

sion began operation and has resulted in a cash deficit situation. For the same reasons expressed above, the committee recommends favorable adoption of Bill 4 which is intended to write off this \$522,200 bad debt.

The Division of Correctional Industries presented to the committee its debt structure, which is set forth below:

I. July 1, 1977 - Fiscal Year 1977-78 Beginning Position

A. Started Fiscal Year 7-1-77 with approximate deficit of	\$140,000
B. Prepayment from Dept. of Revenue, cash spent	<u>522,200</u>
True cash deficit position 7-1-77:	<u>\$662,200</u>
C. Joint Budget Committee funded \$300,000 to cover correctional industries deficit on 6-30-77.	
The Controller applied \$140,000 of this to the above cash deficit, and used the remaining \$160,000 to cover inventory obsolescence.	(\$140,000)
D. Correctional industries true cash deficit as of 7-1-77, not funded	<u>522,200</u>

II. Inventory Indebtedness - March, 1978

A. An account payable to the Controller in the amount of \$365,000 has been on the books of correctional industries for many years. This supposedly occurred when the Old Stores Revolving Fund inventory was transferred to correctional industries, approximately 20 to 25 years ago. This amount should be written off.	<u>\$365,000</u>
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III. Controlled Maintenance Projects

During the fiscal years ended 6-30-78, various controlled maintenance projects were completed by the Correctional Industries' Maintenance Department. While materials were funded and paid for by the monies appropriated to these projects, there was no provision made for labor costs for these projects and they were absorbed in the costs of the Maintenance Department. The loss for this department at the Colorado State Penitentiary for the fiscal year ended June 30, 1978, was	\$212,681
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There was approximately \$61,000 of labor that should have been charged to these projects as well as \$37,000 of applied overhead for a total of \$98,000. The proper billing for these funds of \$98,000 would have reduced the maintenance loss to

\$ 98,000
\$114,681

It is the above controlled maintenance cost of \$98,000 and the prepayment for tags from the Revenue Department of \$522,200 that the division requests additional funding for. This totals \$620,000, as well as the write-off of the \$365,000 old inventory note.

The committee made no recommendation concerning the \$98,000 controlled maintenance cost.

Honor camps. The Western Slope Corrections' Camps (Rifle, Delta, and Arboles) have for years carried out an inmate work program and have adopted memorandums of understanding with various federal, state, county, and city tax-supported agencies whereby the inmates accomplish forestry, recreational, construction, and other work which perhaps could not otherwise be accomplished in the area due to insufficient funds or lack of manpower. Being able to carry out these programs for other agencies has been a selling factor in the adoption and continuance of the camp system.

When S.B. 587 became effective on July 1, 1977, it was the intent of the General Assembly that correctional industries assume all duties and functions for correctional industries at the honor camps on April, 1978. There was some concern that an attempt to implement the industries' program on a profitable basis at the honor camps would result in a loss of the working relationship with other federal, state, and local agencies. These agencies would not have the time to budget and plan for a program that would request them to pay for the services rendered by inmate labor. It was thought that it might, take at least two budgeting years to begin to implement the industries program into the Western Slope Corrections Camps' system. There was concern that counties and cities would be hard put to continue the use of inmate labor due to their tax structure being greatly limited.

The above concerns were realized when correctional industries received negative responses from the various governmental units when they were asked to pay some minimal amount for the services they receive from inmate labor. Some contracts have been worked out with other state agencies (the Forest Service and the Department of Natural Resources) in which these agencies will pay an hourly wage for inmate labor if they could obtain a supplemental appropriation for such purpose. The Division of Correctional Industries feels that it is supplementing other state agencies with which it has working agreements, and can no longer afford to do so if it is to operate on a profitable basis.

Contact with the other agencies by correctional industries in

September revealed that the agencies would not be able to pay a charge of \$1.00 per hour for each unsupervised inmate and \$2.00 per hour for each supervised inmate. The United States Forest Service in both the Rifle and Delta area will be unable to continue the program due to a regulation that prohibits payment for inmate labor except for the purpose of fighting a forest fire. All state agencies contacted do not have funds in this year's budget to pay for this labor and will need a supplemental appropriation for this year as well as additional funds for the 1979-80 fiscal year to pay for these services. The city and county programs do not have funds available for this fiscal year (January through December). The federal programs in the Southwest region do not have funds in this year's budget (October through September) to pay for these services.

The General Assembly recognized that the political subdivisions for which the inmates worked would or could not make cash payments for services provided. It therefore provided 3.0 general fund positions at both Delta and Rifle to provide interim supervision for inmates and to also explore "profit" alternatives in those areas. These positions are to be considered interim only and will be funded only through the transition period.

Many believe that the Honor Camp Program is as successful as any program in helping inmates towards rehabilitation and social adjustment. The honor camps also relieve the overcrowded conditions at the other state adult correctional institutions. Another distinct advantage that the honor camps provide is the agreement with some of the federal, state, and local agencies in which inmates provide services which in many cases could not otherwise be accomplished. Because these facilities and programs provide many benefits to both the inmates and the state, the committee became concerned with the possibility that the programs will terminate and that the facilities may have to be closed if they cannot operate profitably. It was suggested that the General Assembly could appropriate money to the other state agencies to pay for the services that they receive from the department. Another suggested solution is to fully fund the honor camps for the next several years until they reach a point of self-support due to profits obtained from profit-making industries and the charges received for various services. The committee was presented with the following alternatives:

1. Funding must be provided to the agencies under state funding for payment to the Department of Corrections for the inmate labor at the agreed upon rate. This would allow the Department of Corrections to contract with the using agencies consistent with the mandates of Senate Bill 587.
2. If funding is not provided to the using agency to allow them to pay for the inmate services, then a decision must be made by the legislature to allow the Department of Corrections to provide the inmate labor services free as they have in the past, which, in effect, subsidizes that agency for the amount of the services provided.

3. Where state agencies are not involved and funding is not available to pay for the inmate labor services, then a decision will be made by the Department of Corrections to either cancel these services or where possible, provide services within the constraints of the department budget. Priority will be given to providing inmates to agencies that can pay for the services. Any extra inmates will be used to support programs for agencies unable to pay.

The committee determined that the General Assembly should support additional funding to the concerned state agencies so that they could pay the Division of Correctional Industries for inmate labor at the agreed upon rate. This will allow the division to contract with the using agencies. Based upon the following table outlining present and proposed inmate jobs and industries' programs, the committee recommends that the Joint Budget Committee favorably consider a supplemental appropriation request to the following agencies in the designated amounts:

State Home and Training School, Grand Junction	\$ 48,000
Division of Parks and Outdoor Recreation	72,000
Division of Wildlife	8,000
TOTAL	<u>\$128,000</u>

Closing of Arboles Camp. At the August meeting, the committee was informed by the department that the Arboles Camp will be closed on September 1. The department maintains that the appropriations for the Delta and Rifle Honor Camps were underfunded by 4.0 FTE at each location. The loss of these FTE required the department to consider program cutbacks in the mobile operations in order to adequately staff the home base camps at Rifle and Delta. The department chose to close the Arboles Camp and to shift these personnel to Rifle and Delta.

The appropriated staffing for the Western Slope Corrections' Camps, as explained by the Joint Budget Committee staff, consists of the following:

I. Institutional

Administration	- 2.0 FTE
Delta	- 11.0 FTE
Arboles	- 6.0 FTE
Rifle	- 11.0 FTE

Administration consists of the west slope supervisor and a clerical position. This function manages the Delta and Rifle facilities. The appropriation for Delta and Rifle provides a 2-3-1 (2 day, 3 swing, 1 grave) or 2-2-2 staffing pattern which includes the camp manager and a clerical position. This staff provides for camp management, security, and group living functions. The adequacy of the staff at Arboles has never been questioned.

