liens except general taxes and prior special assessments.

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

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

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

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

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

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

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

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

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

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

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

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

PART 2

ORDINANCES - PENALTIES - PROCEDURE FOR ADOPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 38

CONCURRENT RESOLUTION NO.

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

Resolution Summary

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

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

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

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

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

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

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

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

~~The-compensation-of-any-county-officer-shall-be-increased-or decreased--only--when--the--compensation--of--all-county-officers within-the-same-county;-or-when-the--compensation--for--the--same county--officer--within--the--several--counties--of-the-state;-is increased-or-decreased.~~

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

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

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

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 39

A BILL FOR AN ACT

CONCERNING THE EXCLUSION OF TERRITORY FROM SPECIAL DISTRICTS.

Bill Summary

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

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

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

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

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

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

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

~~(c) The governing bodies of the municipality and district have contracted for the disposition of assets owned by the district and located within the area described in the petition. Said contract shall include, if applicable, provisions as to the maintenance and continuity of service of any lines, or other facilities, to be utilized by the territories both within and without the municipal boundaries and composing part of the territories of the district. The court shall review the provisions of said contract, and, if it finds the contract to be fair and equitable, the court shall approve the contract and incorporate the provisions thereof in its exclusion order. The court's review of the provisions of the contract shall include, but not be limited to, consideration of the amount of the district's outstanding bonded indebtedness in relation to the percentage of total district territory proposed for exclusion, the fair market value of the district's assets located within the territory proposed for exclusion, and the effect which the transfer of these assets will have upon the service provided by the district in territory unaffected by the exclusion proceedings.~~

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

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

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

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

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

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

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

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

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

SECTION 2. Safety clause. The general assembly hereby

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 40

A BILL FOR AN ACT

CONCERNING BUILDINGS CONSTRUCTED WITH FUNDS OF PUBLIC AGENCIES.

Bill Summary

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

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

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

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

ARTICLE 5.5

Buildings Constructed with Funds of Public Agencies

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 41

A BILL FOR AN ACT

CONCERNING MINED LAND RECLAMATION.

Bill Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

otherwise transported without appreciable surface damage.

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

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

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

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

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

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

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

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

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

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

(a) Meet at least once each month;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(V) The approximate size of the affected land;

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

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

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

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

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

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

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

34-32-111. Application for permit - bond - fee - notice. (1) Any operator desiring to obtain a permit shall make written application to the board for a permit on forms provided by the board. The permit, or the renewal of an existing permit, if approved, shall authorize the operator to engage in such mining operation upon the affected land described in his application for the life of the mine. Such application shall consist of the following:

(a) Two application forms;

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

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

(d) The application fee.

(2) The application forms shall state:

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

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

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

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

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

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

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

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

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

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

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

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

(c) A proposed timetable indicating when and how the

reclamation plan shall be implemented;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The reclamation plan shall also:

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

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

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

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

responsibility for all surety other than a bond.

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

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

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

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

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

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

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

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

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

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

34-32-112. Prospecting notice - reclamation requirements. (1) Any person desiring to conduct prospecting shall, prior to entry upon the lands, file with the board a notice of intent to conduct prospecting operations on a form approved by the board.

(2) The notice form shall contain the following:

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

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

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

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

(e) An approximate date of commencement of operations.

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

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

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

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

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

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

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

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

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

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

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

(a) The application is incomplete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

four feet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 42

A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

ARTICLE 22

Land Use Planning and Urban Service Area Act

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

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

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

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

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

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

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

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

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

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

(h) Preserving the environment and fragile natural areas;

(i) Controlling development in hazardous areas;

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

(k) Conserving energy and reducing unnecessary travel; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29-22-106. Responsibilities of regional commissions in reviewing proposed urban service areas. (1) No later than sixty days after receipt of the proposals and recommendations submitted pursuant to section 29-22-105, each regional commission shall

review and submit to each county and municipality within the regional planning and management district comments regarding the proposals for urban service areas which have been submitted by the municipalities and counties within the region.

(2) In making its comments, the regional commission shall place particular emphasis on reconciling any conflicts, which may exist in the plans and recommendations of the counties and municipalities, with existing regional plans and programs.

(3) Accompanying the submissions required by this section shall be a written explanation of the reasons underlying the recommendations of the regional commission, including reference to applicable provisions of section 29-22-109 and any other factors deemed relevant.

29-22-107. Responsibilities of state commission. (1) Upon receipt from each county of the proposals and recommendations submitted pursuant to section 29-22-105, the state commission shall proceed to review such proposals and recommendations in light of the standards and considerations provided in section 29-22-109 and on the basis of the relevant provisions of part 2 of article 65.1 of title 24, C.R.S. 1973.

(2) If the state commission decides that modification of the proposals and reommendations submitted by the counties and municipalities is desirable, the state commission, within sixty days of receipt of the proposals, shall submit to the governing bodies of the counties and municipalities written notification of its recommendations and shall specify in writing the modifications which the state commission deems appropriate. The

state commission shall place particular emphasis on reconciling any conflicts which may exist in the plans and recommendations of the counties and municipalities within the county.

(3) Upon receipt of the modifications recommended by the state commission, the governing body of counties and municipalities may incorporate such modifications in its proposed urban service area as it deems appropriate. In those cases where such modifications result in conflicts between the proposals submitted by counties and municipalities, such conflicts shall be reconciled as provided in section 29-22-108.

29-22-108. Designation of urban service areas. (1) Upon receipt of the proposals and recommendations submitted pursuant to section 29-22-105, each municipality having a proposed urban service area shall proceed to review such proposals and recommendations in light of the standards and considerations provided for in section 29-22-109. No later than eighteen months after the effective date of this article, such municipalities may submit written comment to the county regarding the proposed urban service areas as submitted by the county.

(2) In those cases where conflicts in the plans and recommendations of the counties and municipalities concerning the territory to be included in an urban service area exist, the governing bodies of the affected municipalities and the county shall promptly proceed to jointly reconcile these conflicts. The designated service area of each municipality shall include as a minimum all of the incorporated territory within its boundaries.

