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Report to the Colorado General Assembly:

**RECOMMENDATIONS FOR 1978
COMMITTEES ON:**

**THE BUDGETING PROCESS
JUDICIARY
FIXED UTILITIES
TRANSPORTATION AND ENERGY**



VOLUME I

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 223

December, 1977

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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 1978

(Volume I)

Committees on:

The Budgeting Process

Judiciary

Fixed Utilities

Transportation and Energy

Legislative Council
Report To The
Colorado General Assembly

Research Publication No. 223
December, 1977



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November 28, 1977

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To Members of the Fifty-first Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1977. This year's report consolidates the individual reports of nine committees into two volumes (Volume I and Volume II). The reports of the Committees on Insurance (Volume III), the Committee on Health, Environment, Welfare, and Institutions (Volume IV), the Committee on Corrections (Volume V), the Committee on School Finance (Volume VI), and the Committee on Fire and Police Pensions (Volume VII), are contained in separate volumes as indicated.

Respectfully submitted,

/s/ Representative Carl Gustafson
Chairman
Colorado Legislative Council

CG/clw

FOREWORD

The recommendations of the Colorado Legislative Council for 1978 appear in two consolidated volumes and five separate reports. Volume I contains the reports of the Committees on The Budgeting Process, Judiciary, Fixed Utilities, and Transportation and Energy. Reports in Volume II are from the Committees on Agriculture and Wildlife, Higher Education, Mined Land, Governmental Expenditures, and Legislative Procedures.

In addition to the findings and recommendations resulting from studies assigned pursuant to House Joint Resolution No. 1046 (1977 Session), several other bills and recommendations pertaining to a "sunset" review of the Public Utilities Commission's regulation of fixed and non-fixed utilities, as directed by the Legislative Council and assigned to the Committee on Fixed Utilities and the Committee on Transportation and Energy, are included with the committee reports in this Volume I.

The Legislative Council reviewed the reports contained in this Volume I at its meeting on November 28, 1977, and transmits all bills included herein with favorable recommendation to the Governor and the 1978 session of the General Assembly.

The committees and staff of the Legislative Council were assisted by the staff of the Legislative Drafting Office in the preparation of bills and resolutions contained in this Volume. Gary Davis and Mike Risner assisted the Committee on The Budgeting Process; Vince Hogan and Mike Risner, the Committee on Judiciary; Gary Davis and Doug Brown, the Committee on Fixed Utilities; and Gary Davis and Marcia Baird, the Committee on Transportation and Energy.

December, 1977

Lyle C. Kyle
Director

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LEGISLATIVE COUNCIL
COMMITTEE ON THE BUDGETING PROCESS

Members of the Committee

Sen. Joe Schieffelin, Chairman	Rep. Robert Burford
Rep. Arthur Herzberger, Vice Chairman	Rep. Robert DeNier
Sen. James Kadlecek	Rep. John Hamlin
Sen. Dan Noble	Rep. Joel Hefley
Sen. Don Sandoval	Rep. Jean Marks
Sen. Ted Strickland	Rep. John McElderry
	Rep. King Trimble*
	Rep. Walter Waldow
	Rep. Dorothy Witherspoon

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*Replacing Rep. Douglas Wayland who resigned in October, 1977.

COMMITTEE ON THE BUDGETING PROCESS

The findings and recommendations of the Committee on the Budgeting Process, resulting from the study directives assigned by the Legislative Council, may be categorized under three general subject headings:

- I. The present state budgeting process;
- II. The cash flow problems of the general fund and a determination of the general fund surplus; and
- III. A program of incentives for state agencies to develop more efficient methods of conducting activities.

I. State Budgeting Process

The committee was directed to study the present state budgeting process with a view toward identifying unnecessary steps in the process, the appropriate roles of the executive and legislative branches, and duplications of effort among the agencies involved in the process. In addition, the feasibility of zero-base budgeting was to be examined.

The study involved looking at the present budgeting system in terms of the mechanics and actual practices, and obtaining the perspectives of the executive and legislative branches of government. Budget systems and practices in other states were examined, together with innovative budget systems such as zero-base budgeting and the City of Lakewood's program performance budgeting, to give the committee a broader perspective of budgeting in general.

Colorado's budget process is recognized as a legislatively prepared line-item budget system, exerting strong fiscal control through the identification of objects of expenditure in the Long Appropriations Bill. Throughout the hearings, the committee received testimony concerning the strengths and weaknesses of the system from a variety of individuals involved in the process, including former Governor's Love and Vanderhoof, Governor Lamm, representatives from the executive branch, members of the Joint Budget Committee, representatives from the City of Lakewood, and a student of the state budgeting process.

The major strengths of the system as expressed by many of these individuals and members of the committee are detailed below.

- 1) The legislatively controlled preparation of the budget is preferable to the executive domination experienced in other states.

The General Assembly, by nature of its duty to appropriate money and provide direction for the state, must set the policies, criteria and dollar constraints that the executive branch should administer. The Governor, as the primary elected official in the executive branch directly involved in the administration and direction of the state, should not make all of the necessary decisions alone. The appropriate roles of the legislative and executive branches are well established in Colorado.

2) The line-item budget format permits the General Assembly to closely control how moneys are spent, and helps to insure that the programs and policies established by the General Assembly are carried out as they were envisioned.

3) The adversary hearings process involving the Joint Budget Committee and the executive departments, by in large, provides a healthy climate for the exchange of view points. This process allows the Joint Budget Committee to discuss a department's budget request with the head of the department to determine what he or she thinks must be considered, and the factual grounds for funding an activity at the level requested. The hearings also allow agencies an opportunity to defend their requests and to gauge what areas of their requests are of concern to the members of the Joint Budget Committee.

The concerns expressed by many of the individuals deal with the roles of the legislative and executive branches, duplications of effort, the lack of integrated planning, the lack of flexibility, and items of a procedural nature. These concerns can be summarized as shown below.

1) Lack of long-range planning -- Other than specialized planning efforts conducted by the executive departments, no comprehensive planning for the state is being conducted. For the present fiscal year the Office of State Planning and Budgeting was budgeted for only three F.T.E. (full-time equivalents) to carry out its statutory planning responsibilities.

The General Assembly does not engage in long-range planning activities. The planning is short-range, usually year-to-year, and is primarily accomplished through the appropriations process. Due to the uncertainty of the direction the General Assembly will take from year to year, executive departments are prevented from planning to meet perceived future needs.

2) The General Assembly has assumed too dominant a role in the budgeting process. The budget requests submitted to the Joint Budget Committee are often ignored in the preparation of the Long Appropriations Bill. The Joint Budget Committee essentially builds the Long Appropriations Bill from scratch, suggesting that the executive budget activities may not be worth the time and energy involved. Therefore, the executive's expertise and knowledge of the operations of the departments is often not utilized to the fullest possible extent by the Joint Budget Committee and the General Assembly as a whole.

3) The line-item budget format and the General Assembly's almost exclusive concern for control of objects of expenditure severely restricts the department heads' flexibility in administering the functions and activities for which they are responsible. These executives should have more freedom to manage the resources at their disposal. The present system breeds inefficiency and ineffectiveness due to the inability to apply the resources to unpredicted situations as they arise.

4) Members of the General Assembly, other than the Joint Budget Committee members, are not sufficiently involved in the budgeting process. The only exposure to the process for most members is the party caucus discussions and the floor debate on the Long Bill. Individual members may be well versed on particular portions of the Long Bill, but may not be familiar with the overall impact.

5) The Joint Budget Committee process is too closed. The departments are not adequately informed prior to a hearing as to the concerns of the committee. The result is that the departments often do not know what to expect or what information to provide. This situation is not conducive to a meaningful dialogue and exchange of information necessary for effective budget decision making.

6) The short time between introduction of the Long Bill and subsequent adoption does not allow sufficient time for its review by members of the General Assembly, the departments, or other interested parties. Sufficient time should be given to permit thorough consideration, perhaps by introducing a "draft" Long Bill early in the session.

7) The supplemental appropriations process is too slow. Supplementals are passed late in the session, often causing cutbacks in departmental operations which the supplementals were designed to prevent. Supplementals should be considered as early in the session as possible.

Lakewood's "Program Performance" Budget System

Based on the committee's understanding that the City of Lakewood has established a highly regarded budgeting process, the committee invited representatives from the City of Lakewood to make a presentation on their "program performance" budgeting process. In summary, performance budgeting emphasizes grouping the expenses into functional and activity categories. In performance budgeting terminology, a function refers to a group of related activities for which a governmental unit is responsible. Public safety, health, and transportation are three functions performed by government. In preparing a performance budget these functions would be divided into activities -- specific groupings of work and expenditures. For example, the health activity might include food inspection, water treatment, and the operation of clinics. This classification structure is the product of fiscal, organizational, and political considerations.

The budget document prepared in support of a program performance budget emphasizes performance objectives and indicators. For example, in Lakewood, a major governmental function or program is "safety"; the sub-element is "traffic regulation"; and the specific program is "traffic activities". The program is briefly described, performance objectives for the fiscal year are enumerated, indicators of performance are listed and commented upon, and the resources needed to fulfill the program are listed both in general and more specific object-of-expenditures terms. This procedure is followed for each program identified under the major functions to be performed.

Committee action. Recognizing that the results of zero-base budgeting, in its infancy this year, should first be analyzed, the committee does not recommend the implementation of a "program performance" system at this time.

Zero-base budgeting. The committee requested the opinions of several people on the feasibility of zero-base budgeting. The common opinion is that the zero-based budgeting process is not a panacea. Members of the Joint Budget Committee indicated that they will offer changes to the zero-base budget statute for the 1978 legislative session.

Committee Recommendations

The major conclusion from the study of the budgeting process is contained in the following statement formally adopted by the committee:

In its meetings, the Committee on the Budgeting Process heard of the strengths and weaknesses of the state's budgeting system from two former Governors, Governor Lamm, members of the General Assembly's Joint Budget Committee, executive department heads, municipal budget experts, and a college professor. In addition, the committee reviewed the reports of Joint Budget Committee members who traveled to four states -- Idaho, Oregon, Iowa, and Wisconsin -- to study the budgeting process in those jurisdictions. The conclusion of the Committee on the Budgeting Process is that, despite the numerous criticisms of Colorado's existing process, our present system of budgeting, representing a legislatively prepared budget, is superior to any other described to the committee. The changes the committee does find are necessary are in the areas of "fine-tuning". The basic budgeting structure should be retained.

Consistent with this conclusion, the committee submits four recommendations for improving the present budgeting process.

Bill 1 -- Create by joint rule a committee on State Needs, Goals, and Priorities. The most common and serious criticism of the budgeting process registered is the lack of planning and articulation

of state needs, goals, and objectives. The committee concludes that it is the responsibility of the General Assembly to correct this weakness.

The Joint Committee on State Needs, Goals, and Priorities will consist of eight members, four from each party, and four from each house. Members will be appointed for their term of office by the leadership of the House and Senate. Their responsibility will be to issue an annual report articulating the needs, fiscal resources, goals, and objectives of the state for the short and long term. In addition, the committee is to suggest priorities and examine long-range plans of state agencies. In pursuance of these objectives the committee will be able to draw on the expertise of the staffs of the Legislative Council, the Joint Budget Committee, the Office of the State Auditor, and the Office of State Planning and Budgeting.

Supplemental budget process. The committee finds that the delay in approving supplemental requests until late in the legislative session results in a hardship to the requesting agencies. Establishing a deadline (February 1) for the passage of supplemental requests was considered, but rejected due to the fact that the need for supplementals is often not known early in the session.

Recommendation. The committee recommends that the Joint Budget Committee give high priority to supplemental requests in order for the General Assembly to make decisions on them as early in the session as possible.

Bill 2 -- Require the Governor to Give Notice to the General Assembly of Unmatched Federal Moneys Received for Use at his Discretion. This bill will require the Governor to report receipt of federal funds that do not require state matching funds to the General Assembly. Although the committee recognizes that these funds are not subject to legislative appropriation, it is in the best interests of the state for the General Assembly to know that these monies were made available. This report would be made within thirty days of receipt of such funds.

"Oversight" responsibility. The committee concludes that more active involvement of the members of the General Assembly in the budgeting process would be beneficial, to the members and the executive agencies. The committee strongly recommends that the "oversight" responsibilities of the standing committees of reference be more actively fulfilled, with an emphasis on the activities and budgets of the agencies under their jurisdiction.

II. Cash Flow and Surplus

The Committee was directed to review the cash flow problems of the General Fund in order to determine what size cash reserve should be maintained by the state.

The committee, with the assistance of the State Controller, studied a discussion paper prepared by the accounting firms of Arthur Young & Company and Touche Ross & Company. The paper addressed the cash flow situation of the General Fund. It also presented several alternative levels of surplus, based on the inclusion of various reserves that could be tapped to avoid a constitutionally prohibited deficit.

The paper noted that discussions of a budget safety factor or surplus tend to confuse two concepts: fund balance management, and cash management. Cash management is concerned with the day-to-day timing of revenue receipts and expenditure disbursement. Fund balance management is concerned with total revenues versus total expenditures. In the long run, if the General Assembly does not appropriate in excess of revenues, there cannot be a cash deficit, but only temporary periods of cash shortage. Effective cash management procedures are available through the co-mingling of funds in revolving accounts in the State Treasurer's Office. In addition, the general fund can borrow from other state funds in cash short situations.

The committee, not seeing a significant problem with the cash flow of the General Fund, narrowed the scope of its study to the question of fund balance management, including the treatment of reserves and a determination of surplus.

General Fund Surplus

The committee concludes that a clear definition of surplus, in terms of what it should or should not contain, is extremely important. The importance of this determination is enhanced by the "Kadlecek Amendment" to H.B. 1726, enacted during the 1977 session of the General Assembly.