TABLE I
PRESENT AND PROPOSED INMATE JOBS AND INDUSTRIES PROGRAMS

FY79-80 PROPOSAL CAMP	FTE		INMATES		INMATE JOBS		INMATE JOBS		ADDITIONAL FTE COSTS AND/OR INCOME					
	1	2	3	4	5	6	7	8	9	10				
	NOW	PROP.	NOW	PROP.	NOW	PROPOSED	FTE	TRANS.	COST	ESTIMATED INCOME				
SUPERINTENDENT	2.0	2.0	0	0	0	0	0.5 (Ind. +0.5 Mgr.)	0	+29,978	0				
DELTA	20.0	22	82	ADA 90	State Home-G.J.	8	State Home-G.J.	12	1.0 (G.F.)	+4,840	20,507	48,000		
					Colo. Parks	2	Colo. Parks	12	+1.0	+1,320	+20,507	36,000		
					Colo. Wildlife	-	Colo. Wildlife	--						
					City of Delta	6	City of Delta	--						
					D-M Vo-Tech School	20	D-M Vo-Tech School	20						
					Laundry	1	Laundry	1						
					Kitchen	12	Food Services	10	0.5 (Ind.)					
					Janitorial	6	Janitorial	6						
					Warehouse & Supply	2	Warehouse & Supply	2						
					ABE-GED School	1	ABE-GED School	1						
					Maintenance	24	Maintenance	20						
							Sign Shop	6						
							Total	82		Total	90	+1.0	0	+20,507
							* 3.5 (+2)	+6,160	+61,521	84,000				
RIFLE	14.0	16.0	50	ADA 90	Colo. Parks	11	Colorado Parks	12	+1.0	+1,320	+20,507	36,000		
					Colo. Wildlife	0	Colo. Wildlife	0						
					Colo. Hatchery	6	Colo. Hatchery	4				8,000		
					New Camp. Const.	25	Prefab. & Const.	25	+4.0	?	+82,028	123,042 (min.)		
							Furniture	6	+0.5		+10,253	15,379 (min.)		
							Sign Shop	5	+0.5		+10,253	15,379 (min.)		
							Power Sewing	8	+1.0		+20,507	30,760 (min.)		
							Kitchen	4	Food Services	10	0.5 (Ind.)			
							Laundry	1	Laundry	1				
							Janitorial	1	Janitorial	1				
							Maintenance	2	Maintenance	13				
							Total	50	Total	90	* 7.5 (+7)	+1,320+?	+143,548	228,560
					TOTALS	36.0	40.0	132	180	132	180	11.5 (+9)	7,480	205,069

II. Correctional Industries' Purchase of Service

FTE to coordinate correctional industries' purchase of service activities are provided for in each camp's purchase of service appropriation. Delta is provided one FTE and Rifle is provided none. The intent of the legislature is for inmates to assume supervisor roles in food service, laundry, and maintenance. Program guidance is to come from the domestic services manager and the maintenance manager in Colorado Springs and Canon City, respectively. This recognizes that inmates in this phase of the transitional system are close to release and should be able to assume greater responsibilities than those remaining in the larger institutions.

III. Correctional Industries' Production

The legislature provided 3.0 general fund positions at both Delta and Rifle to provide interim supervision for inmates and to also explore "profit" alternatives in those areas. These positions are to be considered interim only and will be funded only through the transition period.

Inmate work assignments. As of September 21, the Division of Correctional Industries reported that 38 industries were in operation system-wide. Correctional industries now employs approximately 1,343 inmates in eight-hour per day work assignments, as follows:

	<u>Inmates Assigned</u>
Purchase of Services (food services, laundry maintenance, vocational education)	535
Production Shops	696
Other Industry Support Services	<u>112</u>
Total Assignments	1,343

New industries programs. The Division of Correctional Industries presently has under consideration the development of several new projects in the energy and environmental areas. The manufacture of insulation material and a process which turns garbage into fuel bricks are two industries' programs which are being considered. The committee was briefed on the development of these ideas.

Division of Occupational Education and Division of Vocational Rehabilitation

In the past, many problems have developed in trying to obtain federal money for the Division of Correctional Industries for voca-

tional and technical training programs. In response to this problem, the committee elicited testimony from Dr. Richard Edsall and Mr. Lloyd Lawson of the Division of Occupational Education and Dr. Mark Litvin of the Division of Vocational Rehabilitation. Dr. Richard Edsall of the State Board of Community Colleges and Occupational Education said that vocational money from the board was available as enrichment money, but was withdrawn because of the lack of a maintenance of effort. He remarked that federal support money has not been obtained for the last four years because the federal money replaced state money, and has not been used to supplement or enrich state money.

In order to obtain additional funding from the Division of Occupational Education, the Division of Correctional Industries must make some changes, according to Mr. Lawson. He stated that there were two problem areas which were causing difficulty. One of these problems is that inmate supervisors are doing a number of different things. Mr. Lawson recommended having one person solely responsible for teaching, stressing the need to individualize the instruction method. A second problem is making a distinction between how much of the training is vocational education and how much is related to production. There can be no supplanting of funds in order to receive vocational education funding.

The committee suggested that meetings between officials of the Division of Occupational Education and the Division of Correctional Industries continue to be held, in order to arrive at methods for increasing funding for the Division of Correctional Industries. The committee also recommended that a report of the effort be provided to the Joint Budget Committee and that the enrichment funds not be utilized for maintenance of effort by the Joint Budget Committee in its formulation of the appropriations bill.

In an attempt to solve additional funding source problems, the committee heard testimony from Dr. Mark Litvin and Bill Phillips of the Division of Vocational Rehabilitation. Dr. Litvin outlined the goals and functions of the division, and explained which groups and individuals are eligible for assistance.

Mr. Phillips distributed material to committee members analyzing the Division of Vocational Rehabilitation's programs. He emphasized that the difficulty for obtaining funding in the past has been due to the issue of the money being used to supplant state funds in other areas. The committee suggested that officials from the Department of Corrections and from the Division of Vocational Rehabilitation meet in an effort to resolve some of these problems.

Purchase of service industry. The committee reviewed the purchase of service industry, which is the largest industry in correctional industries. The purchase of service industry provides the food, plant maintenance, laundry and vocational education services as required by statute [17-24-204 (1) and (3), C.R.S. 1973]. General fund is appropriated to each institution based on their populations to purchase food, laundry, maintenance, and vocational education services

from correctional industries. Correctional industries then receives cash spending authority equal to that amount in the Long Bill to provide these services. Section 17-24-110 (4), C.R.S. 1973, authorizes the director of correctional industries and the director of adult services to negotiate resource allocations for exchange of these services. These allocations are subject to review by the JBC and the Governor and appropriation by the General Assembly.

The following is a breakdown of one institution's purchase of service appropriation as provided to the committee by the Joint Budget Committee staff:

Penitentiary - 1,174 inmates - \$2,524,467

<u>Category</u>	<u>Appropriation</u>	<u>Justification</u>
1. Personal Services	\$1,022,350	50 FTE x \$20,447 average salary
2. Food	879,431	1,174 inmates x 3 meals/day x 365 days x \$0.6841 per meal
3. Other Operating	264,862	FY 1977-78 estimate adjusted for inflation
4. Inmate Incentive	182,700	350 inmates x 261 days x \$2.00/day for 95% healthy work force
5. Working Capital (Profit)	117,467	5% of above totals
6. Administrative Overhead	57,657	Purchase of service industry director's salary, % of division director's salary, other salaries
	<hr/>	
TOTAL	\$2,524,467	

This process was duplicated for the five other institutions.

Reformatory	\$1,551,719
Delta Camp	173,999
Rifle Camp	120,176
Golden Camp	87,491
I.T.C.	<u>108,593</u>
TOTAL (including penitentiary)	\$4,566,445

The Division of Correctional Industries maintains that the purchase of services appropriation in fiscal 1978-79 is approximately 1.2 to 1.5 million dollars short. The primary area of shortage is in the appropriation for food services. The appropriation funds an average per meal cost of 68.4 cents, which includes the cost of raw food and related operating supplies. This reflects a 6 percent inflationary increase over the current year expenditures. The current projection of the division's Food Service Department is that inflationary costs on food will range anywhere from 12 percent to 24 percent for the Fiscal Year 1978-79. In addition, the division maintains that the funding for food was based upon an average daily attendance (ADA) level that is approximately 140 below what is anticipated to be the institutional ADA level for the coming fiscal year. The division claims that these two factors combine to make a projected shortage in the food service area alone of nearly \$600,000. Shortages in appropriations were alleviated somewhat by supplemental funding, however, the division maintains that a shortage of approximately \$400,000 still exists. This problem area is of major concern to the division due to its effect on very sensitive institutional areas as well as to the volume in dollars impact. The division will try to specifically set forth the cost per meal to the JBC for the next fiscal year and will be seeking to increase its appropriation for operation of the purchase of service industry.