(3) No more than twenty-four months after the effective

date of this article, the county and the municipality shall jointly adopt a plan designating the boundaries of urban service areas throughout the county.

(4) Accompanying the final designation shall be a written explanation of the reasons underlying the urban service area designations, including reference to applicable provisions of section 29-22-109 and any other factors deemed relevant.

Option I

(5) If the provisions of subsection (2) of this section are not complied with, such noncompliance shall be considered malfeasance in office, and no member of the board of county commissioners of the county nor member of the governing body of the appropriate municipality shall be entitled to or earn any compensation for his services or receive any payment for salary or expenses; nor shall any member be eligible to succeed himself in office.

Option II

(5) (a) If the county and municipalities whose proposed urban service areas are in conflict fail to reconcile these conflicts as provided in subsection (2) of this section, the state commission may bring suit in the nature of mandamus.

(b) If satisfied that the governing bodies of the county and municipalities have not complied with the provisions of this section and that an agreement may not be reached within the immediate future, the court may make an appropriate order compelling the county and municipality to reach such an agreement within the time to be specified in the order. Upon failure to do

so, the governing bodies of the county and municipality will be held in contempt of court and shall be subject to the penalties provided by the laws of this state.

29-22-109. Criteria for designating urban service areas. (1) In proposing, reviewing, or designating urban service areas, each municipality and county shall be guided by the following criteria:

(a) Local desires concerning the size and character of the community, including, but not limited to, the written or oral testimony received in conjunction with the hearings required in section 29-22-110;

(b) Economic considerations concerning minimum community size in order to provide desired community services, such as schools and medical, shopping, and recreational facilities;

(c) Ability and willingness to provide or make available adequate and economic water, sewer, police and fire protection and other urban services within a general time period or in accordance with a plan of phased or sequential development;

(d) Optimum size to provide adequate and economic urban services;

(e) Regional housing needs by type, quantity, and impact;

(f) School needs and impact;

(g) Regional transportation needs and impact;

(h) Natural and man-made barriers to expansion of urban areas or service within urban areas;

(i) Proximity of neighboring urban areas and the desirability, when practical, of retaining separate community

identities which exist because of geographic or historic considerations;

(j) Elimination or controlling of further urbanization in areas where such urbanization would be hazardous because of geological, climatic, topographic, or other hazardous conditions; and

(k) Need for maintenance of agricultural lands.

(2) In addition to the criteria provided in subsection (1) of this section, the following criteria shall apply to reconciling conflicts between proposed urban service areas or in determining whether a proposed boundary adjustment, pursuant to sections 29-22-113 and 29-22-114, should be approved:

(a) There should be a fair and equitable distribution of the costs of services and facilities among those who benefit therefrom.

(b) Any boundary adjustment should not unduly complicate local government organizational patterns.

(c) Annexation to an existing municipality should be preferred over incorporation of a municipality or formation or extension of a special district.

(d) Incorporation of a municipality or formation of a special district should require a clear and convincing demonstration of the need for such services and facilities as can only be provided through incorporation or by the formation of a special district.

(e) Any designation of urban service areas or any boundary adjustment should be consistent with prevailing and developing

community interests as evidenced by economic, environmental, and social factors.

(f) The proximity of the territory to a municipality and the extent to which residents of the territory use the employment, civic, social, religious, recreational, and commercial facilities of a municipality should be considered.

(g) The existence and provisions of any annexation agreements should be examined and incorporated, where practical, into the urban service area of the municipality who is a party to the agreement.

(h) Maintenance of open space between service areas should be encouraged.

29-22-110. Hearings. (1) A public hearing shall be held by the governing body of the municipality or county, as the case may be, prior to such a municipality or county defining a proposed urban service area and submitting recommendations thereon. A second public hearing shall be held jointly by the county and municipalities before finally designating the urban service areas.

(2) Published notice of the hearings shall be provided by the governing body in one or more newspapers of general circulation in their respective jurisdictions no later than thirty days prior to the hearings. In case of joint hearings, the costs of publication shall be paid proportionately by all participating governing bodies based upon each of the bodies share of the total population of the county. In addition, notice shall be provided not later than fifteen days prior to the

hearing to each affected municipality, county, and regional commission.

(3) Any interested party or political subdivision or any person may appear and be heard.

(4) All proceedings at the hearing shall be recorded by electronic or stenographic means, but proceedings need not be transcribed unless the subject under consideration at the hearing is appealed to the court of appeals.

(5) If a redesignation of an urban service area is proposed pursuant to section 29-22-111, a public hearing and notice thereof shall be provided in the manner provided by this section.

29-22-111. Redesignation of urban service areas. (1) Territory not included within an urban service area or territory within an existing urban service area may be redesignated by agreement between the county and municipality after review and recommendation from the applicable municipality or municipalities and county.

(2) Except as provided in this section, the criteria, considerations, and procedures for redesignation shall be substantially the same as those applicable to an original designation.

(3) Redesignation shall be made only if:

(a) There was significant error in the original designation;

(b) There has been a significant change in the character of the area; or

(c) There is a demonstrated need for additional, expanded,

or reduced urban service areas.

(4) Any proposal for additional or expanded urban service areas shall be accompanied by a plan for development of such areas.

29-22-112. Uses permitted in areas outside of urban service areas - hearing. (1) In areas outside of designated urban service areas, any of the following uses, whether alone or in conjunction with other uses listed within the same paragraph or a combination of paragraphs within paragraphs (a) through (f) of this subsection (1) shall be uses of right, subject to any county or other applicable restriction thereon:

(a) Forestry, farming, ranching, and other agricultural pursuits, including the use of greenhouses;

(b) Residential uses in connection with forestry, farming, ranching, and other agricultural pursuits;

(c) Extraction and processing of natural resources;

(d) Storage, sales, and delivery facilities for agricultural products or livestock;

(e) Public utility transmission lines, pipelines, underground facilities, substations, switching and regulatory stations, water supply and treatment works, and sewage collection and treatment works; and

(f) Commercial radio, television, and telephone towers.

