Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1980
COMMITTEES ON:

State Rail Plan

Corrections

Local Government

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 245

December, 1979

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.

COLORADO LEGISLATIVE COUNCIL

RECOMMENDATIONS FOR 1980

Committees on:

The State Rail Plan

Corrections

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Legislative Council

Report to the

Colorado General Assembly

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

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

To Members of the Fifty-second Colorado General Assembly:

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

Respectfully submitted,

/s/ Senator Fred Anderson
Chairman
Colorado Legislative Council

FA/pm

FOREWORD

The recommendations of the Colorado Legislative Council for 1979 appear in five separate volumes (Research Publication Nos. 242 through 246). The Legislative Council reviewed the reports contained in this volume (Research Publication No. 245) at its meeting on November 26, 1979. The Legislative Council voted to transmit the bills included herein with favorable recommendation to the Governor and to the 1980 Session of the General Assembly.

The committees and staff of the Legislative Council were assisted by the staff of the Legislative Drafting Office in the preparation of bills and resolutions contained in this Volume. Matthew E. Flora assisted the Committee on The State Rail Plan; Michael T. Risner and Bill Hobbs assisted the Committee on Corrections; and Patrick Boyle assisted the Committee on Local Government.

December, 1979

Lyle C. Kyle
Director

TABLE OF CONTENTS

LEGISLATIVE COUNCIL

COMMITTEE ON THE STATE RAIL PLAN

Members of the Committee

Sen. Tilman Bishop,
Chairman
Rep. Jim Reeves,
Vice-Chairman
Sen. Hugh Fowler
Sen. Al Meiklejohn
Sen. Don Sandoval
Sen. Richard Soash
Sen. Ruth Stockton
Rep. Frank DeFilippo
Rep. Laura DeHerrera
Rep. Carol Edmonds
Rep. Jeanne Faatz
Rep. Casey Hayes
Rep. William Hilsmeier
Rep. W. P. "Wad" Hinman
Rep. Miller Hudson
Rep. Ray Powers

Council Staff

Bart Bevins
Research Associate

Debbie Wilcox
Senior Research Assistant

In 1977, the General Assembly adopted House Joint Resolution 1046 which authorized the Legislative Council to develop and submit a plan which would qualify the state for freight rail service assistance as provided in section 803 of the federal "Railroad Revitalization and Regulatory Reform Act of 1976." The Legislative Council was authorized to contract with other state agencies to carry out the application and administration of the program. The Department of Highways received authority from the Legislative Council to serve as the designated state agency to the Federal Railroad Administration (FRA) for the purpose of developing a state rail plan. The Department of Highways, acting on behalf of the Legislative Council, contracted with the URS Company to undertake the study of a state rail plan.

The initial draft of the State Rail Plan was presented to the 1978 Interim Committee on Transportation and Energy. That committee did not have adequate time to conduct a complete review of this draft and therefore transmitted the report without recommendation to the General Assembly. There were several additions and revisions that the committee requested be incorporated in the report before it could be considered in its final form. The committee also wanted to provide adequate time for public review and comment. Based on these factors, the committee recommended that the hearing and review process for this study continue through the next session of the General Assembly.

The 1978 committee also recommended that a 1979 update be conducted as part of the ongoing study of the State Rail Plan to address the following topics:

1) an eastern bypass analysis;
2) agricultural rate structure evaluation; and
3) continuing evaluation of branch line abandonments.

The 1979 Interim Committee on the State Rail Plan was presented with, and subsequently recommended the final report of the State Rail Plan. The State Rail Plan is an indepth study and analysis of rail services in Colorado. This plan may be obtained from the Colorado Department of Highways. As part of the process required for submission of the rail plan, the committee received resolutions adopted by the Colorado Highway Commission and the Public Utilities Commission which authorized the transmittal of the State Rail Plan to the Governor for his certification and submittal to the FRA (see Appendix A).

BYPASS STUDY

The URS Company prepared and submitted for the committee's comment the initial draft of the Rail Bypass Study Element of the State Rail Plan. After the draft was submitted, committee members received

presentations from URS officials and members of the Colorado Department of Highways with regard to the study objectives and recommendations. The committee review provided a forum for public comment on the study. There were also four public meetings which were held in Denver, Hugo, Pueblo, and Commerce City. The railroad industry also provided their comments on the concept of a bypass in general and, the bypass draft report. Written comments were submitted to the URS Company by September 1, 1979, and the report in final form was submitted to the committee on October 2, 1979. This report was accepted and transmitted to the Legislative Council. Copies are available from the Colorado Department of Highways.

The bypass study identified and addressed the projected increase in unit coal trains which will transverse Colorado between now and the end of the century. With the view that some increase in coal train traffic is inevitable, the bypass study looked at the long range planning that may be necessary to deal with such increases.

The primary emphasis of the bypass study is placed upon the increased traffic along the north/south front range corridor. While there is no doubt that coal from northwestern Colorado will increase traffic along the east/west corridor, the heaviest traffic is anticipated from Wyoming to Texas along the north/south route. In order to develop a comprehensive approach to deal with increased unit coal train traffic, the study considered a broad range of elements including economics, increased volume of coal trains, institutional arrangements, environmental concerns, public perceptions, and financial requirements.

Alternatives

The study began by identifying 160 possible combinations of existing and potential rail lines in order to identify feasible alternatives. Further analysis narrowed these possible combinations to 22. After the 22 were reviewed, it was clear that these combinations occupied six lanes or corridors. By grouping the 22 combinations into the appropriate lanes with some refining of alignment, these 22 alternatives were narrowed to nine.

In further examining the nine routes, URS applied a series of constraints: institutional; social/community; environmental; political; and economic. Institutional constraints included examination of federal law and regulation, state and local law, and railroad operating procedures. Environmental constraints included air quality, ecologic sensitivity, wildlife, geologic features, and recreation. Based on these constraints four final alternatives were identified as:

1) the loops alternative, which would bypass Denver and Colorado Springs, essentially follows the existing front range route;

2) the urban program which would retain the existing route, but provide a high level of accommodation between roads and railroads;

3) the all new line alternative from Brush through Limon to Las Animas involving a new line from Brush to Limon and from Kit Carson to Las Animas; and

4) the Sterling Rock line alternative from Brush to Limon to just below Colorado Springs including a new line from Brush to Limon (see Appendix B).

These alternatives were then subjected to a detailed economic analysis in order to identify the best alternative. The new line (3) was found to be the most desirable of the four as a long term, comprehensive solution.

A short-term measure, the minimum urban program, was also considered as part of the URS report. Such a mini-urban program actually represents the first step of the complete urban program described in (2) and will probably be necessary to handle the current front range volume within the next three to ten years. This program calls for the construction or upgrading of a limited number of overpasses, underpasses and crossings based on the priority of need.

The committee considered several options for a mini-urban program. The priorities for various grade separations were discussed as well as the possibility of depressing tracks in some places in the metro area. Tracks are currently being depressed in the Littleton area. Based on the Littleton project, the following analysis was developed.

Centennial Engineering, Inc., submitted a draft of the "Littleton Railroad Depression Project" to the Colorado Department of Highways. In their report, Centennial Engineering states that it would cost a total of $19,114,000 in 1978 dollars to depress the Santa Fe and Rio Grande main line tracks in Littleton. Based on a distance of 1.8 miles, the cost per mile becomes $10,620,000. This per mile cost is broken down as follows:

Earthwork	$ 1,555,000
Track Laying	1,837,000
Local Street Modifications	45,000
Drainage	701,000
Bridges	1,387,000
Retaining Walls	4,956,000
Communication Line	139,000
	$10,620,000/mile

A separate analysis of the feasibility of depressing tracks in the Denver metropolitan area was conducted by the Colorado Department of Highways. It was determined that the area of the "Littleton Railroad Depression Project," and an area in Commerce City would be the only areas that may be logically eligible for depressing mainline

railroad tracks along the existing Wyoming to Texas coal train route. The analysis assumed, for the Commerce City area, a rerouting of the Burlington Northern traffic onto the Union Pacific line and depressing the tracks along the Union Pacific corridor. Depression was assumed feasible from a point near E. 67th Place to a point 1,100 feet north of East 88th Avenue. This is a distance of 3.2 miles and by utilizing Centennial Engineering's unit cost figures, it would represent an expenditure of $33,984,000 in 1978 dollars.

An analysis of depressing the coal train mainline route throughout the entire Denver area was also conducted by the Department of Highways. Starting at a point 1,100 feet south of Ridge Road in Littleton and continuing north to a terminating point 1,100 feet north of East 88th Avenue in Commerce City is a distance of 21.15 miles. By using Centennial Engineering's cost figures, the entire project would cost $224,613,000 in 1978 dollars. This expenditure does not include the funds needed to depress the railroad yards, connect existing mainlines and spur tracks, construct special facilities for shippers, or relocate their physical plant if necessary. The cost factors developed in the "Littleton Railroad Depression Project" were deemed appropriate for the purposes of this cursory analysis, but a more detailed analysis would utilize different cost factors.

It should be noted that none of the alternatives showed a positive cost benefit ratio and therefore may not be economically justifiable based on current conditions. The bypass report goes on to suggest, however, that a substantial increase in general commodity and especially coal train traffic could result in increased costs to the present system and consequently alter the analysis.

Coal Projections

In conjunction with these conclusions, the URS Company attempted to provide a more complete analysis of the projected coal train traffic through Colorado by the year 2,000. The study included a summary of current coal usage and production projections with consideration of the following variables: oil and gas prices; coal labor costs; transportation costs and alternative modes (slurry lines); electric power growth; nuclear power; environmental regulations; coal conversion; macroeconomics; synfuels; exports; federal coal policy; and available Gulf Coast lignite.

With only limited estimates available of coal flow through the Front Range, URS developed its own projections. These projections were based on 1985 and 1990 Department of Interior and Department of Energy data extrapolated to the year 2000, reduced by 13 percent (to account for the past and expected trend and condition changes), and analyzed with coefficients developed from those used by the Colorado Energy Research Institute (CERI) (see Appendix C). These figures are dynamic, but may be judged reasonable given the variables that can effect coal production in the next few years.

Funding Arrangements

The recommendation contained in the final Bypass Feasibility Study outlined steps to be taken in order to proceed with a plan for a phased-in program. The initial step in the recommendation is the evaluation of the need to proceed. Based on the testimony provided to the committee and the results of the Bypass Study, the committee voted to take the initial step which leads to the "step to proceed" and begin consideration of funding arrangements (see Appendix D).

In considering funding arrangements, the committee looked at the proposed cost of a mini-urban program, considering that program to be the most necessary and least expensive of the alternatives. Based on figures provided by the Department of Highways, the projected cost of this program is estimated to be $85 million of which the state could be responsible for as much as $56.2 million or as little as $9.8 million depending on the implementation of any new federal programs.

Several funding concepts were examined. Pursuant to a request from the committee, an opinion was drafted by Mr. Robert Johnson of Dawson, Nagel, Sherman & Howard. Mr. Johnson examined five proposals:

1) a special district modeled after the Moffat Tunnel District Act which authorized special assessments against property benefitting from the desired improvements;

2) a special district modeled after the Regional Transportation District which relies upon sales taxes levied within the district;

3) a special district with the power to levy general ad valorem taxes and issue general obligation bonds;

4) the authorization under a special act to allow the state to issue special obligation bonds which would be paid for from certain proceeds of the state's income tax; and

5) the authorization under a special act to allow the state to issue general obligation bonds which would be paid from the proceeds of general taxes levied against all taxable property within the state. The complete opinion is contained in Appendix E.

In addition to the concepts examined by Mr. Johnson, the committee considered other mechanisms that might be used to finance a bypass alternative. A gross ton mile tax and other variations of "user fees" were discussed. From the discussions and information provided by the Department of Highways, it was apparent that some constitutional issues might be raised with regard to taxation of interstate commerce. Vicki Fowler, Attorney General's Office, was asked to render an opinion on the constitutionality of such taxes. According to Ms. Fowler's testimony, funding mechanisms that in fact require the railroads to pay a gross ton mile tax or other similiar tax would interfere with constitutional protection of interstate commerce.

It was noted that several programs for relief to western energy impacted states are being considered at the federal level. The emphasis on the development of western energy resources has also prompted consideration of a federally imposed severance tax that would be appropriated back to energy impacted states. According to Jack Kinstlinger, Executive Director of the Colorado Department of Highways, any program such as this could substantially reduce the state's financial burden in energy related projects such as a rail bypass for unit coal trains.

RAIL PLAN UPDATE PRIORITIES

As provided in section 803 of the federal Railroad Revitalization and Regulatory Reform Act of 1976, federal matching funds are provided by the FRA for planning functions to update states' rail plans. The Department of Highways, the agency currently designated to receive these funds for the state of Colorado, presented their federal FY 1980 budget to the committee for review.

The following were included in the list of update topics to be funded:

		Estimated Budget
1)	Respond to FRA comments on rail plan and update;	$ 10,000
2)	Monitor and make recommendations on abandonment applications;	5,000
3)	Justify future rehabilitation projects (benefit cost analysis);	20,000
4)	Update grade crossing analysis - prioritize separation projects;	25,000
5)	Feasibility of rail relocation around 2 communities;	25,000
6)	Auto-Train market analysis;	35,000
7)	Coal rates study (suggest this be contracted to PUC); and	20,000
8)	Rail passenger service analysis update.	10,000
	Subtotal	$150,000
	Program Administration	12,500
	Total possible planning elements	$162,500

Of the total funds necessary for the update priorities, the federal share is $130,000 and the state share is $32,500. Priorities one through three are required by the FRA to be included as planning elements of the update. With respect to numbers three, four, and five, the committee recommended that all due consideration be given to the east/west routes and the western slope in particular. With respect to number eight, it was specifically recommended that the words "front range" be stricken in order that rail passenger service would be a statewide priority.

Ski Bus

In conjunction with the request that rail service to ski slopes be explored, the committee also requested some information on bus service to ski areas. Mr. Kintslinger reported his efforts with the Ski Pool Task Force to initiate such service. According to his last report to the committee, bus service from the Denver metro area will be available this winter for a 90 day trial period based on the tentative agreements reached by the task force to date. These agreements are:

1) two services will be provided

   (a) bus service to ski areas;
   (b) carpool staging area;

2) both services will operate from Heritage Square (near the intersection of Highway 40 & I-70);

3) the management of Heritage Square has agreed to allow the use of their lower parking lot (closest to the highway) for carpool staging and parking, and the upper lot for bus staging and auto parking;

4) a restaurant in Heritage Square has agreed to open early in the morning to sell bus tickets, coffee, donuts, etc.;

5) four ski areas closest to Denver will be served -- each by at least one bus every weekday; and

6) passengers will be able to make reservations on the buses until 9 p.m. the day before, and then buy tickets at Heritage Square and perhaps at the downtown bus center.

The following considerations are still being explored by the task force:

1) lift ticket discount rates;
2) combined lift/bus tickets;
3) promotion campaign; and
4) carpool liability problems.

The committee also suggested that RTD transit centers be considered as departure points for such service.

Coal Rate Study

The question of the need for a coal rate study was considered by the committee. Testimony from the Colorado Springs Department of Public Utilities provided support for such a study based on some inequities they faced in shipping coal for their power generation.

A coal rate study was included in number seven of the update priorities. It was pointed out that CERI was already in the process of conducting such a study and the committee could provide input into that process. Since this study was already started and the results would be available to the committee, the committee voted to delete this topic from the update priorities, and wait for the results of the CERI review before requesting additional studies.

Auto-Train

As part of the update on passenger rail service in Colorado, Mr. Kintslinger addressed the Auto-Train concept which was included as a priority topic for a market analysis. Auto-Train is a company that provides a mode of passenger travel which offers a combination of the flexibility and convenience of the automobile with the comfort and economics of the train. Each train includes enclosed bi-level railroad auto-rack cars, coaches equipped with reclining seats, and sleeping cars containing staterooms. There are also cocktail-lounge-restaurant cars, and cars containing recreational facilities for both adults and children. The automobile driver and his passengers stop at a point-en-route to their destination. While boarding the Auto-Train, their vehicle is loaded on an auto-rack car.

Members of the Auto-Train Corporation testified before the committee and expressed interest in providing Auto-Train service from Denver to Chicago. According to Auto-Train analysts, such a service would capitalize on the ski business in the winter and tourism in the summer, but a market study is needed to determine the actual interest in such a service.

Some $35,000 was included in the Rail Plan Update budget for Auto-Train market analysis. The Auto-Train officials testified that the actual cost of such a study would be about $75,000. The committee recommends that the money originally allocated for the Coal Rate Study be shifted into the Auto-Train market study bringing the total allocation to $55,000 with the remaining $20,000 to be provided by private industry.

AGRICULTURAL RATE STUDY

One of the charges given to the committee was a study of agricultural rates in Colorado. The Colorado Department of Agriculture agreed to develop such a study for the committee. The first draft of the study was presented to the committee on October 22, 1979. A survey of rates from various shipping points was included as well as a specific look at the rate structure being applied to shipping points in the San Luis Valley. The Department of Agriculture recommended that the results of this study be provided to shippers to allow them input into the rate-making structure. Examples were provided which showed that such information was being offered in other states. The committee did not receive a final report before they adjourned and, therefore, does not make any specific recommendations with respect to this study. A final report is scheduled to be completed in mid-December.

REHABILITATION PROJECTS

In addition to funds available for the update topics, the funds on a federal/state match are also available from the FRA for rail rehabilitation. In order for the state to receive these funds, an agency must be designated to receive the monies and administer the programs. Currently, the Department of Highways is receiving and administering planning funds, however, the department will need further authorization in order to receive capital construction funds to undertake these projects. The program guidelines are as follows:

1) Funds estimated available for rehabilitation projects are: federal - $900,000, and non-federal - $225,000 for a total of $1,125,000.

2) Project eligibility includes any line carrying less than three million gross tons per year (depending on the willingness of railroads to participate and direction from the Legislative Council).

3) Proposed projects are the Atchison, Topeka, and Santa Fe Railway branchline from Hartman to McClave in the Arkansas Valley. (This line was studied in the State Rail Plan.)

4) Projected funds are estimated for these projects as follows:

Capital Construction	Funds
Federal	$138,400
Non-federal	34,600
Administration	
Federal	$ 13,800
Non-federal	3,500
SUBTOTAL	$190,300

5) The project subtotal of $190,300 breaks down as follows:

Federal share	$152,200
Non-federal-state funds	3,500
Non-federal-railroad funds	34,600
	$190,300

The grand total of $352,800 for planning and projects breaks down as follows:

Federal share	$282,200
Non-federal-state funds	36,000
Non-federal-railroad funds	34,600
	$352,800

In order for the state to receive these funds, a receiving agency must be designated.

ABANDONED LINES

In accordance with the charge given the committee to consider possible line abandonments, the committee received testimony on the status of the Chicago, Rock Island and Pacific Railroad.

The Rock Island, currently in receivership and operating limited service under a Directed Service Order, has lines in Colorado which might be abandoned. In response to this situation, the committee forwarded a letter to the Public Utilities Commission (see Appendix E). The letter stated the committee's concern about the possible abandoned lines. It further supported the purchase of such lines in Colorado by the Denver and Rio Grande railroad, and requested, as a last option, that the state be given the option to purchase the rights-of-way to such lines to prevent them from reverting to the adjoining landowners. In the event that a recommended bypass alternative does become necessary to handle unit coal train traffic, the Rock Island line between Colorado Springs and Limon could be a vital part of the line.

RECOMMENDATIONS

The committee, recognizing the ongoing nature of the State Rail Plan and related studies, recommends that the State Rail Plan committee be allowed to continue its work. Such a committee would best be able to monitor and report on future studies in this area.

Secondly, since Colorado presently has no agency authorized to receive capital construction monies from the FRA for rail rehabilita-

tion projects, the committee considered a bill to allow the Department of Highways to receive and monitor such funds. The committee, however, did not recommend the substance of the bill. They recommended a bill title only, in order that it could be considered for inclusion on the governor's call.

Bill 42

This bill, introduced as S.B. 492 by Senator Hugh Fowler in the 1979 session, is recommended by the committee. The bill establishes a railroad facilities financing authority with bonding capabilities and would be a means of funding any future railroad projects which might be undertaken by the state.

APPENDIX A

The following resolution was adopted by the Colorado Highway Commission on August 16, 1979.

RES. NO.
972-D

WHEREAS, the State Highway Commission recognizes that a state rail plan is an important part of an overall statewide transportation plan; and,

WHEREAS, House Joint Resolution No. 1046 of the 1977 General Assembly states, in part, that, "The Legislative Council, with the advice of the Highway Commission and the Public Utilities Commission is authorized to submit a plan for rail services..."; and,

WHEREAS, the Colorado Department of Highways has developed a Colorado State Rail Plan for the Legislative Council; and,

WHEREAS, the State Highway Commission has reviewed the Colorado State Rail Plan and found it to be consistent with the goals and objectives of the Department of Highways; and,

WHEREAS, the Rail Plan must be certified by the Governor prior to its submission to the Federal Railroad Administration.

NOW, THEREFORE, BE IT RESOLVED that the State Highway Commission recommends to the Legislative Council that the Colorado State Rail Plan be forwarded to the Governor of Colorado for his certification and submitted to the Federal Railroad Administration.

HOMER L. BRUTON, Secretary
COLORADO HIGHWAY COMMISSION

State of Colorado

RICHARD D. LAMM GOVERNOR

ADMINISTRATION (303) 892-3154
TRANSPORTATION 892-3171
FIXED UTILITIES 892-3181
COUNSEL 892-3188

DEPARTMENT OF REGULATORY AGENCIES

The Public Utilities Commission

500 STATE SERVICES BUILDING 1525 SHERMAN STREET
DENVER, COLORADO 80203

August 15, 1979

RESOLUTION

WHEREAS, House Joint Resolution No. 1046 of the 1977 General Assembly states, in part, that, "The Legislative Council, with the advice of the Highway Commission and the Public Utilities Commission, is authorized to submit a plan for rail services. . .."; and,

WHEREAS, the Colorado Department of Highways has developed a Colorado State Rail Plan for the Legislative Council; and

WHEREAS, representatives of the Public Utilities Commission actively participated in the development of the Colorado State Rail Plan through the various advisory committees, and has reviewed the same; and

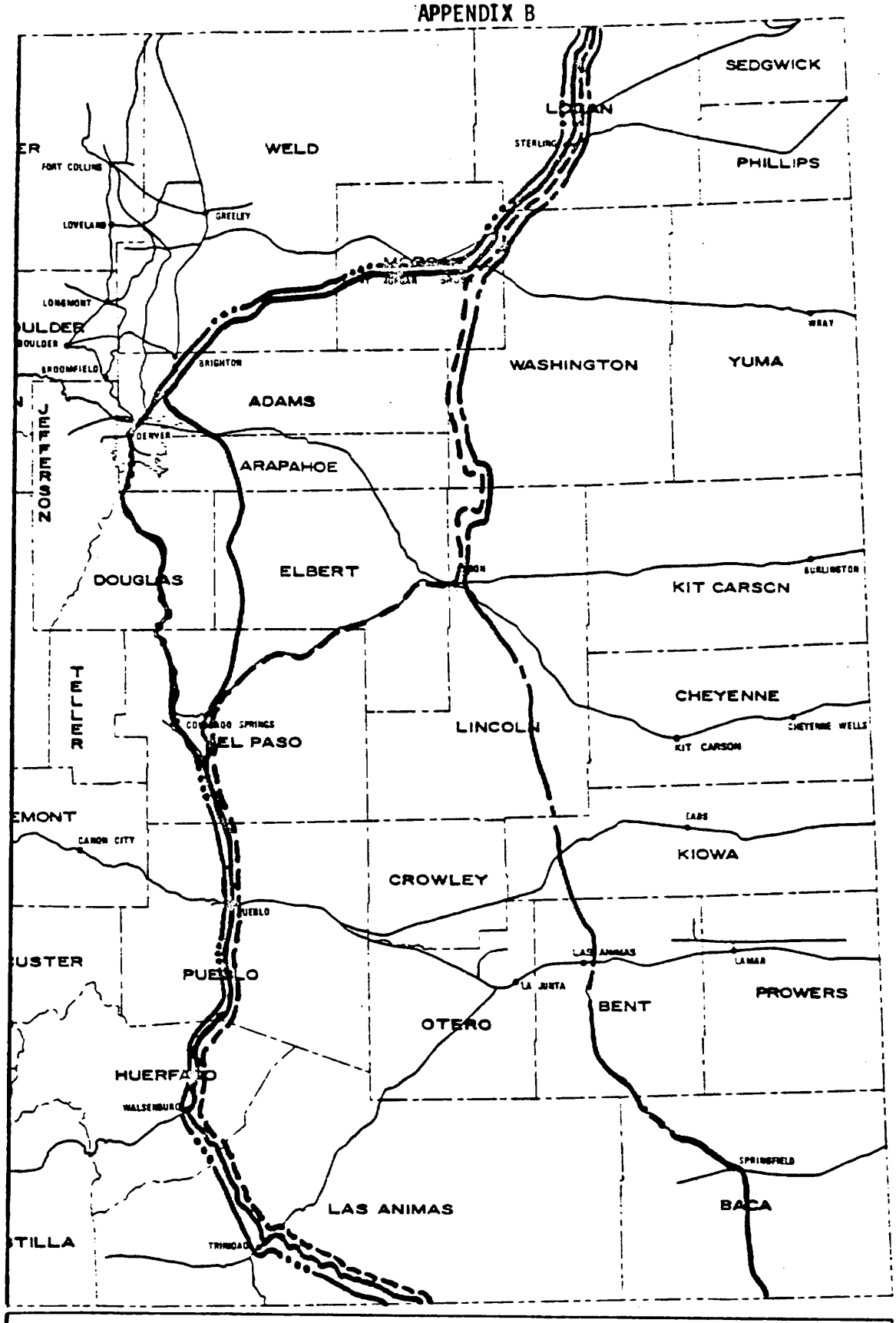
WHEREAS, the Rail Plan must be certified by the Governor prior to its submission to the Federal Railroad Administration,

NOW, THEREFORE, BE IT RESOLVED that the Public Utilities Commission recommends to the Legislative Council that the Rail Plan be forwarded to the Governor of Colorado for his certification and submittal to the Federal Railroad Administration.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRWOMAN EDYTHE S. MILLER NECESSARILY ABSENT AND NOT PARTICIPATING


SEDGWICK
PHILLIPS
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LOGAN
STERLING
FORT COLLINS
GREELEY
LOVELAND
LONGMONT
BOULDER
BROOMFIELD
BRIGHTON
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BURLINGTON
KIT CARSON
CHEYENNE
CHEYENNE WELLS
COLORADO SPRINGS
EL PASO
LINCOLN
TELLER
CANON CITY
EADS
KIOWA
CROWLEY
PUEBLO
CUSTER
LAS ANIMAS
LAMAR
LA JUNTA
PROWERS
BENT
OTERO
HUERFANO
WALSENBURG
SPRINGFIELD
BACA
LAS ANIMAS
TRINIDAD
FINAL SCREENED ALTERNATIVES
ALL NEW
STERLING ROCK
LOOPS
URBAN PROGRAM
NORTH
SCALE MILES

Figure 1

APPENDIX C

table 5

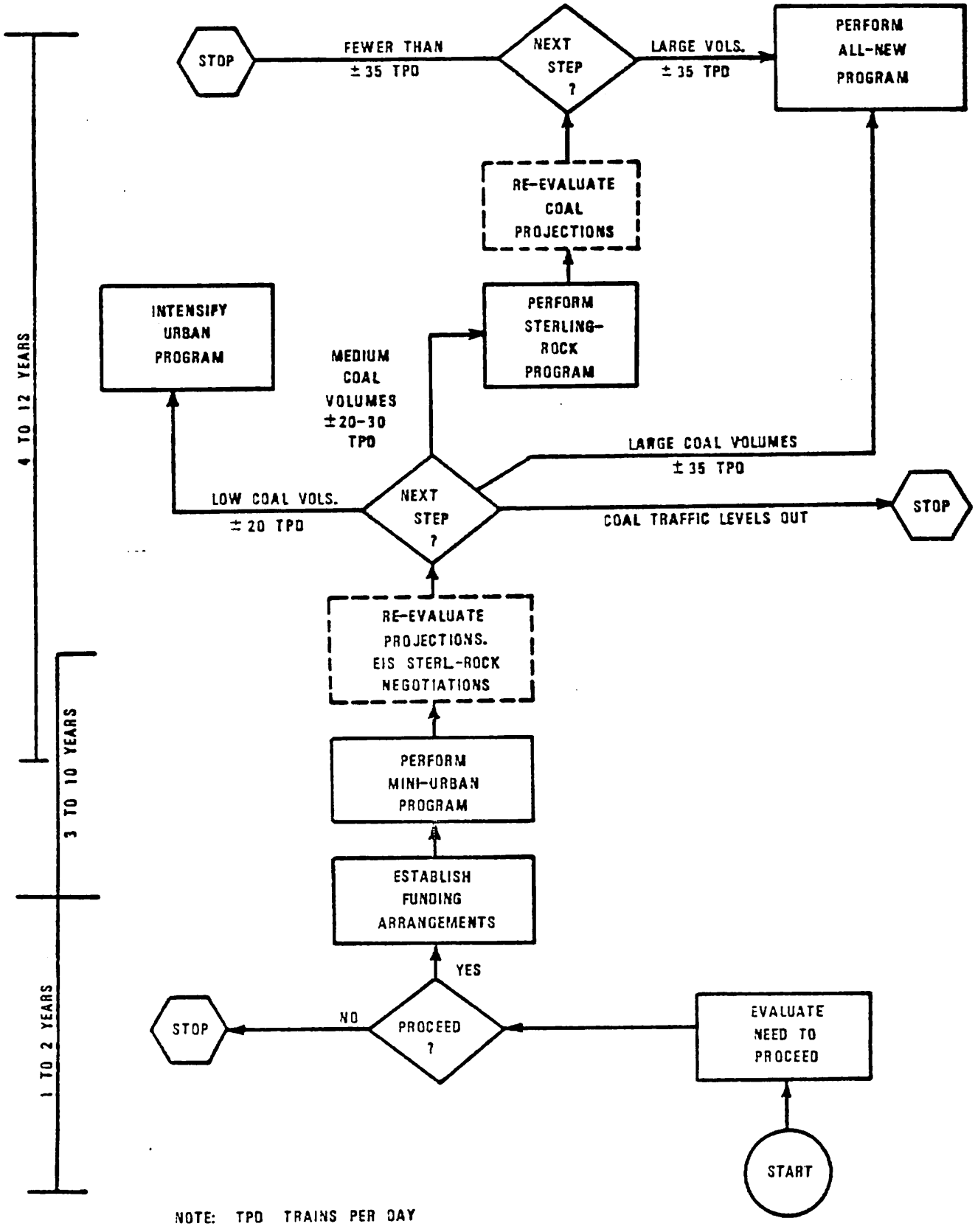
RAIL BYPASS MATHEMATICAL CALCULATIONS TABLE
FOR YEAR 2000 COAL TONNAGES
BY ORIGIN & DESTINATION IMPACTING COLORADO

RESOURCE AREA	EXTRAPOLATED DOI-DOE QUANTITIES (MTPY)	ASSUMPTION & CAPACITY ANALYSIS FACTOR(1)	A x B = MODIFIED PROJECTION	ROUTING COEFFICIENT	C x D = EXPECTED COAL MOVEMENTS MTPY
FROM: POWDER RIVER					
TO: TEXAS	243	0.87	211	0.35	74
DENVER-RATON	7	0.87	6	1.00	6
FROM: GREEN RIVER-HAMS FORK					
TO: TEXAS	7	0.47	3	1.00	3
DENVER-RATON	27	0.47	13	1.00	13
EASTERN & WESTERN INTERIOR	169	0.47	79	0.27	21
FROM: UNITA-SOUTH WEST UTAH					
TO: EASTERN & WESTERN INTERIOR	21	0.87	18	1.00	18

(1) In addition to accounting for the 13% reduction due to assumption evaluation, the factor also takes into consideration that unique condition within the Green River-Hams Fork region, where the anticipated industry capacity or ability to meet demands is significantly less than DOI-DOE projected production in 1985 and 1990. This was developed using the Western Coal Development Monitoring System, DOE Federal Energy Information Agency.

APPENDIX D

RECOMMENDATION



NOTE: TPD TRAINS PER DAY

Figure 2

DAWSON, NAGEL, SHERMAN & HOWARD

ATTORNEYS AND COUNSELORS AT LAW

2900 FIRST OF DENVER PLAZA
633 SEVENTEENTH STREET
DENVER, COLORADO 80202

TELEPHONE: 303 893-2900
TELECOPIER: 303 893-2940
TELEX: 454368

August 17, 1979

URS Company
3955 E. Exposition Avenue
Denver, Colorado 80209

Attention: Mr. Steve Holt

State of Colorado Legislation
Coal Trains Railroad Lines
Tax-Exempt Financing

Gentlemen:

Reference is made to the conference between Mr. Holt and me on July 31, 1979, concerning the above-captioned matter.

FACTS

It is our understanding from comments made by Mr. Holt that the General Assembly of the State of Colorado (herein the "Legislature" and the "State," respectively) has engaged his firm (the addressee of this letter) to conduct, with the assistance of others, an economic feasibility study and to make a report to the Legislature thereabout. There is concern among some legislators as to the environmental impact which the current energy crisis will have upon an urban area in the State. This area runs north and south and lies east of the mountain area of the State and is adjacent thereto. The area constitutes perhaps 80% of the urban area of the State, is continuing to urbanize, and is estimated by some planners to continue to do so for the next couple of decades.

The concern arises from increased coal mining activity primarily in Wyoming (but not necessarily limited thereto) and from the transportation of increasing numbers of generally long railroad coal trains through this urban area. The coal will in large measure be used to fire electric generating facilities in the southeastern part of the State and perhaps in part in other areas outside the State.

The coal trains disrupt traffic, particularly, as is frequently the case, in the case of intersecting streets without appropriate underpasses, overpasses, and other separators. It is estimated that, in the absence of some corrective action, the existing problems will be progressively aggravated and will result in increasing delays in the movement of traffic and in increasing amounts of lost time to persons affected by such delays. The increasing number of coal trains will also contribute to environmental problems, including the growing air pollution and noise problems in those areas.

Corrective action may entail the construction of numerous intersection separators, i.e., underpasses and overpasses, in connection with the existing railroad rights-of-way which are presently experiencing such railroad traffic or entail the diversion of such coal trains traffic therefrom by the construction of other railroads in areas to the east of the urban area in question, thereby largely avoiding those urban areas, or a combination thereof.

Mr. Holt indicated that the "front range by-pass analysis" has narrowed the alternatives down to three. Firstly, still under consideration is the construction of intersection separators pertaining to the current railroad rights-of-way. This route enters the State from the north more or less north of Sterling and then proceeds southwesterly through Sterling, Brush, and Fort Morgan to Denver, then continues in a southerly direction through Colorado Springs and Pueblo to Walsenburg, and then continues southeasterly through Trinidad to the State's south boundary.

Secondly, under consideration is the construction of a by-pass route running in a southerly direction from Brush to Las Animas where a new electric generating facility is planned for construction, and where the route connects with an existing railroad line running southwesterly from Las Animas to Trinidad.

Thirdly, under consideration is the construction of a new by-pass running southerly from Brush to Limon where the by-pass intersects with the Rock Island Railroad line which continues southwesterly to Colorado Springs and there intersects with the existing route designated above as the first alternative.

Preliminary engineering studies to date indicate that the construction costs will be a minimum of about $200,000,000 to about a maximum of $300,000,000.

REQUEST FOR OPINION

Mr. Holt indicated that the Legislature desires some legal vehicle for tax-exempt financing of the proposed improvements. He requested that we give our suggestions, recommendations, and other opinions thereabout.

REQUESTED OPINION

We suggest the following types of legal vehicles to finance the desired improvements:

A. The creation of a special district by a special act the corporate boundaries of which would encompass the existing urban area and the adjacent area likely to urbanize in the next 2 or 3 decades, and the grant, amongh other powers, of the power to levy special assessments against the property specially benefitted by the desired improvements, i.e., the assessable real property within the district, by an annual mill levy against such property and the power to issue special obligation bonds of the district to defray the project costs, which bonds are payable from the proceeds of such mill levy, in a manner analogous to the Moffat Tunnel District (herein the "MTD Alternative");

B. The creation of a special district by a special act with such corporate boundaries, and the grant, among other powers, the power to fix sales and use taxes within the district's boundaries against taxable transactions and to issue special obligation bonds of the district to defray project costs, which bonds are payable from the proceeds of such excise taxes in a manner analogous to the Regional Transportation District (herein the "RTD Alternative");

C. The creation of a special district by a special act with such corporate boundaries, and the grant, among other powers, the power to levy general (ad valorem) taxes against the taxable property within the district's boundaries and to issue general obligation bonds of the district to defray the project costs, which bonds are payable from the proceeds of such taxes in a manner analogous to numerous water, sanitation, and other quasi-municipal districts (herein the "G O District Alternative");

D. The authorization of the desired project by a special act to be undertaken by the State and the issuance of the State's special obligation bonds to defray project costs, which

bonds are payable from certain proceeds of the State's income tax (herein the "State I.T. Alternative"); and

E. The authorization of the desired project by a special act to be undertaken by the State and the issuance of the State's general obligation bonds to defray project costs, which bonds are payable from the proceeds of general (ad valorem) taxes levied against all the taxable property within the State (herein the "G O State Alternative").