Other industries. In addition to the purchase of service industry, the division also operates other industries which are listed below. These industries receive no direct general fund and cash spending authority is appropriated. The industries are to do business with state agencies. For example, the dairy sells its milk products not only to the penitentiary but also to Colorado State Hospital. The print shop earns its revenues from the Department of Revenue for license plate validation stickers and other agency printing jobs. The appropriations figures set forth below were submitted by the JBC staff and were arrived at by doubling the first six-month actual revenues for FY 1977-78. Actual figures through February 28, 1978, are listed for comparison purposes. If revenues generated by these industries are greater than the appropriation, the cash spending authority can be adjusted in the supplemental process.

OTHER INDUSTRIES

<u>FTE</u>	<u>Inmates</u>		<u>1976-77</u> <u>Actual</u>	<u>1977-78</u> <u>Estimate</u>	<u>Actual As Of</u> <u>2/28/78*</u>	<u>HB 1252</u>	<u>1978-79</u> <u>Request</u>
6	35	Dairy	\$ 460,533	\$ 517,500	\$ 320,911	\$ 389,148	\$ 644,000
1	4	Piggery	179,960	194,000	115,777	131,564	215,000
7	70	Farm	79,200	148,924	100,126	177,988	187,455
4	70	Cannery	168,884	180,000	34,800	91,152	400,000
5	40	Tag Plant	2,155,268	339,000	219,328	307,938	275,000
1	30	Office Panels	22,940	120,000	83,371	98,682	220,000
0	20	Furniture Ref.	5,010	31,000	4,221	1,096	58,000
1	35	Women's Sewing	29,886	36,000	48,392	107,025	65,000
4	30	Motor Pool	38,040	149,500	11,754	13,908	204,000
1	15	Signs Out Doors	---	70,000	14,429	15,590	180,000
2	35	Printing	---	720,000	164,574	315,828	600,000
3	40	Forestry	---	220,000	42,090	156,000	225,000
1	12	Soap Plant	---	25,000	6,918	25,000	79,140
2	11	General Services	---	229,676	71,732	-0-	581,326
2	16	Dental Lab	--	--	-0-	-0-	166,500
1	15	Egg Farm	---	---	-0-	-0-	165,045
1	15	Feed Lot	---	---	-0-	-0-	1,869,508
0	4	Feed Mill	---	---	-0-	-0-	505,890
3	28	Sawmill	---	---	-0-	-0-	220,000
1	10	Microfilm	---	10,000	-0-	-0-	40,000
5	20	Slaughterhouse	---	---	-0-	-0-	2,376,696
5	21	Tire Grinding	---	---	-0-	-0-	786,240
1	20	New Furniture	---	40,000	2,352	-0-	100,000
1	15	Surplus Sales	---	200,000	23,615	-0-	135,000
			\$3,139,721	\$3,230,600	\$1,264,390	\$1,830,969	\$10,298,800
	FTE		(29.0)	(38.0)		(36.0)	(58.0)
	Inmates		(334.0)	(402.0)		(436.0)	(611.0)

*See most recent operating statement.

The other large industry that exists within correctional industries is construction. Industries was appropriated \$6,680,573 in cash spending authority for accomplishing those construction projects appropriated in S.B. 587.

The division maintained that the FTE level appropriated for correctional industries is short by approximately 46 FTE. Without the necessary FTE to operate the planned new industries, the division claims that the program will not be able to reach the break-even, let alone the profitability status, which the legislature has mandated. This FTE shortage is of a critical nature in terms of planning for future development of correctional industries. Thus, the Division will be attempting to have this FTE limitation lifted.

Review of Department of Corrections' Programs

Committee members reviewed efforts by the department to improve management and programs within the correctional system. Accomplishments of the department in attempting to achieve the goals set forth in the long-range corrections' plan were reviewed. Other over-all improvements in the correctional system were explored by the committee. A brief explanation of the areas reviewed is set forth below.

Training. One of the areas which has been of concern to the committee is the area of staff training needs and programs. Adequate staff training programs are essential if the correctional system is to improve.

During the 1978 Session, the General Assembly appropriated \$7,500 general fund money as the state match for \$67,500 of federal LEAA money. Thus, a total of \$75,000 was funded for staff training purposes. As the committee was informed by the department, these funds are being utilized to continue the effort to train line staff. The committee was informed that approximately \$220,000 of LEAA funds had been set aside by the State Council of Criminal Justice for training purposes in the corrections' area. A request was made in the 1978 Session for state general fund money sufficient to meet the state match requirement to obtain the entire amount. However, the General Assembly did not appropriate the requested amount. The department maintains that this reduction in funding of approximately \$125,000 means that they will be unable to hire additional training relief officers so that on-line officers can be provided training without incurring overtime costs. This shortage will also reduce the department's ability to provide training to top-management as well as mid-management levels of personnel in all department operations.

Approximately \$17,000 is required to provide the state match money for the remaining \$152,000 of LEAA funds set aside for training purposes. The committee believes that every effort should be made to obtain the available funds as soon as possible. Because state match money was not appropriated to the department, and because the commit-

tee concluded that it was unable to act without consent of the General Assembly, the committee requested that the Governor consider making available, from his discretionary funds, sufficient amounts to meet the state match.

Diagnostic center. The Department of Corrections requested and was appropriated funds to centralize all diagnostic operations in the Canon City Diagnostic Center. Consolidating the two existing diagnostic units into one at Canon City has been accomplished. The incoming process at the Diagnostic Center has been reduced from six to two weeks. A computerized system is now able to predict suicidal and escape tendencies, as well as violent behavior.

Case management system. The committee reviewed the new case management system developed by the department. Case management is basically a counseling and case recording system which seeks to insure appropriate inmate programming and timely response from staff. One of the problems facing the staff of correctional institutions is attempting to deal with inmates as individuals and recording the results of those attempts so that the inmate's individual characteristics are not lost in a standardized system-wide reporting process. Case management is a tool that focuses on the historical aspects of the inmate's life, develops plans for his future, and ultimately measures his success. It is a system that directs the flow of information about the inmate to those decision points that directly affect his life, i.e., classification, commute, parole and progressive transfers, etc. The department has developed a Case Management Policy and Procedures Manual to ensure the best possible kind of integration, coordination, and continuity of diagnosis, individualized program planning, and general conduct of care and treatment as applied to the inmate upon his initial placement and continued throughout his stay until release.

The department has also developed an inmate classification system which provides for the classification of inmates by type of crime, length of sentence, and time served. All inmates in the system have been reclassified.

Performance budgeting and new accounting system. The committee was briefed on efforts by the department to implement a program performance budgeting process. Under this process, each program manager is allocated a dollar amount to run that program, and is responsible for keeping the expenditures within that appropriation. With the emphasis on programs rather than on institutions, the department believes that greater accountability will be achieved. The new program should be capable of evaluating efficiency, effectiveness, and the workload of the entire departmental staff.

The department has also established a new accounting system which provides computerized information and immediate access to all fiscal management reports. This new system provides the ability to analyze the department's financial condition on a daily basis.

Rules and regulations. The department has updated, rewritten, and designed an entire new set of policy statements that will govern all operational procedures. This effort is an attempt to bring all rules and regulations under one unified system for the purpose of developing consistent policies and procedures. The revised rules are being examined by the Attorney General's office to insure that they conform to constitutional and legal principles.

Community corrections. On July 1, 1978, the department established, within the Division of Adult Services, the Community-based Programs Agency consisting of the following programs:

1. Office of Diversion Services
2. Institutional Community Placement Services
3. Western Slope Correctional Centers
4. Colorado Correctional Center at Golden
5. Office of Transitional Services
6. Office of Adult Parole

The mission of the agency is to provide alternatives to incarceration, and programs for the integration of selected offenders into appropriate community programs while assuring the development of law abiding conduct. The committee met with department officials and reviewed progress being achieved by this agency. A report to the committee from the agency is available from the department.