The "Kadlecek Amendment" reads:

24-75-20.1. Restriction of state spending. For each of the fiscal years 1978-79, 1979-80, 1980-81, 1981-82, and 1982-83, state general fund spending shall be limited to seven percent over the previous year. Any amount of general fund revenues in excess of seven percent, and after retention of unrestricted general fund year end balances of four percent of revenues, shall be placed in a special reserve fund to be utilized for property tax relief. The method of distribution of such relief shall be determined by the legislature during the second session of the fifty-first general assembly. (House Bill No. 1726, 1977 Session) (Emphasis added)

The major question the committee addressed is: What should the "unrestricted general fund balances" include?

The Arthur Young, Touche Ross paper, as noted above, discussed several reserves that are not a part of the unrestricted general fund

balance, but could be used to avoid a deficit. The committee examined the reserves and the statutes creating them, in order to determine if they should be a part of the unrestricted balance. Each of these reserves was found to be restricted for a particular purpose by statute or intent. On this basis, the committee concludes that the following reserves should be maintained and, should not be counted as part of the unrestricted balance:

- 1) revenue sharing appropriated to capital construction;
- 2) Old Age Pension stabilization (Article XXIV, Sec. 7);
- 3) revenues restricted to specific agency appropriation (for example, the Brand Inspection Fund (35-22-111, C.R.S. 1973));
- 4) oil shale reserve (34-63-104, C.R.S. 1973);
- 5) appropriations rolled forward; and
- 6) the general cash revolving fund (24-75-501 et. seq., C.R.S. 1973).

The committee examined three reserves that have been reclassified to the unrestricted general fund balance by the authority of the State Controller. These reserves are:

- 1) social services reserve;
- 2) inventory reserve; and
- 3) the University of Colorado working capital reserve;

The committee concluded that the inventory reserve should be restored, as items in inventory should not enter into a determination of unrestricted balance since they are not readily convertible into cash. The social services reserve, initially established to recognize a liability contingent on the outcome of a lawsuit, should be reestablished and broadened to recognize the possibility of losses due to lawsuits involving the state. The University of Colorado working capital reserve should be counted as part of the unrestricted balance and, should not be reinstated. The rationale for such an action is that the cash accounts maintained by other institutions of higher education are counted as unrestricted, and the University of Colorado should be treated in the same manner.

Federal revenue sharing money was another item of concern to the committee. Federal revenue sharing moneys are made available to the state for general purpose use. The moneys are received and credited to the revenue sharing trust fund, out of which the General Assembly makes appropriations. The balance at the end of the fiscal year does not revert to the General Fund (Section 24-75-306, C.R.S. 1973).

However, the balance of the trust fund is normally included together with the General Fund balance in discussions of the surplus or unrestricted balance. The rationale is that the revenue sharing funds are not restricted to any particular use, and the separation of the fund from the General Fund is required only for accounting purposes by the federal government.

The committee concludes that revenue sharing moneys should be included in the determination of General Fund revenues, and the balance remaining in the fund should be counted as part of the unrestricted balance for purposes of the Kadlecik Amendment's calculation of four percent of revenues. The revenue sharing statute should remain intact to fulfill the requirement of the federal government that the funds be separately accounted for in a trust fund.

Recommendations

The following bill is recommended by the Committee, based on the findings and conclusions articulated above.

Bill 3 -- Concerning the Calculation of Surplus Revenues. The bill provides that the unrestricted balance at the end of any fiscal year shall not include moneys budgeted or allocated for possible state liability from legal actions nor moneys invested or spent on inventories; that for purposes of determining unrestricted balances of four percent of revenues, the balance of the federal revenue sharing trust fund shall be included; and, that for purposes of determining four percent of revenues, federal revenue sharing moneys shall be included. This portion of the bill will amend the "Kadlecik Amendment".

In addition, section 24-75-201, C.R.S. 1973, which presently describes surplus as any unappropriated balance, is amended to replace "unappropriated" with the term "unrestricted". "Surplus", under the new language, does not include inventory and state liability allocations, as reflected in the proposed changes to the "Kadlecik Amendment".

III. Efficiency Incentive Program

The committee was directed to consider possible incentives for state agencies to implement innovative managerial or organizational changes to achieve a more efficient operation.

The committee found that agency efforts to implement efficiency changes in their operations is lacking, due in large part to the operation of the budgeting system. For example, an agency that implements an efficiency measure and saves the state some money runs the risk of having its appropriation reduced by the same amount the following year.

The proponents of an incentive program contended that the state will save more money in the long run by allowing an agency to keep a portion of the savings. The advantages of such a program are two fold:

- 1) the incentive for efficiency change will be increased; and
- 2) the savings retained by the agency can be used to examine other innovative techniques that may lead to more efficient operations.

The committee finds that such a program would be beneficial for state agencies.

The committee also examined the employee bonus program first implemented in fiscal year 1974 (Section 24-50-104(8), C.R.S. 1973). The program was to provide a cash bonus to an employee in recognition of an unusually outstanding performance. The State Personnel Board has administered the program, and awarded bonuses of five percent of an employee's annual salary not to exceed \$500. Payments from the bonus fund totaled \$119,000 for fiscal year 1974; however, the program has not been funded since that year.

The committee concludes that a fully funded bonus program of this nature will provide an incentive for increased employee productivity and ingenuity. The committee finds that the responsibility for administering the bonus program more properly belongs with the Governor, as the chief state executive, and ultimately responsible for the activities of the executive departments and agencies.

Recommendations

The committee recommends two bills concerning efficiency incentives. Bill 4 will create a management efficiency program, and Bill 5 will amend the provisions of the employee bonus program. The committee also strongly recommends that the General Assembly appropriate sufficient funds to effectuate the bonus program.

Bill 4 -- Establish a State Agency Management Incentive Program Whereby an Agency may Retain One-Half of any Savings Resulting from Management Techniques or Initiatives. One-half of the savings will be retained by the agency for the first year only. Savings in excess of \$100,000 will be reviewed and confirmed by the State Auditor and the Joint Budget Committee. One-half of all moneys saved will be deposited with the State Treasurer in a management incentive fund, and will be available to the remitting agency in the following fiscal year.

Bill 5 -- Concerning Awards for State Employees. This bill will provide that the Governor, rather than the State Personnel Board, conduct a program for cash bonuses to state employees for outstanding performance. The cash bonus will be five percent of an employee's

yearly salary, not to exceed \$1,000.

The bill will repeal the incentive award program and be supplanted by the cash bonus program.

COMMITTEE ON THE BUDGETING PROCESS

BILL 1

_____ JOINT RESOLUTION NO.

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

4 That the Joint Rules of the Senate and House of
5 Representatives are amended BY THE ADDITION OF A NEW JOINT RULE
6 to read:

7 JOINT RULE NO. 32

- 8 (a) There is hereby created a joint committee on state goals to
9 study the needs, fiscal resources, alternative goals and
10 objectives, and suggested priorities of the state; to
11 examine and evaluate the long-range plans of departments of
12 the executive branch of the state; and to make written
13 reports thereof to the General Assembly by January 15 of
14 each year.
- 15 (b) The committee shall consist of four senators, two of whom
16 shall be of the majority party and two of whom shall be of
17 the minority party of the Senate, and four representatives,
18 two of whom shall be of the majority party and two of whom
19 shall be of the minority party of the House of
20 Representatives. The members of the committee shall be
21 chosen in each house in the same manner as members of other

1 standing committees are chosen. The committee shall
2 function during the legislative sessions and during the
3 interim between sessions.

4 (c) Appointments to the committee shall be made no later than
5 thirty days after the convening of the First Regular Session
6 of the General Assembly held in each odd-numbered year.
7 Membership on the committee shall terminate with the
8 appointment of a member's successor or upon the termination
9 of a member's term of office in the General Assembly,
10 whichever occurs first, and any member may be appointed to
11 succeed himself on the committee. Vacancies in the
12 committee's membership shall be filled in the same manner as
13 original appointments.

14 (d) The committee shall select its chairman and vice-chairman
15 from among its membership, and it shall prescribe
16 subcommittees from the membership of the General Assembly
17 and other persons to assist it in carrying out its
18 functions. The committee may meet as often as may be
19 necessary to perform its functions, but it shall meet at
20 least once in each quarter of the calendar year.

21 (e) In carrying out its duties under this joint rule, the
22 committee may request staff assistance from the Legislative
23 Council, the Joint Budget Committee, the Legislative Audit
24 Committee, and the Office of State Planning and Budgeting.

25 (f) The members of the committee or of a subcommittee appointed
26 by it shall be compensated and reimbursed for necessary
27 expenses incurred in the performance of their duties in the

1 same manner as provided in section 2-2-307 (5) (b), Colorado
2 Revised Statutes 1973, for members of the Joint Budget
3 Committee and the Legislative Audit Committee.

4 (g) All expenses incurred by the committee shall be paid upon
5 vouchers signed by the chairman, or, in his absence or
6 unavailability, by the vice-chairman, and drawn on funds
7 appropriated generally for legislative expenses and
8 allocated to the committee.

COMMITTEE ON THE BUDGETING PROCESS

BILL 2

A BILL FOR AN ACT

1 REQUIRING THE GOVERNOR TO GIVE NOTICE TO THE GENERAL ASSEMBLY OF
2 UNMATCHED FEDERAL MONEYS RECEIVED FOR USE AT HIS DISCRETION.

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 governor to give notice to the general assembly of federal moneys received which do not require matching state moneys and which are distributed at the discretion of the governor.

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

4 SECTION 1. Part 1 of article 75 of title 24, Colorado
5 Revised Statutes 1973, is amended BY THE ADDITION OF A NEW
6 SECTION to read:

7 24-75-105. Notice to general assembly of federal moneys.

8 Any federal moneys received which do not require matching state
9 moneys and which are distributed at the discretion of the
10 governor shall be reported to the general assembly by the
11 governor within thirty days after receipt of such moneys.

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

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

COMMITTEE ON THE BUDGETING PROCESS

BILL 3

A BILL FOR AN ACT

1 SPECIFYING FACTORS WHICH ARE TO BE CONSIDERED IN DETERMINING THE
2 AMOUNTS OF UNRESTRICTED GENERAL FUND YEAR-END BALANCES FOR
3 PURPOSES OF COMPUTING REQUIRED RESTRICTIONS IN STATE
4 SPENDING.

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 unrestricted balance at the end of any fiscal year shall not include moneys budgeted or allocated for possible state liability from legal actions nor moneys invested or spent on inventories.

Provides that for purposes of determining unrestricted balances of four percent of revenues, the balance of the federal revenue sharing trust fund shall be included.

Provides that for purposes of determining four percent of revenues, federal revenue sharing moneys shall be included.

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

6 SECTION 1. 24-75-201, Colorado Revised Statutes 1973, is
7 amended to read:

8 24-75-201. General fund - general fund surplus. There is
9 hereby created and established the general fund, to which shall
10 be credited and paid all revenues and moneys not required by the
11 state constitution or the provisions of any law to be credited

1 and paid into a special fund. The surplus fund created before
2 June 30, 1971, is hereby merged into the general fund. Any
3 ~~unappropriated~~ UNRESTRICTED balance remaining in the general fund
4 at the end of any fiscal year shall be designated as the general
5 fund surplus. FOR PURPOSES OF DETERMINING THE UNRESTRICTED
6 BALANCE AT THE END OF ANY FISCAL YEAR, NO MONEYS BUDGETED OR
7 ALLOCATED FOR POSSIBLE STATE LIABILITY, PENDING THE DETERMINATION
8 OF A LEGAL ACTION, AND NO MONEYS INVESTED OR SPENT ON INVENTORIES
9 SHALL BE INCLUDED.

10 SECTION 2. 24-75-201.1, Colorado Revised Statutes 1973, as
11 enacted by chapter 516, Session Laws of Colorado 1977, is amended
12 to read:

13 24-75-201.1. Restriction on state spending. (1) For each
14 of the fiscal years 1978-79, 1979-80, 1980-81, 1981-82, and
15 1982-83, state general fund spending shall be limited to seven
16 percent over the previous year.

17 (2) Any amount of general fund revenues in excess of seven
18 percent, and after retention of unrestricted general fund
19 year-end balances of four percent of revenues, shall be placed in
20 a special reserve fund to be utilized for property tax relief, AS
21 PROVIDED IN SUBSECTION (3) OF THIS SECTION. FOR PURPOSES OF
22 DETERMINING THE UNRESTRICTED GENERAL FUND YEAR-END BALANCES OF
23 FOUR PERCENT OF REVENUES, THE YEAR-END BALANCE OF THE FEDERAL
24 REVENUE SHARING TRUST FUND SHALL BE INCLUDED. FOR PURPOSES OF
25 DETERMINING FOUR PERCENT OF REVENUES, ALL MONEYS RECEIVED FROM
26 THE GENERAL AND SPECIAL REVENUE PROGRAMS OF THE FEDERAL
27 GOVERNMENT SHALL BE INCLUDED.

1 (3) The method of distribution of ~~such-relief~~ THE PROPERTY
2 TAX RELIEF AVAILABLE UNDER SUBSECTION (2) OF THIS SECTION shall
3 be determined by the general assembly during the second regular
4 session of the fifty-first general assembly.

5 SECTION 3. Effective date. This act shall take effect July
6 1, 1978.

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

COMMITTEE ON THE BUDGETING PROCESS

BILL 4

A BILL FOR AN ACT

1 ESTABLISHING A STATE AGENCY MANAGEMENT INCENTIVE PROGRAM WHEREBY
2 AN AGENCY MAY RETAIN ONE-HALF OF ANY FIRST YEAR SAVINGS
3 RESULTING FROM MANAGEMENT TECHNIQUES OR INITIATIVES.

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 management of a state agency to retain one-half of any general fund savings, after any costs thereof, which result from management initiatives or efficiencies in the first year of their use.