It is our recommendation and opinion that the MTD Alternative i.e., the first alternative designated above, is the preferable financing vehicle.

ANALYSIS AND OTHER COMMENTS

1. MTD Alternative. The MTD Alternative is modelled after the Moffat Tunnel District act, the legality of which was bitterly contested but ultimately upheld. The construction of the Moffat Tunnel for use by railroads through the continental divide and the transmission of water from the western slope to the eastern slope for domestic and other beneficial use is remarkably parallel to the proposed project and public purposes to be achieved thereby.

The first attempt to find a suitable legal vehicle for the Moffat Tunnel was declared invalid in a long opinion (46 pages, 38 written by the majority and 8 by the dissent) in Lord v. Denver, 58 Colo. 1, 143 Pac. 284 (1914), notwithstanding the amendment of the home rule city's charter in 1913 by its qualified electors creating a tunnel commission and granting extensive powers thereto and the authorization of the issuance by the city of its general obligation tunnel construction bonds in the principal amount of $3,000,000 by the city's taxpaying electors.

The validity of the Moffat Tunnel act of 1922, creating the Moffat Tunnel District, was upheld against numerous legal objections in Milheim v. Moffat Tunnel Dist., 72 Colo. 268, 211 Pac. 649 (1922) aff'd 262 U.S. 710, 43 S.Ct. 694, 67 L.Ed. 1194. (The need for additional financing, after the issuance of the maximum amount authorized by the Act, after the construction of the tunnel half-way through the mountain, and after the issuance by the district of additional bonds to complete the tunnel's construction, gave rise to additional extensive litigation in both federal and State courts as to the validity of the bonds, which validity was ultimately upheld.)

The financial base for the payment of the proposed bonds superficially appears to be adequate for the proposed financing. (We have not, however, had the benefit of any underwriter or other financial consultant as to this or any other alternative. Such advice should ultimately be had before the enactment of any legislation and the issuance of any securities, regardless of the type of legal vehicle which the Legislature decides to use.)

2. RTD Alternative. The RTD Alternative might be a suitable legal vehicle for financing the desired project. (No consideration has been given to the financial suitability of this vehicle, and the advice of a qualified financial consultant should be sought.) The proceeds of a modest sales and use tax fixed by the Regional Transportation District has been sufficient to finance its needs to date. (That district, however, has not yet found a satisfactory mass transit system other than its use of buses.)

The proposed special district to be created is prohibited, together with other political subdivisions of the State, by § 6, art. XI, State Constitution, among other limitations, from incurring "any general obligation debt by loan in any form," e.g., by the issuance of general obligation bonds payable wholly or in part from the proceeds of general (ad valorem) taxes, unless the question of incurring the same is submitted to and approved by a majority of the district's qualified electors voting thereon. But no election will be required of the proposed district as a condition to the issuance of the district's special obligation bonds payable only from the proceeds of its sales and use tax. Such bonds probably constitute a "debt" under the State's "special fund doctrine," as the proceeds are not related to the improvements acquired or improved with the bond proceeds. Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957). But such bonds would not constitute a "general obligation debt," because the sales and use taxes fixed by the district are excise taxes, not general (ad valorem) taxes, and because the district would not pledge its full faith and credit for their payment.

3. G O District Alternative. The G O District Alternative is a suitable legal vehicle and presumably a suitable financing vehicle. The district's bonds, however, clearly constitute "general obligation debt" and thus they are required to be authorized by a majority of the qualified electors of the district voting on the question on the authorization of the bonds, as required by § 6, art. XI, State Constitution.

4. State I.T. Alternative. The State I.T. Alternative also is a suitable legal vehicle and financing vehicle. (Of course, the debt service requirements to service a $200,000,000 to $300,000,00 bond issue will require a substantial increase in income taxes or other State revenues to permit it to balance its budget annually.) Possibly there would be some advantages (as well as disadvantages) in the State owning and maintaining management control of the proposed railroad facilities to be acquired, rather than a quasi-municipal district.

Such financing would require either an appropriate constitutional amendment or a favorable decision of the Colorado Supreme Court that the adoption of § 17, art. X, State Constitution, at the general election held on November 3, 1936, resulted in a constitutionally created special fund for the payment of bonds, which thus do not constitute a debt in contravention of the debt and other limitations in contravention of §§ 3, 4, and 5, art. XI, State Constitution.

Sec. 17, art. X, provides that "[t]he general assembly may levy income taxes, either graduated or proportional, or both graduated and proportional, for the support of the state, or any political subdivision thereof, or for public schools, and may, in the administration of an income tax law, provide for special or limited taxation or the exemption of tangible or intangible personal property."

At the general election held on November 6, 1934, there was adopted § 18, art. X, State Constitution. That section provides in relevant part that "[o]n and after July 1, 1935, the proceeds from the imposition of any license, registration fee, or other charge with respect to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel except aviation fuel used for aviation purposes shall, except cost of administration, be used exclusively for the construction, maintenance, and supervision of the public highways of this state. * * *"

Prior to adoption of this section the Colorado Supreme Court held that state bonds for highway construction and payable from the proceeds of such fees and excise taxes constituted a debt in contravention of § 3, art. XI, State Constitution. In re Senate Resolution No. 2, 90 Colo. 101, 31 P.2d 325 (1933). After

the addition of that section to the constitution the Colorado Supreme Court held that the section resulted in a constitutionally created special fund from which such bonds are payable and thus such earlier debt limitation provisions in the constitution were not contravened. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); and Watrous v. Golden Chamber of Commerce, 121 Colo 521, 218 P.2d 498 (1950).

The Colorado Supreme Court may not reach a similar decision in connection with the income tax amendment to the State Constitution because the purpose for which the income tax proceeds may be spent is quite broad rather than narrowly restricted as in the case of the highway funds amendment. Unlike the highway fund proceeds, the income tax proceeds are available for State general fund purposes. Their pledge for the payment of State bonds debt service would deplete revenues available for general fund appropriations. Further, for a period in excess of 40 years no attempt has been made by the State to issue income tax revenue bonds, whereas an immediate attempt was made to issue highway revenue securities after the adoption of the highway amendment.

Because of the uncertainties as to the result of any such litigation, we do not recommend the State I. T. Alternative.

5. G O State Alternative. The G O State Alternative also is a suitable legal and financial vehicle. Sec. 3, art. XI, State Constitution, has been amended several times to authorize the issuance of various types of bonds in various amounts for various purposes.

Pursuant to ch. 148, Session Laws of Colorado 1909, § 3 Art. XI, was amended at the general election held in November 1910, by the addition of a proviso to authorize the State's general obligation Funding Bonds, Series 1910, dated December 1, 1910, in an aggregate principal amount not exceeding $2,115,000, and payable from general (ad valorem) tax proceeds levied on all taxable property in the State to pay the interest on the bonds and for their redemption by the creation and accumulation of a sinking fund sufficient for that purpose, for the purpose of funding outstanding warrants of the State issued for the years 1887, 1888, 1889, 1892, 1893, 1894 and 1897.

Pursuant to House Concurrent Resolution No. 5, approved on April 9, 1919 (see pp 764 to 767, incl., Session Laws of Colorado 1919), § 3, art. XI, was further amended (see ch. 75, Session

Laws of Colorado 1921) at the general election held on November 2, 1920, by the addition of another proviso to authorize the State to contract a debt by loan for the purpose of creating a fund to be expended by the State Highway Commission for the construction and improvement of public highways in the State, the debt to be evidenced by interest-bearing bonds in an aggregate principal amount not exceeding $5,000,000, and presumably payable from annual levies of general (ad valorem) taxes.

Pursuant to an initiated petition, § 3, art. XI, was further amended (see ch. 87, Session Laws of Colorado 1923) at the general election held on November 7, 1922, by the addition of a further proviso to authorize the State to contract a debt by loan for the purpose of creating a fund to be expended by the State Highway Department for the construction and improvement of public highways in the State, the debt to be evidenced by interest-bearing bonds in an aggregate principal amount not exceeding $6,000,000, to be issued in series in 1923, 1924, 1925 and 1926, and payable serially from moneys credited to State Highway Fund from the proceeds of motor vehicle registrationlicense fees.

Thus, there is ample precedent for the amendment of the constitution to authorize a State bond issue.

MISCELLANEOUS COMMENTS

Any act should be carefully structured to delineate the benefits to be derived by the public from the project and the public purposes to be served by the project, e.g., the protection of its urban environment by an amelioration of air and land pollution in concentrated urban areas, adding to the public safety and welfare in the regulation and amelioration of traffic hazards constituting a nuisance, and the implementation of a satisfactory solution in part to the energy crisis and the shortage of electricity.

Any benefit to any railroad company should be strictly incidental to the public purposes achieved.

Article XI reads in relevant part:

> "Section 1. Pledging credit of state, county, city town, township or school district forbidden. Neither the state, nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or

in aid of, any person, company or corporation, public or private, for any amount, or for any purpose whatever; or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state.

"Section 2. No aid to corporations - no joint ownership by state, county, city, town, or school district. Neither the state, nor any county, city, town, township, or school district shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in any corporation or company or a joint owner with any person, company, or corporation, public or private, in or out of the state, except as to such ownership as may accrue to the state by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the state, or to any county, city, town, township, or school district, or to either or any of them, jointly with any person, company, or corporation, by forfeiture or sale of real estate for nonpayment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties, or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public monies, or the performance of any contract in which they or any of them may be jointly or severally interested. Nothing in this section shall be construed to prohibit any city or town from becoming a subscriber or shareholder in any corporation or company, public or private, or a joint owner with any person, company, or corporation, public or private, in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy in whole or in part for the benefit of the inhabitants of such city or town."

(This last sentence was added to § 2 at the general election held on November 5, 1974, and became effective upon the Governor's proclamation on December 20, 1974. See p. 455, Session Laws of Colorado 1974.)

Provisions were added to state constitutions because of, primarily, the so-called canal financing excesses in the third and fourth decades of the 19th century and the railroad excesses of the last half of that century. Railroads were in a state of rapid expansion. Many communities felt it was necessary for the preservation of the community that one or more railroads serve it. Thus many political subdivisions issued bonds and gave proceeds to the railroads, bought their stock, or otherwise gave them financial aid, if the railroad affected would build its line through the community. Many railroad companies went bankrupt. Courts held such bonds were not issued for a public purpose and were invalid. Many bonds were in default.

A book in our firm library, published about 1910, states that over one-third of bonds outstanding were either declared invalid or had a serious cloud over them as to their validity. (Incidentally, investors, in view of these substantial losses, started to condition their bids for the purchase of a bond issue by requiring its approval by an attorney of its choice specializing in municipal finance. Thus, the concept of nationally recognized bond counsel was formed.)

The 2 quoted sections were stated by the Colorado Supreme Court to be broader in scope, and more specific in the matter of restriction, than any similar constitution provision considered or brought to the attention of the supreme court. Lord v. Denver, 58 Colo. 1, 143 Pac. 284 (1914).

Denver agreed with a railroad company to issue its bonds in payment of two-thirds of the expense of driving a tunnel, constructing railroad tracks, and proper approaches with the other necessary equipment to enable the railroad company to connect with its tracks at both ends of the tunnel. For this the company agreed to pay the interest on the bonds, and finally the principal, and upon such payment is to receive full title to the tunnel as constructed for its purposes. Plainly this was in violation of the 2 quoted sections in that the city pledges its faith and credit for the benefit and use of the railroad corporation, and as plainly this is in aid of the railroad corporation. Lord v. Denver, supra.

Public aid to railroad companies is prohibited. It was undoubtedly the intention of the framers of the constitution, whether wisely or not, to prohibit, by the fundamental law of the

new state, all public aid to railroad companies, whether by donation, grant or subscription, no matter what might be the public benefit and advantages flowing from the construction of such roads. Colorado Cent. R. R. v. Lea, 5 Colo. 192 (1879).

The significance of the inhibition of those sections is read in the evil which it was intended to remedy. Common was the practice, theretofore, of issuing municipal bonds to aid in the construction of railroads. The practice was felt to be evil, stimulating unnecessary railroad enterprises, and injuriously affecting the interests of the taxpayer. The universal method of railroad enterprises was through private corporations. The possibility of other methods was unknown, or not seriously contemplated. So, when the people by their constitution prohibited public aid to private corporations, obviously the thought was that all public assistance to the building of railroads was prohibited. Since it is within the constitutional prohibition for the city to make donation or grant to or in aid of one railroad, or to lend or pledge its faith or credit in aid of one railroad, or to become a joint owner with one railroad, clearly it is within such prohibition to so do with two or more railroads. Lord v. Denver, supra.

But the leasing of the public work is neither such an aid to a private person or corporation as is prohibited by those 2 sections; nor does the leasing result in joint ownership of the improvement by the district and its lessee. Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 Pac. 649 (1922) (from concurring opinion).

If any question arises, or if we may assist you in any further way at this time, please do not hesitate so to inform us.

Yours truly,

Robert M. Johnson

Robert M. Johnson

RMJ:bl

APPENDIX F

November 6, 1979

Interstate Commerce Commission
ATTN: Agatha L. Mergenovich, Secretary
12th Street and Constitution Ave., N.W.
Washington, D.C. 20423

Dear Commissioners:

The interim Committee of the Colorado General Assembly on the State Rail Plan, as part of its charge to review rail transportation in Colorado, makes the following recommendations to the Interstate Commerce Commission with regard to the Chicago, Rock Island, and Pacific Railroad Company in Colorado.

1. That all services provided by the Rock Island lines in Colorado should be retained as they are essential to the economic well being of the energy related, industrial, and agricultural sectors.

The line contributes to the coal mining industry in Northwestern Colorado. The Rock Island line is used to move Northwestern Colorado coal from Denver to utility plants in Lincoln, Nebraska, and Iowa City, Iowa. This service must be maintained.

In addition, the interim Committee on the State Rail Plan, the Colorado General Assembly, and the Colorado Department of Highways recently released a "Rail Bypass Feasibility Study" for public consumption. This report recommends three alternatives for rerouting an anticipated large number of unit coal trains from Wyoming to Texas away from the urbanizing Colorado front range. One of the three alternatives would be to construct a new rail line from Limon to Colorado Springs. In the event that this alternative is constructed, the Rock Island line between Limon and Colorado Springs would become a major corridor for the transportation of coal.

The Colorado Springs-to-Limon link, especially the seven miles in the Colorado Springs urban area is very essential. This seven mile section between the Colorado Springs station and Murray Boulevard serves over thirty shippers and in 1978 accounted for 1,177 car loadings and unloadings. Much of this freight was made up of commodities that cannot be shipped by truck.

Over half of Colorado's 1978 wheat crop of $157 million was grown in the east central area of the state which is served by the Rock Island. Corn grain as opposed to silage corn production in Colorado was $174 million in 1978 with over $90 million of this being produced in this central band of the Eastern Plains. Continued service in this area by the Rock Island line is essential for the shipment of these grains.

2. That the Kansas City Terminal Railroad Company be authorized to operate over the Limon to Colorado Springs route under the existing Directed Service Order.

3. If one of the foregoing recommendations is not accepted, that the Rock Island lines in Colorado be acquired by the Denver and Rio Grande Railroad, and if such acquisition does not transpire, that the State of Colorado be given the opportunity to acquire the Rock Island rights-of-way in order to prevent the reversion of such lands to the adjoining landowners. The state wishes to maintain all options for future transportation planning and service to best meet the interests of the people of Colorado.

Very truly yours,

Senator Tilman Bishop, Chairman
Committee on the State Rail Plan

Representative Jim Reeves
Senator Hugh Fowler
Senator Al Meiklejohn
Senator Don Sandoval
Senator Richard Soash
Senator Ruth Stockton
Representative Frank DeFilippo
Representative Laura DeHerrera
Representative Carol Edmonds
Representative Jeanne Faatz
Representative Casey Hayes
Representative William Hilsmeier
Representative W. P. "Wad" Hinman
Representative Miller Hudson
Representative Ray Powers

TB/BB/pm

BILL 42

A BILL FOR AN ACT

RELATING TO THE FINANCING OF RAILROAD FACILITIES, AND ENACTING THE "COLORADO RAILROAD FACILITIES FINANCE AUTHORITY ACT".

Bill Summary

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

Creates the Colorado railroad facilities finance authority as an independent body politic and corporate and a political subdivision of the state, not an agency of the state. Establishes a governing board and specifies the powers, duties, functions, and obligations of the authority relating to the financing of railroad facilities.

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

SECTION 1. Article 4 of title 43, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 4

COLORADO RAILROAD FACILITIES FINANCE AUTHORITY

43-4-401. Short title. This part 4 shall be known and may be cited as the "Colorado Railroad Facilities Finance Authority Act".

43-4-402. Legislative declaration. (1) The general assembly hereby finds and declares that for the benefit of the people of the state of Colorado and the improvement of their health, welfare, and living conditions it is desirable that the people of this state have adequate railroad facilities and that it is essential that railroad companies within this state be provided with appropriate additional means to assist in the development, maintenance, and operation of railroad facilities. The general assembly further finds and declares that it is the purpose of this part 4 to provide a measure of assistance to enable railroad companies in this state to provide improved and additional railroad facilities which are greatly needed in this state, all to the public benefit and good as provided in this part 4. To such end the Colorado railroad facilities finance authority is created to acquire, construct, reconstruct, repair, alter, improve, or otherwise provide railroad facilities through the operations of participating railroad companies and, for such purpose, to lease railroad facilities to such companies; and such authority is vested with powers to enable it to accomplish such purposes. It is not the intent of the general assembly to authorize the authority to directly operate any such railroad facilities.

(2) This part 4 shall be liberally construed to accomplish the intentions expressed in this section.

43-4-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Authority" means the Colorado railroad facilities finance authority created by this part 4.

(2) "Board" means the board of directors of the authority.

(3) "Bond", "note", "bond anticipation note", or "other obligation" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the authority pursuant to this part 4, including refunding bonds.

(4) "Bond resolution" means the resolution authorizing the issuance of, or providing terms and conditions related to, bonds issued under the provisions of this part 4 and includes any trust agreement, trust indenture, indenture of mortgage, or deed of trust providing terms and conditions for such bonds.

(5) "Commission" means the public utilities commission.

(6) "Costs", as applied to facilities financed in whole or in part under the provisions of this part 4, means and includes the sum total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, improvement, extension, relocation, or abolition of such facilities and the acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interest acquired, necessary, used for, or useful for or in connection with a facility and all other undertakings which the authority deems reasonable or necessary for the development of a facility, including without limitation the cost of studies and surveys, of land title and mortgage guaranty policies, of plans,

specifications, and architectural and engineering services, of legal, organization, marketing, or other special services, of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated facilities, of rehabilitation, reconstruction, repair, or remodeling of existing facilities, and of all other necessary and incidental expenses, including working capital and an initial bond and interest reserve funds, together with interest on bonds issued to finance such facilities to a date not more than six months subsequent to the estimated date of completion.

(7) "Facility" means any real or personal property which is necessary or proper for the establishment and operation of a railroad company, including land for track beds, sidings, spurs, or main lines, rights-of-way, easements, licenses, rights, and privileges; and includes any equipment, including locomotives, rolling stock, wires, lights, tracks, safety appliance signals or devices, or other means or instrumentalities, useful for the operation of a railroad company. "Facility" also includes the crossings of railroads and public roads at, above, or below grade; parking lots, garages, and other supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances; and the acquisition, preparation, and development of all real and personal property necessary or convenient for any railroad company.

(8) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, and other income received or to

be received by the authority from any source on account of such facilities.

43-4-404. Authority - creation - board - organization. (1) There is hereby created an independent public body politic and corporate to be known as the "Colorado railroad facilities finance authority". Said authority is constituted as a public instrumentality, and its exercise of the powers conferred by this part 4 shall be deemed and held to be the performance of an essential public function. The authority shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(2) (a) The governing body of the authority shall be a board of directors which shall consist of seven members to be appointed by the governor, with the consent of the senate. Such members shall be residents of the state. No more than four of the members shall be of the same political party. The members of the board first appointed shall serve for terms to be designated by the governor, expiring on June 30 of each year beginning in 1981 and ending in 1987. Upon the expiration of the term of any member, his successor shall be appointed for a term of seven years. Each member shall serve until his successor has been appointed and qualified. Any member shall be eligible for reappointment. The governor shall fill any vacancy by appointment for the remainder of an unexpired term.

(b) Any member of the board may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless such notice and hearing is expressly waived in writing.

43-4-405. Organizational meeting - chairman - executive director - surety bond - conflict of interest. (1) A member of the board, designated by the governor, shall call and convene the initial organizational meeting of the board and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers, the delegation of certain powers and duties, and such other matters as the authority deems proper. At such meeting and annually thereafter, the board shall elect one of its members as chairman and one as vice-chairman. It shall appoint an executive director and an associate executive director who shall not be members of the board and who shall serve at its pleasure. They shall receive such compensation for their services as shall be fixed by the board.

(2) The executive director, the associate executive director, or any other person designated by the board shall keep a record of the proceedings thereof and shall be custodian of all books, documents, and papers filed with the board, the minute books or journal thereof, and its official seal. Said executive director, associate executive director, or other person may cause copies of all minutes and other records and documents of the board to be made and may give certificates under the official

seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely on such certificates.

(3) The board may delegate, by resolution, to one or more of its members or to its executive director or associate executive director such powers and duties as it deems proper.

(4) Before the issuance of any bonds under this part 4, the executive director and associate executive director shall each execute a surety bond in the penal sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the penal sum of fifty thousand dollars, or, in lieu thereof, the chairman of the board shall execute a blanket bond covering each member, the executive director, the associate executive director, and the employees or other officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(5) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any railroad company to serve as a member of the board; except that such trustee, director, officer, or employee shall disclose in writing such interest to the board and may abstain from deliberation, action, and vote by the board in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

43-4-406. Meetings of board - quorum - expenses. (1) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of at least four of its members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(2) Each meeting of the board for any purpose whatsoever shall be open to the public. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling and lodging expenses, incurred in the discharge of their official duties. Any payments for compensation and expenses shall be paid from funds of the authority.

43-4-407. General powers of the authority. (1) In addition to any other powers granted to the authority by this part 4, the authority shall have the following powers:

(a) To have perpetual existence and succession as a body politic and corporate;

(b) To adopt and from time to time amend or repeal bylaws for the regulation of its affairs and the conduct of its business, consistent with the provisions of this part 4;

(c) To sue and be sued;

(d) To have and to use a seal and to alter the same at pleasure;

(e) To maintain an office at such place or places as it may designate;

(f) To determine, in accordance with the provisions of this part 4, and subject to the jurisdiction of the commission, the general location and character of any facility to be financed under the provisions of this part 4 and to acquire, construct, reconstruct, renovate, improve, alter, replace, maintain, repair, relocate, abolish, and operate and lease as lessor such facility; and to enter into contracts for any and all of such purposes and for the management and operation of a facility;

(g) To lease to a participating railroad company any or all of the facilities upon such terms and conditions as the authority deems proper; to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee thereof shall have options to renew the term of the lease for such period or periods, at such rent, and upon such terms or conditions as shall be determined by the authority;

(h) To borrow money and to issue bonds, notes, bond anticipation notes, or other obligations for any of its corporate purposes and to fund or refund the same, all as provided for in this part 4;

(i) To establish rules and regulations for the use of the facilities operated by and to employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(j) To receive and accept from the federal government, the state of Colorado, or any other public agency loans, grants, or contributions for or in aid of the construction of facilities or any portion thereof, or for equipping the same, and to receive and accept grants, gifts, or other contributions from any source, but only for the purposes for which they were loaned, contributed, or granted;

(k) To mortgage or pledge all or any portion of the facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit of the holders of bonds issued to finance such facilities or any portion thereof;

(l) To obtain, or aid in obtaining, from any department or agency of the United States or of this state or any private company any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of this part 4; and, notwithstanding any other provisions of this part 4, to enter into any agreement, contract, or other instrument whatsoever with respect to any such

insurance or guarantee, to accept payment in such manner and form as provided therein in the event of default by a participating railroad company, and to assign any such insurance or guarantee as security for the authority's bonds;

(m) To do all things necessary and convenient to carry out the purposes of this part 4;

(n) To charge to and equitably apportion among participating railroad companies its administrative costs and expenses incurred in the exercise of the powers granted and duties conferred by this part 4;

(o) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this part 4.

(2) The authority shall not have the power to operate the facilities as a business other than as a lessor. Any lease of the facilities entered into pursuant to the provisions of this part 4 shall be for a term not shorter than the longest maturity of any bonds issued to finance such facilities or a portion thereof and shall provide for rentals adequate to pay principal and interest on such bonds as the same fall due and to create and maintain such reserves and accounts for depreciation as the authority determines to be necessary.

43-4-408. Acquisition of property. The authority may acquire by purchase, lease, gift, devise, or otherwise such lands, structures, real or personal property, rights-of-way, franchises, easements, and other interests in lands, including

lands lying under water and riparian rights which are located within or without the state, as it deems necessary or convenient for the construction, acquisition, or operation of facilities, upon such terms as may be considered by the authority to be reasonable, and may take title thereto in the name of the authority.

43-4-409. Notes. The authority may issue from time to time its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any facility, and may renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. All such notes shall be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

43-4-410. Bonds. (1) The authority may issue from time to time its bonds in such principal amount as the authority shall determine for the purpose of financing all or a part of the cost of any facilities authorized by this part 4 or for the refinancing of outstanding obligations. In anticipation of the sale of such bonds, the authority may issue bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged or from the proceeds of the sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as bonds. Such notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations which a bond resolution of the authority may contain.

(2) The bonds may be issued as serial bonds, as term bonds, or as a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the leasing, mortgaging, or sale by the authority of the facilities concerned or of any part thereof as designated in the resolutions of the authority under which the bonds are authorized to be issued or as designated in a trust indenture authorized by the authority, which trust indenture shall name a bank or trust company in this state as trustee, or out of other moneys available therefor and not otherwise pledged. Such bonds may be executed and delivered by the authority at such times, may be in such form and denominations and include such

terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges, may be payable in such installments and at such time or times not exceeding forty years from the date thereof, may be payable at such place or places whether within or without this state, may bear interest at such rate or rates per annum as shall be determined by the authority and without regard to any interest rate limitation appearing in any other law, may be evidenced in such manner, may be executed by such officers of the authority, either manually or by facsimile, may be in the form of coupon bonds which have attached thereto interest coupons bearing the facsimile signature of an authorized officer of the authority, and may contain such provisions not inconsistent with this part 4, all as shall be provided in the resolutions of the authority under which the bonds are authorized to be issued or as is provided in a trust indenture authorized by the authority.

(3) If deemed advisable by the authority, there may be retained in the resolutions or the trust indenture under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such resolutions or in such trust indenture, at such price or prices, after such notice or notices, and on such terms and conditions as may be set forth in such resolutions or in such trust indenture and as may be briefly recited on the face of the bonds; but nothing in this part 4 shall be construed to confer on the

authority the right or option to redeem any bonds except as may be provided in the resolutions or in such trust indenture under which they are issued.

(4) The bonds or notes of the authority may be sold at public or private sale for such price or prices, in such manner, and at such times as may be determined by the authority, and the authority may pay all expenses, premiums, and commissions which it may deem necessary or advantageous in connection with the issuance thereof. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and deliver bonds and notes may be delegated to the executive director of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(5) (a) Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facilities, any other facilities, or any other purpose under this part 4, but the resolutions or trust indenture under which any subsequent bonds may be issued shall recognize the terms and provisions of any prior pledge or mortgage made for any prior issue of bonds and the terms upon which such additional bonds may be issued and secured. Any outstanding bonds of the authority may at any time and from time to time be refunded or advance refunded by the authority by the issuance of its bonds for such purpose and in a

principal amount as may be determined by the authority, which may include interest accrued or to accrue thereon with or without giving effect to investment income thereon and other expenses necessary to be paid in connection therewith. If deemed advisable by the authority, such bonds may be refunded or advance refunded for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a facility or any portion thereof.

(b) Any such refunding may be effected whether the bonds to be refunded have then matured or will mature thereafter, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds to be so refunded, regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities or for any other purpose under this part 4 and regardless of whether or not the bonds proposed to be refunded are payable on the same date or different dates or are due serially or otherwise. The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may be applied, in the discretion of the authority, to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and, pending such application, may be placed in escrow to be applied to such purchase or retirement at

maturity or redemption on such date as may be determined by the authority. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of or guaranteed by the United States of America or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing at such time or times as are appropriate to assure the prompt payment as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profit, if any, earned or realized on any such investment may also be applied, in the discretion of the authority, to the payment of the outstanding bonds or notes to be so refunded or to the payment of principal and interest on the refunding bonds or for any other purpose under this part 4. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a facility may be invested and reinvested in obligations of or guaranteed by the United States of America or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of

paying all or any part of such cost. The interest, income, and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner. All such bonds shall be subject to the provisions of this part 4 in the same manner and to the same extent as other bonds issued pursuant to this part 4.

43-4-411. Negotiability of bonds. All bonds and the interest coupons applicable thereto are hereby declared and shall be construed to be negotiable instruments.

43-4-412. Security for bonds and notes. (1) The principal of and interest on any bonds or notes issued by the authority may be secured by a pledge of or security interest in the revenues, rentals, and receipts out of which the same may be made payable or from other moneys available therefor and not otherwise pledged or used as security and may be secured by a trust indenture, mortgage, or deed of trust (including assignment of leases or other contract rights of the authority thereunder) covering all or any part of the facilities from which the revenues, rentals, or receipts so pledged or used as security may be derived, including any enlargements of and additions to any such facility thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture, mortgage, or deed of trust may contain any agreements and provisions which shall be a part of the contract with the holders of the bonds or notes to be authorized as to:

(a) Pledging or providing a security interest in all or any part of the revenues of a facility or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation, or association or other body, public or private, to secure the payment of the bonds or notes or of any particular issue of bonds, subject to such agreements with noteholders or bondholders as may then exist;

(b) Maintenance of the properties covered thereby;

(c) Fixing and collecting mortgage payments, rents, fees, and other charges to be charged and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(d) Setting aside, creating, and maintaining special and reserve funds and sinking funds and the use and disposition of the revenues;

(e) Limitations on the right of the authority or its agent to restrict and regulate the use of the facilities;

(f) Limitations on the purpose to which the proceeds of sale of any issue of bonds or notes then or thereafter to be issued may be applied and the pledging or providing of a security interest in such proceeds to secure the payment of the bonds or notes or any issue of the bonds or notes;

(g) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(h) Procedures, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the

amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(i) Limitations on the amount of moneys derived from a facility to be expended for operating, administrative, or other expenses of the authority;

(j) Defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default;

(k) Mortgaging of a facility and the site thereof for the purpose of securing the bondholders or noteholders;

(l) Such other additional covenants, agreements, and provisions as are judged advisable or necessary by the authority for the security of the holders of such bonds or notes.

(2) Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded. Each pledge, agreement, lease, indenture, mortgage, and deed of trust made for the benefit or security of any of the bonds of the authority

shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same were made have been fully paid or provision for such payment has been duly made. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the resolutions authorizing the bonds or in any trust indenture, mortgage, or deed of trust executed as security therefor, said payment or agreement may be enforced by suit, action in the nature of mandamus, appointment of a receiver in equity, or foreclosure of any mortgage and deed of trust or by any one or more of said remedies.

(3) In addition to the provisions of subsections (1) and (2) of this section, bonds of the authority may be secured by a pooling of leases whereby the authority may assign its rights as lessor and pledge rents under two or more leases with two or more participating railroad companies as lessees, upon such terms as may be provided for in the resolutions of the authority or as may be provided for in a trust indenture or mortgage or deed of trust authorized by the authority.

43-4-413. Personal liability. Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

43-4-414. Purchase. The authority may purchase its bonds or notes out of any funds available therefor. The authority may

hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

43-4-415. Procedure before issuance of bonds. (1) Notwithstanding any other provisions of this part 4, the authority may not undertake any facility authorized by this part 4 unless, prior to the issuance of any bonds or notes, the board finds that:

(a) Such facility will enable or assist a railroad company to fulfill its obligation to provide facilities; and

(b) Such facility has been reviewed and approved by the commission.

43-4-416. Trust agreement to secure bonds. In the discretion of the authority, any bonds issued pursuant to this part 4 may be secured by a trust agreement between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company in this state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or the proceeds of any contract or contracts pledged and may convey or mortgage the facilities or any portion thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable, proper, and not in violation of law, including particularly such provisions as have been specifically authorized

to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a facility.

43-4-417. Payment of bonds - nonliability of state. Bonds and notes issued by the authority shall not constitute or become an indebtedness, a debt, or a liability of the state, the general assembly, or any county, city, city and county, town, school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic within the state, and neither the state, the general assembly, nor any county, city, city and county, town, school district, or other subdivision of the state shall be liable thereon; nor shall such bonds or notes constitute the giving, pledging, or loaning of the faith and credit of the state, the general assembly, or any county, city, city and county, town, school district, or other

subdivision of the state, or of any other political subdivision or body corporate and politic within the state, but shall be payable solely from the funds provided for in this part 4. The issuance of bonds or notes under the provisions of this part 4 shall not obligate, directly, indirectly, or contingently, the state or any subdivision thereof nor empower the authority to levy or collect any form of taxes or assessments therefor, or to create any indebtedness payable out of taxes or assessments therefor or make any appropriation for their payment, and such appropriation or levy is prohibited. Nothing in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating railroad company to the payment of bonds or notes authorized pursuant to this part 4. Nothing in this part 4 shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of this state or to authorize the authority to levy or collect taxes or assessments; and all bonds issued by the authority pursuant to the provisions of this part 4 are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or with any trust indenture, mortgage, or deed of trust executed as security therefor and are not a debt or liability of the state of Colorado. The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage,

obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation, or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

43-4-418. Exemption from taxation - securities law. The authority is hereby declared to be a public instrumentality of the state, performing a public function for the benefit of the people of the state for the improvement of their health, welfare, and living conditions. Accordingly, the income or other revenues of the authority, all properties at any time owned by the authority, any bonds, notes, or other obligations issued pursuant to this part 4, the transfer thereof and the income therefrom, including any profit made on the sale thereof, and all mortgages, leases, trust indentures, and other documents issued in connection therewith shall be exempt at all times from all taxation and assessments in this state. Bonds issued by the authority shall also be exempt from the "Securities Act", article 51 of title 11, C.R.S. 1973.

43-4-419. Rents and charges. A sufficient amount of the revenues derived in respect of a facility, except such part of such revenues as may be necessary to pay the cost of maintenance, repair, and operation and to provide reserves and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any bonds or notes of the authority or in the trust agreement

securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund, which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds or notes as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; and the rates, rents, fees, charges, and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the bond resolution, any trust agreement, any other agreement, nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the resolution authorizing the issuance of such bonds or notes or to such trust agreement. Except as may be otherwise provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance facilities for a particular railroad company without distinction or priority of one over another; except that the authority in any such

resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular facility of a railroad company and for the bonds issued to finance a particular facility and, additionally, may permit and provide for the issuance of bonds having a lien in respect of the security authorized which is subordinate to other bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

43-4-420. Fees. (1) All expenses of the authority incurred in carrying out the provisions of this part 4 shall be payable solely from funds provided under the authority of this part 4, and no liability shall be incurred by the authority beyond the moneys which are provided pursuant to this part 4; except that, for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided pursuant to this part 4, the authority may borrow such moneys as may be required for the necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided pursuant to this part 4.

(2) Nothing in this part 4 shall be construed to imply mandatory participation by a railroad company. When a railroad company chooses to participate, an application for financial assistance for facilities shall be made to the authority and shall be accompanied by an initial planning service fee in an amount determined by the authority. Such initial planning

service fees shall be included in the cost of the facilities to be financed and shall not be refundable by the authority, whether or not any such application is approved. In addition to such initial fee, an annual planning service fee shall be paid to the authority by each participating railroad company in an amount determined by the authority. Such annual planning service fee shall be paid on said dates or in installments as may be satisfactory to the authority. Such fees may be used for:

(a) Necessary expenses to determine the need for facilities;

(b) Necessary administrative expenses; and

(c) Reserves for anticipated future expenses.

(3) In addition, the authority may retain, for a negotiated fee, the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need and location of any such facilities for which application is being made or for such other services or surveys as the authority deems necessary to carry out the purposes of this part 4.