(2) In areas outside of designated urban service areas, any of the following uses may be permitted as special exceptions, subject to any county or other applicable restriction thereon and to the provisions of subsection (3) of this section:

(a) Recreational uses, such as playgrounds, parks, golf courses, swimming areas, riding tracks and stables, ski trails, runs and lifts, target ranges, hiking trails, and similar facilities and uses; service buildings and support facilities directly related to such facilities and uses; and hotels, motels, lodges, guest ranches, and similar multifamily structures used as temporary dwellings by the vacationing public;

(b) Airports;

(c) Waste management sites;

(d) Single-family dwelling units of not less than five acres per unit designed for and used as seasonal vacation dwellings;

(e) Service facilities designed to serve the traveling public where there is a demonstrated need for such facilities which cannot be filled in existing designated urban service areas; and

(f) Governmental installations, other than those included in subsection (1) of this section.

(3) An application for a special exception permit shall be filed with the county or counties in which the proposed use is to be located in the form and manner and containing such information as may be required by the county. The county shall conduct a hearing on said application within forty-five days and shall post notice thereof for at least fifteen days preceding the hearing in a conspicuous location on the premises for which the application has been filed. In addition, written notice shall be provided not later than thirty days prior to the hearing to each

municipality within the county, to the appropriate regional commission, and to the state commission. Any interested person or party, including the state commission or political subdivision, or any person may appear at the hearing and be heard. The board of county commissioners shall either grant the special exception permit, grant it subject to stated conditions, or deny the application.

(4) In passing on a special exception application, the county shall grant the special exception permit, or it shall grant it subject to stated conditions only if the following standards are met:

(a) Granting thereof would not permit an urban use which would be contrary to the applicable provisions of section 29-22-109;

(b) Granting thereof would not encourage urbanization of adjacent areas; and

(c) Granting thereof would not be contrary to any county or other applicable resolution or regulation.

(5) No later than thirty days following a grant or denial of a special exception permit, any aggrieved party or person, including a political subdivision, may seek judicial review in the district court for the judicial district in which the proposed use is to be located.

(6) In areas outside of designated urban service areas, all uses not set forth in subsections (1) and (2) of this section are prohibited.

(7) Except for a nonconforming use which may be continued

pursuant to section 29-22-116, any use or proposed use of property outside a designated urban service area which does or would violate this section may be enjoined by an action brought by the state commission, by the governing body of any county in which such use occurs or is proposed to occur, or by the governing body of any affected municipality.

29-22-113. Boundary adjustments within urban service areas. (1) Any provision of law to the contrary notwithstanding, no municipality may annex territory which is not located entirely within the boundaries of its designated urban service area. Within its designated urban service area, a municipality may annex any territory eligible for annexation pursuant to the procedures and subject to the limitations provided in the state constitution and any applicable state law.

(2) Except as provided in section 31-12-107 (5), C.R.S. 1973, a municipality may exercise its discretion in refusing to annex territory. A property owner within the urban service area of a municipality aggrieved by a refusal of a municipality to annex territory otherwise eligible for annexation may seek judicial review of such denial no later than forty-five days after the date of denial in the district court for the judicial district in which such territory is located. The denial of the annexation shall be sustained unless the court finds that, based upon the applicable provisions of section 29-22-109, refusal to annex was arbitrary and capricious. If refusal to annex is deemed to be arbitrary and capricious, the court shall afford the municipality a reasonable period of time in which to annex the

territory. Nothing in this subsection (2) shall be construed to preclude a municipality from exercising reasonable discretion in following a plan of phased or sequential development within its urban service area.

(3) Any provision of law to the contrary notwithstanding, no municipality may be incorporated if the boundary of the proposed municipality includes any territory within a designated urban service area of an existing municipality.

(4) (a) Any provision of law to the contrary notwithstanding, except as provided in paragraph (b) of this subsection (4), no special district may be formed or extended involving any territory located within the urban service area of a municipality unless such formation or extension is approved in writing by the municipality.

(b) Where a municipality is unable or unwilling to annex territory eligible for annexation pursuant to article 12 of title 31, C.R.S. 1973, or is also unable or unwilling to provide the services proposed to be provided by the special district within either a reasonable period of time after written demand from property owners within its urban service area or in accordance with an adopted plan of phased or sequential development, the limitations of paragraph (a) of this subsection (4) shall not apply.

(5) Any provisions of law to the contrary notwithstanding, within any urban service area other than the urban service area of a municipality, no municipality may be incorporated or special district formed or extended without approval of the county. Said

incorporation, formation, or extension shall be denied unless the county finds that such boundary adjustment is consistent with the applicable provisions of section 29-22-109.

(6) No later than thirty days after a grant or denial of a boundary adjustment by a municipality or county, pursuant to subsections (4) or (5) of this section, any aggrieved party or person, including a political subdivision, may seek judicial review of the decision in the district court of the judicial district in which the proposed boundary adjustment is to occur.

29-22-114. Boundary adjustments outside of urban service areas. (1) Any provision of law to the contrary notwithstanding, no municipality shall be incorporated or territory annexed to a municipality which includes territory outside of designated urban service areas.

(2) Any provision of law to the contrary notwithstanding, no special district shall be formed or extended within any territory outside of designated urban service areas without approval of the county in which such territory is located. Said formation or extension shall be denied unless the county finds that such boundary adjustment is consistent with the applicable provisions of section 29-22-109 and will not encourage or result in urbanization within the affected territory.

(3) No later than thirty days after a grant or denial of a boundary adjustment by a county, any aggrieved party or person, including a political subdivision, may seek judicial review of the decision in the district court of the judicial district in which the proposed boundary adjustment is to occur.

29-22-115. Land use controls in urban service areas of municipalities. (1) At least twenty days prior to a hearing, if one is held, or prior to approval by a county of any zoning, rezoning, planned-unit development, subdivision, utility extension, or road, highway, or airport project over which the county has jurisdiction in an unincorporated urban service area of a municipality, the county shall refer the proposal to the municipality for its review and comment. Prior to acting on any such proposal, the county shall take into consideration any comments or recommendations submitted by the municipality within said twenty days.