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

5 SECTION 1. Article 30 of title 24, Colorado Revised
6 Statutes 1973, as amended, and as further amended by Session Laws
7 of Colorado 1977, is amended BY THE ADDITION OF A NEW PART to
8 read:

9 PART 12

10 MANAGEMENT INCENTIVE PROGRAM

11 24-30-1201. Management incentive program - policy. It is
12 the policy of the state of Colorado to encourage each state
13 agency to employ varied and innovative management techniques in
14 its operation for the purpose of realizing dollar savings,

1 increased efficiency, increased productivity, elimination of
2 duplicate functions, and other improvements in the operation of
3 the agency. For such purposes, there is hereby established a
4 management incentive program to provide an incentive to the
5 management of state agencies to encourage dollar savings in its
6 operations.

7 24-30-1202. Management incentive fund. (1) There is hereby
8 created in the office of the state treasurer a management
9 incentive fund to which shall be credited one-half of any net
10 dollar general fund savings realized by a state agency in the
11 initial year of the savings, as determined by fiscal rule of the
12 controller and approved by the governor, which result from the
13 implementation of management techniques initiated by such agency.

14 (2) Moneys credited to said fund shall not revert to the
15 general fund at the end of the fiscal year, but shall remain in
16 said fund and be available to the remitting state agency in the
17 fiscal year following the year in which the savings may be
18 realized.

19 (3) Any moneys charged against such fund and available to a
20 state agency shall be used to support the overall goals and
21 purposes of the agency. Each agency spending moneys under this
22 subsection (3) shall make a quarterly report thereof to the
23 governor and the general assembly.

24 (4) The state auditor and the joint budget committee shall
25 review and confirm the savings of each state agency in excess of
26 one hundred thousand dollars.

27 (5) An amount equal to the moneys available to a state

1 agency under subsection (3) of this section shall not be reduced
2 from the agency's budget solely because of such available moneys.

3 SECTION 2. Effective date. This act shall take effect July
4 1, 1978.

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

COMMITTEE ON THE BUDGETING PROCESS

BILL 5

A BILL FOR AN ACT

1 PROVIDING FOR THE ESTABLISHMENT BY THE GOVERNOR OF A SINGLE
2 PROGRAM TO REWARD STATE EMPLOYEES WITH CASH BONUSES FOR
3 OUTSTANDING JOB PERFORMANCE.

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 governor, rather than the state personnel board, conduct a program for cash bonuses to state employees for outstanding performance.

Repeals the incentive award suggestion system.

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

5 SECTION 1. 24-50-104 (8) (a), Colorado Revised Statutes
6 1973, is amended, and the said 24-50-104, as amended, is further
7 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

8 24-50-104. Classification and compensation. (8) Salary
9 administration. (a) The board shall provide by rule, based upon
10 a system of performance evaluation, for periodic salary increases
11 for satisfactory performance AND for the withholding of such
12 increases for less than satisfactory performance. ~~and--for~~
13 ~~payment---of---a---cash---bonus---in---recognition--of--an--unusually~~

1 ~~outstanding-performance-by-an-employee.~~

2 (c) The governor shall establish a program for the payment
3 of a cash bonus to an employee in recognition of an unusually
4 outstanding performance by the employee. Such cash bonus
5 payments shall be five percent of the employee's annual salary,
6 but shall not exceed one thousand dollars.

7 SECTION 2. Repeal. 24-1-116 (4) (d) and part 8 of article
8 30 of title 24, Colorado Revised Statutes 1973, are repealed.

9 SECTION 3. Effective date. This act shall take effect July
10 1, 1978.

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

LEGISLATIVE COUNCIL
COMMITTEE ON JUDICIARY

Members of the Committee

Sen. Ralph Cole, Chairman	Rep. Paul Brown
Rep. Robert Eckelberry, Vice Chairman	Rep. Laura Dellerrera
Sen. Robert Smedley	Rep. Cliff Dodge
Sen. Don MacManus	Rep. Gerard Frank
Sen. Robert Wham	Rep. Anne Gorsuch
Sen. Duane Woodard	Rep. Charles Howe
	Rep. Kenneth Kramer
	Rep. Joe Winkler
	Rep. Sam Zakhem

Council Staff

Earl Thaxton Principal Analyst	Charles Brown Research Associate
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COMMITTEE ON JUDICIARY

The Committee on Judiciary was established by the Legislative Council to conduct two studies pursuant to House Joint Resolution 1046:

- I) a review of the state constitution in order to recommend changes which would provide a more workable statement of basic legal principles for the second century of the state's existence; and
- II) A continuation of the 1976 Interim Committee on Judiciary I study of Colorado's judicial merit selection and tenure system.

For the purposes of assisting the committee in its study of the judicial merit selection and tenure system, the nine-member advisory committee established to aid the 1976 study was continued during the 1977 interim. The advisory committee consists of three persons appointed by the Chief Justice, three persons appointed by the Colorado Bar Association, and three persons appointed by the Governor.

The Committee on Judiciary held five meetings throughout the interim, including public hearings in Pueblo and Grand Junction. The last meeting was devoted entirely to consideration of legislation. Exclusive attention was given to the judicial merit selection and tenure system during the last three committee hearings.

Review of the Colorado Constitution

Due to the scope of the study topics assigned to the committee, it became obvious early in the committee's work that a thorough and exhaustive study of the Colorado Constitution, in addition to its other responsibilities, could not be accomplished because of the brief five meeting interim schedule. As an alternative, the committee voted at its first meeting to begin formulation of a proposal to create a constitutional review commission.

H.B. 1185, which was postponed indefinitely during the 1977 Session, was selected by the committee as a focal point for consideration of commission structure and operations. H.B. 1185 provided for the creation of an eighteen member constitutional review commission comprised of six members appointed by the Governor, six members appointed by the Chief Justice, and six members appointed by the leadership of each house of the General Assembly. The bill further provided that the commission:

- 1) be convened by the Governor and elect its own officers;
- 2) be empowered to hire its own staff or contract with consultants;
- 3) terminate two years after enactment unless extended by legislation; and
- 4) issue yearly reports to the Governor, Supreme Court, and General Assembly.

The committee received testimony concerning the viability of the Colorado Constitution from interested citizens, representatives of various citizen groups, and former public officials. The committee's evaluation and consideration of the testimony presented was directed by its assessment of three primary considerations: 1) the demonstrated need or urgency for systematic constitutional revision; 2) clear identification of specific areas within the Constitution in need of revision which could not be accomplished through existing initiative and referendum procedures; and 3) specification of the optimal method for achieving such revision.

At its second meeting, the committee voted to reconsider the action taken at its first meeting to proceed with the development of a constitutional review commission proposal. Upon reconsideration, the committee voted not to recommend constitutional review commission legislation to the General Assembly. In other action taken by the committee at its second meeting, the committee defeated motions to preclude any further committee action on the constitutional study item and to amend the statutory provisions concerning the Legislative Council to mandate a yearly interim committee study of the Constitution. Therefore, no legislation is recommended by the committee concerning revision of Colorado's Constitution.

The Colorado Judicial Merit Selection System

The plan to replace partisan election of judges and justices with a judicial merit selection system was initiated by petition and placed before the voters as Amendment No. 3 at the 1966 general election. The amendment contained three primary elements: 1) establishment of nominating commissions to supply the names of the best qualified candidates for a judicial office to the Governor for his appointment of one such candidate; 2) a provision that judges and justices run on their records at the general election with the single question of whether such person shall be retained in office -- "Yes" or "No"; and 3) creation of a judicial qualifications commission for the purpose of removing incompetent or unfit judges. The judicial merit selection system was to have jurisdiction over the Supreme Court, all appellate courts, and all district and county courts.

Nominating Commissions

As created by Article VI, Section 24 of the Colorado Constitution, there are 23 judicial nominating commissions in Colorado; one in each of the state's 22 judicial districts and one statewide commission which attends to vacancies on the Supreme Court and the Court of Appeals.

Commission Composition. The nominating commission for the Supreme Court and the Court of Appeals is composed of the Chief Justice or acting Chief Justice of the Supreme Court, who serves as the non-voting chairman of the commission, one lawyer and one non-lawyer from each congressional district in the state, and one non-lawyer who is appointed from the state at large. Presently, there are eleven voting lawyer and non-lawyer members on the commission. No more than one-half of the commission members plus one, excluding the Chief Justice, can be of the same political party.

The judicial district nominating commissions are composed of seven voting members -- four non-lawyers and three lawyers. In judicial districts where the population is less than 35,000 persons, non-lawyers may be substituted for lawyers on the commissions. No more than four members of a commission may be from the same political party and there must be at least one voting member on the judicial district nominating commission from each county in the district.

The non-lawyer members of all of the constitutionally created commissions are appointed by the Governor. Lawyer members are appointed upon majority action of the Governor, the Attorney General, and the Chief Justice of the Supreme Court. Members are appointed to the commissions for six-year terms. Commission membership constitutes a temporary bar to holding certain elective offices and to any consideration for appointment to judicial office.

Each of the justices of the Supreme Court is a non-voting member of a judicial district nominating commission and serves as the chairman of the judicial district nominating commissions to which he is assigned. Since there are 22 judicial districts and only six justices, some justices are assigned to more than one judicial district nominating commission.

Filling of judicial vacancies. Whenever a judicial vacancy is declared to exist by virtue of the death, retirement, resignation, removal, failure to file a declaration for retention, or certification of a negative majority vote on the question of retention, the appropriate nominating commission is required to furnish a list of names to the Governor within 30 days. The list must contain three names if the vacancy occurs on the Supreme Court or Court of Appeals, and either two or three names if the vacancy occurs on a district court bench.

The Governor must make an appointment from the list of nominating commission nominees within 15 days of the date the list is submitted to him. If the Governor fails to meet that deadline, the appoint-

ment is then made by the Chief Justice of the Supreme Court within the next 15 days. Upon appointment, a judge or justice holds office for a provisional two-year term and is then required to stand in a retention election.

Commission procedures. Other than specifying the number of nominees who must be certified by the commission to the Governor for his consideration and appointment, and the time deadline for submission of the list of nominees, no procedures for the operation of the nominating commissions are included in the constitutional provisions which create the commissions. Rules of procedure have been adopted by each commission which specify procedures to: 1) convene the commission and solicit applications for judicial office when a vacancy occurs; 2) maintain the confidentiality of its proceedings; 3) obtain information for the screening of applicants in addition to the standardized application form, including personal interviews, credit checks, medical reports, and other references; 4) evaluate candidate information against various criteria and qualifications for judicial office; and 5) report commission nominations and other information pertinent to the nominees to the Governor. There appears to be some variation between rules of procedure adopted by the various commissions.

Retention Election

At the expiration of the term of office to which he was appointed, a justice of the Supreme Court or the Court of Appeals or a judge of any other court of record who desires to retain his judicial office for a full term (ten years for a justice of the Supreme Court and Court of Appeals, and six years for a district court judge) must file with the Secretary of State a declaration of intent to run for another term. The declaration must be filed within a period of not more than six months or less than three months before the general election next prior to the expiration of his term of office. Upon filing such a declaration of intent, the name of the justice or judge is placed on the ballot at the general election with the single question of whether he shall be retained in office -- "Yes" or "No". If a majority of those persons voting on the question vote in the affirmative, the justice or judge is elected to a succeeding full term. If a majority of those voting on the question vote "no", this will cause a vacancy to exist in that office at the end of his present term of office.

The election of the Supreme Court and Court of Appeals justices is by the electors of the state. District court judges are elected by the electors in the judicial district and county judges by the electors in the county. The same procedure is followed by the judge at the expiration of each full term in judicial office. If a judge fails to file the required declaration of intent, a vacancy is created in that office at the end of his current term.

Commission on Judicial Qualifications

The Colorado Commission on Judicial Qualifications, established by Article VI, Section 23 (3) of the Colorado Constitution, consists of nine members -- three district court judges, two county court judges, two lawyers, and two non-lawyers. The judges are selected by the Supreme Court. Lawyer-members must have practiced law in Colorado for ten years and are appointed by majority action of the Governor, the Attorney General, and the Chief Justice. The non-lawyers are appointed by the Governor. All appointments are for four-year terms and vacancies are filled for a full term instead of the remaining unexpired portion. Appointees serve without salary, but receive actual and necessary expenses for attending commission meetings.

The commission is charged with the responsibility for investigating complaints against judges for:

- (1) willful misconduct in office;
- (2) willful or persistent failure to perform duties;
- (3) intemperance; or
- (4) disability interfering with the performance of duties which is, or is likely to become, permanent.

All Supreme Court, Court of Appeals, district and county court judges and justices, are under the jurisdiction of the commission, except for county court judges in the City and County of Denver which are subject to the Denver Judicial Qualifications Commission.

The commission may take action either on its own motion or upon the complaint of any person. Judge members of the commission may not participate in cases involving themselves. If a complaint is filed by an attorney of record in a case presently before the judge complained about, that judge, at the written request of the commission, shall excuse himself from any case in which the complaining attorney is involved.

After an investigation of the complaint, the commission may order a hearing or request the Supreme Court to appoint three special masters, who are justices or judges of courts of record, to hear, take evidence, and make a report to the commission. After considering the material presented at the hearing or after considering the record and report of the masters, the commission may recommend to the Supreme Court the removal or retirement of the judge. Short of recommending retirement or removal of a judge to the Supreme Court, the commission may take such action as it deems fit on its own motion. The Supreme Court makes the final decision on removal or retirement after a review of the record and any additional evidence it deems appropriate.

All papers filed with and proceedings before the commission are required to be confidential under Article VI, Section 23 (3) of the

Colorado Constitution. When the commission makes a recommendation to the Supreme Court, the record of the case loses its confidentiality, but remains privileged.

Commission rules of procedure were adopted by the Supreme Court and are included in Colorado Revised Statutes 1973 as Chapter 24 of Volume 7 (Court Rules).

Committee Procedures and Recommendations

During the 1976 interim, the Committee on Judiciary I and its advisory committee identified broad issues of concern and elicited a variety of proposals suggested by committee testimony, laws of other states, and pertinent literature in the area of judicial selection. The proposals, some 56 in all, were articulated by the advisory committee as a series of "yes" or "no" questions in its preliminary report to the committee. The advisory committee's preliminary report is contained on pages 51 through 67 of Publication No. 218, Colorado Legislative Council, published in December of 1976.