43-4-421. Investment of funds. The authority may invest any funds in obligations of the federal government, the state, or any municipality of the state or in obligations of agencies of the federal government; in bonds, notes, certificates of indebtedness, treasury bills, or other securities constituting direct obligations of the United States; in certificates of deposit or time deposits constituting direct obligations of any

bank or savings and loan association in this state, but such investments may be made only in those certificates of deposit or time deposits in banks or savings and loan associations which are insured by the federal deposit insurance corporation or federal savings and loan insurance corporation, if then in existence, and may not exceed the maximum of such insurance; or in short-term discount obligations of the federal national mortgage association. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. The authority may invest its funds with such maturities as the authority determines if such maturities are on a date or dates prior to the time when, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time when any funds will be required for expenditure or be redeemable is final and conclusive.

43-4-422. Proceeds as trust funds. All moneys received pursuant to this part 4, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, shall be deemed to be trust funds to be held and applied solely as provided in this part 4. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this part 4, subject to such regulations as this part 4 and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing such obligations shall

provide.

43-4-423. Agreement of the state not to limit or alter rights of obligees. The state hereby pledges to and agrees with the holders of any bonds, notes, or other obligations issued pursuant to this part 4, and with those parties who may enter into contracts with the authority pursuant to the provisions of this part 4, that the state will not limit, alter, restrict, or impair the rights vested pursuant to this part 4 in the authority to acquire, construct, reconstruct, maintain, and operate any facility or to establish, revise, charge, and collect rates, rents, fees, and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds, notes, or other obligations authorized and issued pursuant to this part 4 and with the parties who may enter into contracts with the authority pursuant to this part 4. The state further agrees that it will not in any way impair the rights or remedies of the holders of such bonds, notes, or other obligations of such parties until such bonds, notes, and other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this part 4 precludes such limitation or alteration if and when adequate provision is made by law for

the protection of the holders of such bonds, notes, or other obligations of the authority or those entering into such contracts with the authority. The authority may include this pledge and undertaking for the state in such bonds, notes, or other obligations and in such contracts.

43-4-424. Enforcement of rights of bondholders. Any holder of bonds issued pursuant to this part 4 or a trustee under a trust agreement, trust indenture, indenture of mortgage, or deed of trust entered into pursuant to this part 4, except to the extent that his rights are restricted by any bond resolution, may protect and enforce, by any suitable form of legal proceedings, any rights under the laws of this state or granted by the bond resolution. Such rights include the right to compel the performance of all duties of the authority required by this part 4 or the bond resolution; to enjoin unlawful activities; and, in the event of default with respect to the payment of any principal of, premium, if any, on, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the bond resolution, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate the facility, the revenues of which are pledged to the payment of principal of, premium, if any, on, and interest on such bonds, with full power to pay, and to provide for payment of, principal of, premium, if any, on, and interest on such bonds, and with such powers, subject to the direction of the court, as are permitted by law and are accorded receivers in

general equity cases, but excluding any power to pledge additional revenues of the authority to the payment of such principal, premium, and interest.

43-4-425. Bonds eligible for investment. The state and any county, city, city and county, town, or other political subdivision or public body, and public officers thereof, all banks, bankers, trust companies, savings and loan associations, investment companies, and insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this part 4.

43-4-426. Account of activities and receipts for expenditures - report - audit. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures and shall annually, in the month of January, make a report thereof to its members, to the governor, and to the state auditor, such reports to be in a form prescribed by the state auditor. The state auditor may investigate the affairs of the authority, may severally examine the properties and records of the authority, and may prescribe methods of accounting and the rendering of periodical reports in relation to facilities undertaken by the authority.

43-4-427. Federal social security act. The authority may take such action as it deems appropriate to enable its employees to come within the provisions and obtain the benefits of the

federal "Social Security Act", as amended.

43-4-428. Powers of authority not restricted - law complete in itself. This part 4 shall not be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state but shall be construed as cumulative of any such powers. No proceedings, referendum, notice, or approval shall be required for the creation of the authority or the issuance of any bonds or any instrument as security therefor except as provided in this part 4; but nothing in this part 4 shall be construed to deprive the state and its political subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

43-4-429. Powers in addition to those granted by other laws. The powers conferred by this part 4 are in addition and supplementary to, and the limitations imposed by this part 4 do not affect the powers conferred by, any other law, except as provided in this part 4. Facilities may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued pursuant to this part 4 for said purposes, notwithstanding that any other provision of law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extensions of like facilities or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions

contained in any other provision of law.

43-4-430. Annual report. The authority shall submit to the governor and the general assembly within six months after the end of each fiscal year a report which shall set forth a complete and detailed operating and financial statement of the authority during such year. Also included in the report shall be any recommendations with reference to additional legislation or other action that may be necessary to carry out the purposes of the authority.

SECTION 2. Effective date. This act shall take effect July 1, 1980.

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

LEGISLATIVE COUNCIL

COMMITTEE ON CORRECTIONS

Members of the Committee

Sen. Harold McCormick,
Chairman
Rep. Cliff Dodge,
Vice-Chairman
Sen. Polly Baca-Barragan
Sen. Ralph Cole
Sen. Regis Groff
Sen. Dan Schaefer
Rep. William Becker
Rep. Richard Castro
Rep. Betty Neale
Rep. Robert Shoemaker

Council Staff

Earl E. Thaxton
Principal Analyst

Jim Gottschalk
Senior Research Assistant

Elizabeth A. Vaos
Research Assistant

INTRODUCTION

The 1979 Committee on Corrections is a continuation of a joint review committee on corrections which was initially established by Senate Bill 587 of the 1977 Session, and continued by House Bill 1130 of the 1978 Session.

The legislative intent of House Bill 1130 regarding the composition and objectives of this review committee on corrections is contained in Section 17-1-110, Colorado Revised Statutes 1973:

> 17-1-110. Joint review committee on corrections. In order to give guidance and direction to the department of corrections in the development and construction of the maximum security facility and to provide legislative overview of and input into the plan for utilizing the facility, there is hereby established the joint review committee on corrections. The membership of the committee shall consist of five representatives, three from the majority party to be appointed by the speaker of the house of representatives and two from the minority party to be appointed by the minority leader of the house of representatives, and five senators, three from the majority party to be appointed by the president of the senate and two from the minority party to be appointed by the minority leader of the senate. The committee shall meet when necessary with officials of the department of corrections to review progress in the development and construction of the maximum security facility. The committee may consult with such experts in the field of corrections as may be necessary. The staff of the legislative council shall assist the committee in reviewing the progress on the maximum security facility and in the preparation of reports to be presented to the general assembly setting forth the status of development and construction of the facility and improvements in the overall state correctional system. This section shall be repealed upon occupancy of the maximum security facility.

In attempting to fulfill these statutory goals of monitoring the construction of the new maximum security facility and recommending improvements in the state's correctional system, the 1979 Committee on Corrections held a total of seven meetings, one of which was at the construction sites of the new maximum security facility and the new close security housing units at Canon City. Another of the committee's meetings was held at the Department of Corrections' administrative offices in Colorado Springs.

The committee's major emphasis during the interim was on the oversight of the construction projects. Both the new maximum security facility and the new close security housing units are scheduled for occupancy in January of 1981. The committee emphasized the necessity of completing those projects in time for the scheduled occupancy dates. In addition to these two major projects, construction work has been completed on the Rifle Honor Camp and the Industrial Training Center at Canon City. The Department of Corrections is also trying to initiate remodeling and construction projects at Camp George West.

The committee recognized the importance of vigorous adherence to the construction timetable for completion of the projects in order to prevent cost overruns and to expedite the well-being of staff and inmates. To this end, the committee required the Department of Corrections to report on the construction progress at each committee meeting and present any type of problems which were causing delays. As of November 14, the new maximum security unit is 84 percent complete and is 18 percent ahead of schedule. The close security units are 25 percent complete and are 6 percent behind schedule.

In addition to the physical construction taking place, the committee examined related issues such as food service, staffing patterns, security precautions, utility service, plant maintenance, and the actual transitional phase from the old facilities to the new facilities.

Another major concern of the committee, and an item that is directly related to the physical facilities now being constructed, was the prisoner population projection. The Department of Corrections presented statistics which show an unexpected increase in the number of commitments which they believe may be a direct result of Colorado's new presumptive sentencing law. This situation of increasing commitments is aggravated by the increasing length of stay. Fewer inmates are being released through parole and fewer inmates than expected are having their sentences reduced or commuted by some type of sentence equalization process vis-a-vis the new presumptive sentencing law. This increasing population will exert pressure on existing facilities, programs, and staff, and may cause a significant bed shortage for inmates if the trend continues.

In 1977, a class action suit (Ramos v. Lamm) was filed by the prisoners at the maximum security unit at Canon City alleging that the totality of the conditions at this facility constitutes cruel and unusual punishment and is therefore in violation of the United States Constitution. Joe DeRaismes of the Attorney General's Office, who defended the state in the Ramos case, kept the committee informed on the progress of the litigation. In addition, Mr. DeRaismes solicited comments and advice from the committee. As a result of this interchange, Senator Harold McCormick, committee chairman, appeared as a witness on behalf of the state for the purpose of outlining the history of the General Assembly's efforts to improve Colorado's correctional system. The decision announced on November 15, 1979, by United States District Court Judge John Kane declaring the conditions at the

maximum security facility unconstitutional carries with it far-reaching implications, especially in relationship to the fiscal impact on the state.

In an attempt to provide a possible solution for the prisoner bed-space shortage and the problems raised in the Ramos case, the committee examined the possibility of expanding the community corrections aspect of the correctional system. Currently, many community correctional facilities are underutilized as a result of budgetary constraints. In addition, the state lacks a comprehensive statewide plan for community corrections. Another problem that has been encountered by the Department of Corrections is the statutory requirement that a local community board must be notified of any proposed transitional placement, and this board has the right to reject any offender placed by the Department of Corrections. The increasing development of community corrections as a viable part of the correctional system is one of the committee's major concerns.

The concern and support that previous corrections' committees have shown for the Division of Correctional Industries was continued by the 1979 Committee on Corrections. Because the Division of Correctional Industries started from a debt-laden position when it was first established, it has been extremely difficult for the division to fulfill its statutory requirements of providing work assignments for all able-bodied offenders and for its programs to be operated on a profitable basis. Throughout the interim, the Division of Correctional Industries has presented evidence of their continuing efforts to fulfill these statutory goals.

In terms of their future goals, the division has a long-range plan which calls for continued expansion of its programs and facilities. As a means of informing the committee about Correctional Industries products, the division distributed a catalog of the goods and services which are available to other tax supported agencies. The division has emphasized that support of Correctional Industries programs is instrumental in providing job opportunities for the inmates incarcerated in the state's correctional institutions. The skills that inmates acquire through these programs can help them obtain meaningful employment when they return to their communities. As in the previous interim, the committee recommends legislation which will help alleviate the debt situation of the Division of Correctional Industries and enable the division to expand their programs. The committee also supports actions which will enable the division to sell their products to other states and federal government agencies.

At one of the later interim meetings, the Department of Corrections reviewed their budget request for fiscal year 1980-1981. Officials from the department stressed that the figures contained in the budget request had been adjusted and re-adjusted. Because of the new facilities and as a partial response to problems raised by the Ramos case, the budget contains a request for approximately 145.1 new full-time employee (FTE) positions. In addition, the department's budget contains approximately $4.2 million for capital construction (includ-

ing Correctional Industries). The total budget request represents an increase of $6.4 million (28 percent) over the $22.8 million appropriation for 1979-80. This request is discussed in further detail in the background report.

In addition to the aforementioned areas of concern, the committee has studied the Colorado Women's Correctional Institution (CWCI), examined minority construction participation and minority staffing patterns vis-a-vis the Department of Corrections, and explored other issues and problems that came to the committee's attention during the interim.

COMMITTEE FINDINGS AND RECOMMENDATIONS

In answer to the above problems and issues, the 1979 Committee on Corrections recommends the following three bills for consideration by the 1980 General Assembly.

Bill 43 establishes pre-release programs and provides funding for this purpose.

Bill 44 permits Correctional Industries to sell its products to other states and federal agencies.

Bill 45 transfers title to $665,000 of inventories from Correctional Industries to the Division of Accounts and Control for credit to the general fund.

The following paragraphs contain a brief description of each bill:

Establishment of Pre-Release Programs -- Bill 43

From February, 1959, until July, 1975, a pre-parole or pre-release program was established and operated by the then Division of Corrections. This facility was located near the medium security facility at Canon City and was designed to assist prisoners in their transition from the prison to the community. Testimony presented to the committee stressed the success of this pre-release program in helping the prisoner to integrate into community life and become a productive member of society. The pre-release program was terminated in 1975; the facility now operates as a medium security housing unit for offenders assigned to the Division of Correctional Industries. Recognizing the success of this program, the committee recommends the re-establishment of a pre-release program which will be implemented and administered by the Director of the Department of Corrections. Many committee members expressed their desire that the department locate this pre-release program in a major metropolitan area because of the greater number of resources available.

Sale of Goods and Services Produced by Correctional Industries Programs -- Bill 44

Currently, the law permits the Division of Correctional Industries to contract with other states or the federal government for the purpose of manufacturing and selling license plates, validation stickers, or wood products to these entities. Bill 44 would allow the division to sell their entire product line to these governmental units, thereby expanding the market and creating additional jobs and profit opportunities.

Accounts Payable to the Department of Corrections -- Bill 45

This bill is designed to help the borrowing situation of the Division of Correctional Industries by wiping out a debt that the division currently owes the state. In 1977, Senate Bill 587 dedicated inventories for the establishment of the division's programs, including $665,000 worth of inventories, which are currently the subject of debate. The state controller contends that the $665,000 was not a gift from the state to the division because there was not the necessary accompanying appropriation in Senate Bill 587. The state controller is therefore carrying on the books a $665,000 debt that the Division of Correctional Industries owes to the state's general fund. This $665,000 becomes part of the debt limit of approximately $3 million that Correctional Industries may borrow from the state controller, and thus decreases their borrowing power by $665,000. Bill 45 transfers these inventories from Correctional Industries to the State of Colorado, and thus, in effect, cancels the debt and allows Correctional Industries to borrow additional money. When the Division of Correctional Industries uses or sells any of the inventory that is transferred to the state, the division must pay the general fund for the amount of the inventories that are used.

In addition to the aforementioned legislation, the committee has placed particular emphasis on the following issues which are of primary importance to the State of Colorado.

Construction Projects

As of November 15, the construction of the new maximum security facility is 18 percent ahead of schedule and is proceeding with no apparent problems. The project is scheduled for 66 percent completion and is 84 percent completed. The work on the Rifle Honor Camp is completed and the department is waiting for a beneficial occupancy permit. Work has also been completed on the Industrial Training Center. The major concern of the committee is the status of the close security housing units which are being constructed by Correctional Industries.

To date, the overall completion of this project is 25 percent compared to 31 percent that is scheduled for completion at this time.

During the first few interim meetings this project was as much as 12 percent behind schedule. Much has been accomplished in the recent months in an attempt to recover from the slow start. The committee has continually stressed the importance of completing this project on time and has urged the Department of Corrections to do everything in its power (subcontracting, working double shifts, engaging more personnel, etc.) to accomplish this task. This remains a primary concern of the committee.

Population projections

Due to the increasing inmate population, a shortage of 130 to 150 bed spaces is possible by 1981. As mentioned previously, this shortage will put a tremendous strain on existing facilities, programs, and staff, and may have a significant fiscal impact if the inmate population continues to increase. This problem requires close scrutiny.

Ramos v. Lamm

The implications to the state's correctional system as a result of the federal decision declaring that conditions at the maximum security facility violate the prisoners' constitutional rights are difficult to assess. The exact meaning of the federal ruling will be clarified when Judge Kane issues his written opinion. Although the Ramos case will probably have a fiscal impact upon the state, the exact magnitude of this impact is unknown. Funds will probably have to be allocated for additional staff, especially in the medical area. The idleness of inmates was singled out as a particular problem area and may call for an expansion of the Division of Correctional Industries. Although Judge Kane is contemplating closing Cellhouse 3 at the maximum security facility, the nature of the improvements to existing facilities which may be ordered is difficult to predict. In addition, improvements in the areas of food service, counseling, and diagnostic treatment may have to be made.

Community corrections

The examination of community corrections by the committee accentuates the potential in the area of community corrections to solve a myriad of problems involved in the state's correctional system by expanding existing community corrections programs. First of all, if the prison population continues to increase, community correction facilities could help in alleviating some of the bed shortage. Secondly, community corrections facilities may address many of the problems brought forth by inmates in their constitutional challenge to conditions at the old maximum security facility. Thirdly, community corrections may reduce the recidivism rate by assisting the prisoner to better adjust to the community environment. This area should be one of continual expansion and improvement.

BILL 43

A BILL FOR AN ACT

CONCERNING THE ESTABLISHMENT OF PRE-RELEASE PROGRAMS WITHIN THE DEPARTMENT OF CORRECTIONS AND MAKING AN APPROPRIATION THEREFOR

Bill Summary

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

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

SECTION 1. Title 17, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 41

COLORADO PRE-RELEASE PROGRAM

17-41-101 Legislative declaration. (1) The General Assembly finds and declares that:

(a) From February, 1959, until July, 1975, a pre-parole or pre-release program was operated by the penitentiary and adult parole at a facility built near the medium security facility;

(b) This program operated as a preparatory step for

offenders prior to release on parole, was one of the first such programs in the United States, and as such received national acclaim;

(c) The program was terminated in 1975 and the facility now operates as a medium security housing unit for offenders assigned to correctional industries;

(d) The selection criteria for placement in community correctional facilities is such that many offenders do not qualify for placement in such programs;

(e) There is need for a program to be used by those offenders who are not acceptable to a community corrections program to prepare them to adjust to outside life upon release following imprisonment; and

(f) Such a program will have rehabilitative and social benefits and will reduce the rate of recidivism for those inmates who are now released without the benefit of any type of reintegration program.

(2) The purpose of this article is to encourage the establishment of a program or programs to provide counseling for offenders who will soon be released from imprisonment in Colorado correctional facilities and who are not eligible for placement in community corrections programs. It is the intent of the general assembly that this program be utilized by the maximum number of offenders who are approaching their release dates for the purpose of aiding the offender in reintegration as a productive member of society.

17-41-102. Establishment of pre-release program. The department may, as a means of assisting in the rehabilitation of persons committed to its care, establish programs and procedures whereby such persons may be better prepared for release from imprisonment.

17-41-103. Responsibilities of director. (1) The executive director of the department of corrections shall be responsible for implementing and administering the pre-release program in the Denver metro area and for the supervision of the employees of the program.

(2) The director shall be responsible for the management, control, regulation, and operation of any physical facilities in which the program is located.

(3) The director shall provide for the separation of all offenders in the pre-release program from the offenders in the correctional institutions.

(4) The director shall report to the general assembly progress in implementing this article.

SECTION 2. Appropriation. There is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, to the department of corrections, for the fiscal year beginiing July 1, 1980, the sum of three hundred thousand dollars ($300,000), or so much thereof as may be necessary, for implementation of this act.

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

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

BILL 44

A BILL FOR AN ACT

CONCERNING THE SALE OF GOODS AND SERVICES PRODUCED BY CORRECTIONAL INDUSTRIES PROGRAMS.

Bill Summary

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

Authorizes the division of correctional industries to sell its products to other states. Repeals the law which limits sales to other states to license plates, validation stickers, and wood products.

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

SECTION 1. 17-24-106 (1)(f), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

17-24-106. General powers of the division. (1) (f) To sell all goods and services, including capital construction items, produced by the programs to agencies supported in whole or in part by the state, any political subdivision of the state, OTHER STATES, or the federal government;

SECTION 2. Repeal. 17-24-106.5, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is repealed.

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

BILL 45

A BILL FOR AN ACT

CONCERNING THE DEPARTMENT OF CORRECTIONS, AND RELATING TO THE ACCOUNTS PAYABLE THEREOF.

Bill Summary

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

Directs the division of correctional industries to transfer title to inventories valued at $665,000 to the division of accounts and control for credit to the general fund.

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

SECTION 1. Article 24 of title 17, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

17-24-119. Transfer of title to inventories. The division is hereby directed to transfer to the division of accounts and control in the department of administration for credit to the general fund title to inventory valued at six hundred sixty-five thousand dollars, which inventory the division has carried on its books as an account payable to the controller. In consideration for said transfer of title, the controller shall cancel any

obligation that the division may have for such inventory.

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

REVIEW OF CONSTRUCTION PROJECTS

Construction of New Maximum Security Facility

Section 1 of House Bill 1130 (1978 Session) appropriated $11,486,000 to the capital construction fund for the construction of a new maximum security facility. This appropriation included remaining Architectural and Engineering fees, construction project management costs, and contingencies necessary for construction of the facility. The language of the statute is set forth below:

> Section 1. Appropriation. (1) In addition to any other appropriation heretofore made for the current fiscal year, there is hereby appropriated, out of any moneys in the capital construction fund not otherwise appropriated, to the department of corrections the sum of eleven million four hundred eighty-six thousand dollars ($11,486,000), or so much thereof as may be necessary, for the construction of a new maximum security facility. This appropriation is intended to include remaining A/E fees, construction project management costs, and contingencies necessary for construction of this facility.
>
> (2) In addition to any other appropriation heretofore made for the current fiscal year, there is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, to the capital construction fund, the sum of eleven million four hundred eighty-six thousand dollars ($11,486,000).
>
> (3) The new maximum security facility shall house three hundred thirty-six persons and the total staff of the facility, exclusive of administration, shall not exceed 171.0 FTE.
>
> (4) The appropriation made in this section shall become available upon passage and approval of this act and shall remain available until completion of the project for which the funds are appropriated or a period of three years, whichever comes first, at which time the controller shall revert unexpended balances to the fund from which appropriated.

The bill was approved by the General Assembly and became effective on April 18, 1978. The calendar for completion of the maximum security unit project was established shortly thereafter and is set forth below:

Complete Construction Documents	May 30, 1978
Complete Corrections Review	June 5, 1978
Complete State Buildings Division Review	June 5, 1978
Complete Geological Survey Review	June 5, 1978

Complete Department of Health Review	June 5, 1978
Final Approval	June 13, 1978
First Advertisement	June 13, 1978
Receive Bids	August 1, 1978
Notice to Proceed	August 14, 1978
Occupancy	February, 1981

Bid specifications for construction of the facility were mailed in June, 1978, to about 200 general contractors. Nineteen firms took out documents for bidding, with four of those being from out-of-state. Bids were opened on August 1, and G.E. Johnson Construction Company of Colorado Springs was selected as primary contractor for the project. The bid from G.E. Johnson was for $10,398,000 and, although the bid was over the amount available for the actual construction, the $500,000 that was set aside for owner's reserve made the bid acceptable.

Percentage of completion. Actual site work was started in the middle of August, 1978, and the structure is scheduled for completion in October, 1980. The committee has monitored and reviewed the progress being achieved in the construction of the new maximum security facility and toured the construction site on August 3, 1979. As of November 14, 1979, the project is 84 percent completed and is 18 percent ahead of schedule.

Areas of committee concern. During the interim, the committee noted several items of concern.

1. Industries space. The committee observed that additional industries space could possibly be constructed with some modification of the facility and requested the department to consult with the architect and construction manager to explore this possibility. The initial response was that the architect had serious doubts that it could be done because the extra load on the beams and decking would be too great. The department will explore this possibility further.

2. Security fence. The curbing of the exterior perimeter fences was deleted to save on construction costs. Because of the concern of some members, the department is exploring the possibility of still providing curbing for the security fences.

3. Plant maintenance. The committee requested assurance from the department that the institution maintenance personnel have been involved with and have reviewed the electrical and plumbing installations at the project in addition to the other plant operation equipment. The department has assigned a plant manager who has been involved with and has inspected and reviewed the plant maintenance system to gain knowledge of the physical operation of the institution. It is expected that this will prevent maintenance problems in the future.

4. Staff review and comments. The committee expressed an interest in allowing the security and housing staff which will move

into the completed facility an opportunity to review the construction site and to comment or make suggestions concerning any problems or deficiencies which they might observe during construction. As a result of this review, many security problems with the facility might be avoided. The committee was informed that the department has had its staff inspect the construction site and has established several task forces to scrutinize the facility. These task forces will continue in operation until the transition is completed.

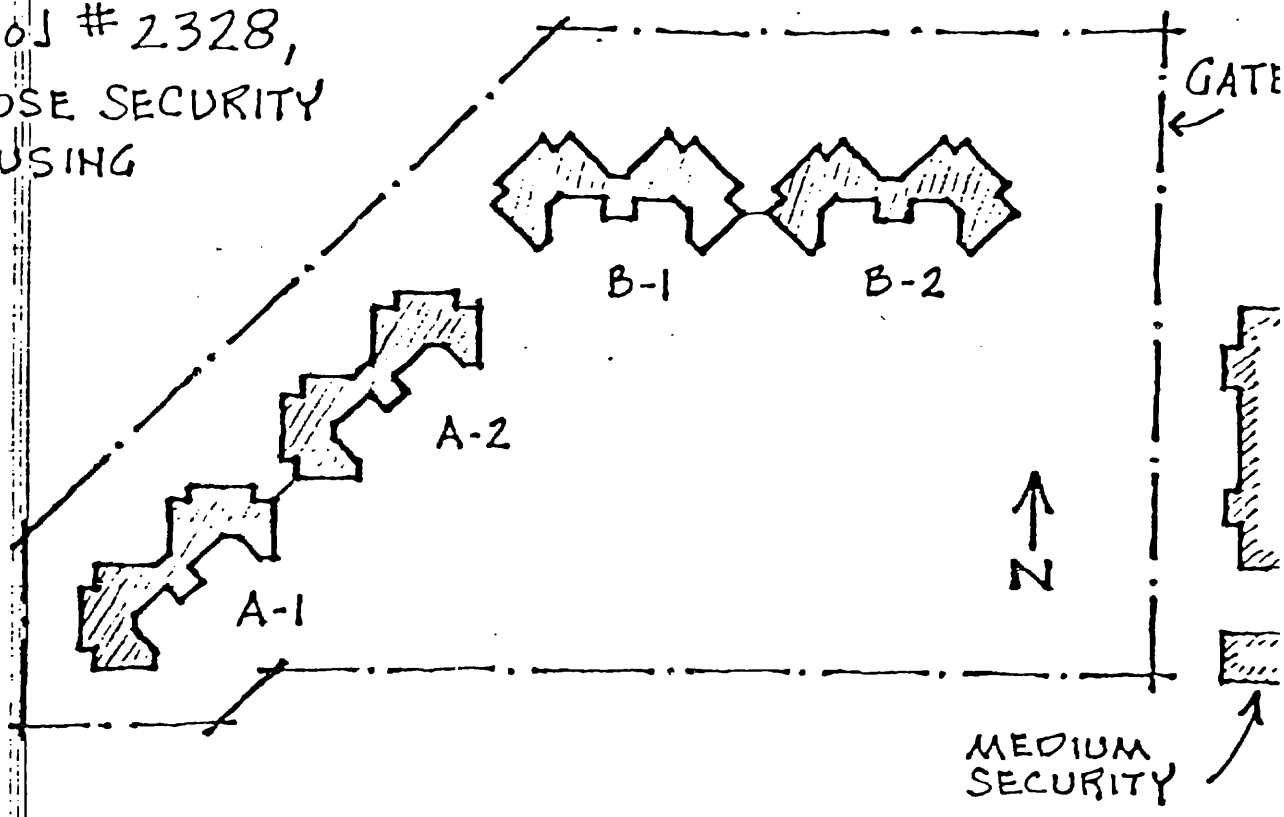
5. Correctional Industries projects. The Division of Correctional Industries will have a role in the construction of the maximum security facility, with approximately $400,000 of the construction and finishing work being performed by the inmates. Because of Correctional Industries involvement in other construction projects and with the emphasis of Correctional Industries on construction of close security, the committee expressed concern as to whether or not Correctional Industries could undertake this project and meet the completion schedule. The committee suggested that an alternative plan for accomplishing this work be developed in case Correctional Industries finds itself in a situation where it cannot handle the job.

Construction of Close Security

The primary concern of the committee has been the progress on the construction of close security. The plan for construction at close security, as revised by House Bill 1129 (1978 Session), calls for construction of four 96-bed facilities. These facilities are being constructed by utilizing inmate labor through Correctional Industries and by subcontracting some portions of the project. The project was funded at $4,413,041. Construction documents were completed in January, 1979, and actual construction began in April, 1979. It was estimated that construction would take approximately 18 months. This project is scheduled to be completed at the same time as the new maximum security unit so that all inmates in the old maximum complex can be moved to the new facilities at the same time. The construction schedule of the close security facilities has been the top priority for the department and for the committee.

In July, the committee was informed that the close security construction project was approximately six weeks behind schedule. The project should have been 20 percent completed but it was only 9 percent completed. The scheduled completion date is December, 1980. This lack of progress concerned the committee and the department and much attention was directed toward solving the problems which have caused delay. The committee has reviewed with the department methods to assure that the project is completed at the scheduled time. The major problems were the need for experienced plumbers and electricians, and the shortage of inmate help. The committee stressed the need to get the foundations in place, the blocks laid, and the ceiling up before inclement weather begins. It was suggested that the department consider subcontracting some of the work to meet the construction deadline.

PROJ #2328,
CLOSE SECURITY
HOUSING



STATUS OF WORK as of Nov. 13, 1979 :

ITEM of WORK	A-1	A-2	B-1	B-2
Footings, foundations	98 %	96 %	100 %	100 %
Concrete floor slabs	—	—	100 %	100 %
1st Floor block walls	40 %	45 %	90 %	75 %
Precast ceiling	—	—	100 %	5 %
2nd Floor block walls	—	—	—	—
Precast roof	—	—	—	—
Plumbing rough-in	15 %	25 %	35 %	25 %
Electrical rough-in	15 %	22 %	50 %	40 %
Heat/ventilation	5 %	5 %	5 %	5 %
Finish (paint, tile, etc)	—	—	—	—
Plumbing finish	—	—	—	—
Electrical finish	—	—	—	—

Overall completion: 25 %, compared to 31 % scheduled.

The following items and problems have been of major concern to the committee:

1. Shortage of inmates and FTE on the job. The committee suggested various methods of increasing productivity, such as double shifts, subcontracting, adding more FTE supervisors, working weekends, etc. The number of inmates on the job has increased from 120 to 180 and they are working eight-hour days. The committee recommended to the Joint Budget Committee that an additional number of FTE (an equivalent of not more than five per year) be allocated to the department so that additional work could be done by inmates. The FTE on the job has been increased up to 45.5.

In August, the department presented a close security construction recovery plan designed to get the project back on schedule. This was considered crucial since the pre-cast flooring and roofing had been subcontracted and was scheduled for delivery in mid-October. The plan called for subcontracting the electrical rough-in, increasing productivity to allow the plumbing and sewage rough-in to be accomplished at a faster pace, and to pour the floor slabs expeditiously so that the masonry walls on the first level could be completed in time to receive the pre-cast concrete floors. In anticipation of the winter months of December through March, it was planned to close in the first half of the buildings so that work could continue inside. Furthermore, a procedure was established to identify personnel requirements in order to maintain construction progress and detailed PERT charts were prepared in order to identify potential problems on a timely basis.

The department also established an incentive pay plan for the close security housing project, and alternatives to pay incentive such as overtime. Authorization was obtained from the state controller to pay construction workers overtime on ten-hour days, six days per week. The incentive pay plan was designed to increase worker productivity from 20 to 50 percent. The committee was informed that this program could create various other institutional problems such as in the food services area, security, and staffing impact on institutional population. The plan also has the potential of impacting on other inmate construction or industry projects. Other projects could request incentive pay and, if refused, a sit-down situation could occur. This situation has not occurred to date.

2. Electrical and plumbing. A major delay in the construction project has been caused by the lack of electrical and plumbing supervisors and workers. The committee suggested that the department subcontract this work. In August, the electrical rough-in was subcontracted. The rough-in electrical work on the first building was completed in late August. In October, two new electricians were hired for close security, one master and one journeyman.

Percentage of completion. The status of the work completed on the close security housing project, as of November 13, 1979, is shown on page 86. Approximately 25 percent of the work has been completed,

compared to the scheduled 31 percent which should have been completed by this date. The department anticipates completing approximately 31 percent by December and approximately 35 percent by mid-January, 1980. The schedule calls for 40 percent completion by mid-January. Thus, by mid-January the department expects to be 5 percent behind schedule. This compares to being 17 percent behind schedule in August. The department has gained 12 percent in the construction schedule since August. It was reported to the committee that most of the technical skills problems and the materials purchasing problems have been worked out. Thirty days of bad weather have been built into the schedule.

With 12 months to go before scheduled completion and 75 percent of the project remaining to be accomplished, the committee continues to be concerned with this project. It is essential that this project be completed to coincide with the completion of the maximum security facility. The committee will continue to monitor progress on this project.

Other Construction Projects

Rifle. There are presently 35 spaces at the Rifle Honor Camp. A total of $577,947 has been appropriated since 1976 to expand this facility to a 100-man camp. Because of work force problems, this project is approximately one and one-half years behind schedule. It was scheduled for completion in March, 1978. The project involved the construction of four 25-bed units and was essentially completed in November of this year and is now awaiting a certificate of beneficial occupancy. There are still three items to be completed before inmates can move in: perimeter lighting, tile in the bathrooms, and a new well. A well was put in last year to which filters were added. However, due to a problem with Rifle's water supply, a Health Department recommendation, and the proximity to a stream, the well has to be moved. The cost of the new well will be approximately $10,000. Completion of this project will allow 60 to 70 more inmates to move into that facility.

Industrial Training Center. The Industrial Training Center (I.T.C.) project is essentially completed. Some insulation and electrical work is still being installed. The shower controls are installed but are not operational. This project expands the I.T.C. capacity by 65 beds.

Camp George West. In 1976, House Bill 1266 appropriated $335,112 to construct a 100-man minimum security facility at Camp George West. This $335,112 was composed of $299,000 from Law Enforcement Assistance Administration (L.E.A.A.) funds and $36,112 from the state's capital construction fund. The project was delayed because Correctional Industries was involved in many other construction projects. An architect is under contract, but he cannot go forward with the plans because the preliminary plans demonstrate that an additional $117,000 is needed for the project. The architect cannot proceed without assurance that the money will be available. Either a revised plan or more money is needed.

In September the finances and the status of the project were reviewed. The L.E.A.A. grant has already been extended twice. There is an oral assurance that federal funding will be extended until the completion date (May 1, 1980), providing the project is underway before expiration of the current grant (December 31, 1979) and providing that inmate labor is used. However, commitments for materials must be made prior to December 31.

The project consists of both new construction and renovation. The cost of both of these project elements exceed the budget. The plans for the project were reviewed by the State Buildings Division in late October. The committee has encouraged the department and the State Buildings Division to initiate action to get the project started.

New Construction and Staffing Requirements for Transition to New Facilities

The committee recognizes the fact that additional construction and renovation projects will have to be funded and completed prior to the transition from the old maximum security to the new maximum security and close security facilities. Funds for these projects, such as the remodeling of the medium security kitchen and the purchase of food service equipment, were not included in the $11,486,000 appropriation under House Bill 1130 (1978). These additional construction items and staffing requirements are discussed below.

Kitchen renovation -- food service. Money for the renovation of the medium security kitchen to handle the food service for the majority of the correctional system in Canon City has not yet been appropriated. The committee views this as a priority item since the completion of the kitchen remodeling and the purchase of food service equipment must coincide with the completion of the new maximum security and the close security facilities. The medium security expansion project will require approximately $311,228. An additional 10.0 FTE has also been requested in the food service area. It is emphasized that funds for equipment needs are critical because of the long lead time necessary to order and obtain such equipment.

Additional space requirements for close security. The committee was informed that approximately 10,000 square feet of additional space will be necessary at the close security facility for administration, visitation, and program needs. Funds for construction of these areas has not been appropriated. Additional funds will also be required for an E-field security system, furniture and equipment, laundry rooms, an inmate traffic control building in conjunction with the medium security control building, and moving the present maximum security gymnasium to the close security site. The above items will require approximately $935,000 in additional appropriations.

Hospital renovation. After the transition is completed, the administration building at the old maximum security facility is to be

converted to an infirmary. Money has not yet been appropriated for this project and no additional funds have been requested in next year's budget to accomplish this goal. The committee will continue to review this project when plans are finalized. The Ramos decision could have an impact on this project also.

Correctional Industries. In order to move the industries program from industries row at the old maximum security site to the new facilities, a new 50,000 square foot building will have to be constructed to house the industry programs. Such a building is projected to cost $1,800,000. The other alternative is to transport the inmates to the existing industries row. The life-cycle cost of this alternative is presently being determined. Another alternative which is being examined is to close down the cannery and expand that building by 20,000 square feet. Again, the life-cycle implications of this alternative are being explored.

Staffing. The committee was informed that additional staff will be necessary to operate the new maximum security and the close security facilities when the transition from the old maximum complex is completed. Since the department will move into new facilities with a capacity of 200 inmates less than the old maximum security facility, the question arises as to whether the department can operate the new facilities with less staff. The response to this question is that when a move occurs from a large facility (old maximum) into five separate facilities (new maximum and the four separate facilities at close security), staffing requirements are increased. In addition, the diagnostic center and the hospital at old maximum will still be operational and will require continuing staff. The possible impact of the Ramos case on staffing requirements is still unknown.