The committee also reviewed the Comprehensive Community Corrections Plan prepared by the Division of Criminal Justice. An explanation of the problems concerning community corrections in Colorado was presented to the committee. Proposed solutions to each problem were presented to the committee. A detailed explanation of the problems and the proposed solutions are contained in the report which may be obtained from the Division of Criminal Justice or the Legislative Council.

The committee makes no recommendations on the legislation which was proposed in the Comprehensive Community Corrections Plan.

Federal standards for corrections. In June, the Department of Justice promulgated standards for federal, state, and local correctional institutions. The standards are responsive to constitutional issues dealing with the rights of individuals and are intended to promote practices which will ensure that correctional facilities are safe, secure, and manageable. The standards are not meant to be imposed on state and local governments, but are intended to serve as guidelines and to encourage a program of improvement in the correctional system. Nevertheless, it is anticipated that courts may use these standards in deciding cases challenging the conditions in various institutions.

The committee reviewed these standards with the Department of Corrections to determine if an appropriate response should be directed to the Department of Justice. Department officials pointed out that

the Department of Justice standards relied on standards developed by the American Correctional Association through the Commission on Accreditation for Correction. It was thought that the ACA standards are more appropriate for state correctional institutions, and that there was no need for the Department of Justice Standards. The committee encouraged the Department of Corrections to forward their concerns and comments concerning the proposed standards to the Department of Justice.

Parole services. The committee was advised that the Parole Personal Services appropriation included \$99,600 of cash funds which were to be earned by the Office of Adult Parole through collections of assessments from parolees for the cost of their parole supervision. The Department of Corrections requested an opinion from the Attorney General and has been advised that this provision in the Long Bill is to be considered unconstitutional. Therefore, the Parole Personal Services budget, as it now stands, is short by \$99,600 in paying for the full cost of FTE appropriated. The Department will be requesting supplemental funding for this shortage.

Escapes. Dr. Allen Ault, Executive Director of the Department of Corrections, presented testimony on the recent escape of nine inmates from the maximum security facility at Canon City. These nine inmates sawed through a grate and escaped through an irrigation ditch. Seven of the inmates were captured shortly after the escape, and two were subsequently captured. Although a full hearing was conducted as a consequence of this escape, Dr. Ault said that there were still some unanswered questions. After presenting the initial facts, Dr. Ault said that the hearing board could find no evidence of collusion or negligence on the part of any Department of Corrections' staff members and no disciplinary action has been initiated. He did, however, state that new and additional security measures were being implemented.

Committee members were concerned with the inability of the tower guard to see the escape, the cutting of the grates which were supposed to be case-hardened steel, the outside perimeter security, the obtaining of the hacksaw blades used in the escape, and the preliminary warning that corrections' officials had concerned a possible escape attempt.

Dr. Ault pointed out to the committee members that previous court orders restricted what could be done in emergency situations, because of due process considerations. He said that a recent court order had now given more latitude in emergency situations, but that due process considerations needed to be kept in mind.

The committee requested and received statistics on the number of maximum security escapes over the last few years. The data submitted to the committee can be obtained from the Department of Corrections or the Legislative Council.

LEGISLATIVE COUNCIL
COMMITTEE ON HIGHER EDUCATION

Members of the Committee

Sen. Hugh Fowler, Chairman	Rep. Cliff Dodge
Rep. Mick Spano, Vice Chairman	Rep. Wayne Knox
Sen. Robert Allshouse	Rep. Leo Lucero
Sen. William Comer	Rep. John McElderry
Sen. Donald Harding	Rep. Betty Neale
Sen. Martin Hatcher	Rep. Betty Orten
	Rep. Thomas Tancredo

Council Staff

Stanley Elofson Principal Analyst	Tony Hernandez Senior Research Assistant
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COMMITTEE ON HIGHER EDUCATION

For its second year of study, the Committee on Higher Education was directed to undertake:

"The continuation of a study of higher education in order to fully consider the statewide plan for higher education of the Colorado commission on higher education and to make recommendations for the legislative implementation of said plan. (S.J.R. 29)

Most of the committee's activities, therefore, were related to various aspects of the state plan of the Colorado Commission on Higher Education (CCHÉ), a plan which was prepared in 1977, and submitted to the General Assembly in February, 1978. 1/

The study directive reflected the fact that this plan was detailed and comprehensive in describing the existing structure and presenting issues for further study. While the plan could not be fully considered at the time a legislative session was underway, the document was considered a significant one for which further review was important. The work of the committee was in response to a number of features of the state plan.

Roles and missions. Each member of the committee was asked to review and comment on the "role and mission statements" for two or three institutions of higher education as these statements appear in the state plan. This activity required some verification with the institutions as to their opinion of the validity of these statements, projections concerning the development of each institution during the period 1978-79 through 1982-83, and problem areas which are confronting each institution.

The role and mission statements briefly describe the historical background, institution's role for the next five years, the area served, the clientele and entrance requirements, program emphasis, and unique characteristics of each institution. The committee found general agreement among the college and university presidents of the accuracy and appropriateness of these statements, and it was a helpful exercise for members to review, in some depth, the statements of a few specific institutions.

1/ A Plan and a Process for Postsecondary Education in Colorado
Colorado Commission on Higher Education, February 1, 1978.

Committee visits. In a two-day meeting the committee completed its tours of nearly all of the institutions of postsecondary educational institutions in Colorado. Visits were made to the campuses of Loretto Heights College, the University of Colorado, Colorado Women's College, Regis College, Arapahoe Community College, and the three Auraria institutions -- Community College of Denver - North, Metropolitan State College, and the University of Colorado at Denver. Members of the legislative committees on education in the last two years, have toured campuses of most of the institutions throughout the state, using these visits to meet with the administrators, students, faculty, governing board members, and interested private individuals. These visits have been a helpful experience in formulating ideas of the extent of the postsecondary educational system in Colorado and in considering ideas for changes in governance of the system.

Specific issues considered. The CCHE plan listed numerous issues which are in need of resolution in the next few years. Following the review of the role and mission statements, attention was concentrated on the following general areas of concern included in the CCHE list of issues needing resolution:

- (a) Governance of public postsecondary education.
- (b) Student financial assistance.
- (c) Relationship between the public and private sectors of higher education.
- (d) Termination of faculty employment.

The remainder of this report reviews the committee activities and recommendations concerning these topics.

Governance of Higher Education

The organization of the governing system for public postsecondary education in Colorado is complex and is the result of many years of growth in and additions to the educational system without a systematic, overall plan for the organization. It seems clear that, if Colorado were able to start over and could adopt a new organization scheme, the resulting organization undoubtedly would differ greatly from the present system. It is not necessary to belabor this point for members of the General Assembly, but the following governing boards and the respective institutions under their jurisdiction are noted below:

Regents of the University of Colorado of Colorado

(Elected board: 9 members, 1 from each congressional district; 4 from state at large).

University of Colorado at Boulder, Colorado Springs, Denver, and the Medical Center at Denver

State Board of Agriculture

(Appointed by Governor with confirmation by the Senate. 8 members, with advisory faculty and student members elected from each campus to serve on board in nonvoting capacity).

Colorado State University, University of Southern Colorado, Ft. Lewis College.

Trustees of the Consortium of State College

(7 members appointed by Governor with confirmation by the Senate. Nonvoting student member is elected to the board by an advisory committee of one student representative from each institution).

Adams State College, Western State College, Mesa College, Metropolitan State College.

Board of Trustees for the University of Northern Colorado

(7 members appointed by Governor with confirmation by the Senate and one nonvoting student advisory member elected by student body)

University of Northern Colorado.

Board of Trustees of the Colorado School of Mines

(7 members appointed by Governor with confirmation by Senate with one student advisory member elected by student body).

Colorado School of Mines.

State Board for Community Colleges and Occupational Education

(9 members appointed by the Governor, with 1 member appointed from each congressional district and 4 from state at large. Confirmation by the Senate is required. A state student advisory council is created, but does not have representation on the board).

Community Colleges:
Arapahoe Community College, Community College of Denver, Lamar Community College, Morgan Community College, Otero Community College, Pikes Peak Community College, Trinidad State Junior College.