In the 1976 interim the committee concluded that more information and testimony concerning public attitudes and the specific impacts of each of the 56 proposals was necessary, that referral of constitutional amendments to the voters would not be possible until the 1978 general election, and that it needed further authorization to consider amendments to constitutional provisions not specified in the 1976 study resolution (H.J.R. 1047, 1976 Session). For these reasons the committee submitted the following two recommendations to the 1976 session of the General Assembly:

- 1) That the study of the judicial merit selection and tenure system, and the advisory committee be continued during the 1977 legislative interim; and
- 2) That the committee be authorized during the 1977 interim to consider amendments to any portion of the Judicial Article (Article VI) of the Colorado Constitution.

The committee's first recommendation was embodied as the directive to the Committee on Judiciary for the 1977 interim (H.J.R. 1046, 1977 Session). The second recommendation was not addressed in the 1977 study directive, and hence, items contained in the 1976 study pertaining to the role of part-time judges in the judicial system and the relationship between the judicial and legislative branches in determining matters of substance and procedure were not pursued this year.

The committee utilized the major portion of the 1977 interim to conduct an item by item review of advisory committee recommendations contained in its 1976 preliminary report and in holding public hearings in Pueblo and Grand Junction. Prior to committee consideration of proposed legislation at its last meeting, the advisory committee issued its final report and recommendations. The advisory committee's

final report is contained on pages 43 through 74 of this report.

Based upon the advisory committee's final report, public testimony, committee discussion, and information and suggestions presented by public officials, the following two resolutions are recommended by the Committee on Judiciary to the second regular session of the fifty-first General Assembly.

Operation of Nominating Commissions -- Bill 6

Bill 6 is a concurrent resolution which submits to the voters three changes to the constitutional provisions governing operation of judicial nominating commissions. The bill extends the deadline for submission of the commissions' nominees to the Governor from 30 to 45 days after the judicial vacancy is declared, and provides that the nominating commission shall make public the names submitted to the Governor. The bill also provides that the Governor's appointment shall be based entirely on merit.

Judicial Retention Elections -- Bill 7

Bill 7 is a concurrent resolution which submits to the voters an amendment to the constitutional provision concerning the election of judges and justices. The bill provides that a judge or justice must receive a 60 percent or more affirmative vote on the question of his retention to be retained in office.

COMMITTEE ON JUDICIARY

BILL 6

CONCURRENT RESOLUTION NO.

1 SUBMITTING TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO AN
2 AMENDMENT TO SECTION 20 OF ARTICLE VI OF THE CONSTITUTION OF
3 THE STATE OF COLORADO, ALLOWING JUDICIAL NOMINATING
4 COMMISSIONS ADDITIONAL TIME FOR SUBMITTING LISTS OF NOMINEES
5 TO THE GOVERNOR, REQUIRING SUCH LISTS TO BE MADE PUBLIC WHEN
6 SO SUBMITTED, AND SPECIFYING THAT THE GOVERNOR'S APPOINTMENT
7 OF JUDGES BE BASED ENTIRELY ON MERIT.

Resolution Summary

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

Allows judicial nominating commissions additional time to submit lists of nominees to the governor, requires lists to be made public when submitted, and requires the governor's appointments to be based entirely on merit.

8 Be It Resolved by the House of Representatives of the
9 Fifty-first General Assembly of the State of Colorado, the Senate
10 concurring herein:

11 SECTION 1. At the next general election for members of the
12 general assembly, there shall be submitted to the qualified
13 electors of the state of Colorado, for their approval or

1 rejection, the following amendment to the constitution of the
2 state of Colorado, to wit:

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

5 Section 20. Vacancies. (1) (a) A vacancy in any judicial
6 office in any court of record shall be filled by appointment of
7 the governor from a list of three nominees for the supreme court
8 and any intermediate appellate court and from a list of two or
9 three nominees for all other courts of record, such list to be
10 certified to him by the supreme court nominating commission for a
11 vacancy in the supreme court or a vacancy in any intermediate
12 appellate court and by the judicial district nominating
13 commission for a vacancy in any other court in that district. In
14 case of more than one vacancy in any such court, the list shall
15 contain not less than two more nominees than there are vacancies
16 to be filled. The list shall be submitted by the nominating
17 commission not later than ~~thirty~~ FORTY-FIVE days after the death,
18 retirement, tender of resignation, removal under section 23,
19 failure of an incumbent to file a declaration under section 25,
20 or certification of a negative majority vote on the question of
21 retention in office under section 25 hereof. If the governor
22 shall fail to make the appointment (or all of the appointments in
23 case of multiple vacancies) from such list within fifteen days
24 from the day it is submitted to him, the appointment (or the
25 remaining appointments in case of multiple vacancies) shall be
26 made by the chief justice of the supreme court from the same list
27 within the next fifteen days. A justice or judge appointed under

1 the provisions of this section shall hold office for a
2 provisional term of two years and then until the second Tuesday
3 in January following the next general election. A nominee shall
4 be under the age of seventy-two years at the time his name is
5 submitted to the governor.

6 (b) UPON SUBMISSION OF THE LIST OF NOMINEES TO THE
7 GOVERNOR, THE APPROPRIATE NOMINATING COMMISSION SHALL MAKE PUBLIC
8 THE NAMES OF THE NOMINEES.

9 (c) THE GOVERNOR'S SUBSEQUENT APPOINTMENT FROM SUCH LIST
10 SHALL BE BASED ENTIRELY ON MERIT.

11 SECTION 2. Each elector voting at said election and
12 desirous of voting for or against said amendment shall cast his
13 vote as provided by law either "Yes" or "No" on the proposition:
14 "An amendment to section 20 of article VI of the constitution of
15 the state of Colorado, allowing judicial nominating commissions
16 additional time for submitting lists of nominees to the governor,
17 requiring such lists to be made public when so submitted, and
18 specifying that the governor's appointment of judges be based
19 entirely on merit."

20 SECTION 3. The votes cast for the adoption or rejection of
21 said amendment shall be canvassed and the result determined in
22 the manner provided by law for the canvassing of votes for
23 representatives in Congress, and if a majority of the electors
24 voting on the question shall have voted "Yes", the said amendment
25 shall become a part of the state constitution.

COMMITTEE ON JUDICIARY

BILL 7

HOUSE CONCURRENT RESOLUTION NO.

1 SUBMITTING TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO AN
2 AMENDMENT TO ARTICLE VI OF THE CONSTITUTION OF THE STATE OF
3 COLORADO, PROVIDING FOR AN APPROVAL BY SIXTY PERCENT OR MORE
4 OF THE VOTERS TO ALLOW A JUSTICE OR JUDGE TO SERVE ANOTHER
5 TERM OF OFFICE.

Resolution Summary

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

Provides that justices and judges must receive more than sixty percent of the votes cast on the question to retain their judicial positions.

6 Be It Resolved by the House of Representatives of the
7 Fifty-first General Assembly of the State of Colorado, the Senate
8 concurring herein:

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

14 Section 25 of article VI of the constitution of the state of

1 Colorado is amended to read:

2 Section 25. Election of justices and judges. (1) A justice
3 of the supreme court or a judge of any other court of record who
4 ~~shall-desire~~ DESIRES to retain his judicial office for another
5 term, after the expiration of his ~~then~~ CURRENT term of office,
6 shall file with the secretary of state, not more than six months
7 nor less than three months prior to the general election next
8 prior to the expiration of his ~~then~~ CURRENT term of office, a
9 declaration of his intent to run for another term. Failure to
10 file such a declaration within the time specified shall create a
11 vacancy in that office at the end of his ~~then~~ CURRENT term of
12 office. Upon the filing of such a declaration, a question shall
13 be placed on the appropriate ballot at such general election, as
14 follows:

15 "Shall Justice (Judge) of the Supreme (or other) Court
16 be retained in office? YES/..../NO/..../" If a--majority SIXTY
17 PERCENT OR MORE of those voting on the question vote "Yes", the
18 justice or judge is thereupon elected to a succeeding full term.
19 If a--majority LESS THAN SIXTY PERCENT of those voting on the
20 question vote ~~"No"~~ "YES", this will cause a vacancy to exist in
21 that office at the end of his ~~then~~ CURRENT present term of
22 office.

23 (2) In the case of a justice of the supreme court or any
24 intermediate appellate court, the electors of the state at large;
25 in the case of a judge of a district court, the electors of that
26 judicial district; and in the case of a judge of the county court
27 or other court of record, the electors of that county shall vote

1 on the question of retention in office of the justice or judge.

2 SECTION 2. Each elector voting at said election and
3 desirous of voting for or against said amendment shall cast his
4 vote as provided by law either "Yes" or "No" on the proposition:
5 "An amendment to article VI of the constitution of the state of
6 Colorado, providing for an approval by sixty percent or more of
7 the voters to allow a justice or judge to serve another term of
8 office."

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

REPORT
of
ADVISORY COMMITTEE
to
COLORADO LEGISLATIVE COMMITTEE ON JUDICIARY

Submitted
October 24, 1977

Members of Advisory Committee

Dr. Chester M. Alter, Chairman
Mr. Leonard Campbell, Esquire
Mr. Gene E. Fischer, Esquire
Mr. Gary Jackson, Esquire

Ms. Susan W. Joshel
Ms. Pat Mesec
Mr. Walter A. Steele, Esquire
Mr. Charles Traylor, Esquire
Mr. Houston Waring

ADVISORY COMMITTEE TO INTERIM
LEGISLATIVE COMMITTEE ON JUDICIARY

TRANSMITTAL OF 1977 REPORT

To: Interim Committee on Judiciary
Senator Ralph Cole, Chairman

From: Advisory Committee to Interim Committee on Judiciary
Dr. Chester M. Alter, Chairman

Date: October 24, 1977

CMA

Herewith is transmitted your Advisory Committee's Report for 1977. The Advisory Committee is a continuation of the Advisory Committee to the former Joint Legislative Committee on Judiciary I of 1976. On November 29, 1976 our Committee submitted a Tentative and Preliminary Report which identified questions that had been raised by members of your Committee and by others during testimony in public hearings. The Preliminary Report responded to those questions which were of a non-constitutional nature. We deferred our response to all constitutional questions.

Our 1977 Report transmitted herewith includes the responses submitted in the 1976 Preliminary Report but also addresses all other listed questions not previously considered.

The Advisory Committee, after having the benefit of a most useful series of public hearings held by the Interim Committee on the Judiciary, believes that the Colorado Judicial System, as provided for by the Constitution, by Statute and by administrative practice, is one in which the citizens of Colorado can be, and generally are, proud. In particular, we believe the Colorado Merit Selection of Judges procedure as provided for in the Constitution is producing excellent judges. Further, we believe that the work of the Qualification Commission as provided for in the Constitution has proven to be an effective method of enhancing a high quality of judicial work and behavior on the part of judges. We are impressed by the fact that the Constitutional provision for removal and replacement of judges by a periodic vote of the people is proving to be useful and effective.

Although there may be minor beneficial changes in the present Judicial Article of the Constitution that might be reasonably suggested, your Advisory Committee strongly recommends that no Constitutional amendment of the Judicial Article of the Constitution be proposed at this time.

Notwithstanding our major recommendation that a Constitutional amendment would be unwise, we have responded specifically to the various suggestions that have been made. Although the Committee's reactions to some of these specific suggestions for change are positive and supportive, no one of these nor does the sum total override the potential adverse effect of a proposed amendment of the Constitution.

The Report makes some suggestions for the improvement of the operation of our merit selection system which can be accomplished by administrative procedure.

We appreciate the privilege you have given us to advise you and offer our continued services.

Respectfully submitted,

Advisory Committee Members

Dr. Chester M. Alter, Chairman
Mr. Leonard Campbell, Esquire
Mr. Gene E. Fischer, Esquire
Mr. Gary Jackson, Esquire
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FOREWORD

The 1977 report of the Advisory Committee to the Legislative Committee on Judiciary is the culmination of two years of study and public hearings to consider improvements to the Colorado judicial system. In 1976 a tentative and preliminary report listing some 56 questions, with responses where appropriate, was submitted, containing issues pertinent to judicial selection.

The Advisory Committee has had the opportunity to attend all the public hearings of the Legislative Committee, including those in 1977 in Denver, Pueblo and Grand Junction, as well as to present testimony regarding the Colorado judicial system and its comparison with the legal systems of other states.

The 1977 report contains in its letter of transmittal a brief statement of the recommendations of the Advisory Committee and there has been attached to the letter appendices which review the recommendations by subject matter and a separate appendix which lists the 56 issues presented in the 1976 report with the comments of the Advisory Committee in regard to non-constitutional recommendations and those modifications that would require constitutional change.

SUMMARY OF
1977 REPORT
OF
ADVISORY COMMITTEE
TO
LEGISLATIVE COMMITTEE ON JUDICIARY

November 4, 1977

In this report the Advisory Committee will list the matters discussed in public meetings, except rule-making powers of the legislature as distinguished from the authority of the Court, and the use of part-time judges, referees and masters, by reference to subject matter of the issues that have been presented in the 56 questions submitted in the 1976 tentative and preliminary report of this committee.