The department's total budget request is for 145.1 additional FTE. Additional security and housing correctional officers requested for the new maximum and the close security facilities is 77.6 FTE. Additional medical personnel requested for the new facilities is 19.1 FTE. Additional food services and laundry staff requested for operation of the new facilities is 13.0 FTE.

Staffing requirements for operation of the new maximum security facility are as follows:

	FTE
Housing	68
Security	46.4
Programs	12.4
Administration	28.0
Purchase of Service	13.0
TOTAL	167.8

Staffing requirements for operation of the new close security facility are as follows:

	FTE
Housing	56.1
Security	34.9
Programs	11.4
Administration	18.0
TOTAL	120.4

Staffing requirements for continuing operation of the diagnostic unit and the hospital at old maximum are 30.9 FTE.

An additional 100.9 FTE will be necessary for operation of the new facilities after the transition is completed in early 1981.

	FTE
New maximum security unit	167.8
New close security units	120.4
Old maximum security unit	30.9
TOTAL	319.0
Less present staff at old maximum	218.1
Additional staff needed	100.9

Planning and training for the transition. The committee has reviewed and continues to review the department plans for accomplishing the transition from old maximum to the new facilities when they are completed. Early planning efforts in order to avoid problems and to assure that the transition is carried out smoothly are of extreme importance to the committee. Especially important is the development of a transition plan which will cause the least disruption and will not require duplication of staff during this period.

The department has established seven task forces to review any potential problems which may occur in the transition and to develop plans to overcome these problems.

The Move-Logistics Task Force is responsible for developing the entire scenario and coordination of the move.

The Orientation and Training Task Force is responsible for providing training so that the staff can operate all new systems in the institution. They are also responsible for developing training methods and a timetable for the training program.

The Programs Task Force is responsible for the development of programs in education, vocation, religion, health care, recreation, case management, classification, library, volunteers, etc.

The Support Services Task Force is responsible for canteen, property control, space utilization, records, communication systems, telephone, intercoms, internal mail, warehousing, purchasing, clothing issuance, etc.

The Security Task Force is responsible for locks/keys, movement/flow patterns, emergency plans, post orders, security procedures, daily schedule of inmates, inmate privileges, tracking system, transportation, and visiting.

The Administrative Task Force is responsible for setting parameters for the project, dealing with personnel matters, costing out the requirements for opening the new facility, and for reviewing all budgetary items developed by the other task forces.

The Industries Task Force is responsible for coordinating all functions relating to the construction of both facilities, work programs, and assignment of inmates to those work programs, vocational education, food service, laundry, maintenance, industries warehousing, industries purchasing, transportation services, and scheduling of inmates for production assignments.

The department has also developed a training curriculum for the staff which will include 40 hours of crisis intervention. The inmate selection process is also being studied. All staff will be trained in general orientation of the physical plant. A security shakedown of the facility will be mandatory prior to occupation. Each staff will have to be thoroughly trained in their responsibilities. Operation of the facility will require training on a post-by-post basis. This training must be conducted during off-duty hours as staff will be performing their normal daily duty assignments. The department will be requesting $175,000 for this purpose.

The move into the new maximum and close security facilities will necessitate additional operating expenses in fiscal year 1980-81. The moving costs are for renting buses, trucks, and other moving equipment and possibly contracting with a moving company for specialized equipment moves. The majority of the move will be handled by Correctional Industries and they will be reimbursed for their costs. New mattresses, bedding and linen will be purchased. A request for $175,000 will be submitted for this purpose.

There will also be a need at the new facilities for additional movable equipment, telephone systems, equipment for the medical programs, cell furnishings for the cells at close security for which funds were not appropriated in the capital construction project, equipment for the staff, etc. A request for $315,000 has been submitted for this purpose.

A request for $160,000 will be submitted for the increased utility costs at the new facilities. All water for new maximum and close security will be purchased from the local water district, which is a new cost item. An additional heating plant will be added requiring fuel. The present heating plant at old maximum will be retained for that facility. New maximum will have a separate new heating plant and new close security will be heated by the present medium security heating plant.

SPACE SHORTAGES AND POPULATION PROJECTIONS

Space Shortages

There are presently 840 inmates in old maximum security. Space in the new facilities will include 336 at new maximum and 384 at close security, thus leaving a shortage of approximately 120 spaces after the transition is completed. The department plans to make up this shortage by placing more inmates into community corrections programs. The plans for expanding community corrections, the cost of such expansion, and other alternatives are discussed in the next section of this report.

Population Projections

One of the major concerns of the committee, as well as a major concern of the department, has been the inmate population and the population projections for the future. Population statistics and projections are a vital factor in determining facility usage, staffing patterns, and capital construction for the department. Although determining an accurate future incarceration rate is of extreme importance, it is also one of the most difficult items to accurately project because of the large number of variables involved.

The basic methodology that is used by the department to determine the future size and composition of the inmate population is a method known as multiple linear regression. This model contains several key variables, among which are the state's unemployment rate, the state's growth rate, the cyclical nature of the number of commitments, and the statewide increase in the "at risk" population (males between the ages of 18 and 49 years of age).

From the variables mentioned above, the department calculates a series of three projections. The first in the projection series is the most likely series and is based upon those circumstances that are the most likely to occur in a given period (usually a five-year time span). The second projection is designated as a higher series and is based upon circumstances which would tend to increase the forecasted inmate population. The third series is the low series, is calculated upon circumstances which would dictate a lower population than that which is projected under "normal" circumstances.

The variables that are used in the multiple linear regression are selected because of their high degree of relationship with the number of prisoners committed to the department. The primary variable that the department uses to calculate prison population projections is the state's unemployment rate. Over the years there has been a high positive correlation between the number of persons unemployed and the number of persons who are committed to the department. At the other end of the scale, factors such as the number of parole revocations, the number of pardons and sentence commutations, and the length of sentence are used to calculate and project the total number of incarcerated persons.

Of all of the variables that have an impact on prison population, the single most important variable that will have an effect in the upcoming years is the presumptive sentencing law (House Bill 1589) that was enacted by the General Assembly in March, 1979, and which applies to offenses committed on or after July 1, 1979. House Bill 1589 is a significant change from the old sentencing law in that instead of the sentencing authority imposing both a maximum and a minimum sentence, a single determinate sentence is imposed within a narrow range of penalties. Penalties outside this presumptive range may be imposed, but only when extraordinary mitigating or aggravating circumstances are involved in the crime.

The legislative intent of House Bill 1589 was to correct some of the disparities and inequities which exist within the criminal justice system, and not to either increase or decrease the commitment rate or the length of stay. It is still too early in the process to estimate the exact impact of House Bill 1589. However, two recent developments have been observed by the department regarding the presumptive sentencing law which could have a major impact on the prison population. These developments and the resulting problems are outlined by the Department of Corrections letter and memorandum of November 8, 1979, which is contained in Appendix A.

Briefly, analysis of the number of commitments during the third quarter of the year (July, August, and September) showed commitments to be 13 percent higher than expected, and also higher than the second quarter intake, which is historically always higher than the third quarter.

This increase is even more alarming because the unemployment rate, which is positively correlated with the number of commitments, fell during the same period. Figures recently analyzed for the month of October indicate that the rate of commitment is 38 percent higher than expected for the month. Analysts for the Department of Corrections believe that these increases may be due to judges interpreting the new sentencing law as requiring the actual incarceration of convicted felons rather than placement in diversionary programs.

Exacerbating the increase in the number of commitments are two other major problems. First, no type of sentence adjustment has taken place in order to equalize current sentences with the new sentences

contained in House Bill 1589. Although the Governor has been reviewing all of the sentences of inmates who are currently incarcerated, there has been few reductions or commutations as expected by the department. The second item which has been affecting inmate population is the reduction by the Colorado Parole Board of the number of inmates who are being granted parole. During the second quarter 244 inmates were paroled compared to 198 inmates who were paroled in the third quarter.

In the final analysis, the increasing number of commitments on one hand and the decreasing number of persons coming out of the prison system on the other hand are responsible for an increasing prison population, which is much larger than had been anticipated by the Department of Corrections.

The material contained in Appendix B outlines the prison population projections for the Colorado correctional system. If Colorado's population grows by three percent each year, and the department is correct in its assumption that the incarceration rate will be approximately 90 inmates per 100,000 persons, then the projected inmate population by the year 2000 will be 3,895. This figure is influenced by the following factors and assumptions:

(1) every one percent rise in unemployment means an increase of approximately 200 inmates per year;

(2) Colorado's unemployment rate will vary between 3.4 and 5 percent;

(3) the state's population will increase at 3 percent each year; and

(4) the length of stay will remain constant for two years and then will increase from 26.2 months to 28 months.

Using these assumptions that are the most likely to occur, the department projects that by January of 1981, there will be a shortage of ten bed spaces and by January of 1982, the department may be short 155 bed spaces.

It should be mentioned that these projections do not take into account the large increase in the number of commitments which are now taking place, and if sustained over time, would increase existing population projections by 500 inmates by 1982.

COMMUNITY CORRECTIONS

According to Section 17-27-102, C.R.S. 1973, a community correctional facility or program may be defined as:

A community based or community oriented facility or program: which is operated by a unit of local government, the department, a private nonprofit agency or organization, or any corporation, association, or labor organization; which may provide residential accommodations for offenders; and which provides programs and services to aid offenders in obtaining and holding regular employment, in enrolling in and maintaining academic courses, in participation in vocational training programs, in utilizing the resources of the community in meeting their personal and family needs and providing treatment, and in participating in whatever specialized programs exist within the community.

In order to achieve the following objectives, community correctional facilities and programs have been initiated:

a) to reduce commitments to state institutions;

b) to enable development of a correctional system which maximizes public protection in a just and humane manner, and affords offenders opportunities for successful re-entry into society through the least restrictive means of control necessary;

c) to develop and coordinate a wide range of correctional programs and services at the local level to ensure implementation of a systematic approach to correctional service delivery; and

d) to enhance community involvement and responsibility for treating offenders.

Pursuant to Section 17-27-102, C.R.S. 1973, there are, as of November, 1979, three basic categories of community correctional facilities:

1) Department of Corrections administered facilities;

2) community correctional facilities and programs operated by units of local government; and

3) community correctional facilities and programs operated by non-governmental agencies.

State Operated Community Corrections Programs

The Department of Corrections currently administers three community corrections facilities which are staffed by department personnel. These community correctional facilities are:

1) Bails Hall Work Release Center
1735 York Street
Denver, CO 80206

2) Fort Logan Community Corrections Center
3630 West Princeton Circle
Denver, CO 80236

3) Grand Junction Work Release Center
2895 North Avenue
Grand Junction, CO 81501

Bails Hall is a three building complex with a capacity of 40. The current on-grounds average daily attendance (ADA) is 35, off-grounds ADA is nine, with a -4 bed space available and an occupancy rate of 110 percent. Bails Hall provides food and transportation for employment purposes and a monitored antabuse and urinalysis program. Ancillary services such as mental health, alcohol and drug treatment, and educational counseling are provided through referrals to community agencies.

The Fort Logan Community Corrections Center is a two-story, brick residence, located on the grounds of the Fort Logan Mental Health Center. This facility has a total capacity of 26, 21 males and five females. The current on-grounds ADA is 22, off-grounds ADA is five with a -1 bed spaces available and an occupancy rate of 104 percent. Food and employment transportation are provided. The main emphasis of this facility is on job placement and employment, however, some residents are attending vocational or academic training programs. Group and individual counseling is provided by the staff on a weekly basis. Assisting community agencies are used as needed.

The Grand Junction Work Release Center is a joint Department of Corrections and Mesa County community correctional program. The facility has a capacity of 20. The current on-grounds ADA is eight, off-grounds ADA is one, with 11 bed spaces available and an occupancy rate of 45 percent. In addition to state clients, the county utilizes this facility as part of their community corrections program.

Food and transportation are provided by the Grand Junction facility. The emphasis of this center is on employment and restitution of obligations. Residents receive ancillary services such as job placement, alcohol, drug and mental health treatment and counseling from community agencies, as needed.

Local Government and Non-governmental Operated Community Corrections Programs

The remaining two categories of community correctional facilities, those operated by units of local government and those operated by non-governmental agencies, are described below. These programs are designed to provide community residential services to both judicial and Department of Corrections placements. The normal length of stay in these facilities is between 90 and 120 days. Table I indicates the types of clients served by these and state-operated facilities. As Table I shows, the Department of Corrections has contracts with the majority of these community correctional facilities (labeled A-L).

TABLE I

CAPACITIES AND TYPES OF CLIENTS SERVED
IN COMMUNITY CORRECTIONS PROGRAMS

Program and location of program	Maximum bed Capacity	State Transitional Clients	Judicial Diversion Clients	Federal Bureau of Prisons	State Health Drug & Alcohol Clients	Other
Bails Hall State Work Release Ctr. Denver	40	Yes	No	No	No	No
Ft. Logan State Work Release Ctr. Denver	26	Yes	No	No	No	No
Grand Junction State Work Release Ctr.	20	Yes	Yes	No	No	County Court Clients *
Loft House, Private Program Adams County	25	Yes	Yes	No	No	D.A. Diversion Clients
Center for Creative Living, Private Program Lakewood	24	Yes	No	No	Yes	Yes
ComCor, County Program El Paso County	40	Yes	Yes	Yes	No	No
Emerson House Private Program Denver	100	Yes	Yes	Yes	No	Yes Federal Juveniles
Empathy House Private Program Boulder	35	Yes	Yes	Yes	Yes	County Court Clients
Our House Private Program Pueblo	50	Yes	Yes	Yes	No	No
Walden C.T.C. Private Program Denver	22	Yes	Yes	Yes	No	No
Williams Street Private Program Denver	40	Yes	Yes	No	No	No

* To be phased out September 31, 1979; county will take over and it will go to approximately 35 beds in the near future

Pogram and location of program	Maximum bed Capicity	State Transitional Clients	Judicial Diversion Clients	Federal Bureau of Prisons	State Health Drug & Alcohol clients	Other
Community Responsibility Center County Program Jefferson County	27	Yes	Yes	No	No	County Court Clients
Independence House Family Private Program Denver	28	Yes	Yes	Yes	No	No
Hilltop House Private Program Durango	11	Yes	Yes	Yes	No	No
Larimer County Community Corrections Program County Program Ft. Collins	12	Yes	Yes	No	No	County Court Clients
TOTAL	500					

A. Adams Community Corrections Program (Loft House)
7660 North Washington Street
Denver, CO 80229

Loft House is a two-story residence with a capacity to house 25 residents. This is a co-correctional program and is located close to public transportation and assisting agencies. Although the mailing address for Loft House is Denver, the facility is actually located in Thornton, Colorado, and conveniently close to Commerce City, Northglenn, Thornton, Brighton, Adams County, and surrounding areas. Emphasis at Loft House is placed on employment. Food services are provided at the facility. Through individual and group counseling, Loft House assists clients in the areas of education, employment, financial management, recreation, family counseling, drug and alcohol monitoring, as well as providing referral services to assisting agencies.

B. Center for Creative Living
1320 Everett Court
Lakewood, CO 80215

The facility is located in Jefferson County and has a capacity to provide for 24 male residents. Length of stay at the center is from 90 to 160 days. The center is close to public transportation and meals are provided to the residents. Individual and group counseling is provided, with emphasis being directed towards dealing with alcohol and drug related problems, self-awareness, employment, and self-management. Staff personnel are familiar with community agencies and clients are directed in accordance with their needs. There is a monitored antabuse program at the center in addition to urinalysis screening.

C. ComCor Facility
3808 North Nevada Avenue
Colorado Springs, CO 80907
(operated by a unit of local government)

The program facility is located in a former motel and is a co-correctional program which can accommodate up to 40 residents. Meals are provided by the facility, including sack lunches for those residents who are employed. ComCor is also close to public transportation and shopping centers. Emphasis at ComCor is placed on job placement and/or vocational or academic training programs. Group and individual counseling is provided to deal with a resident's individual social awareness. ComCor provides psychological evaluations, testing, urinalysis and antabuse monitoring.

D. Emerson House
1420 Logan Street
Denver, CO 80203

The facility is located in a former hotel and has a 100-bed capacity. The facility serves federal and state clients, and has a

juvenile detention unit. Emphasis at Emerson House is placed on employment and education. A resident is required to attend a series of 18 classes dealing with all facets of everyday living. Many of these classes are taught by a member of the local community who has expertise in the subject matter being discussed. The facility directs clients to community agencies in order to assist the residents in meeting their individual needs.

E. Empathy House
1101 University Avenue
Boulder, CO 80302

Empathy House is a 35 bed, co-correctional facility, located close to shopping centers and the University of Colorado. Food services at Empathy House are provided. The staff at Empathy House concentrates on an individual's problems -- marital, financial, employment, alcohol, drugs, family, and emotional. Emphasis is placed on job development and placement. In addition to individual and group counseling, the facility has a monitored antabuse and urinalysis program.

F. Our House
210 Broadway
Pueblo, CO 81004

Our House is a two-building complex with a capacity for 50 residents. This is a co-correctional facility located close to shopping centers, schools, public transportation, and provides food services. Emphasis at Our House is placed on employment, and there is a monitored antabuse and urinalysis screening program. Residents receive both individual and group counseling services, and are required to have a minimum of one counseling session per week. Staff at Our House are familiar with the assisting agencies in the community, and make referrals in the areas of medical, psychological, legal, vocational, and academic training programs, as needed.

G. Walden Community Treatment Center
265 South Yuma Street
Denver, CO 80223

The Walden Community Treatment Center is located in southwest Denver and has a bed capacity for 22 male residents. The center is affiliated with the Southwest Denver Community Mental Health Center. Although food is provided by the facility, it is the residents' responsibility to do their own cooking, cleaning, and general upkeep of their quarters. The facility is located near public transportation and convenient shopping areas. Emphasis at the center is placed on employment. All residents receive individual counseling and the center offers a variety of counseling services in the areas of family and marital relations, and alcohol and drug abuse. In addition, a monitored antabuse and urinalysis testing program is available.

H. Williams Street Center
1776 Williams Street
Denver, CO 80210

Williams Street Center is located in a two-story residential facility which has a capacity to house 25 clients. Although food is provided, the residents are required to prepare their breakfast and lunch; the evening meal is prepared by a facility cook. Emphasis at Williams Street Center is placed on job development, placement, and restitution. Individual and group counseling are required on a weekly basis. Clients are directed to assisting agencies, such as employment, welfare, vocational rehabilitation, Alcoholics Anonymous, and mental health.

I. Community Responsibility Center
New York Building
1651 Kendall Street
Lakewood, CO 80214
(operated by a unit of local government)

Community Responsibility Center is a program located in a very large building owned by the American Cancer Research Foundation. There are a number of different human service programs that rent space in this large building. CRC accepts male and female clients. The maximum bed capacity is related to how much space the program rents from the American Cancer Research Foundation. At the present time, the program is operating under a 27 client maximum. The program is one block from public transportation. Food services are provided to clients at the building. The program emphasis is employment and individual and group counseling.

J. Independence House Family
1760 Gaylord Street
Denver, CO 80206

Independence House Family is located in a large, three-story building in east Denver. There is also a carriage house on the property that is capable of housing clients. This is a co-ed program. The maximum bed capacity of this program is 28. Food is prepared and served at the facility. The program is centrally located for access to other human service programs, public transportation and employment. The main program emphasis is drug-free and alcohol-free living and steady employment.

K. Hilltop House
P.O. Box 2096
Durango, CO 81301

Hilltop House is located approximately one-half mile from the center of Durango. The facility is a frame house. The maximum bed capacity is 11. Food is served at the facility. This program is for male clients only. The main program emphasis is employment and crime-free living.

L. Larimer County Community Corrections Program (LCCCP)
502 West Laurel
Fort Collins, CO 80521
(operated by a unit of local government)

LCCCP is a co-ed program located in the southern part of Fort Collins, very close to the Colorado State University campus. The facility, a former sorority house, has a maximum bed capacity of approximately 40; however, the program is presently prepared to serve 12 clients on a residential basis and considerably more on a non-residential basis. Food is served at the facility. A number of other human service programs utilize the space of the facility to operate their services. Many of these other human services also assist community correctional clients. The program emphasis is administering diagnostic tests on all in-coming clients, employment services, and crime-free living.

Department Community Corrections Budget Request for FY 1980-81

The Department of Corrections strongly supports the concept of community corrections. The utilization of correctional facilities in the community provides a valuable resource for both diversion and transitional clientele, as is reflected by the Department of Corrections' 1980-81 budget request.

Transition placements. For the Fiscal Year 1980-81 the Department of Corrections has requested $146,000 to increase corrections transitional residential placements by 20 ADA ($20 per day cost per client = 20 x 20 x 365 = $146,000). The ADA increase will allow the department to increase the number of offenders who participate in community correctional programs prior to release on parole or discharge of their sentence. The length of stay for offenders will be increased from between three and four months to between four and five months. The increase in utilization of state-operated community correctional facilities will allow the department to attempt to reduce the increasing population within the correctional institutions. Offenders who meet department criteria and who have approval of local community centers and corrections boards will be placed in state-operated community correctional facilities. This transitional program allows offenders to participate in work release programs and enables them to obtain and maintain gainful employment prior to release. This program is a valuable and viable method for reintegrating offenders into the community.

Diversion placements. The second budget request by the Department of Corrections is for $290,175 to increase corrections judicial community placement programs (diversion), by 40 ADA.

The Department of Corrections is responsible for the administration of purchase of services appropriations for diversion programs as sentencing alternatives. Pursuant to Section 17-27-101, C.R.S. 1973, sentencing judges are authorized to sentence non-violent

misdemeants and felons to community correctional programs. Such programs may be utilized by persons awaiting sentencing, and by those who have been sentenced, including probationary sentences. The department contracts with local corrections boards and community residential facilities operated by both local government and non-governmental agencies. The department monitors all judicial placements and is involved in applying standards for the operation of community correctional programs. Persons who otherwise may be incarcerated are assisted by placement in these diversion programs. The following is a list of programs under contract with the Department of Corrections to provide diversion services:

1) Denver Community Corrections Board, who sub-contracts with:

   a) Phase I, Denver Sheriff's Department
   b) Emerson House
   c) Independence House
   d) Walden Community Treatment House
   e) Williams Street Center

2) Boulder Community Corrections Program

3) ComCor - Colorado Springs

4) Community Responsibility Center - Lakewood

5) Hilltop House - Durango

6) Larimer County Community Corrections Programs - Ft. Collins

7) Loft House

8) Mesa County Community Corrections Program - Grand Junction

9) Oasis of Chandala - Denver (non-residential)

10) Our House - Pueblo

The requested increase is to expand current diversion programs, thereby decreasing the number of commitments to the Department of Corrections, which will in turn reduce the potential impact on the prison population. By increasing the budget for diversion programs more offenders can be served.

Pre-release program. The third budget request is for a new community corrections program; a pre-release center. The amount requested is $296,639.

The Department of Corrections recognizes the critical need to prepare incarcerated offenders for their return to the community. The pre-release program will provide inmates with the opportunity to learn

and practice life management skills prior to release to either a community correctional facility, or to their own community. Experience has indicated that releasing offenders to the community without preparation leads to increased recidivism rates and fails to provide the best protection possible for the community.

At the present time, inmates eligible for placement in a community correctional facility must be approved by the department and community corrections boards pursuant to Sections 17-27-103 (3) and 17-24-104 (3), C.R.S. 1973. However, due to stringent criteria used by boards to evaluate offenders, most do not qualify and therefore are often released directly to the community from prison. This direct release results in severe impacts on the community and the offender. A pre-release program would partially alleviate these problems. An offender placed in this program would be prepared for either placement in a community correctional facility prior to parole, or if their sentence has been discharged, released directly to the community.

The foregoing budget requests have been prompted by two major problems the Department of Corrections is currently experiencing.

Problems Necessitating Changes in Operation of Community Corrections

The first problem is the rapid growth of the inmate population at all department correctional institutions. The dramatic increase in population is a result of the following problems:

1) a 19 percent overall increase in commitments to corrections in the last quarter;

2) the utilization of a different approach to equalization of the prison population by the Colorado Parole Board. The number of paroles granted during the second quarter of this year was 244, compared with 198 that were granted during the third quarter;

3) stringent criteria used by community corrections boards to evaluate potential corrections placements, resulting in inadequate use of community correctional facilities because a large number of inmates do not meet the criteria. At present community corrections has 200 bed spaces, 120 are currently being utilized and 166 are funded; and

4) lack of commutation of sentences of offenders sentenced under the old indeterminate sentencing law.

The second problem faced by the Department of Corrections is a result of Sections 17-27-103 (3) and 17-27-104 (3), C.R.S. 1973, which gives community corrections boards the power to reject potential Department of Corrections clients. This has resulted in the following problems:

1) a large number of inmates who do not meet the criteria of the community corrections boards. Therefore, these inmates must

either be released directly into the community, or remain incarcerated until their sentence is discharged or they are paroled;

2) inability of the Department of Corrections to adequately monitor community corrections programs and facilities, resulting in vulnerability of the facility, the offender, and the community; and

3) lack of needed discretion on the part of the Director of the Department of Corrections in selecting inmates for placement in community correctional facilities.

In order to remedy the first problem, the rapid growth of the inmate population, the Department of Corrections is proposing the following solutions:

1) expansion of the front-end diversion programs to accommodate an additional 40 ADA, thereby reducing the number of commitments to corrections;

2) expansion of transitional community corrections programs by an additional 20 ADA, resulting in a reduction in the current incarcerated inmate population;

3) development and implementation of a pre-release center to accommodate from 40 to 50 ADA, thereby reducing the inmate population; and

4) construction of another housing facility at the prison site in Canon City to accommodate the rapidly expanding inmate population.

The second problem is the authority of community corrections boards to reject inmates which do not meet their stringent criteria, may be remedied by:

1) amending Sections 17-27-103 (3) and 17-27-104 (3), C.R.S. 1973, to give the Department of Corrections authority to place whomever they wish in state-operated community corrections facilities, as long as they meet department criteria;

2) allowing the Department of Corrections to share responsibility with the community corrections board for the evaluation and selection of inmates to be placed in community correctional facilities; and

3) allowing the Department of Corrections to develop and implement a monitoring system which will enable them to evaluate community correctional facilities and programs and improve them as needed.

Long-range Correctional Industries plan. The Division of Correctional Industries presented a long-range Correctional Industries plan to the committee. This plan is presently being analyzed by the Department of Administration. The plan is flexible and will be up-dated as necessary. The long-range plan states that approximately $1,890,000 will be needed for future construction costs and that approximately $1,900,000 will be needed for future equipment costs. A copy of this plan is available in the Legislative Council office.

Catalog of products. A catalog of products produced by Correctional Industries was presented to the committee. The catalog was developed by the inmates at Buena Vista and details the products and the current and future activities of the various industries. A copy of this catalog is available in the Legislative Council office.

License plates. As already noted, Correctional Industries is facing a large problem in moving the present industries at old maximum to the new facilities when they are completed. Especially important in this area is the license plate plant, since the move may have a major impact on plate production. It is anticipated that, if funds are appropriated, the plant should be set up and in operation by the first quarter of 1981. The impact on the issuance of license plates due to the move of the plant was explained to the committee.

The committee was also informed that the alpha designation for Colorado is almost complete. The current designation procedures can continue through 1981. Several alternatives were suggested:

1) continue issuing current alpha designation plates until it expires and then change to the three digit three alpha system. County designation would be either discarded or a small number indicating the county would be placed in the right corner of the plate;

2) allow current plates to be used more than five years. This would mean that current plates could be used for 1983-84; and

3) a general issuance of plates could be planned for 1982-83 and 1983-84.

Workmen's compensation coverage of inmates. Two orders of the Industrial Commission of Colorado regarding workmen's compensation claims by inmates were brought to the attention of the committee. In the Matter of the Claim of Patrick Connors vs. City of Delta, August 30, 1979, an inmate filed a claim against the city for injuries incurred. The claimant was involved in a rehabilitation program wherein the department established an agreement with the city for a job training program. The city and the department agreed that the department would supply manpower and the city would supply tools, transportation, and supervision in the performing of services. The statute (8-41-106 (1) (a) (I), C.R.S. 1973) gives coverage to every person in the ser-

vice of a city "under any appointment or contract of hire expressed or implied." From the facts, the Industrial Commission found insufficient evidence to establish a contract of hire or an appointment with the city. The purpose of the arrangement was not to provide employment but to provide job training and rehabilitation for the inmates. Remuneration was not paid by the city nor by the department. Therefore, it was determined that the statute did not apply.

The Industrial Commission considered another applicable section (8-41-106 (1) (a) (IV), C.R.S. 1973) which states as follows:

> Any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the State of Colorado ... and who, as part of any such job training or rehabilitation program of any department, board, commission, or institution of the State of Colorado ..., is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the State of Colorado ... sponsoring such training or rehabilitation program. (Emphasis added.)

The Industrial Commission found that the claimant was in a job training program for the purpose of learning a trade and for the purpose of rehabilitation. This job training program was sponsored by a state agency; namely, the Department of Corrections. While he performed his work, he was under the supervision of the city, and he performed tasks which were determined by the city and utilized their tools and equipment. The commission found that the conditions of the statute had been met in terms of making the claimant an eligible employee under the meaning of the law. The statute deems a qualified employee to be the employee of the sponsoring institution and not of the employer who is providing the training. Since the city was not the sponsoring institution but was the employer providing training, the city was relieved of liability for workmen's compensation inasmuch as the statute deems the department to be the employing entity. Since no claim was filed against the department, the claim was dismissed against the city.

This order raised the question as to whether the department is liable for workmen's compensation benefits under the statute to inmates who are utilized in training programs and who are injured during their training. In a subsequent order, the commission ruled In the Matter of the Claim of William H. Boursaw vs. Colorado State Reformatory that the claimant was not deemed an employee of the reformatory because it was clear that he was not placed with any employer. Thus, the claimant was not eligible for benefits. The commission, however, specifically stated that its findings in this case

"does not per se eliminate individual inmates from possible coverage under the Colorado Workmen's Compensation Act. A case by case determination must be made, applying the law to the facts as presented."

The committee discussed the necessity of submitting legislation to specifically clarify the law and provide that inmates are excluded from coverage under the Workmen's Compensation Act. The department informed the committee that a specific request has been made to the governor to place such an item on the agenda for the next session. The committee saw no need to duplicate the effort and makes no legislative recommendations in this area.

Inventories. Section 17-24-109 (2) and (3), C.R.S. 1973, provides that "all staff members, authorized full-time equivalent employees, capital equipment, and inventories currently used for physical plant maintenance and food and laundry services shall be resources dedicated to the establishment of the correctional industries program" and that "all vocational training programs, personnel, inventories, and equipment shall be resources dedicated to the establishment of the correctional industries program." When the Division of Correctional Industries was established in 1977, certain general fund inventories in the amount of $665,000 were transferred, or dedicated, to the division. The controller has interpreted the word "dedicated" to mean that the inventories were sold to Correctional Industries and that industries owes the general fund the amount of $665,000. The Division of Correctional Industries takes the position that the inventories were dedicated as a gift and that there is no debt owed to the general fund. In order to resolve this issue the committee recommends Bill 45 which directs the controller to take back the inventories into the general fund and to cancel the obligation owed by Correctional Industries.

Sale of Industries products. Current law permits the Division of Correctional Industries to contract with other states or the federal government for the purpose of manufacturing and selling license plates, validation stickers, or wood products to such governments. The committee was asked to consider whether the law should be broadened to include all industries products so as to expand the market and afford Correctional Industries an increased opportunity to be profit oriented. The committee responded by recommending the adoption of Bill 44, which permits Correctional Industries to sell all of its products to other states.

Correctional Industries construction program. Seventeen construction projects are currently being handled by Correctional Industries. These projects have a total bid value of approximately $7,500,000. These projects have been the basis for Correctional Industries, since they result in work for the inmates and create profit for the division. These 17 projects should produce an estimated profit of $780,000. Furthermore, approximately 240 inmates have gained on-the-job experience in the construction trades.

RAMOS vs. LAMM

The 1979 Corrections Committee has taken a special interest in the litigation in the case of Ramos vs. Lamm. The Ramos case is a class action suit in the federal district court brought by the prisoners who are confined in the maximum security unit of the state prison system at Canon City. In their complaint, the prisoners charge that the totality of conditions at the maximum security facility is beneath human dignity, cause needless suffering, and violate constitutional and statutory rights. Among other things, the prisoners' prayer for relief asks that the state not be allowed to confine any person in the maximum security facility.

Joe DeRaismes, Assistant Attorney General, is defending the state in the Ramos litigation, and was in constant touch with the committee in order to apprise members of the proceedings. In addition, Mr. DeRaismes solicited the members' opinions and suggestions which resulted in the appearance of Senator Harold McCormick, committee chairman, as a witness for the state. The purpose of Senator McCormick's testimony was to present a detailed historical analysis to the court on the continuing efforts of the General Assembly to improve the state's correctional system for the safety and well-being of not only the general public, but of the guards and inmates as well.

Although the suit was filed two years ago, the actual legal arguments before the United States District Court began during the middle of October, 1979. In their presentation before presiding Judge John Kane, the plaintiffs attempted to show the intolerable physical conditions at the present maximum security facility, the lack of physical and mental health treatment, the lack of jobs for inmates, the inadequacy of the inmate classification system, and the neglect by the state in improving these conditions. The state on the other hand has attempted to refute many of these claims, and has argued that any existing problems will be corrected when the inmates occupy the new maximum security facility and the new close security housing units in January of 1981.

Shortly after the final arguments were presented in the Ramos case, Judge Kane issued an oral ruling on November 15, 1979, declaring that the conditions at the Colorado maximum security unit at Canon City violate the constitutional rights of the inmates and that such violations must stop.

In his oral ruling, Judge Kane emphasized that he did not desire to run the state's correctional system, but that basic human needs were not being met in terms of the physical facilities, staffing, maintenance, and essential programs, and that if the state could not provide these things, then it must surrender its exercise of the power to deprive confined individuals of their liberty. Although much of the state's argument was based upon the efforts being made to improve the correctional system by the addition of a new maximum correctional facility and new close security housing units, Judge Kane

rejected this argument on the grounds that the United States Constitution does not permit cruel and unusual punishment today on the theory that it will be corrected in the future. The judge also found that the General Assembly has not given the prison system a high priority in its budgetary plans and that now the legislature must allocate resources to improve the existing facilities and programs.

Judge Kane's oral order provided that the state must:

(1) establish emergency procedures to discern which inmates are psychotic or otherwise mentally ill;

(2) provide special treatment within twenty days for one inmate who has been declared legally insane;

(3) immediately hire a full-time physician to administer medical care and treatment, and provide twenty-four hour nursing at the prison infirmary; and

(4) prioritize the hiring and training of case managers for the purpose of monitoring individual inmate's work, education, and mental-health programs.

In terms of the existing physical facilities, Judge Kane stated that he was seriously considering closing down Cellhouse 3, although he had not yet made any final decision. Judge Kane also said that when the new facilities open in January, 1981, that the old maximum security facility will close and will not be used again to house inmates.

Although some estimates were made at the outset of this report on the impact of the decision in the Ramos case, it is difficult to assess what types of implications this has for the state of Colorado.

COLORADO WOMEN'S CORRECTIONAL FACILITY

The committee requested the department to examine the utilization of the Women's Correctional Facility and to make recommendations thereon. It was suggested that another use of this institution may help alleviate some of the space shortages anticipated in the future. As of July 31, 1979, there were 88 offenders in C.W.C.I., which has a capacity of 90 beds. The average length of stay per female offender is 13.4 months.

The department study pointed to three alternative uses for C.W.C.I.:

1) establish the institution as a minimum security facility for male offenders and send female offenders to other states;

2) use as a female facility and utilize at 95 percent capacity; and

3) utilize it as a co-ed facility, by reducing the female population to 50 and using one wing for male offenders.

Final department recommendations for utilization of C.W.C.I. were submitted to the Joint Budget Committee during the month of November.

AFFIRMATIVE ACTION AND MINORITY CONTRACTORS

One area addressed by the Committee on Corrections was affirmative action and minority contracting within the Department of Corrections. Due to the construction projects within the department, the need to include minority contractors and subcontractors in these projects was brought to the committee's attention.

It was explained to the committee that the primary contractor, G. E. Johnson, was aware of Governor Lamm's guidelines and was attempting to meet the 9 percent goal (9 percent of all subcontracts are to go to minority contractors). At the September 12, 1979, meeting it was reported that G. E. Johnson had subcontracted 3 percent or $312,000 of the project to minority contractors. Seventy-nine bid requests had been sent to minority vendors, 60 bids were returned, of which nine were awarded.

One problem identified by the department was the non-competitiveness of minority contractor bids. Most do not have sufficient resources to qualify for bonding and to meet other contractual requirements. The committee was assured that efforts were being made to alleviate some of the problems faced by minority vendors. The committee was informed that two minority contractors had been hired as state employees so as to eliminate the necessity of bonding.