Technical Community College in Pueblo - to be established by July 1, 1980

Area Vocational Schools:
Aurora Technical Center,
Boulder Valley Area Vocational-Technical Center,
Delta-Montrose Area Vocational-Technical School,
Emily Griffith Opportunity School,
Larimer County Vocational-Technical Center,
San Juan Basin Area Vocational School,
San Luis Valley Area Vocational School.

Local district boards for community college districts

(District boards elected by the voters of each district).

Board of Directors for the Auraria Higher Education Center

(4 members appointed by the Governor and one each by the governing boards of the three institutions). A nonvoting student advisory member is elected to the board by a student advisory committee representative of the three institutions).

Commission on Higher Education

(9 members appointed by the Governor and confirmed by the Senate. Advisory committee consists of at least 10 members, including 4 legislators, 1 member from each governing board, and not more than 5 other members selected by the CCHE).

Aims College,
Northeastern Junior College,
Colorado Mountain College,
Colorado Northwestern Community College.

Board has specified management responsibilities for the Auraria center campuses of Metropolitan State College, University of Colorado at Denver, and Community College of Denver - Auraria.

Specific duties pertaining to appropriation requests, capital construction, long-range planning, roles and functions of institutions, planning, research, statistics, and other functions are set forth in the statutes.

Much has been said and written concerning the strengths and weaknesses of the present organizational structure. The system allows for great diversity in the development of the different types of institutions, but problems of coordination and cooperation between the boards are difficult to resolve and a strong coordinating role of the CCHE is difficult to maintain in light of competing pressures between institutional representatives, governing boards, and other groups having an interest in particular institutions.

It may not be considered a weakness in the system, but the present structure represents an irrational mixture of several appointive and one elective board, which govern institutions running the gamut of size from approximately 30,000 student FTE's for the combined University of Colorado campuses, to approximately 3,000 FTE students for the School of Mines. The number of institutions under the jurisdiction of each board ranges from seven community colleges, under the State Board for Community Colleges and Occupational Education, to one each for the Trustees of the University of Northern Colorado and the Trustees of the School of Mines.

Since no proposal concerning governance is submitted by the committee, this report will only note briefly that the concept of one proposal was presented to the committee by the chairman to establish separate elected boards for each institution. Election for these boards would on the basis of the institution's primary service area, whether that area be a distinct region of the state or the entire state. These new boards would have as their responsibility only one institution, with the exception of the combination of the University of Colorado at Boulder and the University of Colorado Medical Center in Denver. Each board could concentrate on the activities of one institution and, as elected officials, would be politically accountable to the electorate for their decisions and would have elective credentials to bring to the General Assembly in support of higher education.

The role of the CCHE would be strengthened under the proposal outlined to the committee. With separate boards for each institution, a strengthening of the commission's authority would be necessary to assure that duplication of courses between institutions would not occur when possibly avoidable, and to assure that the growth and development of the institutions would conform with the role and mission of each institution. To accomplish these goals, the present CCHE statutes would need to be amended to provide increased authority for the commission to review academic program offerings and to strengthen its role in budgetary review and approval before submission of the institutional budgets to the General Assembly.

Another part of the proposal outlined by the chairman was the inclusion of role and mission statements for each institution as part of the statutes establishing each institution. Some Colorado institutions already have language in the statutes similar to role and mission statements, which are relatively clear statements of purpose. Other institutions have only sketchy statements or none at all. Some

of the present statements use archaic language and the descriptions of the institution are obsolete.

Inclusion of role and mission statements and other descriptive material in law would provide consistency in the statutory language describing each institution. The format used in the draft bill would:

- (a) describe the classification of each institution (e.g., comprehensive research and doctoral granting", or "limited master's granting" institution);
- (b) list the divisions, colleges, or schools established within each institution;
- (c) describe the primary service area for instruction (e.g., particular emphasis for a specific region, with additional students from the entire state);
- (d) include enrollment limitations in the statutes; and
- (e) cite the minimum requirements for admission to the institution.

Under this approach, basic changes in an institution's role and mission, or in its basic operation as part of the state system, would need to be considered by the General Assembly through the process of amending of the statutes. No action was requested nor taken in regard to this part of the governance issue.

Auraria Center. Another topic under consideration in regard to governance was the proposed merger or combining of two of the Auraria center institutions -- the University of Colorado at Denver and Metropolitan State College. The proposal was originally submitted to the committee by Chancellor Harold Haak of UCD at the committee's visit to the Auraria institutions in September. An open discussion was held in response to Chancellor Haak's proposal at the September meeting and the committee also held a public hearing on this issue in the House Chambers at its final meeting.

No recommendations are submitted by the committee in regard to the future of the two institutions or in regard to the entire operation of the Auraria center. The Auraria Higher Education Center board is responsible for preparing a report for submission in mid-December to the Commission on Higher Education and to the Joint Budget Committee concerning the management, administrative, and educational arrangements at the Auraria center. This report may clarify the problems of the present arrangement and suggest the options available to the General Assembly for any statutory changes in the present structure. The study is being carefully conducted, with care being taken to be certain that all aspects of the present problems are being reviewed and all alternatives for solution are being considered. The committee concluded that recommendations on this topic would be premature and possibly damaging to the study by the AHEC board.

Student Financial Assistance

Tuition Assistance -- Colorado National Guard -- Bill 5

There are two reasons for submitting Bill 5. The educational reason is that it will provide assistance in increasing the enrollments at selected institutions offering undergraduate degrees and to the state-system community colleges. ^{2/} Some of the institutions have been facing declining enrollments in recent years, and the state is in the position of having classroom space available which could be utilized to a greater extent at little or no increase in cost to the state. The second reason for the bill is that it will function as a recruiting device for the National Guard which is in need of more members in several areas of the state.

Tuition payments for national guardsmen would be paid by the Department of Higher Education for academic work leading toward a bachelor's degree, an associate degree, or a certificate of completion of a vocational course. Tuition payments will be provided for as long as the person remains a member of the Guard, but payments would not be paid for more than 132 semester hours or 198 quarter hours, the number of hours required for a baccalaureate degree.

The appropriation section includes provision for one-tenth full-time employee for the Department of Higher Education in implementing the program. The appropriation for tuition assistance will be made to the Department of Higher Education, since this type of assistance is considered a form of student financial assistance. The fiscal note prepared for this bill estimated the cost to be \$58,100 for the first year and \$145,250 for subsequent years.

Student Financial Assistance - Bill 6

The purposes of this bill are largely technical. First, the bill will consolidate in one article of Colorado Revised Statutes the several existing programs providing student financial assistance which have been established from time-to-time. The second purpose of the bill is to give clear statutory authority for two programs which have been established through the long bill appropriation process. This new article will provide common definitions for these programs and new

^{2/} Institutions included under the bill are Adams State College, Mesa College, Metropolitan State College, Ft. Lewis College, University of Southern Colorado, Arapahoe Community College, Lamar Community College, Morgan Community College, Pikes Peak Community College, Otero Community College, Community College of Denver, and the technical community college of Pueblo to be established by July 1, 1978.

student aid programs will be included in this article as they are established. The existing programs and the present section numbers for the programs which have been established by statute are listed below:

<u>Program</u>	<u>Present Statute</u>
(a) Tuition Assistance Programs:	
Dependents of peace officers	23-1-107(1)(g)
Veterans of Viet Nam	23-1-113
Dependents of POWs and MIAs	23-5-111
Dependents of deceased or permanently disabled National Guardsmen	23-5-111.5
(b) Student Loan Matching (Matching funds required for federal allocations)	Long bill appropriation
(c) Work-study (Work-study program based on student need and interest in working).	23-1-201
(d) Scholarship and Grant Program (Programs based on financial need, merit, talent, or other criteria).	Long bill appropriation
(e) Undergraduate Fellowship Program (Waiver of the nonresident on a differential in tuition rates on a reciprocal basis with other states).	23-1-301

No appropriation is included in this bill, since no new programs are established and the existing programs will continue to be funded under the long bill. The study financial aid programs which have been established by statute will be repealed with the enactment of this new article.