The subjects that will be reviewed and the question numbers may be summarized as follows:

	<u>Question Nos.</u>
I. <u>Operation of Nominating Commissions:</u>	21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 56
a. Increase non-lawyer members	
b. Uniform rules of procedure	
c. Publication	
d. Uniform questions	
e. Increase number of nominees	
f. Increase 30-day limitation	
g. Require two commission meetings	
h. Public participation:	
1. Public meeting	
2. Participation of legislature	
II. <u>Qualifications Commission:</u>	1 through 9; 55
a. Membership	
b. Powers	

	<u>Question Nos.</u>
III. <u>Retention and Discipline of Judges:</u>	17, 18, 19, 20, 10, 11, 12, 13, 23
A. As to Retention:	
1. General election	
2. Percentage for retention	
3. Names appear on ballot for contested office	
B. As to Discipline:	
1. Grounds for discipline	
2. Public/private censure	
IV. <u>Rule-making Powers:</u>	46, 47, 48
a. Legislative participation	
b. <u>Court authority</u>	
V. <u>Part-time Judges, Referees and Masters:</u>	49, 50, 51
a. Non-Lawyer County Judges	
b. Trial de Novo in District Court	
VI. HJR 1047:	52, 53, 54

The Advisory Committee urges the legislature to consider that the Colorado judicial system under the present constitutional amendment adopted in 1966 has achieved a national reputation as an effective example of the merit selection of judges. In the circumstances any changes should be undertaken with great care in concept and in draftsmanship to insure that the modifications represent improvements.

At the same time the Advisory Committee in submitting its report recognizes the desirability of stimulating those changes that would represent proper modifications to the current judicial system in Colorado, whether the proposals involve administrative procedures of nominating commissions, legislative improvements or constitutional amendment.

In the circumstances the Advisory Committee recommends the following of affirmative proposals and the rejecting of those plans and programs that do not represent an advance in the judicial system.

I. Operation of Nominating Commissions:

A. Recommendations not requiring constitutional or legislative action:

1. That there be uniform rules of procedure for nominating commissions. A program to achieve this modification has already been undertaken. (Question 37)

2. That the rules of procedure for nominating commissions be published. (Question 24)

3. That a question pertinent to prior censure should be included in the questionnaire submitted by applicants for judicial nomination. (Question 23)

4. That nominating commissions by resolution should sponsor public meetings as part of their rules of procedure to afford citizen input and public participation in the initial stages of the nominating process. Such a meeting would not be intended to be a hearing procedure involving questions and answers of applicants, but to allow the public to state to the committee the type of nominee desired by the public for the judicial position that is vacant, as well as to make specific nominations if desired. This meeting would be held before the deadline for receiving applications. (Questions 22, 30 and 40)

5. Interview questions must inquire about the individual strengths and weaknesses of each applicant and reflect the interests of each member of nominating commissions. The questioning of applicants in the oral interview cannot be expected to be undertaken by using identical questions. (Questions 29 and 37)

6. Members of nominating commissions should continue to be appointed, rather than elected. (Question 42)

7. Names of nominees to fill judicial vacancies should be submitted to the Governor for appointment and not be placed on a ballot in non-partisan elections. (Question 43)

8. Members of nominating commissions should be encouraged and given the opportunity to improve the quality of their work by attending conferences and by other methods. (Question 45)

9. Nominating commissions, as part of the nominating process, should determine the willingness of an applicant to serve as a judge. (Question 38)

B. The Advisory Committee has recommended against changing the Constitution in 1978, but if the General Assembly does decide to submit remedial legislation to the electorate in November, 1978, the following corrective changes should be made regarding nominating commissions:

1. The number of non-lawyer members of various nominating commissions should be increased. (Question 21)
 2. As to the number of names submitted:
 - a. The number of names submitted to the Governor by the Supreme Court Nominating Commission for appellate court vacancies should be increased to not less than three nor more than five. (Question 31)
 - b. The number of names submitted to the Governor by judicial district nominating commissions should be increased to not less than two nor more than five. (Question 32)
 3. A person who is an active candidate for elective public office should not be considered for nomination to a judgeship during the time he is campaigning for public office. (Question 35)
 4. Records of proceedings before nominating commissions should remain confidential. (Questions 14, 25, 26, 39)
 5. There should be an extension from 30 to 45 days on the period of time during which nominations may be made by a nominating commission to the Governor (Question 33), and there should be at least two meetings on separate days of a nominating commission before the submission of names to the Governor. (Question 44)
 6. A violation of the rules of nominating commissions should be cause for removal of one of the members. (Question 36)
- C. The Advisory Committee has recommended against changing the Constitution in 1978, but if the General Assembly does decide to submit remedial legislation to the electorate in November, 1978, the following recommendations are made regarding nominating commissions:
1. Names of all applicants for judgeships should be kept confidential. (Question 25)
 2. Names of persons nominated by a commission for submission to the Governor should continue to be confidential at the time they are forwarded to the Governor. (Question 26)
 3. The Governor's appointment for a judgeship should not be confirmed by the Senate. (Question 27)
 4. Supreme Court justices should remain as non-voting coordinators for nominating commissions. (Question 28)

II. Qualifications Commission:

A. It was the consensus of the Advisory Committee that the present terms of the constitutional amendment regarding the judicial system should remain the same, and there should not be changes in the Constitution to permit:

1. Selection by the Bar Association of lawyer members of the Qualifications Commission. (Question 2)

2. Confirmation by the Senate of gubernatorial appointments to the Qualifications Commission. (Question 3)

3. Appointment by the leadership of the House and Senate of the General Assembly of non-lawyer members of the Qualifications Commission. (Question 4)

4. Amendment to Section 23 to permit temporary replacement after disqualification of a member of the Qualifications Commission. (Question 8)

B. In the event that an amendment to the judicial section of the Colorado Constitution is proposed to be presented to the electorate in November, 1978, the following changes regarding the Qualifications Commission should be included:

1. The name of the Qualifications Commission should be changed (Question 16). The State of California, which was the source of the 1966 constitutional amendment adopted in Colorado, has changed the name of its similarly empowered tribunal to the "Judicial Performance Commission". Some references have been made to a similar type of change, being entitled "Judicial Discipline Commission".

2. The number of non-lawyer members should be increased from three to five, with the resulting 12-member commission composed of five judges, five non-lawyers and two lawyers. (Question 1)

3. The Qualifications Commission should be divided into an investigative board and a hearing board after the increase in membership. (Question 6)

4. Section 23 of the Constitution should be amended to provide for removal of non-active or disinterested members of the Commission. (Question 7)

5. Penalties and a mechanism should be developed to enforce confidentiality of Commission action. (Question 14)

6. Violation of the rules of the Qualifications Commission should be cause for removal of a member. (Question 15)

III. Retention and Discipline of Judges:

A. As to retention of judges:

1. The public should retain its power under the present Constitution to vote upon retention or termination of a judge after the initial two-year period, and thereafter at the expiration of the regular six or ten year periods for District Court and Supreme Court justices.

a. The Colorado judicial system is preferable, in the opinion of the Advisory Committee, to the lifetime appointment of federal judges. (Question 17)

b. Similarly, the Advisory Committee believes that it is preferable to have a vote of the electorate periodically, rather than a resubmission of a judge to the nominating process. It is noted that it is highly unlikely that there would be the same membership of a nominating commission or even the same appointing authority for such periodic reviews. Further, re-submission to the nominating procedure was the process in Denver under its city charter and was changed by a vote of the people with the encouragement of the judges, who believed that system was inferior to the present Colorado system of a vote of the people to retain or terminate the judge's position.

2. Section 25 of the Colorado Constitution and the present selection system is preferable to returning to a system of contested election for judicial offices, which would result from:

a. The appearance of other names on the ballot at the time of a retention election (Question 19);

b. A return to partisan elections or adoption of a non-partisan procedure for voting on all judges. (Question 20)

3. The present system for a majority vote to retain judges is preferable to a system that would permit a minority of 41% (requiring a 60% majority vote) to terminate public office. Such a vote of minority rule would appear to be contrary to the democratic principles in state and federal elections. (Question 18)

B. As to discipline of judges:

1. Subsection (3)b of Section 23 of the Constitution should be changed to provide that a commission can investigate judicial conduct "prejudicial to the administration of justice that brings the judicial office into disrepute". (Question 9)

2. Criteria for removal of judges should not be made to correspond with the Code of Judicial Ethics. (Question 10)

3. Subsection (3)a of Section 23 of the Constitution should be amended to permit private censure of justices and judges and to recommend public censure to the Supreme Court. (Question 12)

4. Changes should be made to Section 23 of the Constitution to include criteria for disciplining of improper judicial conduct by setting forth standards used in other states. (Question 11)

The Advisory Committee is cognizant of the possible consideration by the Legislative Committee of rule-making powers, and the conflict that might arise between the legislature and the courts regarding their respective authorities. In addition, other issues that might be covered include part-time judges, referees and masters; use of non-lawyer county court judges; and trial de novo in district court. As the public meetings have not addressed these issues and, more fundamentally, because the subjects are, in the opinion of the Advisory Committee, more appropriately ones that could be considered by investigation and in-depth study by persons possessing legal expertise with special training in constitutional law, such as by assignment to a special committee of the Bar Association to receive the input of practicing lawyers, it was deemed inappropriate by the Advisory Committee to make any comment on these matters at this time, or any recommendation.

REPORT OF ADVISORY COMMITTEE

TO

LEGISLATIVE COMMITTEE ON JUDICIARY I

November 4, 1977

INVENTORY OF STUDY ITEMS

I. MATTERS RELATED TO THE RETIREMENT AND REMOVAL OF JUSTICES AND JUDGES:
THE COMMISSION ON JUDICIAL QUALIFICATION, etc. Section 23, Article VI.

1. Question: Should the number of non-lawyer members of the Qualifications Commission be increased from 3 to 5? This would make a 12-member Commission, composed of 5 judges, 5 non-lawyers and 2 lawyers.

Answer: Yes Constitutional

Comments: Experience on both the qualifications and nominating commissions has disclosed the very effective participation by non-lawyers. By increasing the number of members of the Qualifications Commission by two non-lawyers, there would be achieved a substantial increase for public input, yet the size of the commission would still be a workable one - i.e., twelve members. There would not appear to be an inequitable balance of representation on the new commission.

2. Question: Should lawyer members of the Qualifications Commission be selected by the Bar Association:

Answer: No Constitutional

Comments: Experience has again shown an effective operation under the present method of appointing members to the Qualifications Commission. The bar associations have no part in the qualification or nominating processes. The Advisory Committee believes that the general public might properly resent any appearance of control by bar associations. When the judicial article amendment was presented to the electorate in 1966 it was represented that lawyer organizations and bar associations would not be involved in the nominating process to avoid a charge that bar association politics were being substituted for partisan party politics. The policy excluding direct participation by bar associations should be continued.

3. Question: Should gubernatorial appointees to the Qualifications Commission be confirmed by the Senate?

Answer: No Constitutional

Comments: To require confirmation by the state senate of gubernatorial appointments to commissions might delay appointments and could generate particular political overtones in appointing commission members that are not inherent under the present judicial selection system.

4. Question: Should the House and Senate leadership appoint the non-lawyer members of the Qualifications Commission?

Answer: No Constitutional

Comments: Again, the present nominating system has proven to be a successful one. The larger the group required to make appointments to a judicial commission, the longer it would take to complete the appointment process. If the judicial article were to be amended, the Advisory Committee's response to question 5 allows for some input by the legislature in the appointive process for the Qualifications Commission.

5. Question: Should a member or members of the House and Senate Judiciary Committees (to be appointed by House and Senate leadership) serve as members of the Qualifications Commission?

Answer: Yes Constitutional

Comments: This modification would give the elected representatives of the people some representation on the Qualifications Commission. Although experience has shown the present system is satisfactory, the Advisory Committee feels this would be an improvement.

6. Question: Should the Qualifications Commission be divided into an Investigation Board and a Hearing Board in a fashion similar to the Colorado State Board of Medical Examiners?

Answer: Yes (with some reservations) Non-Constitutional

Comments: A recommendation has been made that the Constitution be amended to increase the number of members on the judicial Qualifications Commission. With such an increased number of members on this commission, the rules of that commission should provide:

- (a) That each complaint be handled by separate investigative and hearing panels;
- (b) That each member of the commission might serve on investigative or hearing panels but that a member should not serve on a hearing board to consider any cases which had been brought before the investigative board of which he was a member;
- (c) That a quorum be established by rule for an investigative panel and hearing panel but the number of members need not be identical.

The need is obvious to avoid having the same members of the Qualifications Commission acting first in an investigative capacity prior to the filing of charges and thereafter performing a quasi-judicial function involving the same investigation. Every effort must be made not only to avoid circumstances leading to a prejudgment of any accused, but also any appearance of prejudgment. Separation of investigative and hearing duties in other administrative agencies of the state is working and the Advisory Committee believes this suggestion should be implemented as early as possible, as neither legislation nor constitutional amendment are needed for the present Qualifications Commission to adopt this policy.

A quorum for each type of panel should also be established by the rules of the present Committee on Judicial Qualifications.

7. Question: Should Section 23 be amended to provide for a removal mechanism so that inactive or uninterested members of the Qualifications Commission may be removed:

Answer: Yes Constitutional

Comments: Indifference by members of this important commission should be eliminated and some procedure established for removal of inactive members. Since the commission is established by judicial article, the removal provision should be added to the Constitution but a specific mechanism for removal might be reserved for determination by statute or by a rule thereafter adopted by the commission.

8. Question: Should Section 23 be amended so that if a Qualifications Commission member is disqualified to act in any matter pending before the commission for the same reasons that would disqualify a judicial officer from sitting in a matter, the Commission may appoint a special member or the original appointing officer may appoint a special member to sit in that case?

Answer: No Constitutional

Comments: The Commission is of sufficient size to function without a disqualified member having to be even temporarily replaced.

9. Question: Should subsection (3)b of Section 23 be amended to provide that the Qualifications Commission can investigate complaints against a justice or judge for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute"?

Answer: Yes Constitutional

Comments: The Advisory Committee favors broadening the stated criteria for judicial conduct (see question 11) and if a broader definition were adopted there is no apparent reason why a commission should not

investigate complaints of the nature described in this question. However, at the public hearings there were some statements indicating a preference for an enumeration of specific causes of removal, rather than a general standard.

10. Question: Should the criteria for the removal of a judge or justice be made to correspond to the Code of Judicial Ethics?