At the October 23, 1979, meeting the focus of the committee turned to affirmative action within the Department of Corrections. The Affirmative Action officer for the Department of Corrections informed the committee about minority staffing patterns within the department since it became a "department." Since 1977 there has been an 8 to 11 percent increase in the number of minorities hired by the department.

One problem currently existing within the department budget is the lack of adequate recruiting funds necessary to initiate efforts to recruit minorities. Another area of concern to the committee is minority promotion practices within the department. It was explained that fewer minorities are promoted due to lack of experience.

During the final meeting of the committee, November 14, 1979, Mr. John Woods, Affirmative Action officer for the state, and Mr.

Maurice Hiltie of the Department of Corrections informed the committee about affirmative action within Corrections since June 30, 1978. The figures are as follows:

During June 30, 1978, there were 894 staff at the Department of Corrections, of which there were:

21 Black males
44 Chicano males
1 Asian male
0 Indian males
154 White females
1 Black female
1 Chicano female
0 Asian female
1 Indian female
671 White males
4% of the staff were minority
(223 minority staff)

During November 30, 1978, there were 956 staff at the Department of Corrections of which there were:

23 Black males
51 Chicano males
2 Asian males
1 Indian male
165 White females
4 Black females
14 Chicano females
0 Asian females
0 Indian females
694 White males
3.7% of the staff were minority
(262 minority staff)

During June 30, 1979, there were 994 staff at the Department of Corrections of which there were:

23 Black males
51 Chicano males
2 Asian males
1 Indian male
176 White females
6 Black females
16 Chicano females
0 Asian females
2 Indian females
3.6% of the staff were minority
(277 minority staff)

The committee was informed that in 1977-78 the 3 + 3 rule was requested 78 times out of which 25 minorities were hired. In 1978-79,

the 3 + 3 rule was requested 72 times out of which 16 minorities were hired.

Senator Groff inquired if the 3 + 3 rule requests by Corrections was average. Mr. Woods replied that it was not, because some state agencies never request the 3 + 3 rule. When asked if the intent of 3 + 3 was being achieved, Mr. Woods replied that it was at least a beginning, however, the 3 + 3 rule expires at the end of 1979.

SUMMARY OF BUDGET REQUEST

Outlined below is a summary of the Department of Corrections 1980-81 budget request. The items outlined represent dollar requests over the straight continuation costs.

The Department of Corrections' 1980-81 general fund budget request totals $29.2 million. This represents an increase of $6.4 million (28 percent) over the $22.8 million appropriation for 1979-80. The request includes 145.1 FTE new positions for the department.

These new positions include:

New Maximum/New Close

Mental Health
- 1.0 Psychiatrist
- 3.0 Psychologist I

Recreation
- 3.4 Correctional Technician

Education
- 3.0 Academic Teacher IA

Security/Housing
- 77.6 Correctional Officers

Canon City Medical
- 2.0 Dental Technicians
- 2.0 License Practical Nurse (L.P.N.)
- 7.1 Registered Nurse
- 2.0 Physician Assistant
- 1.0 Physician
- 1.0 Dentist
- 1.0 Laboratory Technician
- 3.0 Medical Records Technician

Purchase of Services
- 10.0 Food Service Staff
- 3.0 Laundry Staff

Medium Security
- 1.0 PBX Operator

Group Living

Industrial Training Center (I.T.C.)
- 4.0 Correctional Officers - Housing

Delta
5.0 Correctional Officers - Housing
Rifle
5.0 Correctional Officers - Housing

Central Office

Records
2.0 Records Clerks
2.0 Time Computation Clerks
Medical
1.0 Health Services Coordinator

Director's Office

1.0 Inspector General
1.0 Planner
1.0 Planner/Evaluator

Management Information Systems

2.0 Computer Programmer

The 1980-81 cash request for Correctional Industries totals $15.7 million.

The governor and the Office of State Planning and Budgeting along with the Department of Corrections are requesting that the FTE limit for Correctional Industries be eliminated. This appropriation of FTE in cash funded industry operation can be counter productive. The Industries' staffing levels should be determined by cash revenues and not by appropriation.

The capital construction request for 1980-81 totals $4.2 million as follows:

Medium Security

1.	Kitchen Equipment	$311,228
2.	Officer/Staff Dining (Renovation & Equipment)	32,272
3.	Remodel MS Dining Room (Including Ventilation)	36,640
4.	Remodel MS Dish Room (Including New Dishwasher)	32,950
5.	Refrigeration Units for Commissary	66,000
	SUBTOTAL	$479,090
A.	1 percent Add for Arts & Humanities	4,791
B.	0.42 percent Add for State Buildings	2,012
	TOTAL	$485,893

Close Security

1.	Inmate Service Building (10,000 SF x $60/SF)	$600,000
2.	E-Field Security System	86,000
3.	Furniture and Equipment (4.6 Million @ 3 percent)	138,000
4.	Relocate Present Maximum Security Gymnasium	80,000
5.	Laundry Rooms (Storage Areas in Each of 8 Housing Units)	6,000
6.	Inmate Traffic Control Building (In Conjunction with Medium Security Control Building)	25,000
7.	Metal Fabrications Building	1,800,000
8.	Print Shop Facility Remodel	20,000
	SUBTOTAL	$2,755,000
A.	1 percent Add for Arts & Humanities	27,550
B.	0.42 percent Add for State Buildings	11,571
	TOTAL	$2,794,121

I.T.C.

1.	Canteen Extension	$ 3,000
2.	Barber Shop Change	5,000
3.	Dining Room Improvements	20,500
	SUBTOTAL	$ 28,500
A.	1 percent Add for Arts & Humanities	285
B.	0.42 percent Add for State Buildings	120
	TOTAL	$ 28,905

New Maximum Security

1.	Furniture & Equipment Contingency	$ 4,000
2.	Tracking System	43,000
	SUBTOTAL	$ 47,000
A.	1 percent Add for Arts & Humanities	470
B.	0.42 percent Add for State Buildings	197
	TOTAL	$ 47,667

Buena Vista Correctional Facility (Reformatory)

1.	E-Field & Alarm System for Exterior Fence	$ 175,000
2.	Kitchen Equipment	14,250
3.	Rehabilitate Lagoons	34,000
4.	Fence Around Sewage Lagoons (2,500 L. Ft. @ $3.40/Ft)	8,500

5.	Improve Ventilation in Existing Boiler Room	3,600
6.	Kitchen Hood	80,000
	SUBTOTAL	$ 315,350
A.	1 percent Add for Arts & Humanities	3,154
B.	0.42 percent Add for State Buildings	1,324
	TOTAL	$ 319,828

Delta/Rifle

1.	Delta & Rifle Kitchen Furniture & Equipment	$ 5,300
	SUBTOTAL	$ 5,300
A.	1 percent Add for Arts & Humanities	53
B.	0.42 percent Add for State Buildings	22
	TOTAL	$ 5,375

General

1.	Kitchen Furniture & Equipment (DC-INF, CWCF & Golden)	$ 39,250
2.	Diagnostic Unit Equipment	4,620
3.	Master Plan Revision	35,000
4.	Program Plan - Disposition of Old Max	25,000
5.	Solar and/or Geothermal Study	15,000
6.	Check Point & Visitors Center	172,500
7.	Utility Update Study	20,000
8.	Physical Planning Funding for Adding Additional Bed Space (Based on Population Projections)	135,000
9.	Updating Handicap Codes	60,000
	SUBTOTAL	$ 506,370
A.	1 percent Add for Arts & Humanities	5,064
B.	0.42 percent Add for State Buildings	2,127
	TOTAL	$ 513,561

Capital Construction Summary (By Facility)

Medium Security	$ 485,893
Close Security	2,794,121
I.T.C.	28,905
New Maximum	47,667
Buena Vista (Reformatory)	319,828
Delta Honor Camp	5,375
General Requests	513,561
TOTAL	$4,195,350

Capital Construction Overall Summary

Department of Corrections		$2,150,110
Correctional Industries		1,986,500
Arts and Humanities		41,367
State Buildings		17,373
	TOTAL	$4,195,350

Other New Dollar Request Items

Penitentiary	
Training Overtime	$ 175,000
Operating	175,000
Capital Outlay	315,000
Utilities	160,000
Community Placements	
Transition	$ 146,000
Pre-Release	297,000
Diversion	290,000

APPENDIX A

Colorado Department of Corrections

6385 North Academy Boulevard
Colorado Springs, Colorado 80907
Telephone: (303) 598-0729

Richard D. Lamm
Governor

James G. Ricketts, Ph.D.
Executive Director

November 8, 1979

Senator Harold L. McCormick, Chairman
Interim Committee on Corrections
State Capitol
Denver, CO 80203

Dear Senator McCormick:

In response to your request for written remarks on the impact of Colorado's new sentencing law, and our most recent inmate population projections, I would like to highlight two recent developments which may become significant with time.

First, the number of commitments to the Department of Corrections during July, August and September of 1979 was 13% higher than expected. This figure (291) was also higher than the April, May and June total of 266. This is the first time in at least 6 years that 3rd quarter intake was higher than the 2nd quarter. This is even more remarkable when one considers that Colorado's unemployment rate fell during this period, and that commitments have historically followed the same pattern as unemployment. It is our belief that judges may be interpreting the new sentencing law as a presumption of incarceration rather than simply a presumed term of incarceration. Additional information on this point can be found in the attached Department of Corrections document.

Secondly, I feel that I must point out one other area of concern. The Department of Corrections has assumed that some sort of sentence equalization process for offenders convicted under the old sentencing law would occur, which would reduce many sentences for offenders now incarcerated. Since the new sentencing law establishes a narrower range of sentences than has been available in the past, it was our assumption that all sentences which clearly fell on the upper side of the new authorized sentences would be commuted back to the authorized maximum. The present review process, however, has considered the merits of each commute decision and many long sentences have not been reduced as expected. While we expect that many such cases may still be reviewed in the courts, we could see some

short-range impact on our population projections, which assumed a smoother road to this end. We will watch this process closely for significant departures from our basic assumptions.

I hope this information will be useful to your committee in its deliberations.

Sincerely,

James G. Ricketts, Ph.D.
Executive Director

Tom G. Crago, Ph.D.
Director of Information Systems

TGC:mds
Attachment

xc: Dr. Ricketts
Jack Weber
George Delaney

AN EARLY ASSESSMENT OF COLORADO'S NEW SENTENCING LAW

Tom G. Crago, Ph.D.

November, 1979

Background

The Colorado Legislature enacted HB 1589, a new presumptive sentencing law, earlier this year. This presumptive sentencing structure represents a significant departure from the indeterminate sentencing concept of imposing a minimum and maximum sentence, which has been utilized in past years. Since July 1, 1979, when the new law went into effect, crimes are punishable by a single determinate sentence which must be within a relatively narrow, presumed range of penalties, unless 'extraordinary' mitigating or aggravating circumstances warrant a different sentence.

It was the expressed intent of the Legislature to create this new structure in such a way that there would be no lasting impact on prison populations. Within this framework, it was decided that statutory provisions which allow probation and other such dispositions should not be altered, and that the new average length of stay should approximate the old length of stay.

Now, four months into the new sentencing environment, the question is being asked, "What has been the effect of the new law?"

Methodology

The Department of Corrections has used complex population projection methodologies for several years with good success. Error rates of zero to four percent have been recorded for population (or ADA) projections developed since December of 1976. While commitment projections have been consistently high (by three to 13 percent), the length of stay estimates have been understated. These errors are opposites in terms of their impact on ADA projections and have had the effect of 'washing out' each other, resulting in ADA errors of no more than four percent.

This study will utilize these routine projections as a baseline for assessing the new law's effect. Actual commitment and incarceration figures for July through October will be used as outcome data. A brief summary of all presumptive sentences imposed to date will be included as a final section.

No definitive trends can, or should, be expected from a study with this small sample size. No more than 27 new sentences are available for analysis at this time, as only a few crimes committed since July 1, 1979 have made their way through our court system.

Findings

Published projections of the Department of Corrections for the last half of 1979 were released since July of this year. They incorporated the following major assumptions:

1. The rate of commitment and average length of stay will not be affected as a result of HB 1589.

2. Unemployment will increase from 3.37% during the second quarter of 1979 to 4.35% during the first quarter of 1980.

3. The average length of stay of 26.2 months for persons committed during the second quarter of 1979 will increase to 26.9 months for persons committed during the first quarter of 1980.

4. Commitments must be seasonally adjusted.

5. Colorado's male population, ages 18-49, will increase from 605,800 in the second quarter of 1979 to 618,400 in the first quarter of 1980.

6. Diversion programs will have no additive (or subtractive) impact on the projections.

7. All other workings of the criminal justice system will remain constant.

These projections indicate that the Department should receive 258 commitments during the third quarter and 264 during the fourth quarter of 1979. Third and fourth quarter ADA's (Average Daily Attendance) should be 2545 and 2540 respectively.

At this time, in the middle of fourth quarter, only assumption number 2 can be objectively examined. With data for July, August and September in hand, Colorado's unemployment rate has dropped to less than 3.2 percent, rather than increase as expected. Since commitments have historically followed the same trends as unemployment, the consequence of this departure from our assumption is that commitments should be lower than we originally projected.

Unfortunately, 291 commitments to the Department during July, August and September is 13 percent higher than projected, and October's figure of 121 is 38 percent higher than expected, resulting in commitments which are 19 percent higher overall than projected. This is the first time that our commitment projections have been lower than actual experience.

On the other hand, ADA projections for the third quarter were in error by less than one percent, with actual ADA at 2552. October's ADA of 2596 is two percent higher than expected during the fourth quarter. As of today (November 8, 1979) our population stands at 2629 -- nearly 3.5 percent higher than we were expecting.

Finally, a review of 27 presumptive sentences received during July through October and for which data is complete, shows that all 27 fall within the presumptive range, and are distributed as follows:

Class 2 - 1 sentence
Class 3 - 9 sentences
Class 4 - 12 sentences
Class 5 - 5 sentences

The average sentence by class is shown in the following table, which also shows a percentage of the mid-point, which each class average represents.

	Range	Mid-Point	Average	Percentage of Mid-Point
Class 2	8-12	10	8.00	80%
Class 3	4-8	6	6.69	112%
Class 4	2-4	3	3.20	107%
Class 5	1-2	1.5	1.44	96%

Total Weighted Average: 105%

Conclusion

This brief study does not claim to reach any definitive conclusions about the effects of Colorado's new sentencing law. Twenty-seven presumptive sentences out of 311 analyzed is clearly not a representative picture of what we can expect when all sentences are the presumptive type.

On the other hand, the fact that we are receiving 19 percent more commitments than expected, during a time when unemployment figures would point to even lower expected commitments, is perplexing. A 19 percent increase in commitments, if sustained over time, and with no other change in our assumptions, would increase existing population projections by 500 prisoners by 1982. This is a trend which bears close watching.

DEPT. OF CORRECTIONS: INMATE POPULATION SUMMARY DATE: 11/06/79 TIME: 15:4

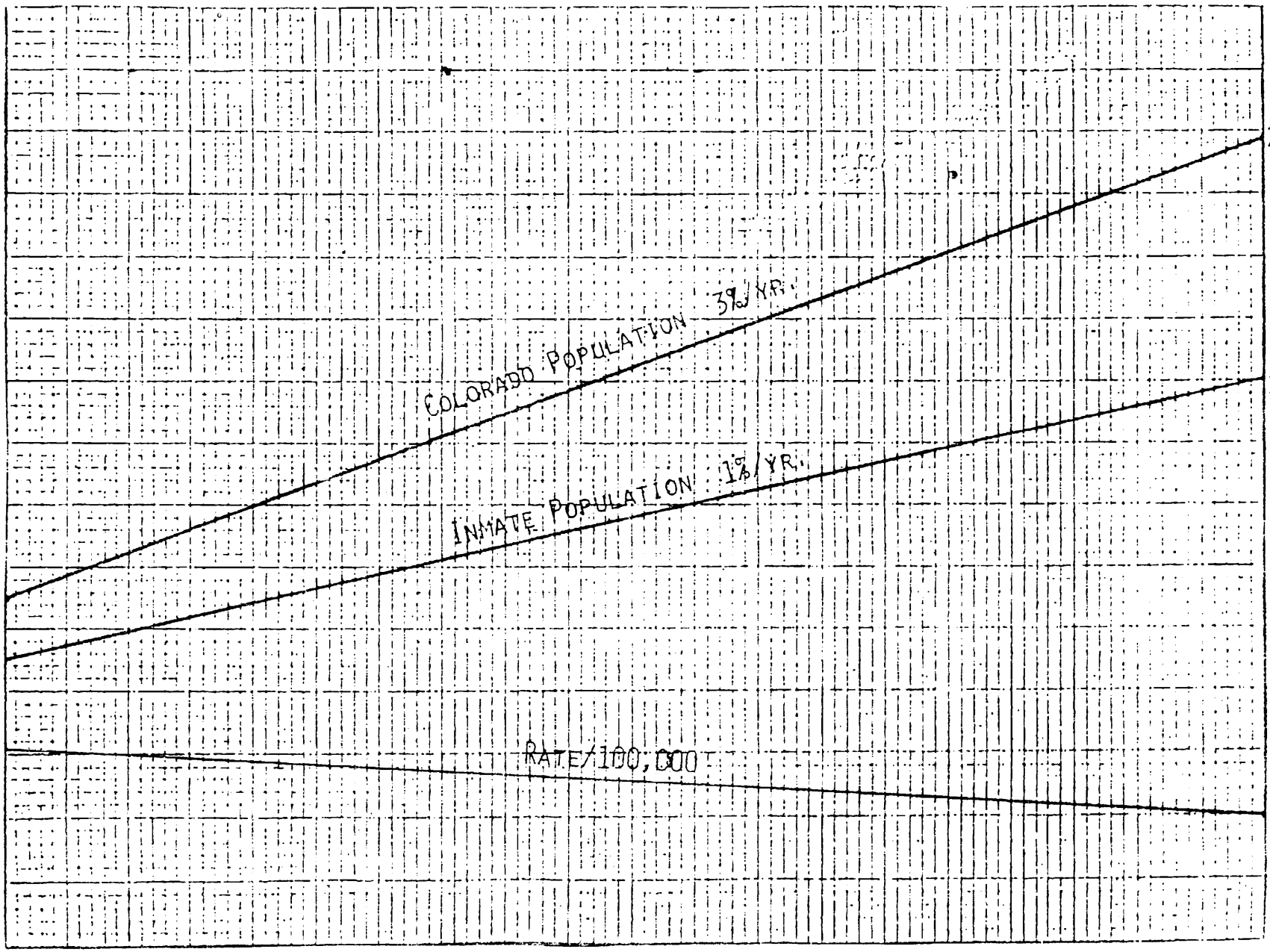
CORRECTIONAL DIAGNOSTIC CENTER:	CURRENT CAPACITY	ON-GROUNDS	OFF-GROUNDS	EMPTY BEDS	OCCUPANCY RATE
CANON CITY	118	112	6	0	100
TOTAL DIAGNOSTIC	118	112	6	0	100
MAXIMUM SECURITY INSTITUTIONS:					
CANON CORR. FACILITY	961	836	53	72	93
TOTAL MAXIMUM SECURITY	961	836	53	72	93
MEDIUM SECURITY INSTITUTIONS:					
FREMONT CORR. FACILITY	413	391	16	6	99
BUENA VISTA CORR. FACILITY	545	512	35	-2	100
COLO. WOMENS CORR. FACILITY	96	75	5	16	83
TOTAL MEDIUM SECURITY	1054	978	56	20	98
MINIMUM SECURITY INSTITUTIONS:					
INDUSTRIAL TRAINING CENTER	132	122	3	7	95
DELTA CORRECTIONAL FACILITY	99	85	0	14	86
RIFLE CORRECTIONAL FACILITY	30	37	0	-7	123
COLO. CORRECTIONAL CENTER	71	70	6	-5	107
TOTAL MINIMUM SECURITY	332	314	9	9	97
COMMUNITY SERVICES:					
RAILS HALL	40	35	9	-4	110
* GRAND JUNCTION WORK REL.	20	8	1	11	45
FT. LOGAN EDUCATIONAL CTR.	26	22	5	-1	104
CONTRACT AGENCIES (3) PAROLEES	98	68	4	26	73
TOTAL COMMUNITY SERVICES	184	133	19	32	83
OTHER DEPARTMENT COUNT:					
TOTAL INMATES ON ESCAPE	113				
TOTALS	2649	2373	143	133	95
TOTAL INMATE COUNT	2629				

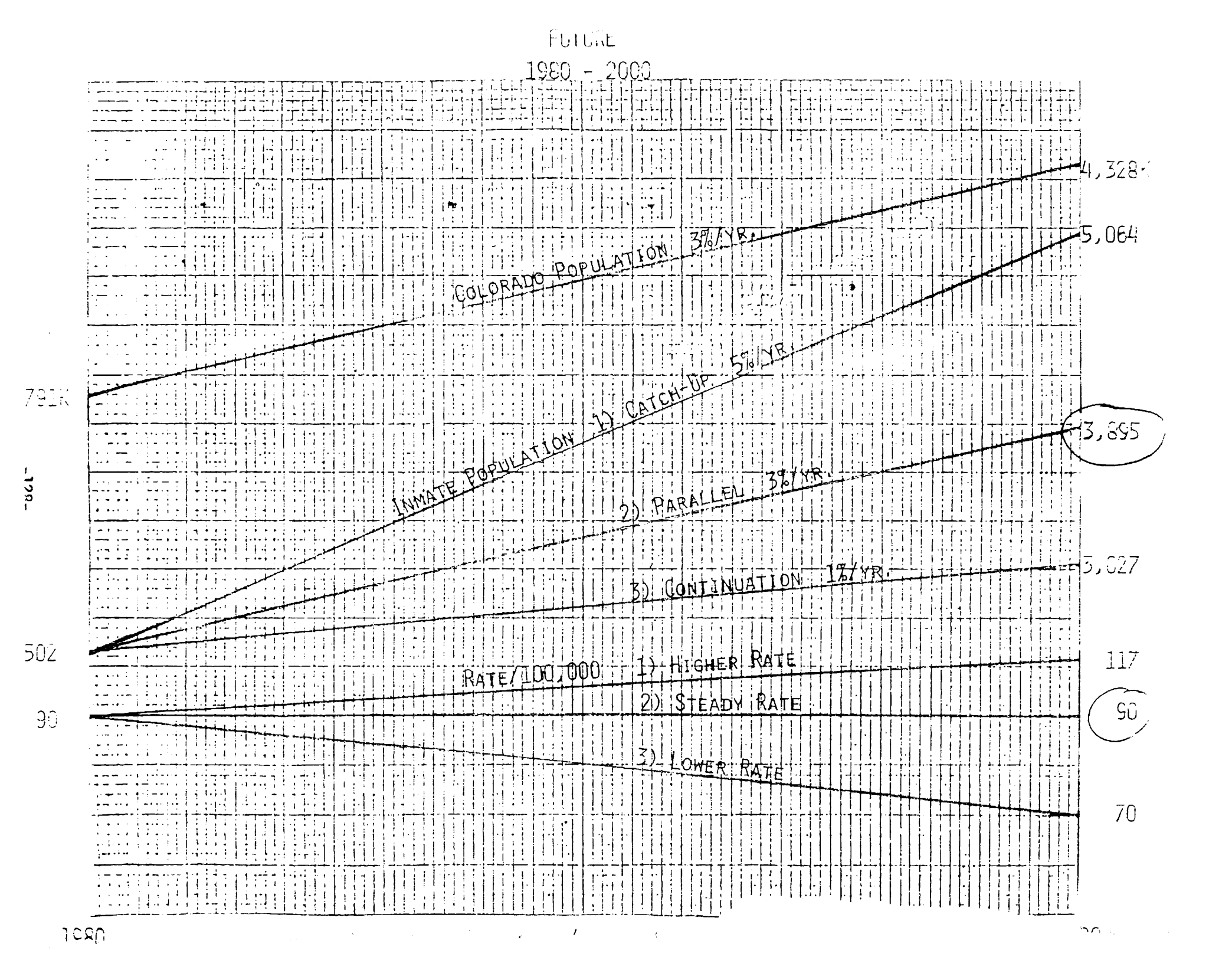
* GRAND JUNCTION WORK REL. AS OF OCT. 1, 1979 IS A CONTRACT AGENCY

* * * E N D R E P O R T * * *

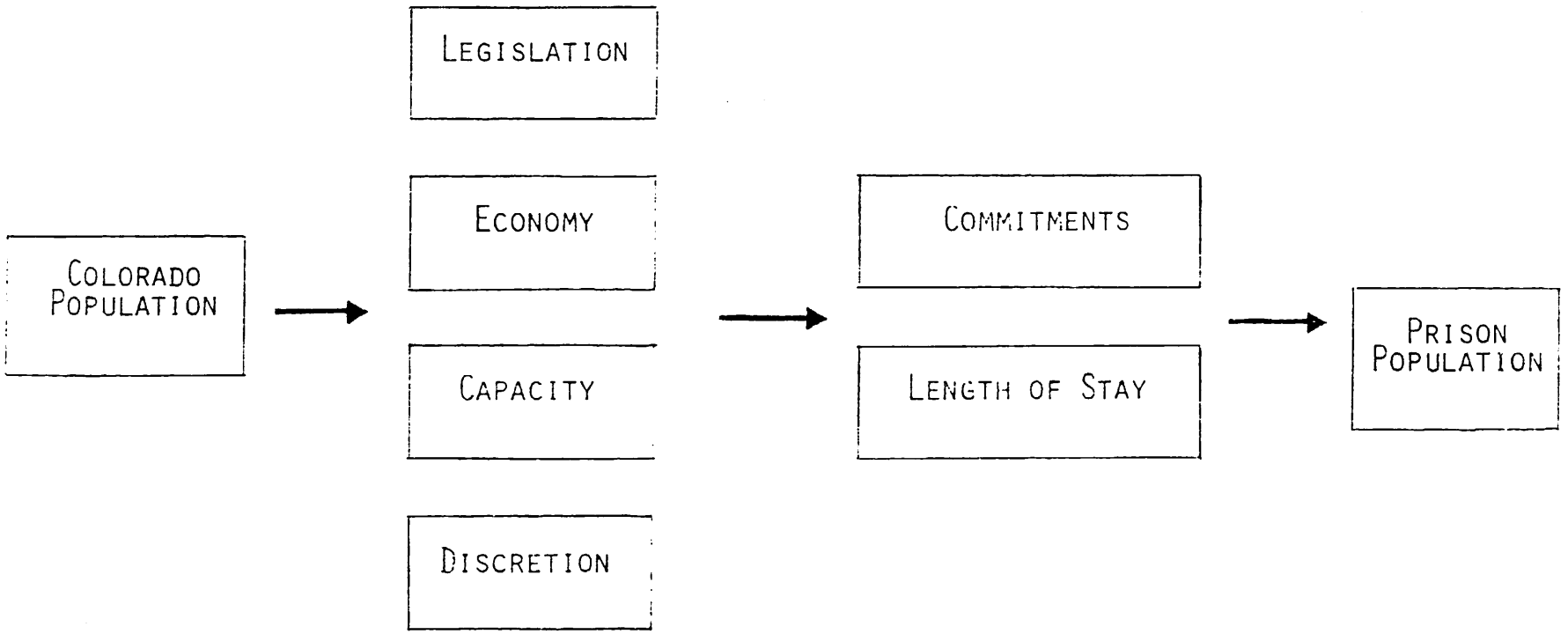
HISTORY

1960 - 1980




FUTURE
1980 - 2000
4,328
5,064
COLORADO POPULATION 3%/YR.
781K
INMATE POPULATION 1) CATCH-UP 5%/YR.
3,895
2) PARALLEL 3%/YR.
3,027
3) CONTINUATION 1%/YR.
502
RATE/100,000 1) HIGHER RATE
117
2) STEADY RATE
90
90
3) LOWER RATE
70
1980

PRISON POPULATION = F (COLORADO POPULATION)



Inmate Population Pressure

Legislation

1. Determinate Sentencing.
2. Twenty-year parole eligibility for Lifers.
3. Widespread discontent among prosecutors.
4. Increased diversion funding.
5. Seven percent budgets.

Economy

1. Short-term softening of economy.
2. Potential for energy-related growth.
3. Long-term uncertainty over energy.
4. Peace-time economy.
5. Continued strong growth of population.

Capacity

1. By January 1981 we will have all our institutions full.
2. Beefed-up community-based capacity.

Discretion

1. Short-term commute and/or Equalization Process.
2. Shifting of more discretion to judges and prosecutors, and away from the parole board and corrections.

SHORT-TERM PROJECTIONS

1.	Unemployment	3.4 to 5.0%
2.	Population	3% per year
3.	Length of Stay	constant for 2 years
		then 26.2 to 28 months

MOST LIKELY

	On-Grounds ADA	Dept. Capacity	Variance
July 79	2341	2363	+ 22
Jan. 80	2363	2438	+ 75
July 80	2302	2438	+136
Jan. 81	2343	2333	- 10
July 81	2401	2359	- 42
Jan. 82	2514	2359	-155
July 82	2499	2359	-140
Jan. 83	2562	2359	-203
July 83	2563	2359	-204
Jan. 84	2577	2359	-218
July 84	2534	2359	-175
Jan. 85	2547	2359	-188

HIGH SERIES

	On-Grounds ADA	Dept. Capacity	Variance
July 79	2344	2363	+ 19
Jan. 80	2375	2438	+ 63
July 80	2332	2438	+106
Jan. 81	2355	2333	- 22
July 81	2469	2359	-110
Jan. 82	2593	2359	-234
July 82	2582	2359	-223
Jan. 83	2648	2359	-289
July 83	2651	2359	-292
Jan. 84	2665	2359	-306
July 84	2623	2359	-264
Jan. 85	2637	2359	-278

LOW SERIES

July 79	2340	2363	+ 23
Jan. 80	2352	2438	+ 86
July 80	2273	2438	+165
Jan. 81	2296	2333	+ 37
July 81	2336	2359	+ 23
Jan. 82	2436	2359	- 77
July 82	2412	2359	- 53
Jan. 83	2474	2359	-115
July 83	2473	2359	-114
Jan. 84	2488	2359	-129
July 84	2444	2359	- 85
Jan. 85	2459	2359	-100

CAPACITY DETAIL

July 1979	Non-Functional	Absolute	Functional Capacity	
D.U.	10%	118	106	
CCF	10%	961	865	-825 on 1/1/81 - 54 on 10/1/79
FCF	10%	417	375	+ 72 on 1/1/81
BVCF	10%	564	508	
CWCF	20%	96	77	
ITC	10%	132	119	
Delta	10%	99	89	
Rifle	10%	30	27	+ 18 on 9/1/79 + 45 on 10/1/79
Golden	10%	71	64	+ 26 on 5/1/81
Bails	10%	40	36	
G.J.W.R.	10%	20	18	- 18 on 9/1/79
Ft. Logan	10%	26	23	
Contracts	0%	56	56	+ 20 on 9/1/79 + 40 on 10/1/79 + 24 on 1/1/80
New Max	10%	-0-	-0-	+302 on 1/1/81
New Close	10%	-0-	-0-	+346 on 1/1/81
	10%	2630	2363	

LEGISLATIVE COUNCIL

COMMITTEE ON LOCAL GOVERNMENT

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House Joint Resolution No. 1052 directed the Legislative Council to appoint to a committee to undertake:

> a study of the programs which are mandated to local governments by the federal and state governments and the implications of the seven-percent limitation on spending in light of such mandated programs.

Pursuant to this directive, the council assigned the study to the Interim Committee on Local Government. In addition, the council authorized the committee, at its discretion, to examine the recodification of Colorado's special district statutes as set forth in Senate Bill 200. This bill was introduced during the 1979 legislative session but was postponed indefinitely in committee. It was suggested at that time that further consideration of this measure during the interim might be warranted.

In pursuing its study topics, the committee held a total of seven meetings during which testimony was received from a variety of state agencies, municipal and county officials, and representatives of the Colorado Municipal League, Colorado Counties Inc., and the Colorado Special District Association.

Senate Bill 200

At its initial meeting on July 17, the committee briefly discussed S.B. 200 and whether its provisions merited further consideration. The committee voted to postpone any additional discussion on S.B. 200 unless the Governor indicated that this matter would appear on his agenda for the 1980 legislative session. The Governor did not give any assurance that this issue would appear on the "call". As a result, the committee postponed further discussion and voted to forward a letter to the Governor expressing support for placing the matter of recodifying special district laws before the General Assembly in 1980 (see Appendix A).

Mandated Programs

The issue of mandated programs was approached by the committee in several different phases. Initially, the committee examined the relationship of the federal, state, and local governments, and the nature of the mandating issue in Colorado. It subsequently identified certain definitions of mandated programs and attempted to develop an inventory of these programs. The committee also reviewed the fiscal impact of mandates, especially as they affect county governments.

Finally, the committee reviewed several policy options in developing their final recommendations.

Intergovernmental Relations

Federal-State relations. Fundamental to any discussion of "mandates" from one level of government to another, are basic considerations concerning the relationship of federal, state, and local governments. With regard to the federal government's position vis-a-vis state and local governments, a fundamental principle is the separation of powers as granted and protected by the United States Constitution. The Constitution, in the 10th Amendment recognizes state soverign powers and imposes limitations on the ability of the federal government to mandate actions of state governments and, by implication, actions of local governments. Within these constraints, however, two categories of mandates have been imposed by the federal government on state and local governments -- direct orders and contractual obligations.

The first category, direct orders, stems primarily from court orders or federal statutes. With regard to court orders, the upgrading of prisons and mental institutions, and orders regarding indigents are cited as examples of directives which have affected state and local governments. Concerning federal statutes, Congress often attempts to achieve social and economic objectives by enacting legislation, particularly in the areas of environment and civil rights. Examples of these mandates created by federal statute are the Clean Air Amendments of 1970, the Federal Water Pollution Control Act of 1972, and the Age Discrimination in Employment Act of 1967.

It should be noted, however, that the constitutionality of efforts to regulate state and local actions by direct orders has been challenged in the federal courts. Two significant rulings in the cases of National League of Cities v. Usery and Brown v. the Environmental Protection Agency have been recently issued which address this matter. In the first case, the Supreme Court invalidated the 1974 amendments to the Fair Labor Standards Act (Public Law 93-259) that extended minimum wage and overtime pay protection to non-supervisory state and local government employees. The court ruled that such an extension was impermissable in that it interfered with the integral functions of state and local governments and threatened their "separate and independent existence."

In Brown v. E.P.A., the Ninth Circuit Court of Appeals held that the Clean Air Act, as amended in 1977, does not permit the EPA to subject a state to that act's sanctions in order to compel a state to undertake specific official actions required by regulations of the EPA. While the court did not limit the power of the federal government to adopt and enforce specific anti-pollution measures, it did preclude the federal government from compelling the state to serve as its enforcement agency.

The extent to which these rulings may be applied in other instances is not clear. The rulings do suggest, however, that the authority of the federal government to intervene in local affairs through the use of direct orders is limited.

Mandates arising from contractual obligations are those in which the federal government requires a local government to perform certain activities in order to qualify for a grant program or other financial aid. A major compliant regarding these prerequisites for the receipt of aid is that in order to meet these conditions, a portion of the grant's resources must be diverted away from the primary goals of the grant. These primary goals may then need to be reduced, or additional local funds must be supplied to make up the difference.

State-local relations. Much of the debate regarding the matter of programs mandated on local governments by the state stems from the continuing dispute over a fundamental question regarding the nature of state, county, and municipal government authority. County governments traditionally have been defined "as a local subdivision of state government for the administration of state programs", or "arms of the state". In Colorado their powers stem from those granted by the General Assembly, rather than any inherent powers. While a "structural" home rule charter may be adopted by a county in Colorado, this action extends to counties only powers with respect to their organization and structure. Consequently, it has been argued that the state exercises a legitimate right in mandating programs. Others will argue that counties, regardless of tradition, perform many governmental functions and should be recognized as an entity separate from the state with certain rights and powers.

Municipal governments on the other hand, have certain inherent police powers. Further, they may be granted additional home rule powers. Upon obtaining home rule status, municipalities may draft, adopt, and amend their charters, and generally govern their own affairs without the interference of the state. The Colorado Constitution does provide, however, that state laws may govern municipal activity if a state act is found by the General Assembly to effect a statewide interest. Such a statewide interest is rather loosely defined, and consequently, the General Assembly has been given latitude in making this determination. Again, it is argued that state governments should more clearly recognize the status of home rule cities, especially in mandating programs.

Mandating Issues

Testimony before the committee indicated that local officials were concerned with several issues steming from state and federal mandates. These were: 1) who should pay the cost; 2) cost-benefit considerations; 3) displacement effects; 4) differentiating worthwhile from pointless mandates; and 5) loss of local accountability.

Who pays the cost. Local officials suggested to the committee that a principal objection to mandated programs was the fact that local sources of funding were utilized. These officials maintained that during the passage of legislation the General Assembly often does not accurately estimate program costs, nor adequately consider the fiscal impact which performance requirements have on local budgets. They suggested that some general principles of cost allocation be developed between the state and localities.