Student Loan Guarantee Program -- Bill 7

A student loan guarantee program, operated by the state under federal guidelines, will be established under Bill 7. The loan guarantee program will be reinsured by the federal government. If the borrower were to default on a student loan guaranteed under the program, the state will repay the lender, and the federal government will reimburse the state for the amount of the loan.

It is hoped that more money will be available for student loans from the private financial sector if a state program were established. Several difficulties are present at this time for lenders who do participate in the federally insured loan program, and these difficulties discourage lenders from making student loans. It is believed that Bill 7 can overcome the problems experienced by lenders, partly by having the administrative responsibility for the program located in a state agency accessible and responsive to the participants in the program.

The program will guarantee low interest loans made to students attending institutions of higher education in Colorado, or to any person attending institutions of higher education outside Colorado who qualify for in-state tuition status as defined under the Colorado system of classification of students for tuition purposes (Article 7 of Title 23, C.R.S. 1973). A feature of the bill which makes it attractive for middle-income families, is that students will be eligible, regardless of family income, for the loan guarantee program.

The administrative costs of the loan guarantee program will be paid by user fees and federal payments. The user fee is calculated by multiplying a figure of up to one percent of the original face value of the loan, times the number of years for which the loan is outstanding. The federal government will pay the state agency one percent of the face value of each loan to cover the administrative costs of the program. Bill 7 provides for a one-time appropriation of \$200,000 for the initial startup costs of the agency. This appropriation will cover the cost of six or seven staff members needed to administer the program for the first year. Thereafter, it is expected that the user fees and federal payments will cover costs of operating expenses of the program.

The proposed bill provides for the creation of a loan division in the Department of Higher Education. The division is to promulgate the rules and regulations to administer the program. A twelve-member advisory committee will be established with representation from higher education, the Colorado General Assembly, and Colorado lenders, specifically the Colorado Banker's Association, the Savings League of Colorado, and the Colorado Credit Union League.

Provision is also included in the bill for the issuance of revenue bonds, which will be offered for the purposes of purchasing student loans from lenders or for making direct loans to students. This part of the bill provides that the division will issue revenue bonds for the purpose of increasing the volume of loans available to students. The state will not be liable for the repayment of the bonds issued under authority of this act.

In order to be eligible for the federal reinsurance for the guarantee loan program, the state will have to comply with federal requirements. However, concern exists over the level of control and discretion which the state could exercise in the operation of the program. The issues are identified in questions which have already been

directed to the U.S. Office of Education by the CCHE: Can Colorado operate a student loan guarantee program, without losing eligibility for federal reinsurance or interest subsidy, if the program were to limit access on the basis of income or a determination of need?

This question was asked in regard to both the loan guarantee part of the federal program and to the interest subsidy features of the program. Members of the commission were concerned that the monies available not be used for loans to families who do not need them.

The CCHE expects response to its inquiries from the U.S. Office of Education early in the 1979 legislative session. We are confident that the General Assembly will carefully review the responses to these questions at the time Bill 7 is being considered.

Relationship Between Public and Private Sectors of Higher Education

Contracting for Educational Services -- Bill 8

Under Bill 8, contracts can be written between the state and private institutions of higher education for the mutual use, between the public and private sectors, of educational services and facilities at public and private institutions. The services for which contracts can be written include, but are not limited to, faculty services, classroom space, and laboratory facilities.

The joint use of the educational services and facilities can benefit students, private institutions, as well as the state. For example, students in the public sector, under contract, can have curricula or individual courses available to them which are not offered at state institutions, or can use facilities that are otherwise not as accessible through state institutions. Private institutions may wish to have their instructional programs, facilities, and equipment used to greater extent through the contracting of services. The state can benefit through the offering of services which are now in place at private institutions, rather than having to respond to pressures to duplicate programs at a greater cost at state institutions. Possibilities for greater coordination than is present at this time are provided under this bill.

The bill further allows any state institution, subject to the approval of the Colorado Commission on Higher Education, to contract for educational services. Another major provision of the bill is a limitation that, in contracting for educational services, the cost incurred by the state is not to exceed 75 percent of the total program cost and the cost to the student is not to be less than 25 percent of the program cost.

Termination of Faculty Employment

Termination of Faculty Employment -- Bill 9

Colorado currently has legislation which specifies procedures and priorities to be used for the dismissal, nonrenewal, and reductions in force at many, but not all, state institutions of higher education. Bill 9 will repeal and reenact this article (Article 10 of Title 23, C.R.S. 1973), and extend the applicability of the act to all public post-secondary institutions in Colorado.

The stated purpose of the bill is the same as current law -- namely to provide a fair and orderly procedure for the termination of employment of faculty members in cases of dismissal or nonrenewal of contract, whether by reason of reduction of force or for other reasons. Present law excludes the University of Colorado, University of Northern Colorado, Colorado State University, and Colorado School of Mines from its provisions, but the bill includes all postsecondary institution of higher education operated by the state or by a public local district.

A written list of the grounds for dismissal or nonrenewal of a contract under Bill 9 will be established and published by the governing board for the institution, and this list will be made available to all faculty members. The current law lists several reasons as ground for dismissal and nonrenewal, but these criteria are considered highly subjective (e.g., "moral turpitude, incompetency"), which present difficulties in arriving at factual determination of the case.

Notice of nonrenewal during the first year during which a person is on the faculty will be given no later than April 15 of the contract year. Current law provides that the notice be given no later than February 15 of the year in which the contract is to expire. For other faculty members, the bill retains the existing provision that the notice shall be given no later than December 15 of the year prior to the year in which the nonrenewal contract is to expire.

Under current law, the faculty member has ten calendar days to request a hearing if he wishes to appeal a notice of nonrenewal. Then, within seven school days of a written request for a hearing, a campus hearing committee of five individuals is convened to attempt to reach an informal resolution. The bill provides for a three member campus hearing committee to be convened within 20 school days of the written request for a hearing.

Bill 9 provides that the campus hearing committee shall make one of the following recommendations: a) dismissal or nonrenewal; b) retention; or c) some other resolution acceptable to both the faculty member and the chief administrator officer. If a resolution cannot be reached, the bill retains the present statutory provision for a full and fair hearing conducted in accordance with the Administrative Procedures Act (section 24-4-105, C.R.S. 1973) before an impartial

hearing officer.

The law now provides for summary suspensions, with provision for hearings thereon. These provisions are retained in Bill 9. However, the bill specifies that the hearing officer shall make one of the following decisions in regard to summary suspension: a) that the faculty member be reinstated; b) that the suspension be for a stated period without pay; c) dismissal of the faculty member on a specified date; d) the member be dismissed immediately for stated cause; or e) other recommendations as the facts warrant.

In regard to a faculty member's probationary contracts, current law provides that no hearing need be granted in the case of nonrenewal of a faculty member's first three annual contracts. The bill provides that there be no hearing granted, and adds that no reason need be given for nonrenewal of a faculty member's first five probationary annual contracts.

As for the reduction in forces, current law provides that the most recently employed faculty member shall be the first to be reduced and additional reductions shall proceed in that order. The bill will delete this provision. However, another provision in current law, that the part-time faculty will be the first to face reductions in force, is retained in Bill 9.

COMMITTEE ON HIGHER EDUCATION

BILL NO. 5

A BILL FOR AN ACT

1 CONCERNING TUITION ASSISTANCE FOR ATTENDANCE BY MEMBERS OF THE
2 COLORADO NATIONAL GUARD AT DESIGNATED INSTITUTIONS OF HIGHER
3 EDUCATION, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Establishes a program of tuition assistance for active members of the Colorado national guard who are in good standing and makes an appropriation to fund the program in its first year.

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

5 SECTION 1. Article 5 of title 23, Colorado Revised Statutes
6 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to
7 read:

8 23-5-111.4. Tuition for national guardsmen. (1) The
9 general assembly recognizes its responsibility for the
10 establishment and maintenance of a strong well-trained and
11 high-spirited national guard. The encouragement of membership in
12 the guard through the granting of reduced or free tuition at
13 certain institutions of post-secondary education simultaneously

1 expresses a commitment to a part of this responsibility and
2 supports existing institutions, carrying out a policy of
3 maintaining reasonable access to quality education as broadly in
4 this state as possible.