Answer: No Constitutional

Comments: The Code of Judicial Ethics should not be the exclusive standard to evaluate conduct of judges. The Advisory Committee recommends inclusion of this code in a broadened definition of criteria for judging judicial conduct (question 11). However, removal for any violation might be too severe and if a change were to be made in the constitutional definition, the Code of Judicial Ethics should be a guideline as to whether a specific violation should be grounds for recommending disciplinary action as well as removal.

11. Question: Should changes be made in Section 23 so as to include criteria for judicial conduct used in other states as follows:

- a. Corruption in office;
- b. Commission while in office of any offense involving moral turpitude;
- c. Gross partiality in office;
- d. Oppression in office;
- e. Violation of any code of judicial ethics;
- f. Other grounds as may be specified by the legislature.

Answer: Yes Constitutional (questionable)

Comments: In the course of the public hearings before the Legislative Committee it was indicated that there was need for greater flexibility in handling disciplinary charges involving judges. It appeared desirable to give an additional listing of areas of judicial conduct which could properly be deemed to be improprieties and therefore adequate reason for disciplinary action.

It was felt that the term "oppression in office" needed further study and clarification before being recommended.

Also the second grounds might be reworded: While in office, commission of, or conviction for, any offense involving moral turpitude.

The Advisory Committee recommends that flexibility should be permitted in the establishment and later creation of additional standards against which to measure proper judicial conduct, and for that reason believes inclusion of other grounds as may be specified by the legislature to be proper would be desirable.

Although question 11 was designated in our 1976 report as non-constitutional and a legislative definition of judicial misconduct under the present Section 23 of Article VI might be possible, upon further review the Advisory Committee recommends that if there be an amendment, there be a broadened definition of the standards of judicial conduct for removal or discipline of judges contained in Section 23. (See our previous comments under question 11 and our comments that there should be flexibility for redefinition from time to time by the legislature of proper judicial conduct.)

12. Question: Should subsection (3)a of Section 23 be amended to permit the Qualifications Commission to privately censure a justice or judge, and to recommend public censure to the Supreme Court?

Answer: Yes Constitutional

Comments: The mere investigation of a complaint will probably have a remedial effect on a judge. In addition, some form of private reprimand or censure could be an effective tool that should be available to the commission. It appears that a constitutional amendment would be necessary to Section 23 to achieve this goal.

13. Question: Should the powers of the Qualifications Commission include the power to suspend, with or without pay, to censure, to reprimand, and to discipline?

Answer: Yes Constitutional

Comments: The Advisory Committee's comment to question 12 is relevant here and the commission should have the power to discipline and censure, as well as reprimand, without necessarily removing a judge. All these remedies short of actual removal are desirable for the most effective operation of the Qualifications Commission.

14. Question: Should a mechanism be developed to enforce Commission confidentiality and that penalties be adopted for confidentiality violation?

Answer: Yes Non-Constitutional

Comments: While the current constitutional provisions of the judicial amendment specifically require confidentiality of the Qualifications Commission, there is no similar admonition to the judicial nominating commissions. Nevertheless, it is the belief of the Advisory Committee that confidentiality should be preserved in the nominating process for appointment of persons to fill judicial vacancies. Unfortunately, the Constitution does not presently contain provisions regarding the removal of members from a commission. An amendment to the Constitution describing the method or grounds for removal of members of a nominating commission will be required to clarify the authority and grounds for such removal.

In the meantime, it appears desirable that members of a nominating commission, when first appointed, should be specifically instructed as to the confidentiality of the proceedings. Further, it is recommended that the rules of procedure for each commission provide for disciplinary action against any member of a commission violating that rule.

15. Question: Should violation of the rules of the Qualifications Commission be cause for removal from the Commission:

Answer: Yes Constitutional

Comments: To make enforcement effective, rules need to be promulgated by the Commission itself. A violation of the rules should be a basis for removal from service on the commission. (See question 7 - removal from the commission should come about for inaction or lack of interest as well as active or affirmative violation of its own rules.)

16. Question: Should the name of Judicial Qualifications Commission be changed?

Answer: Yes Constitutional

Comments: The present name is confusing and the work of a nominating commission is often confused with that of a qualifications commission. California, after whose system of removal the Colorado provisions were modeled, has now changed the name of its commission to "Judicial Performance Commission". If powers of discipline, censure, and remedies less severe than removal are granted, the phrase "removal commission" is not correct. The Advisory Committee is not wedded to any particular name for the commission, and "Judicial Disciplinary Commission" might also be effective.

17. Question: Should lifetime appointments to the judiciary be made without periodic votes for or against retention?

Answer: No Constitutional

Comments: Despite the existence of a removal procedure other than in the hands of the electorate, the Advisory Committee feels strongly that the public should also have the power of removal at the polls. The need for public scrutiny of the conduct and work of judges is a potent reminder to judges of their high responsibility in the administration of justice. Judges have been removed at the polls under the present system. The non-partisan election for retention in office should be maintained.

II. MATTERS RELATED TO ELECTIONS OR RETENTION OF JUSTICES AND JUDGES:
Section 25, Article VI.

18. Question: Should justices and judges be required to receive a 60-percent affirmative vote at retention elections to remain in office, rather than a majority:

Answer: No Constitutional

Comments: As long as the Qualifications Commission and a removal procedure exist and work, as experience has proven, judges should be given tenure subject to removal by the will of a majority, not a minority. To allow a 40-percent minority to unseat a judge appears inequitable and contrary to the democratic processes of the electorate for other important decisions. An automatic "NO" vote appears inevitable in retention elections by some voters who want to evidence opposition to the judicial system, as well as the individual judge.

A typical judge doing an adequate job without being involved in a controversial case, or not having some group in society mounting a campaign against him, will not be known to the average voter. Therefore it appears inadvisable to require him to conduct a public campaign at substantial financial expense to insure a 60-percent affirmative vote. Furthermore, if the majority rule vote (50-percent) were changed, there may be a tendency to alter the percentage from time to time and encourage periodic or continual constitutional changes in the non-partisan election system.

19. Question: Should Section 25 be amended to permit other names to appear on the ballot for contested judicial office?

Answer: No Constitutional

Comments: To do so would defeat the very foundation of "merit" selection and the entire system of non-political nomination after a screening process based on qualifications.

20. Question: Should the question of whether or not the merit election system shall be abolished and replaced with non-partisan or partisan election of judges be submitted to the voters at the next general election?

Answer: No Non-Constitutional

Comments: While it is recognized that this question would involve a constitutional amendment if answered affirmatively, i.e., that there be a partisan election of judges proposal to be submitted to the voters at the next general election, it was felt appropriate by the Advisory Committee to state its opinion that such a proposal not be submitted.

The present merit selection of judges in Colorado has gained for the state and the system widespread recognition throughout the United States and any abandonment of the principles and concept would be definitely contrary to what the Advisory Committee believes to be the best interests of the administration of justice in Colorado. Nevertheless there are some areas for improvement, both by constitutional amendment to be hereafter discussed and by rule changes and legislative action, as set forth in the answers to questions being furnished at this time. The public hearings before the Legislative Committee have confirmed that political selection of judges in Colorado exposed the judicial system to improprieties that included:

- a. Inefficient use of judges' and court officials' time during election years as they felt required to campaign.
- b. Campaign financing problems because a major source of support for judges nearly always came from lawyers who later appeared before the judges.
- c. Unique importance in the nomination and election of judges of powerful political personalities.

In addition, while there could be no direct relationship of judicial performance to the promises of a political platform, the political process placed a potential judge before the electorate in the public position that his selection and the political campaign of his party and other office seekers were intimately inter-related.

III. MATTERS RELATED TO FILLING OF JUDICIAL VACANCIES, JUDICIAL NOMINATING COMMISSION, etc. Sections 20 and 24, Article VI.

21. Question: Should the number of non-lawyer members of various nominating commissions be increased:

Answer: Yes (with reservations) Constitutional

Comments: As in the case of the Qualifications Commission, experience has shown the non-lawyer members to be effective participants. (See question 1) As deliberations progress toward final selection of names to be submitted to the Governor, the degree of participation by non-lawyer members increases. Under the present system, non-lawyer members of a nominating commission outnumber lawyers. The present size of the nominating commission appears to be appropriate. While the Advisory Committee feels basically the structure of present commissions is satisfactory, the addition of one or two non-lawyers might be a desirable change.

22. Question: Should the various nominating commissions hold a public hearing at the initial stages of the nominating process to allow for citizens' input?

Answer: Yes Non-Constitutional

Comments: It was reported to the Legislative Committee that the existing policy of all judicial nominating commissions includes notification to the news media of the existence of a vacancy in a judicial office and in establishing a deadline for filing nominations. It was felt that an opportunity for public participation could be encouraged by the scheduling of a public hearing as part of the process. It is recommended that when notice is given to the news media of the deadline for filing questionnaires with the nominating commission, that there be scheduled a public hearing to be held before said deadline so the public could offer such input as it desired. Such a public hearing should not violate the confidentiality of those nominees who did not desire to make public their interest in appointment as a judge.

Some experienced members of the Advisory Committee felt that this proposed procedure would unduly increase the time required of the Commission and would add little to the effectiveness of the procedure or improve the quality of the results.

23. Question: Should a question pertaining to prior censure be included on the questionnaire now submitted by applicants for judicial nomination?
NOTE: Now included.

Answer: Yes Non-Constitutional

Comments: It was felt by the Advisory Committee that the fact of prior censure, if it existed in the record of a nominee for judgeship, should be noted on the application so that members of the nominating commission could inquire into the circumstances under which the censure arose, if that were their desire. It was felt inappropriate that such an issue be overlooked, either in the application or during questioning.

24. Question: Should the rules of procedure for all nominating commissions be published?

Answer: Yes Non-Constitutional

Comments: It is the belief of the Advisory Committee that an appropriate agency should review existing rules of procedure of judicial nominating commissions to provide uniform rules throughout the State of Colorado covering subjects appropriately controlled by such rules.

It is felt by the Advisory Committee that there may be some need for different policies in some rules of nominating commissions, arising from dissimilar conditions such as the number of applicants for judicial vacancies, but there could be uniformity of some rules such as the form of questionnaire, the need for more than one meeting of each nominating commission, publication of rules of procedure, the holding of a public hearing before the deadline for receiving applications, the notice of existence of a vacancy, and the establishment of a quorum for a commission to act. Other subjects could also be covered by such uniform rules.

25. Question: Should the names of all applicants for a judicial vacancy be publicized by the appropriate nominating commission:

Answer: No Constitutional

Comments: It is felt by the Advisory Committee that the publication of the names of all applicants for a judicial vacancy would reduce the number and quality of the applications, as it has been the experience of some nominating commissions that many lawyers do not desire to publicize their intention to become a judge and remove themselves from the active practice of law, and thereby jeopardize the retention of clients in the event they were not selected for a judicial position.

26. Question: Should the publication of names of persons nominated by a commission for appointment by the Governor be mandated?

Answer: No Non-Constitutional

Comments: Information presented in the public hearings of the Legislative Committee indicated that publication of the names of nominees at the time the list of names was given to the Governor would subject the appointing authority to political pressure that was inappropriate to the independence sought to be exercised in the selection of the best qualified candidate.

27. Question: Should the Governor's appointees be confirmed by the Senate?

Answer: No Constitutional

Comments: See answer to question 3

28. Question: Should Supreme Court justices be removed from all district court nominating commissions?

Answer: No Constitutional

Comments: Experience has shown the use of a supervisory Supreme Court justice to be an effective way of coordinating the work of nominating commissions. These justices do not vote and their presence emphasizes to all members the importance of judicial involvement in the nominating process. There has been submitted no evidence of domination by Supreme Court justices in the deliberations of the commissions. The non-lawyer members have expressed satisfaction with the role of the justices. Justices can effectively describe the work of a judge and the qualities needed to be a good judge to the non-lawyer members. The nominating procedure appears to be enhanced by having a Supreme Court justice on each commission, as they also operate as a centralized clearing agency for the paper work of the commission for filing of applications and supporting documents.

29. Question: Should all nominating commission interviews be made uniform?

Answer: No Non-Constitutional

Comments: It was felt inappropriate to standardize questions on the basis of uniformity that might in any way distort the inquiry and dialogue between an applicant and a nominating commission, as it is important that there be a full exploration by each member of the commission of those areas of interest which were believed to be most important in the judicial selection process. The concept of uniformity would bring with it the undesirable aspect of possibly impropriety that might result from deviations from the normal, uniform or standard questions. It was hoped that each lay member, as well as each lawyer, would bring to an interview the background and personal experience that would enable a truly wide inquiry in the process of the interview.

30. Question: Should the legislature, by resolution, request the nominating commission to adopt the public hearing proposal as part of their rules of procedure:

Answer: Yes (with reservations) Non-Constitutional

Comments: It was felt that there should be additional input by the public in the nominating process and that an additional hearing was desirable, as set forth in the answer to question 22. In the circumstances, it is felt by the Advisory Committee that both the legislature by resolution and the Chief Justice of the Colorado Supreme Court, by appropriate action, should encourage such additional participation.

31. Question: Should the number of names submitted to the Governor by the Supreme Court Nominating Commission be increased from not less than three to not more than five?

Answer: Yes Constitutional

Comments: In some instances there may be a particularly good group of candidates and greater selectivity of the appointing authority of the Governor might be served by submission of five rather than three names. The Advisory Committee feels that the nominating commissions should have this option of supplying the Governor with a larger group from which to choose a member of the Supreme Court or the Court of Appeals, if the number of applicants for the judgeship so warrants.

32. Question: Should the number of names submitted to the Governor by the various district court nominating commissions be increased to permit submission of not less than two and not more than five?

Answer: Yes Constitutional

Comments: In some less populated areas it often happens that there are very few applicants. A spread of two to five allows flexibility to the commission and the Governor.

33. Question: Should the 30-day limitation on certifying a nominee to the Governor be increased to 45?

Answer: Yes Constitutional

Comments: Experience has shown the 30-day period to be too short for the selection process, particularly when a judicial vacancy occurs suddenly, such as by death, rather than by retirement which may be announced well in advance. Vacations, geography, busy schedules, a flood of applications, and the mechanics of investigation all dictate the desirability of a longer period for the work of the commissions.