It was also pointed out that these problems are further aggravated by the imposition of spending lids which do not account for the increasing costs imposed by mandated programs. In Colorado, local governments are prohibited from levying an amount of property tax revenue greater than was levied in the preceding year, plus seven percent, unless a variance is allowed by the Division of Local Government, or adopted by the electors of the taxing jurisdiction. Local governments can, as a result, be caught between inflation, increasing costs imposed by state mandates, and artifically imposed restraints on their revenue raising capacity. This may also be the case when the state reduces local governments' taxing capacities by removing an item from the tax base.

Cost-benefit considerations. Local government officials objected to financing programs which benefitted the state as a whole to a greater degree than the locality. As noted in a University of California report: 1/

> At the core of the argument over who should pay is the question of who benefits -- specific people in specific communities or a broader statewide or national constituency. The concept of benefit spillovers is an old one in finance literature but as the ACIR [Advisory Commission on Intergovernmental Relations] points out, benefit spillovers are difficult to measure and to apply operationally (ACIR, 1978). Nonetheless, the concept is a useful one in distinguishing nationwide or statewide from purely local matters and in helping decide who should pay for mandates. The assumption has been made that mandates which distribute benefits primarily to local constituencies should be paid locally and those that have significant spillover benefits should be paid by the mandating government. (emphasis added)

It was also the committee's concern that in the absence of a state mandate, programs could be more efficiently administered and benefits maximized by the local entity. A principal interest of the

1/ Federal and State Mandating on Local Governments: An Exploration of Issues and Impacts, University of California, Riverside, June, 1979, page 21.

committee, therefore, was to develop measures which would streamline program administration and reduce the cost of the programs to local government.

Displacement Effects. To the extent that mandated programs impose duties over which local governments have no control, the flexibility of local officials to provide other services more appropriate to local needs is constrained. When the mandated programs impose costs upon local governments for which they are not fully reimbursed, not only are program priorities affected, but local expenditure decisions are also restricted.

Worthwhile versus pointless regulation. This issue was one of the most frequently mentioned during committee testimony. Local officials strenuously objected to regulations which appeared unnecessary and only hindered the accomplishment of a program's objectives. It was suggested that regulations promulgated for administration of a program should emphasize the accomplishment of goals, but leave the choice of specific methods up to the responsible agency or unit of local government. Accordingly the role of state government should be to monitor the local agencies achievement of specified goals.

Local accountability. Mandated programs have been characterized as a threat to local political accountability. It can be argued that the level of government mandating the program should also be held accountable for its execution and costs. Concurrent with this argument is the belief that local governments are most directly accountable to the electorate for services provided, and can best judge the need for a particular program. To the extent that mandated programs may be imposed by state or federal legislation despite the disapproval of local government, local officials feel that they have little control over their operation but, paradoxically, they become accountable to the voters for these programs.

Definitions

An initial problem in addressing this subject area is the development of an acceptable definition of "mandated programs". The nature of such a definition affects the scope of programs which may be included in a program inventory and the development of any related cost estimates. In developing any definition of a mandated program, four questions are generally addressed. These questions are: 1) what entity should be included as a mandating agency -- legislative, executive, or judicial; 2) should procedures as well as programs be considered; 3) should requirements imposed as conditions of aid, as well as direct orders be included; and 4) should the imposition of spending limitations on local governments be included.

Several definitions have been suggested by various studies conducted relative to this matter. Generally, definitions which have been suggested by others have tended to be very broad in scope. For

example, the Advisory Commission on Intergovernmental Relations in its 1978 study of state mandated programs utilized the following definition.

> State-initiated mandates can be defined to include any constitutional, statutory or administrative action that either limits or places requirements on local governments. 2/

While the committee reviewed several definitions, it did not adopt any for discussion purposes.

Mandate Inventory

The committee attempted to establish the parameters for considering mandated programs affecting Colorado and its political subdivisions. In an effort to establish such parameters, the committee considered compiling an inventory of mandated programs and related costs. Similar inventories have been conducted in several other states.

The identification of the full-range of programs mandated by the state and federal government, however, represents a difficult task for two principal reasons. First, the sheer number of programs which have been mandated on local governments makes their identification difficult. For example, the University of California identified approximately 1,260 federal mandates; 223 of them were classified as direct orders, while 1,036 were conditions of aid.

Secondly, while particular examples could be cited by local officials, information regarding the entire range of mandates imposed on local governments is not readily available. Further, categories of mandates may be aggregated together under one general heading, e.g. public safety, so that what might be considered to be a number of significant mandates within this general heading are ignored. These drawbacks are applicable again to both state and federal mandates.

Given these practical obstacles, the committee did not attempt to independently develop an inventory of federal and state programs mandated on local governments. Instead, the committee chose to utilize other resources in order to gain some sense of the degree to which mandates are imposed upon local governments. As a result, the Colorado Municipal League and Colorado Counties, Inc., were asked to provide the committee with a list of programs they identified as state mandates. Further, the committee heard from individual local officials concerning state programs which they believed to have the most significant impact on their respective local governments. The committee concentrated its efforts on state mandated programs since positive

2/ State Mandating of Local Expenditures, Advisory Commission on Intergovernmental Relations, July, 1978, page 16.

action could more readily be taken with regard to state programs rather than federal programs.

The lists of programs developed by the Colorado Municipal League and Colorado Counties Inc. are attached as Appendices B and C respectively. While these lists may not be complete, they do encompass a wide range of governmental services. Based on these lists, the committee then proceeded to review several specific programs in order to consider their continued merits. It was felt that modification or deletion of some of these programs, in light of changing circumstances, could provide some relief to affected local governments.

Fiscal Impact

In an effort to estimate the fiscal impact of mandates on local government, data was obtained from a number of counties regarding costs of certain mandated programs. In addition, the committee reviewed a 1975 study conducted by the Division of Local Government which attempted to estimate the direct costs imposed on local governments in the following six areas: water and air pollution laws and regulations; regulations concerning land fills; laws affecting subdivision, zoning and land use regulation; the decriminalization of alcoholism; and certain aspects of local government employee pension programs.

The development of reliable estimates of the costs of mandated programs to individual local governments proved to be beyond the capacity of the committee given the time constraints of the interim. This was due primarily to a lack of adequate information. As noted in the division's report:

> Most local government officials do not recognize any over-all pattern of mandated costs. In interviews they will express the general opinion that state actions are costing them large amounts of money, but are able to cite only a few particulars. Upon questioning they can usually point out the mandated costs in a given project or program, but relatively few officials have attempted on their own to separate out the mandated costs in terms of dollars, time or any other measure. 3/

Other considerations also hinder the development of accurate estimates of the impact of mandated programs on local governments. For example, the use of expenditure figures only, tends to overlook the benefits which may be derived by a particular community from a mandated program. Ignoring such benefits does not provide an accurate

3/ "Mandated Costs for Local Governments", Lynn P. Behrns, February, 1975, page 12.

picture of the actual cost incurred by that community. In addition, the difference in costs between what a community would be doing or was doing in absence of the mandated program is most difficult to estimate. Such efforts would appear to be speculative at best and are even more difficult to estimate the longer a program continues.

With the understanding that these factors must be considered, the committee did request some specific examples of programs and related costs. El Paso County provided the committee with a list of costs of ten state mandated governmental functions. These are shown below:

	Function	Facility Cost	Operational Cost 1978-Actual	Operational Cost 1979-Budget
A.	Courtroom Facilities:	$ 5,984,724	$ 240,487	$ 288,213
B.	County Jail:	5,951,317	1,399,972	1,581,197
C.	Social Services (County Share)	Included in operational cost	2,155,733	2,523,564
D.	Criminal Prosecution (D.A.)	Included in A., above	1,630,795	1,774,589
E.	Public Health:	360,000	844,000	948,900
F.	Land Use (Planning, Zoning, & S.B. 35)	Unknown	325,621	332,530
G.	Municipal Road and Bridge Rebates	N/A	1,666,544	999,927
H.	County "Poor Law" Assistance	188,000	187,372	211,283
I.	Legal Publications and Notices	N/A	6,210	7,310
J.	Property Tax Assessment Mapping	N/A	16,482	17,281
	TOTALS	$12,484,041	$ 8,473,116	$ 8,685,334

Weld County also provided the committee with what proved to be the most complete estimate of costs incurred as a result of state mandated or authorized programs (attached see Appendix D). It was estimated that a total of nearly $7 million will be expended by Weld County in 1978 to implement the programs mandated or authorized by state statute. It should be noted, however, that Weld county characterized this survey as only a cursory study of the impacts of programs

or services mandated by the state or federal government. Further, problems in estimating the costs are expressed in the following excerpt from the county's letter.

> As you will note from a review of the attached survey, actual costs cannot be attached to many of the items included on your list. Solid waste management requirements in terms of actual county dollars to date are fairly minimal. However, the combined impact to counties of implementation of federal regulations against open burning, closure of open dumps, and future county liability in actions to enforce solid waste regulations is incalculable. Existing fugitive dust regulations as they apply to the county are fairly non-specific as to actual implementation and enforcement. The apparent abandonment by the Air Pollution Control Commission of its recently proposed fugitive dust regulations, which would have effectively mandated paving of most of the roads in the southern part of Weld County, has obviously lessened the financial impact to Weld County of fugitive dust compliance (at least for the time being).

Finally, Jefferson County's estimates of cost which are imposed on the county by mandated programs are outlined below.

Area of Mandate	Approximate Amount of Dollars
Alcohol Detox	$ 100,000
Court Related Costs (Maintenance, new requests) (Does not include rental offset)	290,000
House Bill 1041	40,501
Senate Bill 35	10,000
Road and Bridge Funds Due Cities	1,779,777
Law Enforcement Records	25,000
Clerk -- Motor Vehicle (Net)	210,000
Planning (Includes S.B. 35 Overlays, etc.)	125,000
Mental Retardation/Community Center	837,601
Social Services (approximate County share 20% plus other programs)	3,500,000
Mental Health Cash $270,540) Bldg. $ 79,658)	350,198

Unemployment Insurance	75,000
Mapping (Includes Assessor-Mapping)	165,717
House Bill 1529 (Mine Reclamation)	46,030
Road and Bridge -- Mining (Gravel operations by County)	6,800
Health (County General Portion)	891,001
District Attorney (County's Portion -- Administration Budget)	1,208,119
TOTAL	$ 9,660,744

Again, the data provided by these counties is cursory in nature and, inferences made from this information may be tenuous. It should be emphasized, however, that these programs do appear to impact local government budgets significantly, drive up property tax levies, and make it difficult for local governments to live with the seven percent limitation on annual increases in property tax revenues. Local officials indicated that these mandates significantly affect the operations of local government by expanding the scope of activities undertaken by these governments and by diminishing their flexibility to respond to individual local demands. While several local government representatives recognized the beneficial nature of certain programs, they also strenuously objected to the programs which are either administratively burdensome or simply irrelevent.

Policy Options

In addition to the fiscal impact, the committee also viewed the manner in which other states are dealing with the issue of mandated programs. The results of this survey are summarized below:

Alaska. The State of Alaska has adopted constitutional requirements which provide local governments with the authority to veto "local acts" which will require the expenditure of land funds.

Alaska's Constitution also forbids a political subdivision to contract a debt "unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question" (Art. IX, Sec. 9). Further, Alaska's municipalities are statutorily authorized to exempt themselves by local ordinance from the applicability of a state mandate, although only a few apparently have enacted such an exclusionary ordinance.

Louisiana. In line with Alaska, the Louisiana Constitution contains restrictions on the authority of the state to enact laws

affecting local governments. However, this restriction relates only to personnel expenditures, rather than matters of general concern.

Pennsylvania. The Pennsylvania Constitution restricts the General Assembly's authority to adopt limitations on the imposition of local sales and property taxes.

Montana. The 1974 Montana Legislature committed itself to the principle of reimbursing local governments for costs incurred from mandated programs. It also gives local governments the authority to refuse to administer any law that requires the local governmental unit to exceed its statutory levy authority. In addition, this legislation requires that the state either reimburse local governments for any increased costs or authorize local governments to raise tax levies to meet these costs.

California. Currently, only four states provide for the reimbursement of mandated local costs by the state government -- California, Louisiana, Montana and Pennsylvania. Of these four, California statutes are the most comprehensive in dealing with reimbursement. In 1972, California adopted the principle of reimbursing local government for the costs incurred in providing state mandated services. This action was taken as part of a larger effort to effect property tax reform and alter educational finance as a result of the Serrano v. Preist decision. As part of an effort to respond to that decision, limitations on property taxes were imposed on local governments in the form of rate limits on cities, counties, and special districts, and revenue limits on school districts.

In connection with these limits, the state committed itself to reimburse local governments for any revenue loss stemming from the new limitations on property as well as sales and use taxes. Further, the state adopted the principle of reimbursing local governments for state mandated programs.

The reimbursement provision affects local costs resulting from: 1) new state mandated programs; 2) increased service levels mandated for existing programs; and 3) costs previously incurred at local option but which were subsequently mandated by the state. Administrative and executive orders leading to mandated local costs are also reimbursable. These provisions are applicable to cities, counties, special districts, and school districts. Reimbursement of these costs are, however, restricted to those state mandates that would necessitate a net increase in property tax rates to finance the additional costs to local governments.

In addition, several types of mandates are identified as beyond the scope of the provisions of state reimbursement. These mandates can be grouped into three major categories: bills which affect local government expenditures for reasons outside the scope of the reimbursement provision; bills which do impose some new or additional duties on local entities, but do not create any additional net costs to be funded from the property tax; and bills which, for policy or

other reasons, are exempt from reimbursement even though they would impose some costs on local governments.

Fiscal notes. While the committee did not conclude that any of the approaches taken by other states were appropriate to the needs of Colorado at this time, there was discussion of the process by which mandates become effective, specifically those with fiscal impacts.

On two separate occasions, the committee heard from members of the Office of State Planning and Budgeting (OSPB) staff and the Department of Local Affairs with respect to the fiscal note process and the ways in which programs with fiscal impacts on local governments are handled during the legislative session. Several local officials expressed interest in a more structured fiscal note process that would at least provide an indication of costs prior to passage of a bill.

As a result of ensuing discussions, the committee accepted some of the changes to the fiscal note process suggested by local governments. These changes are explained in recommendation 55 detailed below. In addition to these changes, the OSPB staff, in conjunction with the Department of Local Affairs, outlined an experimental program which would give legislators an indication of mandated program costs to local governments. In brief, the program will rely upon volunteers from both municipalities and counties who will be willing to look at a bill and estimate its fiscal impact upon their unit of government. Although the time needed to prepare the estimates may be as much as fifteen days and the information provided is derived from a random sample, it is hoped that the information obtained will be helpful. The committee endorsed this OSPB experimental project for the 1980 session.

Recommendations

The committee concentrated its efforts on developing proposals to reduce the number or extent of mandates imposed on local governments. Several areas of specific concern, such as mandates relating to social services, health, and employment requirements, were given particular attention. While no overall policy change was initiated, the following recommendations represent specific program changes that were considered most necessary.

Mapping by County Assessors -- Bill 46. This bill would eliminate the requirement that county assessors maintain maps which they are currently required to prepare for their counties. The bill makes such maintenance discretionary with each county assessor. The committee recognized the importance of preparing these maps in order that counties may develop accurate information regarding valuations. It felt, however, that a continuing maintenance requirement was unnecessary.

Notification of County Proceedings -- Bill 47. This bill allows the Board of County Commissioners of each county to post tax notices and reports of claims and expenditures paid by the county rather than publish these notices in a legal newspaper. In the event the board decides to post these notices, it shall furnish a copy of the report to every legal newspaper in the county.

Burning of Solid Wastes -- Bill 48. This bill would allow the burning of solid wastes by both commercial and noncommercial interests in counties of less than 25,000 persons when, in the opinion of the commissioners, such burning will not result in a public nuisance which is injurious to the health and safety of the people. This bill is intended to allow county commissioners increased flexibility in meeting the individual needs of the county and so reduce costs.

Sewage disposal systems -- Bill 49. This bill changes the fees for accepting and processing an application for a permit for an individual sewage disposal system from a fixed fee (not exceeding $75) to a fee based on the average cost of processing the application in the preceding year. Testimony indicated that the current fee structure was inadequate to cover rising costs of inspection. The bill would provide some flexibility in this matter.

County mining operations -- Bill 50. This bill would permit the modification or waiver of a mine operator's duties where a county was conducting a limited impact operation for the extraction of minerals used in the construction or maintenance of county roads. Currently counties are responsible for fulfilling all the reclamation duties applicable to a private firm when engaged in mining. Again, this represents a considerable cost imposed on county government which might be reduced.

Local boards of health -- Bill 51. This bill would permit the State Department of Health to bring suit or other action against a local board of health for being unwilling to act to prevent the spread of contagious diseases. Currently, the state can bring suit if the local board "...is unable or unwilling" to abate the spread of contagious diseases. In addition, the bill provides that the nonprevailing side in such a case, rather than the local board of health, would bear the expenses of the case.

Salaries during military leave -- Bill 52. This bill would provide that a public official or employee may be compensated only at a rate sufficient to equal his normal income level while that official or employee is on annual military leave. This would reduce "double dipping".

Workmen's Compensation Coverage -- Bill 53. This bill would allow the state, or local governments the option of excluding nonsalaried or part-time salaried officials from Workmen's Compensation Insurance coverage. It came to the committee's attention that in many instances a single individual serving on many nonpaying boards and commissions were covered by Workmen's Compensation Insurance for

each of these boards. This requirement seemed redundent and unnecessary.

Seasonal Employees for Unemployment Insurance -- Bill 54. This bill redefines "seasonal employment" for the purpose of the Colorado Employment Security Act (unemployment insurance). The bill is intended to reduce a local government's liability for seasonal workers such as park workers, life guards, and similar seasonal employees.

Fiscal notes -- Bill 55. This resolution would amend Joint Rule No. 22 concerning fiscal notes. The rule would be extended to concurrent resolutions. In addition, the joint rule would require that a note be delivered to a committee of reference stating that the measure had no significant impact if such were the case. This requirement may be waived by the Speaker of the House or the President of the Senate. Currently, committees go unnotified no fiscal impact is anticipated or if the impact can not be determined.

Disposition of certain traffic fines -- Bill 56. This bill broadens the categories of state traffic offenses for which a portion of the resulting fines, penalties, or forfeitures collected by local authorities could be retained. These offenses would consist of driving under the influence, driving while one's ability is impaired, violations of registration or driver licensing laws, violations of obligations of persons involved in a traffic accident, and violations of motor vehicle equipment requirements. The bill would allow local governments to recover some of the costs incurred by them as a result of enforcing state statutes.

Reimbursement of Nursing Homes -- Bill 57. This bill would require the Department of Social Services to pay 85 percent of the previous month's medicaid reimbursement to each nursing home vendor on the first of the month. The remainder would then be paid based on actual billings. The bill is intended to reduce the cash flow problems now being experienced by nursing homes as a result of late state reimbursement payments.

Allocation of Recovered Welfare Payments -- Bill 58. Bill 58 would allow county departments of social services to retain 50 percent of the amount of fraudulently obtained public assistance or fraudulently obtained overpayment which they recover. This is intended as an inducement to county government to vigorously pursue these cases in the manner they find most appropriate.

Homemaker Services -- Bill 59. This bill would require the state to increase the advancement of funds to counties for homemaker services for elderly and disabled clients from 80 percent to 90 percent. This bill is intended to discourage the placement of elderly or disabled individuals in institutionalized settings such as county nursing homes.

APPENDIX A

September 21, 1979

Governor Richard D. Lamm
State Capitol Building
Room 136
Denver, CO 80203

Dear Governor Lamm:

As you are no doubt aware, the Legislative Council has appointed an Interim Committee on Local Government and charged it with the primary responsibility to study state and federally mandated programs on local governments. In addition, however, it also authorized the Committee to review the provisions of Senate Bill 200, a proposal recodifying various provisions of current special district statutes. In recognition of the importance of its primary study charge, the Committee determined that absent some assurance that the issue of special district recodification would be placed on the "call", the Committee would not pursue a thorough examination of this matter.

In light of the Committee's position, representatives of the Special District Association of Colorado, on behalf of the Committee, approached your office in an effort to seek such assurances. These discussions indicated that you would not, at this time, make any commitments regarding "call" items until all requests had been submitted later in the year. Consequently, the interim Committee will not undertake an indepth study of this proposal.

The Committee would, however, strongly recommend that you give this matter favorable consideration and include on your legislative agenda an appropriate call item regarding special district recodification. The current statutory provisions are in the committee's opinion unacceptable. The various special district statutes were developed to address immediate concerns within particular historic circumstances. As a result, the provisions of each district lack overall consistency, especially with regard to procedural matters. Such procedures as formation,

consolidation, dissolution, elections, and the like are addressed in differing manners for various special districts in Colorado. Such conflicting procedural requirements are confusing, and consequently do not serve the public interest in its need for clear, simple, easily understood statutes. Examination by your staff of these provisions will no doubt confirm this observation.

The Committee would again strongly recommend that you place on the upcoming legislative agenda an item concerning the recodification of special district laws. Thank you for your consideration.

Very truly yours,

James R. Lillpop, Chairman
Interim Committee on Local
Government

JRL/pm

APPENDIX B

Colorado Counties, Inc.

1500 Grant Street • Suite 301
Denver, Colorado 80203
Phone 303 861-4076

August 8, 1979

Mr. Chairman
Members of the Local Government Committee
Colorado State Legislature
State Capitol Building
Denver, Colorado 80203

Dear Mr. Chairman,
and Members of the Local Government Committee:

Colorado Counties, Inc., representing 62 counties of the State of Colorado, wish to comply with the request from the Local Government Committee to review mandated costs to county government in relation to the proposed 7% expenditure limitation.

The Committee is herewith being provided a selected list of mandated costs, both State and Federal. There are many other mandated costs which fall on county government and are not covered in this document.

CCI, in light of the information provided, must respectfully submit to the General Assembly that limitations on county government are ill-advised under the above-mentioned circumstances. The following reasons substantiate the county position:

1) Expenditure limitations offer simplistic solutions to complicated problems and do not take into account growth or population increases. There is an important distinction between a revenue increase and a tax increase. The revenue increase does not necessarily imply a tax increase or an increased tax burden.

2) The rate of increase in county government expenditures is decreasing.

3) County Commissioners are conservative, not because they are Democratic or Republican, but because the only tax-levying authority empowered to a Board of County Commissioners is the property tax--the most disliked of all taxes.

4) Inflexible expenditure limitations will eliminate or reduce discretionary programs desired by local constituents in favor of Federal and State mandated programs and reduce local accountability.

An overview of the 62 Colorado Counties' budgets demonstrates that the majority of the counties are within the current statutory 7% limitation. Those that exceeded the guidelines had necessary and justified costs, which, coupled with inflation, reflected expenditures that warranted approvals above the statutory ceilings.

County commissioners, as locally elected officials, are responsible to their constituency and politically must answer to the electorate. The cumulative effects of State and Federal mandates are disastrous to expenditure control and each year county commissioners have less and less discretion over their budgets.

While certain mandates are necessary and help the county better serve the people, the mandates, if not worked out in a spirit of partnership, jeopardize cooperation between state and local governments.

Responses from a number of Boards of Colorado County Commissioners, regarding the mandated cost problem, have been provided to the Committee membership.

Proper budget control is paramount in the minds of the Colorado County Commissioners -- expenditure limitations are not unrealistic if certain mandated costs are eliminated or properly controlled.

The General Assembly needs to assure that any legislation that will affect the expenditures or taxing rate of local governments thoroughly analyzed and a comprehensive fiscal note be developed. If the programs are not fully funded, they should be optional. That means, basically, changing "shalls" to "mays" in legislation. Counties should be given flexibility to assess fees that reflect the actual costs of doing business.

CCI, representing the counties of Colorado, appreciates the opportunity to appear before your Committee and present the attached information. We pledge our assistance and cooperation during the deliberations of this Interim Committee.

Sincerely,

Harry P. Bowes
Executive Director

Betty Ann Dittemore
Legislative Consultant

HPB/BAD:jdc

Part I:

The following are mandated costs by state statutes which, if repealed or amended, would NOT constitute a cost shift from counties to the state.

MAPPING

HB 1089 (Section 39-5-103.5) requires County Assessors to map counties for assessment purposes. It is recommended that this legislation be permissive rather than mandatory and can be affected by changing "shall" to "may".

UNEMPLOYMENT INSURANCE

Counties should be exempt from paying Unemployment Insurance and not be subject to the Colorado Employment Security Act as required by HB 1614 (1977).

PUBLIC HEALTH

As provided by CRS 1973, Section 25-1-602, local Boards of Health may be prosecuted for willful failure to enforce health laws of the state. The costs of enforcing State health laws should not be borne by local Boards of Health.

Power and duty of County and District Health Departments to administer and enforce laws pertaining to public health; vital statistics; water quality control; orders, rules and regulations of State Board of Health; air pollution control is covered under CRS 1973, Section 25-1-506. Counties contribute $1.50 per capita. Consideration should be given to removal of the per capita cost.

CRS 1973, Section 30-20-110, subjects counties to solid waste facility disposal requirements. The fiscal impact of this legislation on county budgets is critical.

Local Boards of Health are required to enforce the provisions of the Individual Sewage Disposal System Act under CRS 1973, Section 25-10-109.

Fugitive Dust

County road and bridge operations have been impacted by Fugitive Dust regulations relating to rock/crusher gravel pit operations and unpaved roads. Air Pollution Control Commission Regulation No. 1 should exempt counties from regulations on hot mix asphalt plants.

Solid Waste

CRS 1973, Section 30-20-110, should be amended to provide that Boards of County Commissioners may develop regulations by resolution permitting the burning of solid waste deposited at any site and facility in the unincorporated areas of said county.

GENERAL ADMINISTRATION

Section 30-25-111 (1) should be amended to provide that certain classes and categories of claims and expenditures only need to be posted conspicuously in three places in the courthouse.

County Clerk and Recorder are responsible for administrative functions related to primary, general and special elections.

Clerk and Recorder must establish branch registration offices as required by CRS 1973, Section 1-2-215.

PLANNING, ZONING AND LAND USE REGULATIONS

SB 35. CRS 1973, Section 30-28-133 and HB 1041, 1974 Section requirements impact heavily on counties and are part of the overall planning and zoning budget. The Land Use Commission's authority and power to require counties to mitigate impacts of a development proposal if identified as a matter of state. Concern should be reviewed as it is a mandated cost via HB 1041.

CRS 1973, Section 30-28-133, requires counties to adopt and enforce subdivision regulations.

Under CRS 1973, Section 30-28-103 a Planning Commission is required and its duties are set forth in Section 30-28-133.

CRS 1973, Section 30-28-106 requires the Planning Commission to adopt a master plan for physical development of rural areas.

Counties are required to identify and regulate matters of state interest. The Land Use Commission may request identification and regulation subject to Section "407" Powers (HB 1041).

Counties are required to adopt non-residential energy conservation standards as provided by CRS 1973, Section 29-12-101.

MINERAL RESOURCE EXTRACTION PLANS

HB 1529, CRS 1973 as amended, Section 34-1-305, requires that the counties to develop a Mineral Resource Extraction Plan. This is a charge to the County Planning Commission. This cost is included as part of overall planning of the counties.

MINING ACTIVITIES

HB 1065, Title 34, Article 32, CRS, as amended, pre-empts local government regulations of most safety and reclamation provisions relating to mining activities. Counties are included under the definition of operators. This requires them to apply for permits and report to the Land Reclamation Board for their gravel pit operations, and further requires counties to submit reclamation plans.

Part II:

The following are mandated costs by state statutes which, if repealed or amended, WOULD constitute a cost shift from counties to the state.

CRIMINAL JUSTICE

Court Facilities

CRS 1973 as amended, Section 13-3-108 (1) (2) and CRS 1973, County Court Section 13-6-304 requires that the cost of court facilities for new District and County Court costs attendant thereto be borne by the counties.

CRS 1973, Section 30-10-514, requires that the costs of transporting prisoners to other jurisdictions be borne by the counties. For example, the cost for Weld County alone was $29,500.

CRS 1973, Section 27-26-101, provides that the commissioners of each county with a population exceeding 2,000 must maintain a County Jail.

District Attorneys

Section 20-1-306 provides that 20% of the compensation for District Attorneys shall be borne by the counties. Full funding by the State can be accomplished by the following legislation:

> Section 20-1-306. Strike "shall constitute 80%" and insert "100%".
>
> Strike the remainder of the sentence. Title, strike "and county". CRS 1973 as amended, Section 30-1-303. Strike 20-1, Part 3 -- "Compensation and Expenses" and rewrite to "provide for state payment".

Title 20

Title 20 should be repealed and re-enacted to provide that compensation for District Attorneys and deputies be funded by the State.

JAILS

CRS 1973, Section 27-26-101, requires that there be maintained, at the expense of the county, a county jail for the safe keeping and confinement of persons and prisoners lawfully committed. Jails, however, are not required to be maintained in counties having a population of less than two thousand (2,000).

County jails are subject to sanitary standards and regulations promulgated by the Colorado State Department of Health pursuant to CRS 1973, Section 25-1-107 (n) and requirements imposed by Federal and State Courts.

The Sheriff serves as the custodian of the County jail. County Commissioners are required to fund the expenses of the County jail. Sheriffs and county commissioners have no control of sentencing and law enforcement practices which contribute to the overcrowding of county jails and impacts significantly on county expenditures.

STATE HEALTH DEPARTMENT

Section 21-1-516 (b) provides that county pay $1.50 per capita in order to be eligible to participate with state for County Health Departments. The counties are actually reimbursed $1.07 per capita. It is recommended that this requirement be permissive and can be accomplished by striking "shall" and substituting "may" determine, etc. The Colorado State Department of Health may require that counties provide a local health officer. In that event, the counties pay 3/4 of the salary and other expenses. State pays 1/4 of salaries only (CRS 1973, Section 25-1-601).

If the State Department of Health requires a county health officer, full funding should be provided by the State.

Decriminilization of Alcoholism

HB 1279 (1973) repealed all municipal laws relating to public drunkenness, declaring alcoholism to be a mental health problem. Alcoholics who are publicly intoxicated may no longer be arrested or prosecuted solely for the act of being drunk. As a result, alcoholic treatment centers were established. The State funds 75% and 25% is funded by whatever means, i.e., counties, private, etc. CRS, Section 12-47-112 increased excise tax for fermented malt and alcoholic beverages and provided that monies be spent for treatment facilities. It is recommended that the State should be directed to totally fund the program and not place counties in the position of being pressured for additional funds.

Receipts generated from HB 1150 for the Fiscal Year 1978-79 amounted to $4,557,310.

The legislature appropriated $5,747,994 for alcoholism programs during the same year. Prior to the new tax, in excess of $3M was appropriated from general fund dollars.

VETERANS SERVICE OFFICES

Title 26, Article 9, Part 1, CRS 1973 requires counties to establish County Veterans' Service Offices. This legislation should be reviewed to determine present need.

MOBILE HOME TAXATION

Under SB 214 (1977) Ad valorem Taxation of Mobile Homes additional costs were incurred due to actual inspection of mobile homes held for delinquent taxes prior to sale. There may be additional cost due to a potential lack of market for mobile homes at tax sales.

SOCIAL SERVICES

Title 26, Social Services Code, CRS 1973, as amended, establishes State law and along with the Department of Social Service regulations govern the administration of welfare within the Colorado counties. As of this year, a county's liability for federal/state welfare and social services is limited to 20% (HB 1569, 1977).

Programs administered by the counties are as follows:

1. County administration including all case workers, social workers, homemakers plus eligibility determination and administration.

2. Assistance payments including AFDC, aid to needy disabled and aid to blind.

3. Social service providers including foster homes, residential child care facilities, group homes, adoptions and day care.

The counties' 20% share amounted to $ 27,105,536 for 1977-78.

Part III:

BRIDGE INSPECTION

Federal Surface Transportation Act of 1978 requires the inspection of all bridges of more than 20 feet in length every two years. The cost is unknown at this time as this is a new act. Condition of receiving Federal funds is based on a 80/20 formula.

FLOOD INSURANCE PROGRAM

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 requires that flood plain studies be conducted to identify flood plain areas and to develop flood plain and flood proofing regulations. The counties are also the coordinating entities for the development of flood plain maps for various state and federal agencies involved in the program. Federal assistance is contingent on compliance with provisions in flood prone communities.

208 WATER QUALITY PLANNING

Public Law 92-500, Federal Water Pollution Control Act, Section 208, mandates federal requirements to states and counties. If the counties do not accept designation as the planning agency, the state will act as planning agency. Federal support for this program is scheduled to be terminated by 1983. It is recommended that the state terminate its program since the mandate will no longer be funded by the federal government.

EEOC

Affirmative Action Plan, Public Law, Title VII of Civil Rights Act of 1964 and Equal Opportunity Act of 1972, Section 709 (c) of Title VII, Public Law 92-261 prohibits discrimination on all levels including the private sector. As amended, it includes all private employers employing 15 or more persons. It further includes all local governments and labor unions. This is a major cost for counties with populations of 100,000 or more. For example, the cost to Weld County alone is $200,000 annually.

RETIREMENT

The 1978 Age Discrimination Act changes mandatory age from 65 to 70, effective January 1, 1979. The fiscal impact is unknown at this time.

EMPLOYMENT INSURANCE

Colorado Employment Security Act, Public Law 94-566 (Federal/State), requires that unemployment insurance be paid by the employer. Governmental entities are no longer exempt. The exact amount of impact is unknown, but cost will be substantial.

ACCESSIBILITY TO HANDICAPPED

The Rehabilitation Act of 1973 (503 and 504) requires that all buildings and programs be reasonably accessible to the handicapped. If enforced, the costs will be incalculable and could run into millions of dollars even for small counties.

SOCIAL SECURITY

The payment to Social Security on a monthly basis rather than quarterly will have a fiscal impact due to the loss of interest on funds as well as increased administrative time.

****

The following federal environmental laws and regulations have significant fiscal impacts on the State as well as local government.

CLEAN AIR ACT

Public Law 95-95. "To preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores and other areas of special national or regional natural recreational, scenic or historic value." These areas are designated Class I air quality control region under clean air regulations.

Colorado Regulations state that the following areas of the state are designated as Colorado Category I:

a) All existing National Parks

b) All existing National Monuments of at least 5,000 acres in size

c) all existing Forest Service Wilderness or Primitive Areas of at least 5,000 acres in size

d) Gunnison Gorge Recreation Area

"The Commission shall schedule a public hearing to consider redesignation to Category I of any newly designated National Park, National Monument, Wilderness or Primitive Area or Wild and Scenic River Corridor located in whole or in part within the State of Colorado."

"Industrial" siting requires extensive air quality modeling to determine effect on "Pristine" Class I areas. Particularly in light of wilderness area designations anticipated as a result of Forest Service and Bureau of Land Management Wilderness Studies.

Federal Clean Air Act

"The Administrator shall not approve any projects or award any grants authorized by this Act and the Secretary of Transportation shall not approve any projects or award any grants under Title 23, United States Code, other than for safety, mass transit or transportation improvement projects related to air quality improvement or maintenance, in any air quality region --

(1) in which any national primary ambient air quality standard has not been attained."

RESOURCE CONSERVATION AND RECOVERY ACT

" . . . to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources and to encourage resource conservation."

" . . . each State plan must comply with the following minumum requirements--

2) " . . . prohibit the establishment of new open dumps within the state . . . "

3) The plan shall provide for the closing or upgrading of all existing open dumps within the state . . ."

4) "The plan shall provide for the establishment of such state regulatory powers as may be necessary to implement the plan."

Colorado Law

" (1) Except as provided in subsection (3) of this Section, it is unlawful for any person to operate a solid wastes disposal site and facility in the unincorporated portion of any county without first having obtained therefor a certificate of designation from the Board of County Commissioners . . ."

" (1) The department shall promulgate rules and regulations for the engineering design and operation of solid waste disposal sites and facilities . . ."

"Any county is authorized to establish a county solid wastes disposal site and facility fund."

State Regulations

Definitions include: "Engineering date" describing the area; "Geological date" throughout the site and to extend some distance beyond; "Hydrological data" includes precipitation, surface drainage, adjacent sites, wells, streams and lakes; "Operational data" include supervisory personnel, traffic control compaction control; "Engineering Report Design Criteria" shall mean the minimum requirements which shall be applied to new facilities proposed for designation as a solid waste disposal site and facility.

"INDIRECT" FEDERAL MANDATORY PROGRAMS

- Water Pollution Control Act
- Water Resources Planning Act
- Safe Drinking Water Act
- Noise Control Act
- Surface Mining Control and Reclamation Act
- Wild and Scenic Rivers Act
- Soil and Water Resources Conservation Act

Colorado Counties, Inc.
1500 Grant Street • Suite 301
Denver, Colorado 80203
Phone 303 861-4076

August 8, 1979

TO: Committee on Local Government, Rep. James R. Lillpop, Chairman

FROM: Colorado Counties, Inc.