5 (2) Any person who is a member of the Colorado national
6 guard, upon being accepted for enrollment at any designated
7 institution of higher education shall be permitted to pursue
8 studies leading toward a bachelor's degree, an associate degree,
9 or a certificate of completion with tuition paid by the
10 department of higher education, subject to available
11 appropriations, for so long as such person remains a member of
12 the Colorado national guard, but such tuition payments shall not
13 be made for more than one hundred thirty-two semester hours or
14 one hundred ninety-eight quarter hours.

15 (3) For the purposes of this section, "designated
16 institution of higher education" means the university of southern
17 Colorado, Adams state college, Mesa college, Metropolitan state
18 college, Fort Lewis college, and all community colleges governed
19 by the state board for community colleges and occupational
20 education.

21 (4) If any member of the Colorado national guard is
22 accepted for enrollment at any designated institution of higher
23 education and such member has not been classified as an in-state
24 student for tuition purposes pursuant to article 7 of this title,
25 the amount paid by the department of higher education to the
26 designated institution of higher education pursuant to subsection

1 (2) of this section shall be the amount of in-state tuition for
2 that institution.

3 (5) Each individual member of the Colorado national guard
4 receiving tuition assistance as provided in this section shall
5 obtain certification, on forms to be supplied by the department
6 of higher education, from his commanding officer attesting to his
7 current satisfactory guard performance and present such
8 certificate to the designated institution he is attending at the
9 time of enrollment for each semester or quarter for which tuition
10 assistance is requested. No tuition assistance shall be granted
11 without such certification.

12 SECTION 2. Appropriation. There is hereby appropriated out
13 of any moneys in the state treasury not otherwise appropriated,
14 to the department of higher education, for the fiscal year
15 commencing July 1, 1979, the sum of fifty-eight thousand dollars.
16 (\$58,000) and one-tenth of one (.1) F.T.E., or so much thereof as
17 may be necessary, for the implementation of this act.

18 SECTION 3. Effective date. This act shall take effect July
19 1, 1979.

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

COMMITTEE ON HIGHER EDUCATION

BILL NO. 6

A BILL FOR AN ACT

1 CONCERNING STUDENT FINANCIAL ASSISTANCE FOR HIGHER EDUCATION.

Bill Summary

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

Reorganizes higher education student assistance statutes and gives clear statutory authority and specifications for such programs. Repeals the existing provisions which are included in the reorganization.

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

3 SECTION 1. Title 23, Colorado Revised Statutes 1973, as
4 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

5 Article 3.3

6 Student Financial Assistance

7 PART 1

8 GENERAL PROVISIONS

9 23-3.3-101. Definitions. As used in this article, unless
10 the context otherwise requires:

11 (1) "Commission" means the Colorado commission on higher
12 education.

1 (2) "In-state student" means a student who qualifies for
2 in-state status pursuant to article 7 of this title.

3 (3) "Institution" means an educational institution
4 operating in this state which:

5 (a) Admits as regular students persons having a
6 certification of graduation from a school providing secondary
7 education or comparable qualifications and persons for enrollment
8 in courses which they reasonably may be expected to complete
9 successfully;

10 (b) Is accredited by a nationally recognized accrediting
11 agency or association;

12 (c) (I) Provides an educational program for which it awards
13 a bachelor's degree;

14 (II) Provides not less than a two-year program which is
15 acceptable for full credit towards such a degree; or

16 (III) Provides not less than a one-year program of training
17 to prepare students for gainful employment in a recognized
18 occupation.

19 (4) "State institution" means an institution supported in
20 whole or in part by general fund moneys.

21 (5) "Undergraduate" refers to any program leading toward a
22 bachelor's degree or associate degree or any nondegree program
23 providing training for employment in a recognized occupation.

24 23-3.3-102. Assistance program authorized - procedure.

25 (1) The general assembly hereby authorizes the commission to
26 establish a program of financial assistance for students

1 attending state institutions.

2 (2) The commission shall administer the program with the
3 assistance of state institutions according to policies and
4 procedures established by the commission.

5 (3) Each annual budget request submitted by the commission
6 shall provide information on the proposed distribution of moneys
7 among the programs developed under this article. Subsequent to
8 final appropriation the commission shall provide to the joint
9 budget committee an allocation proposal specifically identifying
10 the distributions among programs for the coming year. On or
11 before December 30 of the following year, the commission shall
12 provide to the joint budget committee a report of expenditures in
13 the various programs. Expenditures in any program shall not
14 exceed the allocation for that program by more than ten percent
15 of such allocation, and the total appropriation for all student
16 aid programs shall not be exceeded. The commission may require
17 such reports from state institutions as are necessary to fulfill
18 the reporting requirements of this subsection (3) and to perform
19 other administrative tasks.

20 PART 2

21 TUITION ASSISTANCE

22 23-3.3-201. Definitions. As used in this part 2, unless
23 the context otherwise requires:

24 (1) "Dependent" means:

25 (a) Any natural child born or conceived before the period
26 of time either of said child's parents served as a prisoner of

1 war, was declared a person missing in action, or served on state
2 active duty or authorized training duty as a Colorado national
3 guardsman;

4 (b) Any child lawfully adopted, or for which formal
5 adoption procedures were commenced, prior to the time either of
6 said child's adoptive parents served as a prisoner of war, was
7 declared a person missing in action, or served on state active
8 duty or authorized training duty as a Colorado national
9 guardsman; or

10 (c) Any child in the legal custody of or for which
11 proceedings for custody were initiated by either of said child's
12 parents prior to the time such parent served as a prisoner of
13 war, was declared missing in action, or served on state active
14 duty or authorized training duty as a Colorado national
15 guardsman.

16 23-3.3-202. Program funding. Out of any moneys provided
17 for the financial assistance program authorized by section
18 23-3.3-102, the commission shall first provide tuition assistance
19 to individuals who qualify under the provisions of this part 2.

20 23-3.3-203. Dependents of peace officers. The commission
21 shall carry out the policy of the state of Colorado, determined
22 by the general assembly, to maintain a plan whereby the
23 dependents of any person who has been permanently disabled or
24 killed while acting to preserve the public peace, health, and
25 safety in the capacity of police officer, sheriff, other law
26 enforcement officer, or fireman may attend any state institution

1 under the benefits of tuition assistance and other similar
2 assistance. In carrying out such policy, the commission shall
3 accept applications from persons who qualify under such plan and,
4 upon determining that an applicant is so qualified, shall
5 recommend to the governing board of the state institution which
6 the applicant desires to attend or for which the applicant is
7 best suited that tuition assistance, an available scholarship, or
8 similar assistance be granted to the applicant.

9 23-3.3-204. Veterans with service after August 5, 1964.

10 (1) As used in this section, unless the context otherwise
11 requires:

12 (a) "Full-time student" means a student enrolled for ten or
13 more credits or, in eligible courses for which academic credit is
14 not assigned, an equivalent, as defined by the commission, in a
15 term of ten or more weeks.

16 (b) "Part-time student" means a student enrolled for fewer
17 than ten credits or, in eligible courses for which academic
18 credit is not assigned, an equivalent, as defined by the
19 commission, in a term of ten or more weeks; or a student enrolled
20 in any eligible program, the duration of which is less than ten
21 weeks.

22 (c) "Weighted average in-state tuition" means:

23 (I) In the case of a full-time student, an amount of money
24 based on full-time enrollment during an academic year of three
25 quarters or two semesters and computed as follows: For the prior
26 fiscal year, multiply the number of in-state students at each

1 state institution, except institutions under the jurisdiction of
2 the state board for community colleges and occupational
3 education, by the in-state tuition rate at that institution; add
4 the products of such calculations to arrive at a total amount;
5 and divide this amount by the total number of in-state students
6 at the institutions used in the calculation;

7 (II) In the case of a part-time student, an amount of money
8 based on part-time enrollment and computed as follows: Prorate
9 the weighted average in-state tuition for a full-time student to
10 a per credit basis; this amount is payable for each credit or its
11 equivalent, in eligible courses for which credit is not assigned,
12 for which the student enrolls.