(2) If the municipality fails to submit comments or recommendations or if the decision of the county is consistent with the comments or recommendations of the municipality, the county's decision shall be final.

(3) If the county approves a proposal over the objections of the municipality and if approval is inconsistent with the comprehensive plan of the municipality as it applies to the urban service area, the municipality may seek review of the decision in the district court of the judicial district in which the affected property is located no later than thirty days after the date of such approval. In reviewing the county's approval, the court shall consider the municipality's comprehensive plan for its urban service area and the applicable provisions of section 29-22-109.

29-22-116. Nonconforming uses in areas which are not designated urban service areas. Any use of property outside of

an urban service area, which use was in existence at the time the urban service areas were designated pursuant to section 29-22-108, may be continued as a nonconforming use, notwithstanding the fact that it is not a use of right or a permitted special exception recognized pursuant to section 29-22-112. A subdivision which has been platted and approved prior to designation of the urban service areas pursuant to section 29-22-108 shall have nonconforming rights only where water and sewer services were available to the subdivision prior to such designation or where it can be shown that the water supply and the requirements for on-lot sewage disposal systems, as set forth in section 30-28-133, C.R.S. 1973, and in any applicable regulations therefore set forth by the state department of health and the state water engineer have been met prior to such designation. Any individual lot subdivided and owned by a person other than a subdivider prior to the effective date of this article may be improved for residential purposes, subject to any county or other applicable restrictions thereon, even though it has not been included within a designated urban service area.

29-22-117. Judicial review. (1) Any aggrieved person may obtain initial judicial review of a final designation pursuant to the provisions of this article only in the court of appeals. Such review shall be commenced by an action filed with the court of appeals no later than thirty days after the final administrative decision of the commission.

(2) No decision of a county or municipality pursuant to

this article shall be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this article.

(3) No decision of a county or municipality pursuant to this article is subject to judicial review unless all applicable administrative remedies pursuant to the provisions of this article have been exhausted.

(4) Any action for judicial review and any action for a declaratory judgment relating to this article shall be brought within the time limits specified in this article or shall be forever barred. All proceedings for judicial review shall be on the record and shall be limited to a determination as to whether the county or municipality or both, as the case may be, exceeded its jurisdiction or abused its discretion.

(5) All proceedings for judicial review brought pursuant to this article shall be advanced as a matter of immediate interest and concern and heard at the earliest practical moment.

(6) An appeal of a decision of the court of appeals to the supreme court shall be upon the record.

(7) In all other respects, judicial review of a decision of any county or municipality made pursuant to this article shall be pursuant to C.R.C.P. 106 (a) (4).

29-22-118. Restrictions - effective. No restriction on the use of land and no restriction on boundary adjustments contained in this article shall be effective until adoption of a designation plan pursuant to section 29-22-108.

29-22-119. Technical assistance - state agencies. Upon

request, appropriate state agencies shall provide technical assistance to counties and municipalities in the implementation of this article.

29-22-120. Boundary adjustment - action to enjoin. (1) Any incorporation of a municipality which is prohibited by this article may be enjoined by an action brought by the county in which such incorporation is proposed to occur or by any affected municipality.

(2) Any proposed boundary adjustment for which approval is required by this article but which is not obtained may be enjoined by an action brought by the county or municipality having authority to grant such approval.

SECTION 2. 13-4-102 (2), Colorado Revised Statutes 1973, as amended, is amended to read:

13-4-102. Jurisdiction. (2) The court of appeals shall have initial jurisdiction to review awards or actions of the industrial commission, as provided in articles 53 and 74 of title 8, C.R.S. 1973, to review orders of the banking board granting or denying charters for new state banks as provided in article 2 of title 11, C.R.S. 1973, to review actions of the board of medical examiners in refusing to grant or in revoking or suspending a license or in placing the holder thereof on probation, as provided in section 12-36-119 (2), C.R.S. 1973, and to review actions of the board of dental examiners in refusing to issue or renew or in suspending or revoking a license to practice dentistry or dental hygiene as provided in section 12-35-115, C.R.S. 1973, AND TO REVIEW THE FINAL DESIGNATION OF URBAN SERVICE

AUTHORITIES AS PROVIDED IN SECTION 29-22-117, C.R.S. 1973.

SECTION 3. Part 1 of article 2 of title 31, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

31-2-110. Approval required. Any provision of law to the contrary notwithstanding, effective upon adoption of a designation plan pursuant to section 29-22-108, C.R.S. 1973, no town or city may be incorporated under this part 1 unless the incorporation has been first approved pursuant to the provisions of article 22 of title 29, C.R.S. 1973.

SECTION 4. Part 1 of article 12 of title 31, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

31-12-123. Approval required. Any provision of law to the contrary notwithstanding, effective upon adoption of a designation plan pursuant to section 29-22-108, C.R.S. 1973, no annexation or detachment under this article shall be effected unless the same has been approved pursuant to the provisions of article 22 of title 29, C.R.S. 1973.

SECTION 5. Article 3 of title 32, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

32-3-134. Approval required. Any provision of law to the contrary notwithstanding, effective upon adoption of a designation plan pursuant to section 29-22-108, C.R.S. 1973, no formation, consolidation, or dissolution and no inclusion or detachment of territory of a district under this article shall be

effected unless the same been approved pursuant to the provisions of article 22 of title 29, C.R.S. 1973.

SECTION 6. Part 1 of article 4 of title 32, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

32-4-141. Approval required. Any provision of law to the contrary notwithstanding, effective upon adoption of a designation plan pursuant to section 29-22-108, C.R.S. 1973, no formation, consolidation, or dissolution and no inclusion or detachment of territory of a district under this article shall be effected unless the same has been approved pursuant to the provisions of article 22 of title 29, C.R.S. 1973.