Attached is a list of selected mandated costs affecting counties.

Counties are creatures of the State created by Statute pursuant to Constitutional provisions. They are, in essence, arms of the State charged with the primary responsibility of performing statewide functions on a decentralized basis. The State not only charges counties with the performance of specific functions but also determines the manner in which those functions are to be financed. The only tax levying authority a board of county commissioners has at its disposal to supplement state revenue for the performance of State functions (or for any authorized function) is the property tax. Therefore, the amount of appropriation made by the General Assembly for mandated functions drives the amount of property tax levied by the board of county commissioners for the performance of those functions.

SELECTED LIST OF MANDATES

SOLID WASTE MANAGEMENT

SB 132 enacted in 1971 concerning solid waste disposal sites and facilities established additional requirements for county sanitary landfills. The Colorado State Department of Health in a letter to Colorado Counties, Inc. in late 1974 estimated that annual compliance with the Solid Waste Disposal Sites and Facilities Act would cost $7,240,000 for 248 sanitary landfills in Colorado. The estimated annual compliance cost does not include costs for converting substandard sites. Counties operate about 60 per cent of the disposal sites in Colorado.

PLANNING, LAND USE ADMINISTRATION AND SUBDIVISION REGULATIONS

From 1971 to 1975, three pieces of land use legislation were enacted that gave counties new responsibilities. They were: SB 92 (1971), mandating that counties create planning commissions; SB 35 (1972), requiring counties to adopt and enforce subdivision regulations; and, HB 1041 (1974), providing for the identification and administration of matters of state interest. The Colorado

General Assembly has made an annual appropriation for county land use administration for the last four years to assist counties in implementing provisions of HB 1041. The amount appropriated for distribution to each county, however, was reduced from $26,750 in 1976-77 to $15,000 in 1977-78. County expenditures for planning and zoning increased from an estimated $1.1 million in 1971 to $4.2 million in 1975 according to a Colorado Counties, Inc. analysis of expenditure data presented in the 1971 and 1975 Local Government Financial Compendiums published by the Department of Local Affairs.

COURT FACILITIES

Colorado statutes provide that the boards of county commissioners are responsible for providing and maintaining adequate courtrooms and other court facilities including janitorial services (CRS 1973, 13-3-108). From 1971 to 1975, ten pieces of legislation were enacted providing for additional county and district court judges in Colorado resulting in costs to counties for the provision of court facilities. For example, Jefferson County reported to Colorado Counties, Inc. that in 1976 it cost the county $87,000 to provide facilities for two new judges. Boulder County reported that court needs surpassed available space causing the county to rent facilities for several years. In 1976, Boulder County constructed an $8 million justice center to house the courts as well as the sheriff, district attorney and city police department. Adams County reported that the addition a new county judge in 1975 cost the county $23,000 for remodeling expenses.

ADMINISTRATION AND ENFORCEMENT OF STATE PUBLIC HEALTH LAWS

A board of county commissioners may establish and maintain a county health department. If a department is established, CRS 1973, 25-1-506 outlines the powers and duties of such departments. Responsibilities include the administration and enforcement of state public health laws; vital statistics; water quality control; implementation of orders, rules, and regulations of the State Board of Health; Air Pollution Control; and, other requirements. SB 203 enacted in 1971 required counties to spend at least $1.50 per capita to qualify for state aid to organized health departments. State aid in 1977 amounts to an average of 95 cents per capita. The Budget Report of the Colorado State Department of Health for the fiscal year 1977-78 reports that in 1975, local health departments spent approximately $12 million or $5.42 per capita out of local sources to provide health care services. There are 13 organized county, district or regional health departments which serve 22 counties and approximately 2.2 million persons.

The board of county commissioners serves as the local board of health in a county in which there is no organized health department. CRS 1973, 25-1-602 provides that local boards of health may be prosecuted for willful failure to enforce state health laws. Additionally, CRS 1973, 25-1-601 states that the Colorado State Department of Health may require a local board of health to hire a local health officer to work with and under the advice of the state health department. The 41 counties without organized departments employ 16 sanitarians and 58 registered nurses. Counties contribute three quarters of the salary for sanitarians and public health nurses and most

other expenses. The state contributes one quarter of the salaries mostly from federal funds. The state share was at one third of salaries until 1973 when it was reduced to one quarter.

SOCIAL SERVICES

State law and Department of Social Services regulations govern the administration of social services delivered by Colorado counties. As of 1977, a county's liability for Federal-State welfare and social services was expressly limited to 20 per cent of program costs (HB 1569, 1977). For 1977-78, it is estimated that counties spent $28 million to support mandated social service and welfare programs. Programs administered by county social service departments include Aid to Families with Dependent Children, Aid to the Needy Disabled, Aid to the Blind and a variety of social service programs including foster homes, residential child care, group homes, adoption and day care.

PROPERTY TAXATION

Reasonable and necessary expenses of the assessor in the performance of his lawful duty are to be allowed by the board of county commissioners (CRS 1973, 30-10-805). In 1976, the Colorado General Assembly enacted HB 1089 requiring that prior to 1981 each assessor map all the land in the county showing each parcel according to guidelines established by the property tax administrator. The 1976 Annual Report of the State Division of Property Taxation reports 1,077,615 parcels of residential, commercial and industrial property within the State. The division in its Real Estate Parcel Identification and Mapping Specifications Manual estimates that mapping cost per parcel to between $4.50 and $14.00.

CRIMINAL HISTORY RECORD INFORMATION

SB 189 enacted in 1971 and HB 1597 enacted in 1977 require law enforcement agencies to report criminal history information to the Colorado Crime Information Center (CCIC). For purposes of urging the Colorado General Assembly to continue state rather than requiring local funding of CCIC, 40 local law enforcement agencies reported in September 1975 to the Colorado Bureau of Investigation that costs in excess of $2 million were incurred in reporting criminal history information to CCIC.

MINED LAND RECLAMATION

HB 1065 enacted in 1976 and rules and regulations subsequently adopted by the Mined Land Reclamation Board require counties to plan for an implement reclamation projects for gravel pits. Notwithstanding the corrective action of the Mined Land Reclamation Board to eliminate the surety requirement for counties, an analysis by Colorado Counties, Inc. indicates that HB 1065 will cost counties in excess of $3 million to implement.

UNEMPLOYMENT INSURANCE

In response to federal requirements, the Colorado General Assembly enacted HB 1614 in 1977 requiring unemployment coverage for county employees. Anticipated costs to counties as estimated by Colorado Counties, Inc. may exceed $500,000 in 1978 and subsequent years.

AIR POLLUTION CONTROL

SB 69 enacted in 1970 and subsequent regulations adopted by the Air Pollution Control Commission have impacted counties primarily in solid waste management through burning restrictions. The Colorado Department of Local Affairs, Division of Local Government, in a 1975 report on mandated costs estimated that in 1974 county expenditures resulting from air quality regulations on burning approximated $500,000. Additionally, selected counties have felt the impact of emission requirements as related to hot mix asphalt plants and fugitive dust. Logan County alone reported a 1976 expenditure of more than $160,000 to purchase a new hot mix asphalt plant after a cease and desist order was issued on their old plant. Pueblo and Jefferson counties have reported considerable expense to control fugitive dust on unpaved county roads. Jefferson County reports a material expense of $18,000 a mile to asphalt unpaved roads.

Colorado Municipal League

TO: The Honorable James R. Lillpop, Chairman, and Members, Local Government Interim Committee

FROM: Ken Bueche, CML Executive Director

SUBJECT: Mandated State Programs

DATE: August 1, 1979

Pursuant to the request of the committee members, my staff and I have reviewed the list of state mandated programs provided to Representative McElderry on April 24, 1979. That list represents the most recent review of such programs by the CML Executive Board, and remains the best available prioritization of municipal concerns regarding the programs. I have attached a copy of the letter to Representative McElderry along with an earlier list provided to Senator Allshouse for the convenience of you and the members of the committee.

The members of my staff and I have highlighted a few of the items on the list which the committee may desire to review more closely. The CML staff would be pleased to develop more detailed information on these items, or any other items the committee wishes to study in greater detail.

1. The overlapping of taxing jurisdictions which levy general property taxes. This is of particular concern when municipal residents are burdened with general property taxes levied throughout the county by county government, and the county tax revenues are used exclusively or primarily for the provision of county services to unincorporated areas. Examples include county law enforcement, road construction and maintenance, planning, zoning and other land use activities, etc.

2. Water quality standards and requirements. While it is understood that many of these mandates originate with the federal government, the discretionary authority and administrative practices of the state should be reviewed to determine whether the state mandates are reasonable and cost effective.

3. Military leave policies. Current statutes (C.R.S. 28-3-601) require public entities to fully compensate employees on annual military leave rather than simply pay the difference between military and civilian pay. This unfairly compensates employees to the detriment of taxpayers.

4. Unemployment insurance compensation. This program, which was extended by the General Assembly in 1977 to cover public employees, could be reviewed to determine whether modification might reduce costs. For example, it is questionable whether park workers, life guards and similar seasonal public employees should be entitled to such compensation. As another example, all public employers are grouped together for rating purposes regardless of their susceptibility to claims.

5. Mandatory certification of law enforcement personnel and water and wastewater treatment operators. These programs impose both financial and practical burdens on local government and are deserving of review.

Suite 204, 4900 Wadsworth Boulevard • Wheat Ridge, CO 80033 • (303) 421-8630

6. Local enforcement of state laws. Enforcement of state laws, criminal as well as minor traffic offenses, by local law enforcement personnel with the fines and penalties accruing to the state rather than to municipalities and counties result in large costs to local governments.

If there are any areas in which the League can provide additional information, please do not hesitate to contact us.

April 24, 1979

The Honorable John McElderry
State Representative
State Capitol
Denver, Colorado 80203

Dear John:

This is in reply to your letter of March 8, 1979, requesting the League to identify a list of state mandates which could be made optional to allow greater budgetary flexibility for municipalities.

The problem of federal and state mandates is a very real problem which has grown incrementally over many years. Whether a mandate is good or bad depends on the purposes and actual effects of the mandate, the imposition on local government, the cost to the taxpayers, and the perspective of the evaluator. The sum of federal and state mandates has had a major impact on local government operations and on local taxes and other charges levied on taxpayers.

Listed below are state mandates affecting Colorado cities and towns which have been identified by the League Executive Board for possible modification or elimination. This list is not exhaustive, but includes many significant state mandates. Inclusion within this list does not necessarily constitute criticism of a mandate. As you pointed out in your letter, some mandates could be removed by the state and made optional with the affected local governments. At the top of the list are several programs which the League Executive Board identified as perhaps more appropriate candidates for modification or elimination.

1. Payment of county property taxes by municipal residents for the provision of services to the unincorporated areas of the county (examples include law enforcement, road construction and maintenance, planning, zoning and other land use activities, etc.)

2. Water quality requirements (while some requirements in this area are necessary, the regulating program could be modified and streamlined to reduce unnecessary costs and delays)

3. Safe drinking water requirements (modifications in this area could likewise reduce costs)

4. Military leave policies--compensation requirements for public entities

5. Legal publication requirements, including publication or ordinances and bills paid

6. Requirement that local traffic regulations be uniform with those adopted by state

7. Enforcement of miscellaneous traffic related offenses required by state to be enforced locally

8. Solid waste requirements

9. Jail standards

10. Emergency medical service requirements

11. Mandatory purchase of gasohol in counties over 200,000 population

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12. Police and fire pension benefits and contributions (while the League does not advocate elimination of the state program, the state shares responsibility for financial assistance to assist with these costs)

13. Alcohol treatment--transportation of intoxicated persons to treatment centers and the requirement (by default) to finance treatment facilities and operations now that alcoholism has been decriminalized.

14. Unemployment insurance coverage for public employees

15. Mandatory certification of peace officers (here is a good case of a state mandate with inadequate state financing to accommodate the training required by state law)

16. Mandatory certification of water treatment operators

17. Mandatory certification of wastewater treatment operators

18. Governmental liability and insurance

19. Construction standards for public facilities to accommodate the handicapped

20. Regulation of public deposits and investments

21. Budgeting requirements

22. Accounting requirements

23. Annual audit requirement

24. Enforcement by local law enforcement personnel of wide variety of criminal laws

25. Criminal justice records administration

26. Regulation of municipal courts

27. Jury and witness fees in municipal court

28. Preference for purchase of Colorado products

29. State regulation and licensing of some occupations, businesses, etc., such as electricians and electrical contractors

30. Mined land reclamation requirements

31. Miscellaneous land use laws

32. Air pollution requirements

33. Burdensome procedure for condemnation of water rights

34. Energy conservation standards for residential and nonresidential facilities and other building standards and regulations

35. Requirements for condemning property

36. Reimbursement of costs and attorney fees by municipalities in certain civil actions

37. Public records administration

38. Contractor bonds for public projects

39. Use of Colorado labor on public projects

Another form of mandate imposed on local governments is legislation reducing the tax base for taxes levied by municipalities. The shrinkage of the local tax base, as has happened or been proposed on numerous occasions, effectively reduces the revenue available to fund local program needs or shifts the burden of taxation to other taxpayers. Some examples which have occurred or been proposed in recent years include miscellaneous sales tax exemptions, including exemption of food; property tax exemptions and changes in assessment requirements; and, reduction in assessment rates for stocks of merchandise. Similarly, revenue otherwise avaiable has been affected by exemptions or reductions in motor vehicle registration fees or specific ownership taxes, and "off the top" expenditures from the highway user fund which have reduced funds available to municipalities for street construction and maintenance.

Finally, as illustrative of the ongoing problem of state mandates, we list several bills which are still pending action in the 1979 session of the General Assembly:

SCR 4 - Homestead property tax exemption for needy elderly and handicapped

SCR 9 - Exempting stocks of merchandise from property taxes

S.B. 76 - Restrictions on development over known hydrocarbon fields and mandated planning requirements

HCR 1003 - Homestead property tax exemption for needy elderly

HCR 1005 - Homestead and stocks of merchandise property tax exemption

H.B. 1239 - Retention limitations in public construction contracts

H.B. 1463 - Mandatory purchase by local governments of gasohol when it becomes available and reduction of motor fuel tax on gasohol

We appreciate your interest in this troublesome area and hope the above has provided the requested information. Please feel free to contact Dick Brown or me should you have any questions or desire additional information.

Sincerely yours,

Kenneth G. Bueche
Executive Director

APPENDIX D

WELD CO. COLORADO

OFFICE OF BOARD OF COUNTY COMMISSIONERS

PHONE: (303) 356-4000 EXT. 200
P.O. BOX 758
GREELEY, COLORADO 80631

March 29, 1979

Harry Bowes, Executive Director
Colorado Counties, Inc.
1500 Grant, Suite 301
Denver, Colorado 80203

Dear Mr. Bowes:

Enclosed are the results of a "mandated costs survey" of Weld County services, which Weld County hopes will be of benefit to CCI in its attempts to obtain legislative review of costs borne by counties.

The Board of Weld County Commissioners would emphasize that the survey results do not attempt to recommend which services or costs should be repealed and which retained. The survey should be viewed as a preliminary attempt to catalog Weld County programs which are significantly affected by state or federal laws or regulations. Weld County's 1980 budget process will include a comprehensive review of each function now performed by Weld County government to determine the mandatory or discretionary existence and funding level of each program, applicable statutes or regulations, any revenue-producing measures available through or limited by statutes or regulations, as well as recommended legislative remedies at local, state, or federal levels to allow full cost recovery where possible. Subsequent to that analysis, Weld County will have available complete data on net county cost in property tax dollars for programs or services mandated by the state or federal governments. At this time, only a cursory study of such impacts on Weld County can be provided.

Weld County would encourage CCI to include in its request for review the definition of "mandated" versus "authorized or permitted" services -- power to perform as opposed to duty to perform. For example, the lack of a definition, and consequent confusion in county government, is very apparent in the statutes and regulations providing for county health services. Powers vs duties of local health departments and boards of county commissioners in the enforcement of public health laws or provision of health-related programs are not clearly delineated. In addition, a review of local health department programs indicates that the county health department is implementing, and county property taxpayer financing, many responsibilities delegated to the State Health Department by statute. The interrelationship of state and local agencies should also be clarified.

Similar lack of clarity exists in many other statutes or regulations affecting county government. Weld County asks that CCI seek the addition of a statute requiring a clear statement of "mandated" or "authorized" for each bill or statute which provides for costs or programs of county government. Without this delineation of county responsibility or discretion in programs and services provided for by statute, or funding levels thereof, county commissioners cannot effectively establish funding priorities in order to remain within such revenue limitations.

In addressing CCI's request for county input concerning specific items listed in the Repeal of Mandated Costs -- MEMO II, Weld County is not prepared at this time to recommend actual repeal of any items on the list; we would, instead, support CCI efforts to gain state or federal assumption of costs resulting from these mandated items, or at the very least, a legislative review of the proper funding mechanisms for each item. It is Weld County's belief that many of these programs or services are of legitimate concern to some or all counties or necessary to other government operations, as stated in the attached memo from the Weld County Assessor.

However, in the case of certain programs, such as provision of court facilities, enforcement of state public health and encironmental laws, funding of district attorneys, certain social service programs, etc., the appropriateness of the property tax as a funding mechanism is clearly open to question.

As you will note from a review of the attached survey, actual costs cannot be attached to many of the items included on your list. Solid waste management requirements in terms of actual county dollars to date are fairly minimal. However, the combined impact to counties of implementation of federal regulations against open burning, closure of open dumps, and future county liability in actions to enforce solid waste regulations is incalculable. Existing fugitive dust regulations as they apply to the county are fairly non-specific as to actual implementation and enforcement. The apparent abandonment by the Air Pollution Control Commission of its recently proposed fugitive dust regulations, which would have effectively mandated paving of most of the roads in the southern part of Weld County, has obviously lessened the financial impact to Weld County of fugitive dust compliance (at least for the time being).

It is Weld County's belief that a recommendation for wholesale repeal of such statutes or regulations, or even complete removal of counties from the responsibility for administering them, would be premature at this point. In some cases, it may be in the best interest of some or all counties to retain a degree of responsibility in program administration in order to assure some local control in the determination of program objectives and levels and to assure that specific requirements of a local nature are considered.

It would seem an advisable first step, in that CCI has gained legislative attention to the problem, to seek a legislative commitment to a full review of the effects of legislative actions on local government costs with the objective of defining basic government services appropriately funded by the property tax, which remains as counties' primary source of funding, appropriate funding levels of such services and a commitment to state funding of mandated programs (or provision of other sources for county funding) for those programs or costs which are not appropriate for funding through property tax revenues.

Weld County commends the efforts of CCI in obtaining legislative awareness of the problems faced by counties and other units of local government in complying with a 7% (or, in Weld County's case, 5%) limitation on property tax revenue increases. Any data which Weld County compiles concerning such mandated costs during its budget process will be available to Colorado Counties for use in pursuing legislative relief for this problem in future sessions of the General Assembly. We would encourage CCI to utilize its resources to help counties throughout Colorado develop cost review mechanisms in the future, so that the data required to effectively present the counties' case in this regard will be readily available. Weld County would be very interested in discussing the development of such mechanisms with CCI and other counties after the legislative session has ended.

If you should require any clarification of the enclosed information, or require additional data, please do not hesitate to contact our office.

Sincerely,

Norman Carlson

Norman Carlson, Chairman
Board of Weld County Commissioners

clb

WELD COUNTY

MANDATED COSTS SURVEY

NOTE:

-- Costs listed in "1978 Cal. Year Cost" column are gross expenditures for listed functions. Figures do not reflect net county expense, and are not reflective of revenues received from fees, grants, or funding from other governmental entities.

-- Statutory or regulatory citations are not represented as all-inclusive.

-- In many functional categories, the service or program may be mandated, but service or funding levels are discretionary to the county. Conversely, the existence of certain services or programs is at local discretion, but operation or funding levels may be subject to significant statutory or regulatory impacts. The permissive column makes note of such conditions in certain categories.

-- Statutory citations were identified by program administrators and/or Commissioners' Office staff. Some citations, in particular those cited by the Health Department, have not been verified as to their applicability to the specified programs or to their inclusion under "authorized" or "mandated" services. Such verification is necessary prior to utilization of the included data.

-- This survey is not intended, and should not be utilized, to recommend the repeal of any of the covered programs or services.

-- Certain "non-mandated" programs which require large expenditures of tax dollars to implement are also included in this survey.

clb

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
OUNTY OMMISSIONERS	County Commissioners -- expenses.	30-2-103, CRS 1973	$ 193,928		X	(level & numbe set by Charte and/or statut
	Commissioners to exercise powers of county. (Actual powers and duties and assignment of responsibilities throughout statutes.)	30-11-103, CRS 1973			X	
SSESSOR	All duties required:		402,416		X	
	-- General Property Tax, General Provisions	Title 39, Article 1				
	-- Real and Personal Property	Title 39, Article 5, Part 1				
	-- Valuation of Mines	Title 39, Article 6				
	-- Valuation of Oil and Gas Leaseholds and Lands	Title 39, Article 7				
	Maps of parcels of land in the county	39-5-103.5, CRS 1973	(7,000)		X	
LERK AND ECORDER	All duties required: includes functions of Recording, Motor Vehicle (registration and sales tax collections), Clerk to the Board (including liquor licensing).	Major provisions in Title 30, Article 10; Title 42, Article 1	$ 549,851		X	
	Elections Division	Title 1, Election Laws	174,444		X	
ORONER	Coroner's fees, pathologist, deputies, expenses	30-10-606, CRS 1973	34,954		X	
ARRANTS	Publication of all claims and expenditures	30-25-111, CRS 1973	5,820(ave.)		X	
IVIL DEFENSE	Each county is required to maintain a disaster agency, who shall prepare and update a disaster emergency plan for its area. Approximately 5% of time for Communications Director, Assistant Director, and secretary.	Title 28, Article 2, Part 1, CRS 1973.	2,200(app.)		X	
EGAL SERVICES	County Attorney, special legal counsel		$270,622			X

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
VETERANS' SERVICE OFFICE	Requires establishment of county veterans' service office; lists duties of officer, including assisting all veterans, widows and dependents of veterans in county in filing claims for benefits' requires county to furnish office space and necessary supplies.	Title 26, Article 9, Part 1, CRS 1973	$ 24,933		X	
	Authorizes state assistance to county veterans' service officers in an amount equal to amount the county authorizes, not to exceed $50 monthly.	26-10-103, CRS 1973				X (to state)
	Pension Audit: processing of annual income questionnaires by each claimant. Administration has greatly increased veterans' office workload; probable result will be a request for county funding of assistant fulltime in next budget year (now CETA).	Effect of P.L.95-588	-unknown-	X		
EXTENSION SERVICE	County share of extension agents' salaries per legislative formula: 8 agents/$4900 per agent	Division of Budgeting Schedule	(39,200)			(mandated level for permissive service)
	Extension Service programs are optional to the county by contract. Apparently no actual statute exists providing for programs to be offered by Extension Service. S.B. 77, 1979 Session, would at least describe the Service, but still provide for programs by contract.		101,605 (includes agents salaries)			X
PEST AND WEED CONTROL	Authorized.	35-5-105; 35-8-103	83,652			X
RESEARCH CENTER	Counties are authorized to contract for agricultural research. Northern Colorado Research Center located in Pawnee National Grasslands.	Title 30, Article 24	3,000			X

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
ENGINEERING SERVICES/ ROAD AND BRIDGE	"Road supervisors - districts - duties - powers. (1) The county systems, both primary and secondary roads, shall be assigned to the county for construction and maintenance." (Requires the appointment of road supervisors and specifies powers.)	43-2-111, CRS 1973	$5,185,002 (Total of road and bridge costs; does not include apportionment to municipalities.)		X	Level of operation and funding is discretionary.
	Required standards for construction of county roads, reporting requirements to state, required establishment of road and bridge fund.	Title 43, Article 2			X	
BRIDGE INSPECTION	Inspection of all bridges of over 20 feet in length every two years.	Federal Surface Transportation Assistance Act of 1978	-unknown- (new cost)	X		
FUGITIVE DUST REGULATIONS	Weld County road and bridge operations have been impacted by fugitive dust regulations in the areas of rock crusher/gravel pit operation and control measures on unpaved roads. However, costs involved in compliance cannot be effectively isolated from other road construction and maintenance costs.	Air Pollution Control Commissioner Reg. #1	-unknown-		X	
HOSPITAL	Authorizes establishment of county hospitals; (if established, the hosital operations and construction are subject to all other applicable state and federal mandates).	Title 25, Article 3 CRS 1973, as amended	$322,222 (for capital improvements)			X
COUNTY LIBRARY	Establishment authorized. (Once established, can only be abolished by vote of electors.)	Title 24, Article 90	$222,414			X
SOLID WASTE DISPOSAL FACILITIES	Requires that sites receive designation by the Board of County Commissioners subject to land use guidelines and health department regulations. It also authorizes governmental units to operate or contract for such operations.	Title 30, Article 20	Costs of administration are in Health Dept. expenditures		X	

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissiv
	All duties mandated.		$ 181,033		X	
	-- to receive and pay moneys	30-10-707, CRS 1973			X	
	-- to collect taxes (for state, county, schools, towns, special districts)	30-10-714 (and statutes covering individual subdivisions)			X	
	Collection of taxes--aportionment of taxes--all taxes collected by the treasurer shall be apportioned and credited to the state, the county, and the several towns, cities, school districts, and special districts within the county... No fee shall be charged to the state for collection of its taxes.	Title 39, Article 10			X	
	Tax Sales	Title 39, Article 11			X	
	Redemption	Title 39, Article 12			X	
SCHOOL DISTRICTS (items of concern)	Tax levy to pay principal and interest--treasurers are not allowed to charge school districts fees for processing of bonds and coupons. Estimate is that at least 1/4 time of Treasurer's Office employee is required for this function.	22-42-118, CRS 1973	(3,000)		X	
	Requirement that public be notified of reduced mill levy pursuant to funds received under Title 22, Article 50. Cost to county for addition of statement to tax notices, for destruction of materials on hand, printing new forms, staff time to insert notices by hand due to oversize envelopes, etc.	Title 22, Article 50, School Finance Act	(3,000)		X	
MOBILE HOME TAXATION	Potential financial impacts to county of ad valorem taxation of mobile homes cannot yet be determined. Possible effects include additional administrative costs due to actual inspection of mobile homes held for delinquent taxes prior to sale, as well as potential lack of market for mobile homes at tax sales resulting in county ownership.	S.B. 214, 1977 Session	-unknown-		X	

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
TAX DEFERRAL	Again, potential costs cannot yet be assessed, although administrative costs may be recovered by filing fee required for tax deferral for elderly statute. (Apparently, S.B. 49, 1979 Session, would repeal this deferral system.)	Title 39, Article 3.5	-unknown-		X	

WELD COUNTY SHERIFF/JAIL

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissiv
ADMINISTRATIVE DIVISION	Sheriff to execute writs -- attend courts of record held in his county.	30-10-515, C.R.S. 1973, as amended.	$ 42,560		X	
	Sheriffs to preserve peace-command aid.	30-10-516, C.R.S. 1973, as amended.	65,405		X	
	Officers to keep account of fees.	30-1-113, C.R.S. 1973, as amended	10,750		X	
	Requires record-keeping and reporting of affirmative action.	Title VII, Civil Rights Act of 1964, 24,101 Affirmative Action, 23,106.	16,250	X		
	Deputies-Liability of Sheriff -- Each sheriff may appoint as many deputies as he may think proper, for whose official acts and those of his under-sheriff he shall be responsible. (Personnel Off.)	30-10-506, C.R.S. 1973, as amended.	14,750		X	
	Peace Officer Certification -- two sworn officers lost during the year for schooling.	Chapter 1.1.4 Rules and Regulations on Peace Officer Certification.	24,200		X	
	Limiting access to records (administrative costs)	House Bill 1597 as amended by House Bill 1070.	36,000		X	
JAIL DIVISION	Sheriff as custodian of jail/keeper of jail-- expenses of keeping the jail in good order and repair and of lighting and warming that part thereof wherein prisoners are confined and the office in the jail shall be paid by the county...	30-10-511 and 17-26-102, C.R.S. 1973, as amended.	$1,067,573 (total operational costs)		X	
	There shall be maintained in each county in this state, at the expense of the county, a county jail for the detention, safekeeping, and confinement of persons and prisoners lawfully committed.	17-26-101, C.R.S. 1973, as amended			X	

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
JAIL DIVISION continued	(The following costs are included in the total Jail Division budget listed on Pg. 1)					
	Transporting of prisoners to other jurisdictions.	30-10-514, CRS 1973	($ 29,500)		X	
Programs Unit	Work Release: At court order, prisoners are released on a daily basis to attend work in the community, attend school, etc.	17-25-128, CRS 1973	(20,034)			X
	In-House Counseling: Coordinates religious activities and community treatment agencies providing treatment to inmates, as well as individual counseling to inmates, their families, and staff of the Sheriff's Office.	Standards from Nat'l Sheriff's Association and Nat'l Advisory Commission on Criminal Justice Standards and Goals.	(9,826)			X
	Programs Unit Supervisor		(12,855)			X
	Classification/Intake Program:		(5,010)			
	-- Separation of Prisoners by type and severity of crime;	17-26-105, CRS 1973			X	
	-- Separation of Male and Female Prisoners;	17-26-106, CRS 1973			X	
	-- Separation of Juvenile Prisoners.	17-26-121, CRS 1973			X	
BLOOD ALCOHOL TESTING (DUI)	Implied Consent Law, Motor Vehicle Code	42-4-1202, CRS 1973	$ 6,900		X	
POLICE SERVICES DIVISION	Enforcement of protection of life and property, patrolling, enforcement of Criminal Code, Children's Code, Health and Safety Code, and Uniform Traffic Code, suppression of forest or prairie fires, and rescue operations.	Titles 12, 24, and 42 (Motor Vehicle Laws); Titles 25, 27 (Health Code); Titles 16, 18 (Criminal Code); Title 19 (Children's Code) 30-10-513; 30-10-515	$970,000		X	

(Many programs and standards under which the jail and law enforcement services operate are influenced by court decisions, national standards on jail programs and construction, State Health Department sanitary standards, and civil liability of jail operators concerning treatment of prisoners and confidentiality of records.)

DISTRICT ATTORNEY

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
	All duties required.		$ 344,493		X	
	Compensation of deputies and assistant district attorneys shall be fixed by district attorney with approval of board of county commissioners.	20-1-203, CRS 1973			X	
	Compensation and expenses of district attorney.	Title 21, Article 1, Part 3			X	
	Provides that the state contribution will not exceed $23,200 annually, with remainder of district attorney's expenses to be paid by counties in the district; in this case, the 19th Judicial District includes only Weld County.	20-1-306, CRS 1973			X	
CONSUMER AFFAIRS	Optional program.		56,658			X
UVENILE INVEST-IGATION	Optional program.		16,307			X
ELFARE FRAUD INVESTIGATION	Counties are to be billed for costs and expenses reasonably and necessarily incurred by the district attorney's office in carrying out provisions of Social Services Code regarding fraudulent claims and AFDC recoveries.	Title 26, Article 1, Part 1, CRS 1973 (?)	18,044		X	

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
MAINTENANCE OF COURT FACILITIES	Requires county responsibility for provision and maintenance of adequate courtrooms and court facilities including janitorial service, except as otherwise provided in this article.	13-3-108 (1), CRS 1973, as amended.				
	Costs to Weld County in 1978 included security service, electricity, water, trash service, elevator maintenance and repair, and remodeling (wiring and plumbing). Not included were heating, air conditioning, labor and materials for repairs by county staff, or groundskeeper.		$ 87,048		X	
COUNTY COURTS	Court Facilities -- County Commissioners shall provide facilities at the county seat and may provide elsewhere in the county.	13-6-304, CRS 1973				
DIVISION WATER COURT	" ... The services of the water judge shall be in addition to his regular duties as a district judge... "	37-92-203 (2)				
	" ... The water judge of a division shall normally sit in the county where the water clerk is located ... Should the functions of the water judge require separate or additional facilities, the same shall be provided for by the state from funds provided for by the state from funds appropriated to the supreme court."	" (3)				
	"... All expenses in connection with the performance of the functions of water referees, including salaries and other compensation, office space ... shall be paid from funds appropriated to the supreme court."	" (6)				
	Water Clerk -- duties... "The water clerk shall maintain his office in the offices of the clerk of the district court of the county in each division as follows: Division 1 Weld"...	37-92-204 (1)(b)				

COURTS (Pg. 2)

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
Water Court(cont)	"The expenses of the office and staff of the water clerk shall be provided for out of state funds appropriated to the supreme court, and each county in which a water clerk's office is located shall be reimbursed for the cost thereof to the county."	37-92-204 (1)(4) CRS 1973, as amended				
CAPITAL IMPROVEMENTS*	Maintenance of court facilities -- capital improvements. (2) "The court administrator, subject to the approval of the chief justice, shall prepare annually a capital construction budget. The capital construction budget shall specify: The additional court housing facilities required for each court; the estimated cost of such additional structures or facilities and whether such additional court structures or facilities will include space used by other governmental units for nonjudicial purposes; and a detailed report on the present court facilities currently in use and the reasons for their inadequacy...."	13-3-108 (2), CRS 1973, as amended				

* Although this statute would indicate that provision of additional court facilities is to be at the expense of the State, inadequate funding levels authorized by the State appear to place a continuing responsibility on the county for provision of such facilities. Growing dockets in County, District, and Water Courts located in Weld County, as well as records storage required and the advent of Small Claims Court, are placing increasing pressure on existing facilities. Full state funding of court facilities, particularly in the case of multi-county courts such as the Division Water Court, would seem the minimum responsibility of the State under existing statutes. It would be an unreasonable tax burden to place on Weld County taxpayers to expect any expansion of court facilities to be financed by county property tax dollars for the benefit of all Division 1 citizens.