34. Question: Should a seven-day delay period between a commission's deadline for submission of applications for a judicial vacancy, and the selection and transmittal of the names of nominees to the Governor be mandated?

Answer: Yes Non-Constitutional

Comments: The testimony presented at the public hearings before the Legislative Committee described committee procedures and improprieties of judicial commissions in some areas of the state that might be corrected by a more mature reflection on the responsibilities of commission members and the manner in which they act. The Advisory Committee concurs in the suggestion that there be a delay between the deadline for submission of applications by persons interested in judicial appointment and the time when the committee acts, so that the basis of a charge of precipitous action might be minimized.

35. Question: Should a person who is an active candidate for an elective public office be considered for nomination to a judgeship?

Answer: No Constitutional

Comments: The philosophy of the non-political selection of judges is to eliminate active candidates for public office. This recommendation appears to be a proper sacrifice to maintain a truly non-political system for the selection of judges.

36. Question: Should violation of the rules of nominating commissions be cause for removal?

Answer: Yes Constitutional

Comments: See answer to questions 7 and 15. The Advisory Committee feels that removal from qualifications or nominating commissions should be allowed for lack of interest as well as active misconduct, including disobeying the rules of the particular commission.

37. Question: Should minimal rules of procedure be made uniform for all nominating commissions?

Answer: Yes Non-Constitutional

Comments: It was recognized that rules of procedure cannot be so detailed on a statewide basis as to be blueprints for the conduct of every meeting of each judicial nominating commission in different judicial districts. The number of candidates, the interest in particular appointments in various judicial districts, and the difference between statewide nominating commissions and judicial district nominating commissions mitigate against detailed uniformity that would restrict flexibility needed by a commission. Nevertheless, there are many essential requirements that each commission should meet and these matters should be set forth in minimal rules of procedure, such as notice to news media, holding of a public meeting in the initial stages, confidentiality of proceedings, disciplinary action for failure to abide by confidentiality, etc.

38. Question: Should nominating commissions determine the willingness of a person to serve before he is nominated to the Governor?

Answer: Yes Non-Constitutional

Comments: The nominating commission should investigate and ascertain the availability and willingness of all nominees to serve. It was felt by the Advisory Committee that there would be a waste of manpower in the commission and a distortion of the list and number of nominees submitted to the Governor under the Constitution if it were not known whether one or more of the nominees would be willing to serve. For example, if there were three nominees and two were unwilling to serve, there is no provision under the present Constitution for the recerti-

fication of additional names, and the Governor would, in effect, have only one person to appoint.

39. Question: Should the record of proceedings of nominating commissions be open to the public?

Answer: No Non-Constitutional

Comments: See the answer to question 14 on confidentiality; also answers to questions 25 and 26.

40. Question: Should preliminary public hearings be held by nominating commissions before the deadline for receiving applications?

Answer: Yes (with some reservation) Non-Constitutional

Comments: See answer to question 22.

41. Question: Should the nominating commission and the Governor maintain the confidentiality of names of nominees submitted?

Answer: Yes Non-Constitutional

Comments: See answer to question 14; also to questions 25 and 26.

42. Question: Should members of nominating commissions be elected rather than appointed?

Answer: No Constitutional

Comments: The nominating system as established is working. The non-political aspect is created by the constitutional requirement of limiting the number of members from any party serving on a nominating commission. To open to public election the determination of who sits on the commissions would be injecting the nominating process into the political arena.

During the public hearings no evidence was submitted to indicate that the elective process for nominating commission members would improve their caliber or performance. It appears unlikely that there would be political platforms and campaign promises to elect members of a nominating commission that would not weaken the non-political process of the selection of judges by such a commission composed of elected members.

Especially important are the cost and delay involved in such campaigns. This suggestion appears to be a cumbersome, expensive, delaying and unnecessary change in the system that would not only deter service on commissions but weaken the process.

43. Question: Should the names of nominees to fill judicial vacancies be placed on the ballot for non-partisan election rather than submitted to the Governor for appointment?

Answer: No Constitutional

Comments: Vacancies often occur suddenly and the need for an immediate replacement with our overloaded judicial system is obvious. To require the delay of an election after the nominating commission has screened candidates would be cumbersome. Furthermore, requiring a public election and/or open campaign among the nominees of the commission would deter many qualified lawyers from seeking judicial office. The partial return of judgeships to partisan politics appears particularly undesirable.

44. Question: Should there be required at least two meetings on separate days of nominating commissions before submission of names of nominees to the Governor?

Answer: Yes (subject to special exceptions) Constitutional

Comments: It was felt by the Advisory Committee that the rules of nominating commissions could establish an initial period after the deadline for applications and might create a period for submission of the information to the Governor that would tend to avoid an unreasonably hurried process at the beginning or end of each nominating selection by the commission. This is in response to a report to the Legislative Committee that on some occasions there had been only a perfunctory meeting of some judicial nominating commissions.

The foregoing suggestions would help avoid hurried practices but probably cannot, and should not, be imposed on all nominating commissions under the existing constitutional 30-day period under which judicial nominating commissions presently act. The Advisory Committee is separately recommending that the minimum period for the nominating process be extended to 45 days.

45. Question: Should the members of various nominating commissions be encouraged and given the opportunity to improve the quality of their work by attending conferences, and by other methods?

Answer: Yes Non-Constitutional

Comments: There are a number of conferences and seminars sponsored by such national organizations as the American Judicature Society, and on more than one occasion such conferences have been held in Denver. It is felt that every encouragement should be given to productive in-service training for nominating commission members. In addition, it was indicated that both the legislature and the Chief Justice of the Colorado Supreme Court should consider the desirability of

a statewide conference in 1977 of members of nominating commissions so the input of these people vitally interested in the nominating process could be obtained prior to the time when a constitutional amendment is submitted to the general electorate in November, 1978.

IV. RELATIONSHIPS OF THE LEGISLATIVE AND JUDICIAL BRANCHES IN DETERMINING MATTERS OF SUBSTANCE AND PROCEDURE.

46. Question: Should the Court be granted final authority to determine the definition of substance and procedure in each context?

Answer: * Constitutional

Comments: Deferred

47. Question: Should the legislature be granted power to override court rules by an extraordinary majority of each house?

Answer: * Constitutional

Comments: Deferred

48. Question: Should a mechanism be established whereby the legislature is granted authority to reject court rules within a specified time period, or after a specified time period, such rules automatically become effective?

Answer: *

Comments: Deferred

V. THE ROLE OF PART-TIME JUDGES, REFEREES AND MASTERS IN THE JUDICIAL SYSTEM.

49. Question: Should the provision for non-lawyer county court judges be abolished?

Answer: **

Comments: Deferred

* The Advisory Committee has not heard enough testimony or had the opportunity to research the problem to develop an advisory position on this matter.

** The Advisory Committee feels that providing for lawyer-judges should be a long-term objective in all jurisdictions but more study should be given to the implications of such a move before the Advisory Committee can advise.

50. Question: Should circuit systems using full-time lawyer judges be established in counties presently using part-time non-lawyer judges:

Answer: **

Comments: Deferred

51. Question: Should a trial de novo in district court be provided for all cases heard before non-lawyer county judges?

Answer: **

Comments: Deferred

VI. GENERAL MATTERS RELATED TO STUDY ITEMS ASSIGNED IN H.J.R. 1047.

52. Question: Should the life of the Committee on Judiciary I, as provided in H.J.R. 1047, be extended for one year?

Answer: Yes Non-Constitutional

Comments: The extension is required for the holding of public hearings and the additional consideration that must be given to the issues requiring amendment of the Constitution.

53. Question: Should the Committee on Judiciary I, if extended, undertake to conduct a series of public meetings in various sections of the state to receive citizen input on the operation of the judicial system?

Answer: Yes Non-Constitutional

Comments: There is an underlying desire to permit greater participation by the public in the nominating process for the selection of judges, and it would appear desirable that, as a part of determining how the public should be involved in the judicial nominating process, there be additional hearings held throughout the state to receive information and reaction and, hopefully, constructive suggestions.

54. Question: Are there matters pertaining to procedures made necessary by Article VI that may be, in the short term, modified by rule or by statute?

Answer: Yes Non-Constitutional

Comments: The constitutional enactment adopted in 1962 by vote of the electorate contained a term that placed rule-making authority in the Supreme Court"

"The Supreme Court will make and promulgate rules governing the administration of all courts and shall make and promulgate rules governing practice and procedure in civil and criminal cases, except the General Assembly shall have the power to provide simplified procedures in county courts for claims not exceeding five hundred dollars, and for trial of misdemeanors." Article VI, Section 21

The possibility of conflict between the court and the legislature was the subject of a law review by Courtland Peterson, Dean of the Colorado University Law School, who appeared before the Legislative Committee. The question of legislative authority in this field was discussed by Senator Ralph Cole and the position of the Supreme Court stated by Chief Justice Pringle. To the extent that the question involves the constitutional proviso in the judicial amendment, the Advisory Committee seeks to defer any comment until a specific proposal is available for study.

In the meantime, the Advisory Committee has made suggestions for changes that might be made by judicial nominating or qualifications commissions, and recommended that both the legislature and the Supreme Court stimulate these improvements to the existing judicial system.

55. Question: Should the name of the Qualifications Commission be changed to make it more descriptive of duties?

Answer: Yes Constitutional

Comments: See answer to question 16.

56. Question: Should vacancies on various commissions be promptly filled?

Answer: Yes Non-Constitutional

Comments: While there is not a continuous need for full membership on commissions because of the intermittent nature of the work load, nevertheless there is no purpose to be served by maintenance of vacancies nor permitting them to continue for an unreasonable length of time.

LEGISLATIVE COUNCIL
COMMITTEE ON FIXED UTILITIES

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COMMITTEE ON FIXED UTILITIES

The Committee on Fixed Utilities was appointed by the Legislative Council at its meeting on June 27, 1977, to study and review the Public Utilities Commission's regulation of fixed utilities. The study was designated to be a "sunset" review.

The committee held five public hearings and received testimony from the Public Utilities Commission (PUC) -- including the commissioners and staff -- the Department of Regulatory Agencies, the State Auditor's Office, investor-owned utilities, municipal utilities, rural electric cooperatives, numerous individuals, and consumer and other interest groups. The testimony from almost all parties indicated a need for continuing the Public Utilities Commission, strengthened with additional staff to better regulate public utilities.

Structure of the Public Utilities Commission

There was no testimony that advocated the deregulation of fixed utilities by the Public Utilities Commission. There was discussion of a bill, however, which would have split the Public Utilities Commission into two commissions: one regulating fixed utilities, and one regulating non-fixed utilities (transportation).

The commissioners generally indicated support for such a concept so long as both commissions would be adequately staffed. If this could not be achieved, Commissioner Edythe Miller indicated the better alternative would be to retain one commission and strengthen its staff. The committee decided not to recommend the creation of two separate commissions, and recommends instead the continuance of the Public Utilities Commission in its present form until July 1, 1984 (Bill 8). The committee then turned its efforts toward providing more staff for the single commission.

Staff of the Public Utilities Commission

Since much of the testimony pointed to the need for increasing the staff of the PUC, one of the areas on which the committee concentrated was authorizing the commission to hire its own in-house legal counsel instead of relying on the Attorney General's Office for legal assistance. Commissioner Sanders Arnold indicated that, in his opinion, this was perhaps the single most important issue before the committee. Bill 13 will empower the Department of Regulatory Agencies to appoint attorneys to the PUC either as counsel to the commission or as counsel to residential customers in rate hearings. In a letter to the Joint Budget Committee, the committee stressed its desire that any attorneys immediately provided to the commission be transferred -- in terms of FTE -- from the Attorney General's Office in order to avoid creating any new staff positions.

Another issue relating to staff concerned the filling of commission positions authorized by the General Assembly this past session but which had not as yet been acted upon by the Department of Personnel. The General Assembly authorized the addition of an economist and consumer representatives to the commission staff, but the positions have remained unfilled since July. The committee expressed its concern over this situation to the Department of Personnel and requested that the positions be filled as soon as possible. The department and the commission have, since this discussion, resolved their differences as to the qualifications of applicants and the positions in question are expected to be filled soon.

Other Major Issues

The committee dealt with two other major issues: (1) providing lower utility heating rates for low income elderly and disabled persons (Bill 15); and (2) giving the Public Utilities Commission more time to consider rate increase requests while at the same time permitting the utilities' rate increase requests to go into effect under bond subject to refund pending a final commission decision on the rates (Bill 12).

Concerning the first issue, the committee reacted to a Public Utilities Commission order reducing by 50 percent the natural gas rates for low income elderly and disabled persons by recommending legislation which would prohibit the commission from taking into consideration the unique economic circumstances of a particular class of customers when setting utility rates. The committee was not opposed to the idea of reducing the utility burdens of these customers, but concluded that it was the responsibility of the legislature -- and not an agency whose members are appointed -- to make such decisions. The commissioners generally agreed that the legislature could more effectively deal with this issue. Their major concern in issuing the order was to provide one class of customers with rates they considered "just and reasonable".

Commissioner Sanders Arnold indicated that it was his opinion that the committee's action would also prohibit the PUC from permitting commercial rates to subsidize residential rates. As a result of this discussion, the committee rescinded its earlier action and is instead recommending legislation which will provide for an income tax credit or refund for heating expenses for low income elderly or disabled persons (Bill 15).

As for the second issue, the committee recommends a bill which will authorize the commission to extend the suspension time on rate increases by an additional 60 days, while permitting a utility's rate request to go into effect during the suspension period under bond subject to refund, with interest, pending a final decision on the rates by the commission. Commissioner Edythe Miller supported this idea as a fair trade-off in view of the additional time necessary to consider major rate requests. Commissioner Sanders Arnold indicated

he would prefer to have the current situation remain in effect.

Committee Recommendations

As a result of its deliberations, the committee recommends nine bills.