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

LEGISLATIVE COUNCIL

COMMITTEE ON HEALTH, ENVIRONMENT,

WELFARE, AND INSTITUTIONS

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COMMITTEE ON HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS

The two major areas of activity on which the HEWI committee concentrated were: Colorado Blue Cross-Blue Shield and nursing homes, with particular emphasis on alternatives to nursing home care. Nine bills are submitted, four bills relating to Blue Cross-Blue Shield and four bills relating to nursing homes. Another recommended bill concerns drug histories of patients and would apply to nursing homes and a number of other facilities and institutions.

Additional actions taken by and recommendations of the committee on topics involving Blue Cross-Blue Shield and nursing home reimbursement are reviewed in this report. This report also contains a recommendation that health facility certificate of need legislation be placed on the Governor's call for the 1976 session, although specific legislation is not included.

Part of the assignment of the HEWI committee was a review of state statutes pertaining to air pollution and the administration of these statutes. The committee did not have time to conduct this study this interim period.

Colorado Blue Cross-Blue Shield

Senate Bill 136 of the 1975 session directed that an interim study be conducted on a number of specified areas concerning non-profit hospital and health insurance corporations, with the study to be coordinated with a performance audit by the Legislative Audit Committee. The performance audit, however, was begun after several HEWI committee meetings and is not expected to be completed until early spring, 1976. Further efforts at coordination of information gathered by the two committee studies will need to be considered at that time.

Based on substantial information presented at five hearings relating to Blue Cross-Blue Shield, the committee submits four bills and also reports the action taken on administrative costs of handling claims.

Rate Filing Procedures -- Bill 43

This bill would make technical amendments to the article under which non-profit hospital and health service corporations are organized (Article 16 of Title 10, C.R.S. 1973). The amendments were suggested by the Office of Attorney General based on the rate hearings held last summer by the insurance commissioner relative to subscriber rate increases for the Blues.

Specifically, the bill would provide that the insurance commissioner could require, on his own motion, the filing of rate information. The time within which a hearing would need to be held would be lengthened from twenty to 40 days. Upon disapproval of an original filing and a subsequent refiling, the insurance commissioner would be given discretion to waive the requirements pertaining to public hearings.

Prospective Reimbursement -- Bill 44

Colorado statutes now provide that the Department of Health select, for both hospitals and nursing homes, not less than four nor more than eight institutions for pilot programs to test the concept of prospective reimbursement. Results of these projects are to be reported before July 1, 1977. Bill 44 would require that the number of hospitals under the pilot programs be set at eight.

On a related matter, the committee concluded that the standing HEWI committees need to be provided with periodic progress reports on the pilot programs. At the direction of the committee, a letter from the chairman to appropriate persons was prepared to help assure that the standing committees be given this information.

Audit of Fiscal Agent Under the Medical Assistance Act -- Bill 45

A conflict has existed for some years in regard to whether the state or the fiscal agent of the state, in this case, Colorado Blue Cross-Blue Shield, would assume the cost for overpayment, multiple payments, or fraudulent payments, under Title XIX, the Medicaid program. At the present time the agreement provides that the vendor does not assume this cost, so the cost of any overpayments are borne by the state.

Bill 45 would provide that an audit be made to determine the amount of financial loss due to administrative error in claim payments. The conclusion reached was that information on the amount of money involved and the types of problems which result in overpayment should be known before legislation to correct the situation is enacted. This bill would require an appropriation for a special audit of the claim payments, so that any problem of overpayment, multiple payments, or fraudulent payments could be evaluated.

Board of Directors - Blue Cross-Blue Shield -- Bill 46

Three amendment are submitted to existing statutes relating to the corporate organization of Colorado Blue Cross-Blue Shield. The amendments would apply to non-profit hospital and health service corporations which have an annual gross subscription income of over $1,000,000, thus limited to the Blues. The three amendments are:

(a) The legislative intent section would express that members of the corporate board include representation from all economic income levels in the state.

(b) The terms of members of the board would be for a period not to exceed six years and all board members would need to be subscribers of a plan offered by the corporation.

(c) The names of potential appointees to the board, along with other information as requested, would be submitted to the insurance commissioner for his review and comment before appointment.

Activity Relating to Administrative Costs

Administrative costs for the handling of claims of Blue Cross were especially disturbing in two areas. The committee found that the company has substantially lower costs than the national average as fiscal agent for the Medicare program ($4.64 - Colorado; $6.01 - national in 1974), but experiences a higher than average unit cost per claim paid than the national average for the administration of claims for other programs paid for by Colorado subscribers ($14.50 compared to $11.58). In view of this inconsistency, the committee questioned whether Colorado subscribers are subsidizing the administrative costs of the Medicare program.

Further information supplied by the Blues indicated another trend that may also have serious consequences. The annual administrative cost for the operation of the Blue Shield programs has increased each year from $5,669,973 (1969) to $14,133,283 (1974). The payment of claims has also increased from $41,138,655 in 1969 to $76,895,387 in 1974. The problem noted is that claims were paid at a considerably lesser rate of increase than the increase in the rate of the administrative costs. A similar pattern of increases is found in regard to Colorado Blue Cross, although administrative costs of Blue Shield ($14,133,283) compared with claims paid ($76,895,387) appears to be a major problem for the corporation.

Two letters were approved by the committee in regard to administrative costs of processing claims by the Blues corporations, one to J. Richard Barnes, Commissioner of Insurance, and the second to John Proctor, State Auditor. In general, the letters reported on the difficulty in obtaining data for the time period requested and also on the trends of administrative costs which the available data showed.

It was recommended that these departments further pursue these concerns. The committee asked that the insurance division and the Legislative Audit Committee attempt to suggest methods of reducing administrative costs of the corporations.

Institutional Health Care Requirements for Drug Histories - Bill 47

Information was received that drug histories are not systematically provided for patients who enter nursing homes and other institutions, even though this lack of information could result in serious consequences in drug treatment at the facility.