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
FLOOD INSURANCE PROGRAM	The County has conducted floodplain studies to identify floodplain areas and develop floodplain regulations and flood-proofing regulations. The County is also coordinating development of administrative floodplain maps for the various state and federal agencies involved in the program.	National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973.	$ 10,000	X (by sanction--federal assistance is contingent on compliance with provisions in flood-prone communities.)		
208 WATER QUALITY PLANNING	Weld County has been designated, and has accepted responsibility as a management agency under the 208 Plan -- to plan water quality control measures required because of urban industrial concentrations or other factors causing significant water quality problems in region.	Public Law 92-500 Federal Water Pollution Control Act/ Section 208	-Unknown- 1979 will be first full yr. of county admin.	X (to State)		X (to County if County did not accept designation, State would act as planning agency for region.
SUBDIVISION REGULATIONS	All counties were required to adopt and administer subdivision regulations so that long-range costs of new development would not fall so heavily on existing taxpayers. Costs are now part of overall planning and zoning functions and cannot be effectively isolated.	Senate Bill 35 -- 1972 Session of Co. General Assembly. Section 30-28-133, C.R.S. 1973.	Part of overall Planning		X	
MATTERS OF STATE INTEREST/LAND USE COMMISSION	Identification and administration of areas of state concern by local governments was required under this bill. The Land Use Commission can require local governments to mitigate impacts of a development proposal if identified as a matter of state concern, effectively mandating this program. Long-term administration of ordinances and regulations developed under bill are of continuing cost to counties.	House Bill 1041 -- 1974 Session of General Assembly	Part of overall planning & zoning budget.			X (Some provisions were effectively mandated.)
MINERAL RESOURCE EXTRACTION PLANS	Required development of mineral resource extraction plan. Weld County also administers and enforces regulations relating to mineral resource extraction in the county as a result of plan developed.	House Bill 1529 -- Section 34-1-305, C.R.S. 1973, as amended.	-Unknown- Part of overall Planning		X	

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissiv
MINING ACTIVITIES	This act amended H.B. 1529 by preempting local government regulation of most safety and reclamation provisions relating to mining activities. It also included counties under the definition of operators, thereby requiring counties to apply for permits to the Mine Land Reclamation Board for gravel pits operated by counties for road construction and maintenance.	House Bill 1065 -- Title 34, Article 32, C.R.S. 1973, as amended.	$2603 (permits)		X	

WELD COUNTY PERSONNEL DEPARTMENT

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: Fed.	Mandated: State	Permissive
COMP TIME	Statute requires that 1½ compensatory time or dollars be returned to the employee for every hour of overtime work.	Section 8-13-105, C.R.S., 1973, as amended.	$ 137,500		X	
EEOC/AFFIRMATIVE ACTION PLAN/ CIVIL RIGHTS	Prohibits discrimination in Federal, State and local governments, and in the private sector on the basis of race, color, religion, sex, or nat'l origin. As amended, Title VII of the Civil Rights Act now includes all private employers of 15 or more persons, all educational institutions, state and local government, public and private employment agencies, labor unions with 15 or more members, and joint labor-management committees for apprenticeship and training.	P.L., Title VII of Civil Rights Act of 1964, Equal Opportunity Act of 1972, Section 709(c) of Title VII Public Law 92-261.	200,000	X		
RETIREMENT AGE	Federal law changed the mandatory retirement age from 65 to 70, effective January 1, 1979.	1978 Age Discrimination Act.	Unknown	X		
EMPLOYMENT INSURANCE	Requires the payment for unemployment insurance be paid by the employer; governmental entities are no longer exempt.	Colorado Employment Security Act; P.L. 94-566.	30,000	X	X	
ACCESSIBILITY TO HANDICAPPED	Requires building and programs be reasonably accessible to the handicapped, and prohibits employment discrimination based on handicap.	Rehabilitation Act of 1973 (503 & 504)	200,000	X		
SOCIAL SECURITY	Payment to Social Security on monthly basis rather than quarterly; cost in additional administrative time plus loss of interest.	Social Security Regulations	41,000	X		

WELD COUNTY DEPARTMENT OF SOCIAL SERVICES

WELD - 14

gram/Service	Description	Statute Authority	1978 cal. year cost	Mandated: By Fed.	Mandated: By State	Permissiv
to Families with endent Children	Provides money for food, clothing, shelter, and personal needs to single-parent households.	Social Security Act, Title IV-A, CFR 45 Part 200, CRS 26-2-118, 1973.	$3,275,027	X	X	
l to Families with pendent Children, mployed Father	Provides money for food, clothing, shelter and personal needs to households in which the father is unemployed.	Social Security Act, Title IV-A, CFR 45 Part 200, CRS 26-2-118, 1973	161,051		X	By Fed.
ter Care	Direct 24-hour care of a child under 18 years of age who must be removed from his parents' home because they are dependent or neglected, in need of supervision, or the parents have some problem with which they cannot cope.	Social Security Act, Title IV-A and B, Sections 508 and 425 and Title XX. CRS 26-2-103, 26-5-102, 26-6-101 through 26-8-112; 26-1-118 (5)	483,504	X	X	
l to Needy Dised-Colorado Supment	Provides money for food, clothing, shelter and personal needs to adults who are physically or mentally impaired to the extent that they cannot support themselves financially; 1-year disability	CRS 26-2-119, 1973	292,385	X	X	
to Needy Dised - State Program	Provides money for food, clothing, shelter, and personal needs to adults who are physically or mentally impaired to the extent that they cannot support themselves; 6-month disability.	CRS 26-2-119, 1973	96,723		X	
Care	Direct care for a child under the age of 18 for less than 24 hours per day by a person other than the natural parent or legal custodian. Can be in the child's home or provider's home or facilities. Service is available to single-parent households who are employed or participating in an educational or training program and meet income guidelines.	Social Security Act, Titles XX Section 2002, IV-B, Section 425 and IV-C WIN; State 26-2-103, 26-2-122, and 26-5-101 through 26-5-107; CRS as amended.	373,205		X	By Fed.

rogram/Service	Description	Statute Authority	1978 cal. year cost	Mandated: By Fed.	Mandated: By State	Permissi
urchased Services	Homemakers from Weld County Health Department assist eligible recipients with home management, personal care services and educational and support services.	Social Security Act Titles IV-B and XX as amended; CRS 26-2-112, 1973 as amended; CFR 45 Part 228.	$ 112,306	X	X	
urchased Services	Nutrition aide provides counseling on food preparation and storage, nutritional requirements, relationship between nutrition and health, and consumer education to Food Stamp participants and public assistance recipients.	Social Security Act Titles IV-B and XX as amended. CRS 26-2-112, 1973 as amended, CFR 45 Part 228	11,770			X
eneral Assistance	Provides money for temporary, emergency food, utility and housing needs of recipients whose financial needs cannot be met by federal/state assistance programs.	CRS 30-17-101, 1973 (Poor law requires coverage but much discretion left to counties.)	65,656		X	X
d to the Blind	Provides money for food, clothing, shelter, and personal needs to those persons who are determined to be legally blind.	CRS 26-2-120, 1973	10,475		X	
edicaid Transportaion	Provides money for Medicaid eligible recipients to secure medical treatment when transportation is unavailable.	Social Security Act, Title XIX. CRS Article 5 Chapter 119, 1963 as amended	6,578		X	
rvice Payments	Provides transportation and tuition funds to eligible children. Provides funds for psychological evaluation of children needing protective services.	Social Security Act, Titles IV-B and XX as amended; CFR 45 Part 228	6,231		X	

WELD - 16

Program/Service	Description	Statute Authority	1978 cal. year cost	Mandated: By Fed.	Mandated: By State	Permiss
Child Support Administration (IV-D)	Enforces the child support obligations of absent parents whose child(ren) are receiving Aid to Families with Dependent Children grants.	Social Security Act Titles IV-A and IV-D as amended; CRS Title 14 articles 5 and 6, Title 19, Articles 6 and 7, 26-1-109 (1), (2), (3) and (4), 26-1-114 (1), (3), and (5), 26-1-118 (1) and (4), 26-1-121, 26-2-104, 26-2-105, 26-2-106 (3) 26-2-107, 26-2-124, 26-2-130	$ 109,853	X	X	
Administration	Provides salaries for personnel implementing the above programs and services. Provides operating funds to implement the above programs and services.	All of the above plus CRS Chapter 29, 1973 as amended.	1,537,844	X	X	
Youth Shelter Home	Purchase home which is used as a temporary placement facility for youth who are in crises, beyond the control of their parents, and runaways.		42,000			X
			$6,584,608			

FMRutherford
EMcKenna
March 16, 1979

WELD COUNTY HEALTH DEPARTMENT

MANDATORY PROGRAMS

COST CENTERS	EXPENDITURE FUNCTION	CITATION	ESTIMATED FY 1978 COST
		Colo Revised Statutes (CRS)-1973	
801	Health Officer	25-1-505	$ 25,364
802	Health Education	" " "	18,108
803	Perpetual Inventory	" " "	-0-
804	Business & Personnel Mgm't.	" " "	127,594
805	Custodial Statistical & Other	" " "	-0-
806	General Office Activities	" " "	-0-
808	Inservice Education & Training	" " "	-0-
809	Meat Inspections	25-4-101	10,040
810	Laboratory	25-1-506 (1)f	45,103
828	Vital Statistics	25-1-506 (1) i	13,444
829	TB Control	25-4-501	21,260
830	Venereal Disease	25-4-401	23,636
831	International Certificates	25-1-506	1,787
832	Other Communicable Disease	25-1-506	38,567
833	Epidemiology	" " "	-0-
834	EPSDT	25-4-201	23,176
837	Maternity Program	" " "	32,880
838	Child Health	" " "	57,667
840	Developmental/Evaluation Clinics	" " "	-0-
841	Child Health Clinics	" " "	-0-
842	Handicapped Children	" " "	9,342
843	School Health	25-4-901	1,377
850	Adult Health Maintenance	25-1-506	16,512
851	Well Oldster	25-1-506	45,284
861	General Health/Nursing	25-1-506 (b)	135,829
863	Mental Health & Retardation	" " "	5,992
874	Air Quality Control	25-7-101	14,930
867	Solid Waste Disposal	25-9-101	1,749
877	Food Service	25-4-101	24,671
878	Radiological Hazard Control	25-11-101	1,298
879	Occupational Hazard Control	25-1-506	411
880	Dairy Inspection	25-4-101	38,111
882	Sewage Disposal	25-10-101	22,776
883	Water Quality Control	25-8-101	664
884	Potable Water	" " "	21,041
885	Institution Sanitation	25-4-101	522
887	Kennel & Pet Shops	25-4-601	-0-
889	Environmental Planning	25-1-506	34,607
890	General Env. Services	" " "	-0-

WELD - 18

WELD COUNTY HEALTH DEPARTMENT

MANDATORY PROGRAMS

COST CENTERS	EXPENDITURE FUNCTION	CITATION	ESTIMATE FY 1978 COSTS
891	Noise Control	25-12-101	$ 386
892	Rabies Control	25-4-601	4,460
893	School Sanitation & Safety	25-4-101	2,009
895	Child Care Facilities	25-4-101	1,818
896	Recreational Facilities	25-4-101	1,412
897	Occup. Health & Hazardous Mat.	25-1-506	1,279
898	Rodent & Insect Control	25-4-101	549
899	Regional Wastewater	25-9-101	24,197

AUTHORIZED PROGRAMS

COST CENTERS	EXPENDITURE FUNCTION	ESTIMATE FY 1978 COSTS
811	*Emergency Medical Services	$ -0- ←* (may be mandatory under recent Colo. Law
812	In Home Health Care	10,659
814	Hypertension Screening	10,710
816	Counseling - Alcohol	100,038
817	Alcohol Detoxification Center	167,571
818	Central Intake System, Alcohol	5,026
819	Halfway House, Alcohol	30,633
820	Outreach - Alcohol	29,962
835	Family Planning	90,831
836	Supplemental Foods	4,583
848	East Side Health Center	21,095
852	Homemaker Aide	143,386
853	Title XX Homemaker Aide	129,260
854	Home Health Care	140,883
855	Physical Therapy	24,128
856	Speech Therapy	1,970
857	Occupational Therapy	17,266
858	Health Aides	42,731

BILL 46

A BILL FOR AN ACT

LIMITING THE MAPPING REQUIRED OF COUNTY ASSESSORS.

Bill Summary

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

Eliminates the requirement that county assessors maintain the maps, which they are required to prepare, of parcels of land in their counties. Makes such maintenance discretionary with each county assessor.

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

SECTION 1. 39-5-103.5 (1), Colorado Revised Statutes 1973, as amended, is amended to read:

39-5-103.5. Maps of parcels of land in the county. (1) Prior to January 1, 1981, each assessor shall prepare and MAY maintain full, accurate, and complete maps showing the parcels of land in his county. The maps shall include a master county index map, together with applicable township, section, and quarter-section maps, depending on density. Guidelines shall be established by the administrator to produce uniformity throughout the state. The guidelines shall include the definition of a

parcel, the development of a parcel numbering system, map size, map scale, and suggestions for minimum information to be plotted.

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

BILL 47

A BILL FOR AN ACT

CONCERNING NOTIFICATION OF COUNTY PROCEEDINGS.

Bill Summary

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

Allows the board of county commissioners of each county to post reports of claims and expenditures allowed and paid by said county and of taxes rebated, in lieu of the existing requirement of publication in a legal newspaper. Requires that, in the event that the board decides to post, it shall furnish a copy of the report to every legal newspaper in the county.

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

SECTION 1. 30-25-111 (1), Colorado Revised Statutes 1973, 1977 Repl. Vol., is amended to read:

30-25-111. Proceedings published - failure - penalty. (1) It is the duty of the board of county commissioners of each county to publish, in at least one legal newspaper in the county, OR TO POST, IN NOT LESS THAN THREE CONSPICUOUS PLACES IN THE COUNTY, ONE OF WHICH SHALL BE THE COURTHOUSE DOOR, a report of each claim and expenditure by it allowed and paid and taxes rebated, disclosing the name of and the amount paid to each

individual or firm, a description of the services or material furnished to the county, and, as to other items, the nature of the claim and disclosing the fund charged with each expenditure. Such report shall contain a statement of any contracts for the expenditure of money not paid immediately made by the board of county commissioners, disclosing the nature and purpose of the contract, the parties thereto, and the amounts involved therein. Such reports shall be published OR POSTED at least monthly within thirty days following the end of the period for which made. ~~If no legal newspaper is located in the county, either such reports shall be published in a newspaper of an adjacent county which has general circulation in the county for which the report is made; or the board shall cause such statements to be posted in three conspicuous places in said county, one of which shall be the courthouse door.~~ IF THE BOARD CHOOSES TO POST THE REPORT, IT SHALL TRANSMIT A COPY OF SUCH REPORT TO EVERY LEGAL NEWSPAPER IN THE COUNTY. The county accounting office, if there is one, and otherwise the county clerk and recorder, if he is acting as the accounting agency for the county, shall provide to the board of county commissioners all information necessary for the publication OR POSTING. The published OR POSTED report shall state that it is published OR POSTED under the direction of the board of county commissioners. Nothing in this section shall be construed as requiring the board of county commissioners to ~~publish or~~ make public the names of or individual public welfare payments to, or in behalf of, indigent persons receiving

assistance from public welfare programs financed, in whole or in part, by federal or state funds, or any combination thereof, when such publication is specifically forbidden by law; NOR SHALL ANYTHING IN THIS SECTION BE CONSTRUED AS REQUIRING PUBLICATION OR POSTING OF THE INDIVIDUAL SALARIES OF COUNTY EMPLOYEES.

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

BILL 48

A BILL FOR AN ACT

CONCERNING THE BURNING OF SOLID WASTES.

Bill Summary

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

Allows the burning of solid wastes by both commercial and noncommercial interests in counties of less than twenty-five thousand persons when, in the determination of the board of county commissioners such burning will not result in a public nuisance injurious to the health, safety, or welfare of the people of the state.

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

SECTION 1. 30-20-110 (2), Colorado Revised Statutes 1973, as amended, is amended to read:

30-20-110. Minimum standards. (2) Any ~~provision~~ PROVISIONS of section 25-7-108, C.R.S. 1973, OR THIS ARTICLE to the contrary notwithstanding, the board of county commissioners in any county with less than twenty-five thousand population, according to the latest federal census, is authorized to develop regulations, by resolution, permitting the ~~noncommercial~~ burning of ~~trash~~ SOLID WASTES DEPOSITED AT ANY SUCH DISPOSAL SITE AND FACILITY OR AT ANY

OTHER PLACE in the unincorporated area of said county; except that no permit OR, IN THE CASE OF COUNTY OPERATIONS, NO BURNING shall be issued OR UNDERTAKEN which, ~~shall allow the county to exceed primary and secondary ambient air quality standards as prescribed by federal laws and regulations adopted pursuant thereto~~ IN THE DETERMINATION OF THE BOARD OF COUNTY COMMISSIONERS, MAY RESULT IN A PUBLIC NUISANCE ENDANGERING THE HEALTH, SAFETY, OR WELFARE OF THE PEOPLE OF THE STATE.

SECTION 2. Repeal. 30-20-110 (3), Colorado Revised Statutes 1973, as amended is repealed.

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

BILL 49

A BILL FOR AN ACT

CONCERNING INDIVIDUAL SEWAGE DISPOSAL SYSTEMS.

Bill Summary

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

Changes the fee for accepting and processing an application for a permit for an individual sewage disposal system from a fixed fee to a fee based upon the cost of administration.

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

SECTION 1. 25-10-106 (1) (a), Colorado Revised Statutes 1973, is amended to read:

25-10-106. Basic rules for local administration. (1) (a) Procedures by which application may be made for the issuance of a permit for an individual sewage disposal system. A fee ~~not--to exceed--seventy-five--dollars~~ may be charged by local health departments for accepting and processing such applications. SUCH FEE SHALL BE BASED ON THE AVERAGE COST OF PROCESSING SAID APPLICATIONS IN THE COUNTY OF THE PRECEDING CALENDAR YEAR. The application for a permit shall be in writing and shall include

such information, data, plans, specifications, statements, and commitments as may be required by the local board of health in order to carry out the purposes of this article.

SECTION 2. Effective date - applicability. This act shall take effect January 1, 1981, and shall apply to applications made on or after said date.

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

BILL 50

A BILL FOR AN ACT

CONCERNING LIMITED IMPACT COUNTY OPERATIONS UNDER THE "COLORADO MINED LAND RECLAMATION ACT".

Bill Summary

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

Permits modification or waiver of mine operators' duties in the case of a county conducting limited impact mining operations for the extraction of minerals used in the construction or maintenance of county roads.

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

SECTION 1. 34-32-102, Colorado Revised Statutes 1973, as amended, is amended to read:

34-32-102. Legislative declaration. (1) It is declared to be the policy of this state that the extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities. It is further declared to be the policy of this state that both such activities should be and are compatible. It is the intent of the general assembly by the enactment of this article to allow for the continued development

of the mining industry of this state, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state. It is the further intent of the general assembly by the enactment of this article to conserve natural resources, aid in the protection of wildlife and aquatic resources, and establish agricultural, recreational, residential, and industrial sites and to protect and promote the health, safety, and general welfare of the people of this state.

(2) IT IS FURTHER DECLARED TO BE THE POLICY OF THIS STATE TO PRESERVE AND MAINTAIN AN ECONOMICAL ALL-WEATHER COUNTY ROAD SYSTEM THROUGHOUT THE STATE IN A MANNER CONSISTENT WITH THE STATE POLICY OF CONSERVATION OF NATURAL RESOURCES AND THE OVERALL POLICY OF PROTECTION AND PROMOTION OF THE HEALTH, SAFETY, AND WELFARE OF THE PEOPLE OF THIS STATE. IT IS THE INTENT OF THE GENERAL ASSEMBLY BY THE ENACTMENT OF SPECIAL PROVISIONS FOR COUNTY OPERATORS TO RELIEVE UNITS OF COUNTY GOVERNMENT FROM THE REQUIREMENTS OF ABSOLUTE ADHERENCE TO RECLAMATION ACTIVITY WHERE THE LAND TO BE RECLAIMED HAS BEEN DEVOTED TO LIMITED IMPACT OPERATIONS AND THE COST OF RECLAMATION WOULD BE VASTLY DISPROPORTIONATE TO ANY BENEFIT TO BE GAINED.

SECTION 2. 34-32-110, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

34-32-110. Limited impact operations. (10) The duties required of operators may be waived or modified solely at the discretion of the board if, in the case of a unit of county

government operator, it is evident from written statements and other documents produced at the request of the board that a limited impact operation is devoted to the extraction of gravel or other road building materials for use in the construction or maintenance of county roads.

SECTION 3. The introductory portion to 34-32-116 (1), Colorado Revised Statutes 1973, as amended, is amended to read:

34-32-116. Duties of operator. (1) EXCEPT AS PROVIDED IN SECTION 34-32-110 (10), every operator to whom a permit is issued pursuant to the provisions of this article may engage in the mining operation upon the affected lands described in the permit, upon the performance of and subject to the following requirements with respect to such lands:

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

BILL 51

A BILL FOR AN ACT

CONCERNING THE POWERS OF THE DEPARTMENT OF HEALTH WITH RESPECT TO LOCAL BOARDS OF HEALTH.

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 nonprevailing party in any suit by the department of health against a local board for failure to act shall pay the cost of any such suit. Permits such suits and other actions by the department only in the case of the unwillingness of a local board to act.

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

SECTION 1. 25-1-602, Colorado Revised Statutes 1973, is amended to read:

25-1-602. Local board fails to act. If the local board of health of any community is ~~unable or~~ unwilling to efficiently or promptly abate a nuisance or prevent the introduction or spread of any contagious or infectious disease, the department of health has full power to take such measures as will insure the abatement of the nuisance or prevent the introduction or spread of disease.

The department of health, for this purpose, may assume all the powers conferred by law on the local board of health; or the department of health ~~at its discretion~~, may bring suit against or prosecute any local board of health for a willful failure to enforce the laws of this state in regard to health. The expense of carrying out such orders shall be borne by the ~~local board of health failing to enforce the law~~ NONPREVAILING PARTY IN ANY SUCH SUIT OR PROSECUTION.

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

BILL 52

A BILL FOR AN ACT

CONCERNING THE PAYMENT OF SALARIES TO PUBLIC OFFICIALS OR EMPLOYEES WHILE ON ANNUAL MILITARY LEAVE.

Bill Summary

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

Provides that a public official or employee is to be compensated only at a rate as will insure no loss of income while said official or employee is on annual military leave.

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

SECTION 1. 28-3-601 (1), Colorado Revised Statutes 1973, is amended, and the said 28-3-601 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

28-3-601. Public employees - annual military leave. (1) Subject to the conditions prescribed in sections 28-3-601 to 28-3-607, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who is a member of the national guard or any other component of the military forces of the state organized or

constituted under state or federal law or who is a member of the reserve forces of the United States, organized or constituted under federal law is entitled to leave of absence from his public office or employment without loss of pay; seniority, status, efficiency rating, vacation, sick leave, or other benefits for all the time when he is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding fifteen days in any calendar year. Such leave shall be allowed if the required military service is satisfactorily performed, which shall be presumed unless the contrary is established.

(3) In addition to his military salary, the officer or employee is entitled to receive from his public employer the amount, if any, by which his regular public salary exceeds his military salary for the period of such leave.

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

BILL 53

A BILL FOR AN ACT

CONCERNING WORKMEN'S COMPENSATION COVERAGE FOR PUBLIC OFFICIALS, AND MAKING SUCH COVERAGE OPTIONAL AT THE DISCRETION OF THE EMPLOYER.

Bill Summary

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

Grants the state, its political subdivisions, and other public entities the option of excluding nonsalaried or part-time salaried officials from workmen's compensation coverage.

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

SECTION 1. 8-41-106 (1) (a) (I) and (1) (a) (II), Colorado Revised Statutes 1973, as amended, are amended to read:

8-41-106. Employee. (1) (a) (I) (A) Every person in the FULL-TIME SALARIED service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, WHICH PROVIDES FOR SUCH FULL-TIME SALARIED SERVICE; and every ~~elective official of the state, or of~~

~~any--county;--city;--town;--or--irrigation;--drainage;--or-school district-or-any-other-taxing-district-therein;-or-of--any--public institution-or-administrative-board-thereof~~ PERSON, OTHER THAN AN ELECTED OR APPOINTED OFFICIAL, IN THE PART-TIME SALARIED SERVICE OF ANY SUCH PUBLIC ENTITY; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Policemen and firemen who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S. 1973, during the period of their service upon such posse, and all members of volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firemen or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any

county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) EVERY ELECTED OR APPOINTED OFFICIAL OF THE STATE, OR OF ANY COUNTY, CITY, TOWN, OR IRRIGATION, DRAINAGE, OR SCHOOL DISTRICT OR ANY OTHER TAXING DISTRICT THEREIN, OR OF ANY PUBLIC INSTITUTION OR ADMINISTRATIVE BOARD THEREOF, IF SUCH OFFICIAL IS UNSALARIED, OR WHO, IF SALARIED, SERVES LESS THAN FULL TIME, MAY BE DEEMED AN EMPLOYEE WITHIN THE MEANING OF THIS PARAGRAPH (a) AT THE OPTION OF_____, as to state officials, or at the option of the governing body of such county, city, town, or district as to officials of such political entities. The option to include such officials as employees within the meaning of this paragraph (a) MAY BE EXERCISED AS TO ANY CATEGORY OF OFFICIALS OR AS TO ANY COMBINATION OF CATEGORIES OF OFFICIALS. ANY SUCH OPTION MAY BE EXERCISED FOR ANY BENEFIT YEAR BY THE FILING OF A STATEMENT WITH THE STATE COMPENSATION INSURANCE FUND NOT LESS THAN FORTY-FIVE DAYS BEFORE THE START OF THE BENEFIT YEAR FOR WHICH THE OPTION IS TO BE EXERCISED. IF NO SUCH STATEMENT IS IN EFFECT AS TO ANY CATEGORY OF OFFICIALS, NO OFFICIAL IN SAID CATEGORY SHALL BE DEEMED AN EMPLOYEE WITHIN THE MEANING OF THIS PARAGRAPH (a).

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firemen or as members of such volunteer police departments, volunteer

police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, ~~and--of--every--nonsalaried--person--in-the-service-of-the state;-or-of-any-county;-city;-town;-or-irrigation;-drainage;--or school---district--therein;--or--of--any--public--institution--or administrative-board-thereof-under-any-appointment-or-contract-of hire;--express--or--implied;---including---nonsalaried---elective officials--thereof~~ AND OF EVERY ELECTED OR APPOINTED OFFICIAL DESCRIBED IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AS TO WHOM A STATEMENT EXERCISING THE OPTION TO INCLUDE SUCH OFFICIAL AS AN EMPLOYEE WITHIN THE MEANING OF THIS PARAGRAPH (a) IS IN EFFECT, and of all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 54 of this title.

SECTION 2. Effective date. This act shall take effect July 1, 1980.

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

BILL 54

A BILL FOR AN ACT

CONCERNING SEASONAL EMPLOYMENT UNDER THE COLORADO EMPLOYMENT SECURITY ACT.

Bill Summary

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

Redefines seasonal employment and the procedures related to it under the Colorado Employment Security Act.

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

SECTION 1. 8-73-104 (1), Colorado Revised Statutes 1973, as amended, is amended to read:

8-73-104. Duration of benefits. (1) The division shall compute wage credits for each individual by crediting him with the wages for insured work paid during each quarter of such individual's base period or twenty-six times the current maximum benefit amount, whichever is the lesser. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times his weekly benefit amount and one-third of his wage credits for insured work paid during his base period; except that

benefits based on seasonal wages may be paid only for unemployment during the normal seasonal period of the seasonal ~~industry~~ EMPLOYMENT in which such wage credits were earned and only to seasonal workers who are available for work in such seasonal ~~industry~~ EMPLOYMENT, and the total thereof shall not exceed one-third of such individual's wages paid for insured seasonal work EMPLOYMENT during the corresponding normal seasonal period of his base period. For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom the wages were paid has satisfied the conditions of section 8-70-103 (8), 8-76-104, or 8-76-107, with respect to becoming an employer.

SECTION 2. 8-73-106, Colorado Revised Statutes 1973, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

8-73-106. Seasonal employment - employers - workers - determination. (1) As used in articles 70 to 82 of this title, "seasonal employer" means an employer which, because of climatic conditions, or the seasonal nature of a produce or service, customarily operates all or a portion of its business only during a regularly recurring period or periods of less than 26 weeks for all seasonal periods during a calendar year. An employer may be a seasonal employer with respect to a portion of its business only if that portion, under the usual and customary practice in the industry, is identifiable as a functionally distinct

operation.

(2) As used in articles 70 to 82 of this title, "seasonal employment" means services performed for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to such seasonal employer.

(3) As used in articles 70 to 82 of this title, "seasonal worker" means an individual who has been employed by a seasonal employer in seasonal employment during a regularly recurring period or periods of less than 26 weeksin a calendar year for all seasonal periods, as determined by the division.

(4) As used in articles 70 to 82 of this title, "seasonal determination" means a decision made by the division after appiication on prescribed forms as to the seasonal nature of the employer, the normal seasoal period or periods of the employer, and the seasonal operation of the employer covered by such determination. A seasonal determination shall be made by the division within 90 days after the filing of such application.

(5) In the event an employer shall be determined to be a seasonal employer:

(a) The seasonal determination shall become effective the first day of the calendar quarter commencing after the date of the seasonal determination.

(b) The seasonal determination shall not affect any benefit rights of seasonal workers with respect to employment prior to the effective date of the seasonal determination.

(6) Any interested party may file an appeal in regards to a seasonal determination within 15 calendar days after the determination by the division and obtain review of the determination in accordance with the provisions of section 8-76-113.

(7) Until a seasonal determination by the division has been made in accordance with this section, no employer or worker shall be deemed seasonal. If a seasonal employer, subsequent to the date of its seasonal determination, shall operate its business or its seasonal operation during a period or periods of twenty-six weeks or more in a calendar year, such employer shall be determined by the division to have lost its seasonal status with respect to that business or operation effective at the end of the then current calendar quarter. Such redetermination shall be reported in writing to the employer. Any interested party may file an appeal within 15 calendar days after the redetermination by the division and obtain review of said redetermination in accordance with the provisions of section 8-76-113.

(8) A worker may be a seasonal worker only if:

(a) Such worker is hired for a specific temporary seasonal period as determined by the division; and

(b) Such worker is notified in writing at the time he is hired, or immediately following the seasonal determination by the division, whichever is later:

(I) That he is performing services in seasonal employment for a seasonal employer; and

(II) That his employment is limited to the beginning and ending dates of the employer's seasonal period as determined by the division.

(9) Seasonal employers shall keep account of wages paid to seasonal workers within the seasonal period as determined by the division, and shall report these wages on a special seasonal quarterly report form provided by the division.

(10) The commission shall prescribe regulations applicable to seasonal employers for determining their normal seasonal period or periods.

SECTION 3. Effective date. This act shall take effect July 1, 1980.

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

BILL 55

HOUSE JOINT RESOLUTION NO.

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

That Joint Rule No. 22 (a), (b) and (f) of the Joint Rules of the Senate and House of Representatives are amended to read:

JOINT RULE NO. 22

(a) The joint bill room of the Senate and the House of Representatives shall furnish two copies of each printed bill AND CONCURRENT RESOLUTION introduced in either house to the Division of Budgeting for review of its fiscal implications.

(b) The Division of Budgeting is requested to review each such printed bill AND CONCURRENT RESOLUTION, except BILLS LIMITED TO appropriations measures carrying specific dollar amounts, and if such review indicates that any ~~bill~~ SUCH MEASURE would have a significant effect on the revenues, expenditures, or fiscal liability of the state or any of its political subdivisions, the Division of Budgeting shall advise the chairman of the committee of reference to which the bill was assigned of such fact, and prior to committee consideration shall prepare a fiscal note giving its estimate of such effect. The committee chairman shall provide copies of the fiscal note for all members of the committee of reference. UNLESS APPROVED IN WRITING BY THE PRESIDENT OF THE SENATE IN THE CASE OF A SENATE BILL OR THE SPEAKER OF THE HOUSE IN THE CASE OF A HOUSE BILL, no such measure shall be passed from a committee of reference until an appropriate fiscal note OR A NOTE STATING THAT THE MEASURE HAS NO SIGNIFICANT FISCAL EFFECT is delivered.

(f) In the case of a resolution, other than ~~a--concurrent resolution--or~~ a resolution relating to the legislative department, which has any fiscal implication, the sponsor thereof may request a fiscal note from the Division of

Budgeting prior to its introduction, or if such resolution, upon introduction, be referred to a committee of reference, such committee may request a fiscal note, identifying the resolution by reference to the pages of the journal wherein it appears.

BILL 56

A BILL FOR AN ACT

CONCERNING THE DISPOSITION OF MONEYS RECEIVED FROM FINES, PENALTIES, OR FORFEITURES IN CONNECTION WITH TRAFFIC OFFENSES.

Bill Summary

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

Broadens the categories of state traffic offenses enforced by local authorities for which a portion of the resulting fines, penalties, or forfeitures collected by said authorities shall be locally retained.

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

SECTION 1. 42-1-215 (1) (a) and (1) (b), Colorado Revised Statutes 1973, are amended, and the said 42-1-215 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

42-1-215. Disposition of fines. (1) (a) The aggregate amount of such fines, penalties, or forfeitures, except for a ~~violation-of-section-42-4-1202~~ VIOLATIONS OF ALL STATE LAWS WHICH ARE REQUIRED TO BE ENFORCED BY LOCAL AUTHORITIES PURSUANT TO SECTION 42-4-108 (1) (d) ~~occurring-within-the-corporate-limits-of~~

a--city--or-town, shall be transmitted to the state treasurer and credited to the highway users tax fund.

(b) SUBJECT TO THE PROVISIONS OF PARAGRAPHS (d) AND (e) OF THIS SUBSECTION (1), fifty percent of any fine, penalty, or forfeiture for a-violation-of-section-42-4-1202 VIOLATIONS OF ALL STATE LAWS WHICH ARE REQUIRED TO BE ENFORCED BY LOCAL AUTHORITIES PURSUANT TO SECTION 42-4-108 (1) (d) occurring within the corporate limits of a city or town OR WITHIN THE UNINCORPORATED AREA OF A COUNTY shall be transmitted to the treasurer or chief financial officer of said city or town OR COUNTY WHERE THE OFFENSE OCCURRED, and the remaining fifty percent shall be transmitted to the state treasurer and credited to the highway users tax fund.

(d) Notwithstanding any other provision of this subsection (1) to the contrary, all moneys received as payments of penalty assessments pursuant to section 42-4-1501 (4) (a) without prosecution for the violation being heard in any court shall be transmitted to the state treasurer and credited to the highway users tax fund.

(e) Notwithstanding any other provision of this subsection (1) to the contrary, all moneys received as payments of penalty assessments pursuant to section 42-4-1202 (5) shall be transmitted to the state treasurer and credited to the account of the alcohol and drug driving safety program fund.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1980, and shall apply to all fines,

penalties, or forfeitures received on or after said date.

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

BILL 57

A BILL FOR AN ACT

CONCERNING INTERIM PAYMENT PLAN METHODS FOR NURSING HOME VENDORS.

Bill Summary

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

Requires that the department of social services pay a percentage of the previous month's reimbursement to each nursing home vendor on the first of each month.

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

SECTION 1. 26-4-110 (5), Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-110. Vendors - payments - rules. (5) (d) Subject to the provisions of subsection (1) of this section, on the first working day of each month, the state department shall pay or place in the U.S. mail, postage paid, to each nursing home vendor eighty-five percent of the reimbursement for the previous month. Payment of the remainder of the reimbursement, if any, shall be based on actual billing by the nursing home vendor.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1980, and shall apply to reimbursements on or

after said date.

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

BILL 58

A BILL FOR AN ACT

CONCERNING THE ALLOCATION OF RECOVERED PUBLIC ASSISTANCE FUNDS.

Bill Summary

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

Provides that a county recovering public assistance funds need not share such funds with the state but may retain such funds.

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

SECTION 1. 26-1-112 (2) (b), Colorado Revised Statutes 1973, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

26-1-112. Locating violators - recoveries. (2) (b) (I) Whenever the state department recovers any amount of fraudulently obtained public assistance or fraudulently obtained overpayment which is deposited in the county social services fund, the federal government shall be entitled to a share proportionate to the amount of federal funds paid, and the state shall be entitled to a share proportionate to the amount of state funds paid, and the county department shall be entitled to a share proportionate

to the amount of county funds paid.

(II) Whenever a county department, a county board, or a district attorney recovers any amount of fraudulently obtained public assistance or fraudulently obtained overpayment which is deposited in the county social services fund, the federal government shall be entitled to a share proportionate to the amount of federal funds paid, and the county department and the state department shall divide the remainder equally; except that actual costs and expenses incurred by the district attorney's office in carrying out the provisions of this subsection (2) shall be billed to the counties or a county within the judicial district in the proportions specified in section 20-1-302, C.R.S. 1973. Each county shall make an annual accounting to the state department on all amounts recovered.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1980, and shall apply to all recoveries made on or after said date.

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

BILL 59

A BILL FOR AN ACT

CONCERNING STATE ADVANCEMENTS FOR HOMEMAKER SERVICES.

Bill Summary

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

Requires the state to increase the advancement of funds to counties for homemaker services for elderly and disabled clients who would otherwise require institutional help.

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

SECTION 1. 26-1-122 (4) (d) and (4) (e), Colorado Revised Statutes 1973, as amended, are amended to read:

26-1-122. County appropriations and expenditures - advancements - procedures. (4) (d) (I) Whenever any county, by reason of an emergency or other temporary condition, shall be unable to meet its necessary financial obligations for other public assistance purposes, and at the same time meet its requirements for assistance payments and social services under the program for aid to the needy disabled or the program for aid to families with dependent children, the state department may in its discretion, upon consideration of the conditions and

requirements of this title, reimburse such county in excess of eighty percent of the amount expended for assistance payments and social services under such program. The state department shall determine the amount of such excess reimbursement and the period of time during which such excess reimbursement shall be made. For such purpose, the state department may use not to exceed five percent of the total amount allocated to it by the state for administrative and program costs for assistance payments and social services under the program for which the excess reimbursement is provided.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, WHEN A COUNTY DEPARTMENT PROVIDES OR PURCHASES HOMEMAKER SERVICES FOR CLIENTS WHO ARE IN OR WHO WOULD BE ADMITTED TO SKILLED OR INTERMEDIATE CARE FACILITIES OR HOSPITALS IN ACCORDANCE WITH STATE DEPARTMENT RULES AND REGULATIONS, THE STATE SHALL ADVANCE FUNDS TO SUCH COUNTY DEPARTMENT AT A RATE OF NINETY PERCENT FROM FUNDS APPROPRIATED OR MADE AVAILABLE FOR SUCH PURPOSE UPON AUTHORIZATION OF THE STATE DEPARTMENT PURSUANT TO THE PROVISIONS OF THIS TITLE. AS FUNDS ARE ADVANCED, ADJUSTMENT SHALL BE MADE FROM SUBSEQUENT MONTHLY PAYMENTS FOR THOSE PURPOSES. THE EXPENSES OF TRAINING PERSONNEL TO PROVIDE HOMEMAKER SERVICES, AS DETERMINED AND APPROVED BY THE STATE DEPARTMENT, SHALL BE PAID FROM WHATEVER STATE AND FEDERAL FUNDS ARE AVAILABLE FOR SUCH TRAINING PURPOSES.

(e) When a county department provides or purchases certain specialized social services for public assistance applicants,

recipients, or others to accomplish self-support, self-care, or better family life, including but not limited to day care, homemaker services EXCEPT SUCH HOMEMAKER SERVICES AS ARE PROVIDED FOR IN SUBPARAGRAPH (II) OF PARAGRAPH (d) OF THIS SUBSECTION (4), foster care, and services to mentally retarded persons, in accordance with state department rules and regulations, the state may advance funds to such county department at a rate in excess of eighty percent, within available appropriations, but not to exceed the amount expended by the county department for such services. As funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes. The expenses of training personnel to provide these services, as determined and approved by the state department, shall be paid from whatever state and federal funds are available for such training purposes.

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