Bill 8 will continue the Public Utilities Commission, which was terminated on July 1, 1977, to July 1, 1984.

Bill 9 will limit the number of consecutive terms a commissioner can serve to three consecutive terms. Presently, commissioners are appointed for terms of six years with no limitation on the number of terms they may serve.

Bill 10 will clarify that a public utility is not required to obtain all permits from local authorities prior to an application for a certificate for construction. Present law implies that a utility may need to obtain all permits prior to construction which could lead to delays and higher construction costs.

Bill 11 will provide that commission members are subject to the financial disclosure provisions of the "Colorado Sunshine Act of 1972" and will require that commissioners disclose the value of any gratuities received from a public utility or any employee of a utility.

The bill will also require that a record be made of all meetings at which possible decisions are discussed in pending proceedings before the commission. Present law requires that every vote and official act of the commission be recorded and made available to the public.

Further, this bill will require either the commission or a public utility, in requesting a rate change, to demonstrate by substantial evidence, when the record is considered as a whole, that the rates, fares, tolls, rules or regulations proposed would be just and reasonable. This section was amended by the committee to require the commission to justify any rates it may unilaterally establish (i.e., its order lowering natural gas rates for low income elderly or disabled persons).

Finally, the bill will require the commission to give written reasons for a decision which departs from a regulatory principle, as established in a previous decision, concerning the same public utility.

Bill 12. Presently, when a public utility files for a new increase in rates, the commission may suspend the rate increases for up to 120 days and, in its discretion, may also extend the suspension up to an additional 90 days for a total of 210 days.

The bill will allow the commission to suspend a rate increase up to nine months. However, a public utility could post a bond with the commission at any time during the suspension and put the rate increase into effect. If the commission subsequently determines the rates are excessive, the utility will be required to refund any overcharges, with interest, made during the period of suspension.

Bill 13 will authorize the Executive Director of the Department of Regulatory Agencies to appoint attorneys to serve as counsel to the commission or as counsel to residential customers. Prior to creation of the Division of State Solicitor General, the commission had three full-time attorneys. When the division was created the three attorneys were transferred to the division. In addition, two Attorneys General were assigned to represent the commission at the appellate level. Presently, the commission has the equivalent of only three full-time attorneys assigned to it from the Attorney General's Office.

Bill 14 will provide that, whenever the commission finds that rates are unjust or unreasonable and subsequently determines a reasonable and just rate, the commission may consider current, future, or past test periods, or any combination of factors, in determining the new rate. This bill will allow the commission to consider other factors than it now does in setting rates.

Bill 15 will provide an income tax credit or refund for heating expenses for persons over 65 years of age. The bill will also provide an income tax credit or refund for the disabled. The credit is to be as follows:

- For an individual, \$160 reduced by four percent of the amount by which his income exceeds \$3,300; and
- For a husband and wife, \$160 reduced by four percent of their income over \$4,300.

In order to be eligible for the income tax credit or refund, a single individual must have an income (from all sources) of less than \$7,300. In the case of a husband and wife, the income from all sources must be less than \$8,300.

The credit or refund shall not exceed the amount of heating expenses actually paid.

Bill 16 will require the commission to perform a review and evaluation of all Colorado natural gas and electric utilities' energy forecasts, forecasting methodologies, and construction plans and submit a report every two years to the Governor and to the General Assembly. The bill will also require each electric and gas public utility under the jurisdiction of the commission to submit a long-range energy forecast and plan every two years, plus amendments to the plans and forecasts as they are adopted by the utility.

COMMITTEE ON FIXED UTILITIES

BILL 8

A BILL FOR AN ACT

1 AUTHORIZING THE CONTINUATION OF THE PUBLIC UTILITIES COMMISSION.

Bill Summary

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

Continues the public utilities commission, which was terminated on July 1, 1977, pursuant to the provisions of the sunset law.

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

3 SECTION 1. 24-34-104, Colorado Revised Statutes 1973, as
4 amended, and as further amended by Session Laws of Colorado 1977,
5 is amended BY THE ADDITION OF A NEW SUBSECTION to read:

6 24-34-104. General assembly review of regulatory agencies
7 for termination, continuation, or reestablishment. (4.2) The
8 following divisions in the department of regulatory agencies
9 shall terminate on July 1, 1984: The public utilities
10 commission, created by article 2 of title 40, C.R.S. 1973.

11 SECTION 2. Repeal. 24-34-104 (2) (a) (I), Colorado Revised
12 Statutes 1973, as amended, is repealed.

13 SECTION 3. Effective date. This act shall take effect July
14 1, 1978.

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

COMMITTEE ON FIXED UTILITIES

BILL 9

A BILL FOR AN ACT

1 LIMITING THE NUMBER OF TERMS OF COMMISSIONERS ON THE PUBLIC
2 UTILITIES COMMISSION.

Bill Summary

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

Limits the number of terms a commissioner may serve on the public utilities commission.

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

4 SECTION 1. 40-2-101 (1), Colorado Revised Statutes 1973, is
5 amended to read:

6 40-2-101. Creation - appointment - term - subject to
7 termination. (1) A public utilities commission is hereby created
8 which shall be known as the public utilities commission of the
9 state of Colorado to consist of three members who shall be
10 appointed by the governor with the consent of the senate for
11 terms of six years, one to be appointed the second Tuesday of
12 January, 1949, 1951, and 1953. NO COMMISSIONER MAY SERVE MORE
13 THAN THREE CONSECUTIVE TERMS.

14 SECTION 2. Safety clause. The general assembly hereby

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

COMMITTEE ON FIXED UTILITIES

BILL 10

A BILL FOR AN ACT

1 CONCERNING CERTIFICATES TO EXERCISE FRANCHISE RIGHTS, AND
2 RELATING TO THE AUTHORIZATION THEREOF.

Bill Summary

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

Amends a provision to clarify that it applies only to a certificate to exercise franchise rights and not to a certificate for construction.

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

4 SECTION 1. 40-5-103 (1), Colorado Revised Statutes 1973, is
5 amended to read:

6 40-5-103. Certificate - application for - issuance. (1)
7 Before any certificate may issue under sections 40-5-101 to
8 40-5-104, a certified copy of its articles of incorporation or
9 charter, if the applicant is a corporation, shall be filed in the
10 office of the commission. Every applicant for a certificate TO
11 EXERCISE FRANCHISE RIGHTS UNDER SECTION 40-5-102 shall file in
12 the office of the commission such evidence as shall be required
13 by the commission to show that such applicant has received the
14 required consent, franchise, permit, ordinance, vote, or other

1 authority of the proper county, city and county, municipal or
2 other public authority. The commission has power to issue said
3 certificate after hearing, to refuse to issue the same, or to
4 issue it for the construction of a portion only of the
5 contemplated facility, line, plant, or system or extension
6 thereof or for the partial exercise only of said right or
7 privilege and may attach to the exercise of the rights granted by
8 such certificate such terms and conditions as in its judgment the
9 public convenience and necessity may require.

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

COMMITTEE ON FIXED UTILITIES

BILL 11

A BILL FOR AN ACT

1 AMENDING 24-6-202, 40-6-101, 40-6-111, AND 40-6-112, COLORADO
2 REVISED STATUTES 1973, AS AMENDED, CONCERNING THE PUBLIC
3 UTILITIES COMMISSION.

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 members of the public utilities commission are subject to the financial disclosure requirements of the "Colorado Sunshine Act of 1972", and adds additional disclosure provisions relating to gratuities from public utilities.

Requires a record to be made of all meetings of the commission at which are discussed possible decisions they may render in pending proceedings.

States that it is the burden of the public utilities commission requesting a change in any public utility's rates or any public utility requesting a rate change to demonstrate by substantial evidence that the change would be just and reasonable.

Requires the commission to give written reasons for a decision which departs from a regulatory principle in a previous decision concerning the same public utility.

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

5 SECTION 1. The introductory portion to 24-6-202 (1) and
6 24-6-202 (1) (b) and (1) (c), Colorado Revised Statutes 1973, are
7 amended, and the said 24-6-202 (1) is further amended BY THE
8 ADDITION OF A NEW PARAGRAPH, to read:

1 24-6-202. Disclosure - contents - filing - false or
2 incomplete filing - penalty. (1) WITH REGARD TO THE MEMBERS OF
3 THE PUBLIC UTILITIES COMMISSION REFERRED TO IN PARAGRAPH (d) OF
4 THIS SUBSECTION (1), NOT LATER THAN FORTY-FIVE DAYS AFTER JULY 1,
5 1978, AND, WITH REGARD TO THOSE PERSONS REFERRED TO IN PARAGRAPHS
6 (a) TO (c) OF THIS SUBSECTION (1), not later than forty-five days
7 after January 1, 1973, and thereafter not more than thirty days
8 after their election, reelection, appointment, or retention in
9 office, written disclosure, in such form as the attorney general
10 shall prescribe, stating the interests named in subsection (2) of
11 this section shall be made to and filed with the attorney general
12 of Colorado by:

13 (b) The governor, lieutenant governor, secretary of state,
14 attorney general, and state treasurer; and

15 (c) Each justice or judge of a court of record; AND

16 (d) Each member of the public utilities commission of the
17 state of Colorado.

18 SECTION 2. 24-6-202 (2), Colorado Revised Statutes 1973, is
19 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

20 24-6-202. Disclosure - contents - filing - false or
21 incomplete filing - penalty. (2) (g.5) With regard to a member
22 of the public utilities commission of the state of Colorado, the
23 value of meals, lodging, transportation, and other gratuities
24 accepted by said member from a public utility, as defined in
25 section 40-1-103, C.R.S. 1973, or from an employee of a public
26 utility;

27 SECTION 3. 40-6-101 (1), Colorado Revised Statutes 1973, is

1 amended to read:

2 40-6-101. Proceedings - delegation of duties - rules. (1)

3 The commission shall conduct its proceedings in such manner as
4 will best conduce the proper dispatch of business and the ends of
5 justice. All of the provisions of article 4 of title 24, C.R.S.
6 1973, shall apply to the work, business, proceedings, and
7 functions of the commission or any individual commissioner or
8 examiner; but, where there is a specific statutory provision in
9 articles 1 to 13 of this title applying to the commission, such
10 specific statutory provision shall control as to the commission.
11 For this purpose, any examiner, as provided in articles 1 to 13
12 of this title, shall be deemed to be a hearing commissioner as
13 that term is used in said article 4 of title 24, C.R.S. 1973.
14 The commission may from time to time make or amend such general
15 rules or orders as may be requisite for the order and regulation
16 of proceedings before it or before any individual commissioner or
17 examiner, including forms of notices and the service thereof.
18 Any party to the proceeding may appear before the commission or
19 any individual commissioner or examiner and be heard. Every vote
20 and official act of the commission, any individual commissioner,
21 or an examiner shall be entered of record, and such record shall
22 be made public upon the request of any party interested. SUCH A
23 RECORD OF ALL MEETINGS OF THE COMMISSION AT WHICH ARE DISCUSSED
24 POSSIBLE DECISIONS IT MAY RENDER IN PROCEEDINGS PENDING BEFORE
25 THE COMMISSION SHALL ALSO BE MADE AND SHALL BE AVAILABLE TO THE
26 PUBLIC UPON REQUEST. All hearings before the commission, any
27 individual commissioner, or an examiner shall be public.

1 SECTION 4. 40-6-111 (2), Colorado Revised Statutes 1973, is
2 amended to read:

3 40-6-111. Hearing on schedules - suspension - new rates -
4 rejection of tariffs. (2) On such hearing, whether completed
5 before or after the expiration of the period of suspension, the
6 commission shall establish the rates, fares, tolls, rules, or
7 regulations proposed, in whole or in part, or others in lieu
8 thereof which it finds just and reasonable. All such rates,
9 fares, tolls, rentals, charges, classifications, contracts,
10 practices, rules, or regulations not so suspended, on the
11 effective date thereof, which shall not be less than thirty days
12 from the time of filing the same with the commission, or of such
13 lesser time as the commission may grant, shall go into effect and
14 be the established and effective rates, fares, tolls, rentals,
15 charges, classifications, contracts, practices, rules, and
16 regulations subject to the power of the commission, after a
17 hearing on its own motion or upon complaint, as provided in this
18 article, to alter or modify the same. IT SHALL BE THE BURDEN OF
19 THE COMMISSION REQUESTING A CHANGE IN ANY PUBLIC UTILITY'S TARIFF
20 OR SCHEDULE OR THE PUBLIC UTILITY REQUESTING A CHANGE IN ITS
21 TARIFF OR SCHEDULE TO DEMONSTRATE BY SUBSTANTIAL EVIDENCE, WHEN
22 THE RECORD IS CONSIDERED AS A WHOLE, THAT THE CHANGE IN RATES,
23 FARES, TOLLS, RULES, OR REGULATIONS PROPOSED BY IT WOULD BE JUST
24 AND REASONABLE.

25 SECTION 5. 40-6-112 (1), Colorado Revised Statutes 1973, is
26 amended to read:

27 40-6-112. Alteration or amendment of decision - decisions

1 final in collateral actions. (1) The commission, at any time
2 upon notice to the public utility affected and after opportunity
3 to be heard as provided in the case of complaints, may rescind,
4 alter, or amend any decision made by it. IN THE CASE OF A
5 DECISION WHICH DEPARTS FROM A REGULATORY PRINCIPLE IN A PREVIOUS
6 DECISION CONCERNING THE SAME PUBLIC UTILITY, THE COMMISSION SHALL
7 GIVE WRITTEN REASONS FOR SUCH DEPARTURE. Any decision rescinding,
8 altering, or amending a prior decision, when served upon the
9 public utility affected, shall have the same effect as original
10 decisions.

11 SECTION 6. Effective date. This act shall take effect July
12 1, 1978.

13 SECTION 7. Safety clause. The general assembly hereby
14 finds, determines, and declares that this act is necessary for
15 the immediate preservation of the public peace, health, and
16 safety.