Bill 47 would require that the facilities listed in the act make a reasonable effort to obtain a history of all drugs prescribed for the person for a one-year period prior to admittance to the facility. Facilities that would need to comply with this requirement include the different categories of nursing homes, community-based group homes for the developmentally disabled, hospitals, and state homes for the aged and for the mentally retarded.

The Medical Practice Act would also be amended by a new section to require that medical doctors licensed under the act comply with the requirement for drug histories.

Nursing Home Reimbursement

The adequacy of the level of reimbursement for nursing home care was of considerable concern to the committee. Since the level of state reimbursement for nursing homes is within the jurisdiction of the Joint Budget Committee and the state Department of Social Services, the committee prepared letters to these offices expressing concern in regard to the current system of reimbursement. The opinion of the committee was that private pay patients are subsidizing Medicaid patient care and that the reimbursement level from the state may not be adequate to cover services required and expected of nursing homes. The letter stated, in part, that "...the quality of patient care which we expect of nursing homes cannot be provided at the current reimbursement rate for some nursing homes."

Since the method of calculating the reimbursement of nursing homes is both complex and controversial, below is an explanation of and background information on the current procedure.

Reimbursement for skilled and intermediate care nursing homes is funded under Title XIX of the Social Security Act, the Medicaid program, and represents payment to the vendor for services rendered to the Medicaid recipient. Patients of nursing homes who receive Medicaid funds include the aged, blind, and disabled who have insufficient income and financial resources to meet the cost of necessary medical services.

State and federal governments subsidize the patient costs which are in excess of that which the patient is able to contribute. The federal government pays 54.69 percent of the costs in excess of the patient's contribution and the state government subsidizes 45.31 percent of such costs. The present state appropriation for skilled and

intermediate nursing care is approximately $20.1 million of the combined state-federal appropriation of $47.0 million. 1/

The Reimbursement Formula

Colorado statutes provide that long-term care facilities shall be reimbursed for the actual or reasonable cost of services rendered, plus a reasonable allowance for profit, based on rules and regulations of the Department of Social Services (Section 26-4-110, C.R.S. 1973). The statute was amended in 1975 to specify that actual or reasonable cost is to include an allowance to compensate for fluctuating costs, based on the consumer price index of the U.S. Bureau of Labor Statistics (Chapter 247, 1975 Session Laws). The current reimbursements (including patient contributions) range from $10.34 per patient day to a maximum of $16.60 per patient day, with a weighted average reimbursement of $15.65 per patient day. The long bill specifies that the overall average patient reimbursement, excluding patient contribution, cannot exceed $12.25 per day. The average patient contribution is approximately $3.65 per diem.

The reimbursement ceiling is determined on an annual basis, but the rate of reimbursement for individual facilities is recalculated every six months, based on two audits conducted by the department of each facility's cost reports. One audit is a "desk" audit of cost reports; the second audit is a field audit conducted at the facility.

The rationale for the six-month interval reporting periods and reimbursement adjustments is to provide reimbursement on the basis of actual costs, without having to make retroactive cost adjustments. In addition, the fluctuating cost allowance was established to provide an inflation factor between reporting periods.

The formula developed by the department determines the maximum reimbursement rate, to cover the costs for 90 percent of the patients in participating homes. Conversely, the costs for ten percent of the patients in participating facilities will not be fully covered by the Medicaid reimbursement. Both state and federal regulations also provide that the maximum Medicaid reimbursement rate cannot result in a weighted average payment which is greater than the weighted average Medicare payment for like services.

1/ The FY 1975 long bill also contains a $921,435 appropriation for residential nursing homes with the state share approximately $415,000. Under current federal Medicaid regulations, residential nursing homes are no longer reimbursable with federal Medicaid funds, according to the Department of Social Services.

Nursing homes cannot be reimbursed for amounts greater than the maximum annual reimbursement rate of $16.60 per patient. Thus, facilities with patient costs equal to or greater than the maximum rate do not receive reimbursement for profit or fluctuating costs. Nursing homes which have lower costs than the annual reimbursement ceiling are reimbursed for patient costs, plus the profit and fluctuating cost allowances.

As mentioned previously, not all of the patient costs may be covered by the Medicaid reimbursement if a facility's patient costs exceed the maximum reimbursement. The intent of the reimbursement system, as stated by the department, is to "reimburse participating facilities for services rendered eligible recipients at the lowest cost possible and, at the same time, to attempt to give the facilities an incentive to control their costs." 2/

Questions relating to the formula for reimbursement, such as the determination of the profit allowance, the return on investments of nursing homes, and the earnings of nursing homes, were raised by committee members. The questions raised on these topics were not fully answered during the committee meetings but are of significant importance to require the development of further information.

Other Issues

The current maximum reimbursement rate of $16.60 per patient day was set for the period from July 1, 1975, through December 31, 1975. The state Department of Social Services indicated that this reimbursement level was developed on the basis of a small portion of nursing home cost reports because the majority of the facilities with a six-month reporting period had not submitted their financial and statistical report in sufficient time to be included in this computation. The department stated: "Based on a survey (by the department), as of June 30, 1975, the maximum reimbursement that probably should have been in effect on July 1, based on the coverage of 90% of the Medicaid patients, would have been $17.89 per patient day instead of the $16.60 presently in use." 3/

2/ Memorandum to HEWI Committee from Mr. Willis LaVance, Financial Director, Department of Social Services, entitled "Colorado System of Medicaid Reimbursement to Long Term Care Facilities", p. 4.

3/ Memorandum transmitted to the HEWI Committee, "Establishment of the Schedule of Payments for Reimbursement to Nursing Homes Participating in the Colorado Medicaid Program", by Mr. Willis LaVance, Financial Director, Department of Social Service, p.2.

According to the department, the maximum reimbursement could not have been higher than $16.60 because the total appropriation necessary for reimbursement of nursing homes had been underestimated. The appropriation for skilled and intermediate nursing homes for fiscal year 1976 is $47,001,300, and the overall average patient cost, excluding patient contributions, is a maximum of $12.25 per day. However, for fiscal year 1977, the Department of Social Services proposes to "...hold the total cost of nursing home care to the fiscal year 1975-76 level to encourage use of alternatives to nursing home care, believed to be more appropriate and more economical...This action will severely restrict the number of days of care available, since nursing home costs continue to rise." 4/

The Colorado Health Care Association, as representatives of the nursing home industry, conducted a survey of patient costs in nursing homes as of September 1, 1975. The association reported the audited cost for 90 percent of the patients to be $17.72 per patient day, to which would be added the fluctuating cost allowance (presently 5.1 percent and a 70-cent allowance for profit. Under this calculation, the maximum allowance would total $19.32, compared with the existing maximum reimbursement ceiling of $16.60.

The method employed by the Department of Social Services to compute the maximum allowable cost, however, reduces the reimbursement necessary to cover 90 percent of the Medicaid patients by the profit and inflation factors, rather than add these two factors on to the patient costs at the ceiling rate.

The CHA is in disagreement with the formula in the subtraction of profit and fluctuating cost allowances from the maximum reimbursable cost. Furthermore, they are of the opinion that "Nursing homes are being reimbursed at a figure per day far below actual or reasonable costs in violation of our State nursing home reimbursement statute." 5/

Alternatives to Nursing Homes

One aspect of the committee's examination of the nursing home industry was the consideration of alternatives to nursing home care. The following statement from a representative of the Grey Panthers, an

4/ Colorado State Department of Social Services Budget: Program request, fiscal year 1976-1977, p. 13.

5/ Letter from Robert S. Eberhardt, Counsel for the Colorado Health Care Association to Mr. Tom Nussbaum, Governor's Office, September 29, 1975.

organization representing interests of the elderly, reflects the point of view of advocates of the development of programs which can allow persons to remain in their own homes or in other types of living arrangements, such as small group homes, which are alternatives to nursing homes.

> One of the biggest concerns affecting older Americans is the desire to remain independent and avoid institutionalization in a nursing home unless absolutely necessary. Unfortunately, many older people are not able to maintain themselves in a completely independent living setting. They are, however, not completely dependent and in need of 24 hour nursing care provided by a nursing home. There is a very inadequate range of alternatives available for these people who are between the extremes of completely independent living and completely dependent nursing home living. 6/

The committee also received testimony from the executive directors and other representatives of the state Departments of Health, Institutions, and Social Services, regarding the need for alternatives to nursing home living. One of the objectives of these departments, through the Human Services Cabinet Council, will be to conduct home health care demonstration projects, tentatively in two local communities, under a waiver of Medicaid regulations which would permit use of Medicaid funds in providing long-term health care and other services to the elderly and disabled persons living at home. Current regulations prohibit Medicaid reimbursement for non-medical services and for long-term care in non-institutional settings.

The demonstration projects, similar to projects being conducted in Minneapolis, Minnesota, and La Crosse, Wisconsin, would establish local agencies called Community Care Organizations (CCO) which would be responsible for maintaining elderly and disabled persons in their homes, following an evaluation to determine the level of care needed. The CCO would normally contract with other agencies for specific services and the state would be responsible for auditing both the cost and the quality of services.

In recent years, care for elderly and disabled persons has been provided primarily in nursing homes and hospitals because public funds have been available for these types of institutional care. Home health care services and homemaker services are available, but some persons who testified before the committee questioned the adequacy of such services.

6/ Memorandum to the HEWI Committee from Anne Fenerty, entitled, "Alternatives to Nursing Homes - Home and Community Based Care for Elderly and Disabled People".

Local private agencies provide a range of services to varying degrees throughout the state, such as transportation and meals-on-wheels, to the elderly and disabled in their homes. However, these efforts are frequently uncoordinated. The CCO demonstration project would be directed at coordinating and supplementing services offered at the local level.

Cost Benefit of Alternatives

Information presented to the committee from state departments indicated that many individuals currently residing in skilled and intermediate nursing homes may be receiving a higher level of care than is necessary. Based on preliminary research, the Department of Health estimated that, of the 15,100 persons residing in Colorado nursing homes, approximately 25 percent or 3,800 persons could benefit from alternative forms of care. It was also estimated that eleven percent of the state's elderly population, or 21,100 persons, who do not reside in institutions, are in need of in-home services, which services are presently inadequate.

Estimates were provided which illustrate the potential cost-saving benefits of using both home health care services and homemaker services as a substitute for nursing home care, when the level of care required by the patient would so permit.

Home health care. The Department of Health made two preliminary estimates on the potential cost savings which could be realized by reallocating those Medicaid funds which are presently used to support 25 percent of the nursing home population for use in home health care visitations. One estimate was based on a comparison of the state and federal Medicaid costs for 3,800 persons (25 percent) with the costs of providing home health care visits to 3,800 persons now in nursing homes and an additional 21,100 elderly persons who are not receiving institutional care but who are in need of health care. The estimate of the department was a cost savings of $970,000, assuming that a Medicaid waiver could be obtained for long-term care.

The second estimate by the Department of Health was based on the alternative use of the state share of the Medicaid funds (about $5,000,000) exclusively for the 25 percent of the nursing home population, without providing additional services to other elderly persons. It was estimated that under this plan there could be a net savings of over $3 million.

Homemaker services. This program, under the Department of Social Services, provides housekeeping and other home maintenance services, as well as protective services, for the elderly or the disabled who are living in their own homes. The program is also designed to provide services to maintain family life and to safeguard the care of children. Funding is under the federal Title XX program, as are other local county social services, with the state Department of Social Services responsible for the allocation of funds and program oversight.

Reports received by the Department of Social Services from 25 counties for September, 1975, indicated that there was a cost savings with the homemaker program of over $200,000 for that month, as compared with the cost of maintaining the same clients in nursing homes and hospitals.

The committee recommends four bills which would add to or supplement existing living arrangements for the elderly and disabled. The bills are summarized below.

Specialized Social Services -- Bill 48

Three changes would be made under this bill to the existing statutory procedures for state reimbursement of county social services and public assistance payments. First, transportation would be specified as a reimbursable social service under which counties would be eligible to receive state funds. The present matching formula for reimbursement of all authorized social services, unless otherwise specified, provides that the federal share of such costs is 75 percent, the county share is twenty percent, and the state share is five percent. Transportation has been identified as a major problem for the elderly and disabled, particularly in rural areas. The Division of Aging in the Department of Social Services had identified transportation as their first priority in planning services for the elderly.

The second provision of the bill is that the state would reimburse counties for all expenditures for homemaker services, contingent upon county demonstration that individuals have used homemaker services as a substitute for skilled and intermediate nursing homes and hospitals. This provision would encourage the development of homemaker services on a uniform basis throughout the state.

Finally, the bill would require county departments to provide, or contract for, a central information and referral service for all community-based alternatives to institutional care in an effort to reduce inappropriate placement of persons in institutions. The development of local information and referral services is also directed at the coordination of existing services at the local level.

Group Homes for the Aged -- Bill 49

This bill would declare that the establishment of state-licensed group homes for persons 60 years of age or older is a matter of state interest and that it is the policy of the state to encourage the development of alternatives to nursing homes.

It is further stated in the bill that the establishment of group homes which serve not more than eight persons of 60 years of age or older would be considered a residential use of property. This declaration of state policy would be directed toward preventing home

rule cities from adopting zoning restrictions which would preclude this use of property in some residential areas.

Adult Foster Care Homes -- Bill 50

In April, 1975, residential nursing homes were no longer reimbursable under federal Title XIX. In response to this development, a new non-health care classification of facilities, known as adult foster care facilities, was established by the Department of Social Services. The purpose of this new classification was to allow clients of residential nursing homes to receive federal Supplemental Security Income and Colorado supplemental payments.

Under Bill 50, adult foster care (AFC) would be defined as 24-hour supervision and care in a non-medical setting. The proposed definition would be broad enough to include homes for both elderly persons and developmentally disabled adults.

County social service or welfare departments presently place clients in AFC facilities under agreements between the county and the facility. These agreements cover the programs, physical facilities, and the level of care to be provided by the adult foster care facilities, but they do not constitute county licensure or certification of the homes, although the homes must meet local fire, safety, and sanitation regulations.

The state Department of Social Services, which reimburses counties for social service functions, promulgated "rules and procedures" in September, 1975, which pertain to county placement of clients in AFC facilities and the agreement between counties and the AFC facilities. In another provision of Bill 50, the committee recommends that the Department of Social Services be given specific statutory authority to establish rules and regulations relative to the operation of these facilities.

Group Homes for Developmentally Disabled -- Bill 51

The Department of Social Services is presently responsible for licensing and enforcing regulations for the operation of community group homes for the developmentally disabled (S.B. 135, 1975 session). Bill 51 would transfer responsibilities from the Department of Social Services to the Department of Institutions. This recommendation was made by the committee primarily because of the resources and expertise available in the Divison for Developmental Disabilities of the Department of Institutions and was preceded by recommendations of the 1973 and 1974 HEWI committee interim studies.

Bill 51 would also amend the definition of community-based group homes for the developmentally disabled to state that such homes are non-medical residences which provide training and supervision to residents. The purpose of the amendment is to distinguish group homes

for the developmentally disabled from other medical model facilities, such as nursing homes.

The medical model for group homes is considered inappropriate by the Division of Developmental Disabilities and by the Colorado Association for Retarded Citizens because residents of the group homes do not require 24-hour skilled medical care. Instead, residents of group homes are in need of training and supervision. The objective is to provide non-institutional environments for the developmentally disabled.

Health Facilities Certificate of Need

Late in the interim, the state Department of Health presented a draft bill which would make a number of substantive and procedural amendments to the "Colorado Certificate of Public Necessity Act" which pertains to health care facilities (Part 5, Article 3, Title 25, C.R.S. 1973). Changes in the Colorado act appear to be necessary because of federal legislation enacted in January, 1975 (PL 93-641) and provisions in the Social Security Act (Section 1122). The Health Facilities Advisory Council prepared the draft legislation but their recommendations will probably need further revision after the federal guidelines are completed.

Four areas of major changes noted by the Department of Health are quoted below in a statement received from the department:

(1) Time limitations imposed on area-wide health planning agencies, the council, and the department in the original act have proven to be overly stringent and frequently unworkable. For example, the requirement that the Board of Health set a time and place for a hearing of an appeal within fifteen days after receiving the petition cannot be reconciled with the board's schedule of meetings once every thirty days.

Similarly, the area-wide councils find it impossible to make recommendations on applications within thirty days of receipt. The same objection pertains to the requirement that the council make recommendations within thirty days of receipt of applications from area-wide agencies. The council, like the board, meets once every thirty days. For these reasons changes are requested in the time limitations of the act.

(2) A major change suggested in section 25-3-503 would modify the situations for which a certificate of need is required. Under the amendment, an expenditure of $100,000 or more or one of the other five factors listed in the original act would necessitate the applications for a certificate.

(3) The most difficult of all present provisions to comply with is section 25-3-510 (4) which requires that, in order for the council to reject an application for a certificate, it must find that there would be a significant over-capacity within the community of the type of facility involved, after completion of a project. This requirement frustrates the orderly review and consideration of applications, as otherwise provided for in the act. The amendments suggested would allow flexibility of judgment and discretion by the council in its deliberations and would make full-scale review of the applications by the area-wide planning agencies more effective and efficient.

(4) Another suggestion would correct the deficiency in the so-called "grandfather" provision of the act. A completion date would be placed on construction, with plans received by May 30, 1973, to be commenced no later than July 1, 1976, and to be completed no later than July 1, 1977. Extensions could be granted for good cause.

The committee submits no recommendation in regard to the draft bill of the department. The amendments suggested in the draft bill will need careful and detailed consideration and they will be important and controversial matters when considered by the General Assembly. Since the committee did not have sufficient time for review of these proposals, but still considered them to be of considerable importance, the conclusion reached was that the topic be recommended for inclusion on the Governor's call for the 1976 session.