13 (2) Within guidelines to be established by the commission,
14 any full-time or part-time student who is a veteran with service
15 from August 5, 1964, who is an in-state student, who served on
16 active duty for any period between August 5, 1964, through August
17 5, 1973, who was discharged or released from active duty, who was
18 or is eligible for federal educational benefits under chapter 34
19 of title 38, United States Code, and who was a resident of this
20 state as established by the documented home of record at the time
21 of entry into the service may be granted tuition assistance from
22 state institutions of fifty percent of the weighted average
23 in-state tuition.

24 (3) As used in this section, the term "active duty" does
25 not include any period during which the veteran:

26 (a) Was a student assigned by the armed forces or any other

1 branch of service engaged in the national defense to a civilian
2 institution;

3 (b) Served as a cadet or midshipman at one of the service
4 academies;

5 (c) Served under the provisions of section 511 (d) of title
6 10, United States Code, pursuant to an enlistment in the army
7 national guard or the air national guard or as a reserve for
8 service in any army reserve, navy reserve, air force reserve,
9 marine corps reserve, or coast guard reserve.

10 (4) No tuition assistance provided pursuant to this section
11 shall be afforded an otherwise eligible veteran for any term or
12 course commencing more than eight years after the conclusion of
13 the initial term of the veteran's induction or enlistment or on
14 or after August 5, 1981, whichever is later. Each eligible
15 veteran shall be entitled to tuition assistance for eleven
16 quarter credit hours or its equivalent as defined by the
17 commission, for each month or fraction thereof of continuous
18 active duty between August 5, 1964, and August 5, 1973, to a
19 maximum eligibility of one hundred ninety-eight quarter credit
20 hours or one hundred thirty-two semester credit hours. Unless
21 otherwise provided by law, if the appropriation appears at any
22 time during the fiscal year to be insufficient to provide the
23 tuition assistance for all veterans as authorized in this
24 section, the tuition assistance shall be prorated by the
25 commission in the remaining fiscal period for all eligible
26 veterans.

1 23-3.3-205. Dependents of prisoners of war and military
2 personnel missing in action. (1) As used in this section, unless
3 the context otherwise requires, "prisoner of war" or "person
4 missing in action" means any person who was a resident of the
5 state of Colorado at the time such person entered the United
6 States armed forces and who, while serving in said United States
7 armed forces, has been declared to be a prisoner of war or a
8 person missing in action, as established by the secretary of
9 defense of the United States.

10 (2) Any dependent of a prisoner of war or a person missing
11 in action, upon being accepted for enrollment into any state
12 institution, shall be permitted to pursue studies leading toward
13 a bachelor's degree or a certificate of completion, free of
14 tuition, for so long as said dependent achieves and maintains
15 standards as set by the institution for its students generally,
16 but said benefits shall not be extended beyond twelve academic
17 quarters or eight academic semesters, as the case may be. The
18 institution or the commission shall provide tuition assistance to
19 such qualified students from appropriated student aid and
20 scholarship funds.

21 (3) Any person qualifying as a dependent under this section
22 shall not be deprived of the benefits provided by this section
23 because of the return of a parent or the reported death of a
24 parent.

25 (4) Benefits under this section shall be allowed only to
26 those qualified dependents who are not eligible for educational

1 benefits provided by the federal government.

2 23-3.3-206. Dependents of deceased or permanently disabled
3 national guardsman. (1) Any dependent of a person who died or
4 was permanently disabled while on state active duty or authorized
5 training duty as a Colorado national guardsman, upon being
6 accepted for enrollment into any state institution, shall be
7 permitted to pursue studies leading toward a bachelor's degree or
8 a certificate of completion, free of tuition, for so long as said
9 dependent achieves and maintains standards as set by the
10 institution for its students generally, but said benefits shall
11 not be extended beyond twelve academic quarters or eight academic
12 semesters, as the case may be. The institutions or the
13 commission shall provide tuition assistance to such qualified
14 students from appropriated student aid and scholarship funds.

15 (3) Benefits under this section shall be allowed only to
16 those qualified dependents who are not eligible for educational
17 benefits provided by the federal government.

18 (4) An individual is permanently disabled for the purpose
19 of determining eligibility of dependents to qualify for
20 educational benefits if such individual is ineligible for
21 retention as a member of the national guard and is unable to
22 engage in any substantial full-time gainful activity by reason of
23 medically determinable physical or mental impairment which can be
24 expected to result in death, or which has lasted for a continuous
25 period of not less than twelve months and exists at the time the
26 dependent seeks entry into a state institution.

1 PART 3

2 STUDENT LOAN MATCHING

3 23-3.3-301. Student loan matching program - funding. Out
4 of any moneys provided for the financial assistance program
5 authorized by section 23-3.3-102 and remaining after meeting the
6 requirements of part 2 of this article, the commission shall
7 provide the matching funds required for federal allocations to
8 state institutions for student loan programs.

9 PART 4

10 WORK-STUDY PROGRAM

11 23-3.3-401. Work-study program established - requirements.

12 (1) The commission shall use a portion of any moneys remaining
13 after meeting the requirements of parts 2 and 3 of this article
14 to provide a work-study program of employment of qualifying
15 students in good standing with the institution in which they are
16 enrolled in positions which are directly under the control of the
17 institution in which the student is enrolled or in positions with
18 nonprofit organizations or governmental agencies with which the
19 institution may execute student employment contracts.

20 (2) Any in-state student who is enrolled or accepted for
21 enrollment at a state institution as an undergraduate may qualify
22 for participation in the work-study program established pursuant
23 to this section.

24 (3) Funds appropriated to the commission may also be used
25 by the commission in conjunction with and to supplement funds for
26 current job opportunities or to supplement or match funds made

1 available through any other public or private program for
2 financial assistance. A sum not to exceed thirty percent of the
3 funds allocated by the commission for the work-study program may
4 be used to provide funding on a basis other than financial need.
5 A sum not less than seventy percent of such money shall be used
6 for students demonstrating financial need.

7 PART 5

8 SCHOLARSHIP AND GRANT PROGRAM

9 23-3.3-501. Scholarship and grant program - funding. The
10 commission shall use a portion of any moneys remaining after
11 meeting the requirements of parts 2 and 3 of this article to
12 provide other programs of financial assistance based upon
13 financial need, merit, talent, or other criteria established by
14 the commission for students enrolled at state institutions.

15 PART 6

16 UNDERGRADUATE FELLOWSHIP PROGRAM

17 23-3.3-601. Undergraduate fellowship program - repeal. (1)
18 The commission is directed to establish an undergraduate
19 fellowship program. The commission shall identify those
20 circumstances under which the waiving of the nonresident
21 differential in tuition rates, on a reciprocal basis with other
22 states, would enhance the educational experience for Colorado
23 residents enrolled in state institutions. In relation thereto,
24 the commission shall:

25 (a) Consult with the governing bodies and departments of
26 state institutions in order to identify those classes and numbers

1 of Colorado residents enrolled in said institutions whose
2 educational experience would be enhanced by participation in said
3 program; and

4 (b) Negotiate with the appropriate representatives of other
5 states, with the objective of establishing reciprocal agreements
6 for waiving the nonresidential tuition differential for Colorado
7 residents enrolled in state institutions who wish to enroll in
8 other states' institutions of higher education in exchange for
9 the waiver of the nonresidential tuition differential for
10 residents of said other states wishing to enroll in state
11 institutions.

12 (2) For any year of said program, reciprocal exchanges
13 shall be allowed for one academic year only and not to exceed
14 more than fifty Colorado residents enrolled and having completed
15 their first academic year of study at state institutions.

16 (3) No student may be a recipient or participant in the
17 undergraduate fellowship program for more than one year.

18 (4) Residents of other states attending state institutions
19 pursuant to said fellowship program shall not be counted as
20 nonresident students.

21 (5) As used in this part 4, "Colorado resident" means a
22 person who is classified, for tuition purposes, as an in-state
23 student.

24 (6) This section is repealed effective July 1, 1980.

25 SECTION 2. Repeal. 23-1-107 (1) (g), 23-1-113, parts 2 and
26 3 of article 1 of title 23, 23-5-111, and 23-5-111.5, Colorado

1 Revised Statutes 1973, as amended, are repealed.

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

COMMITTEE ON HIGHER EDUCATION

BILL NO. 7

A BILL FOR AN ACT

1 ESTABLISHING A STUDENT LOAN GUARANTEE PROGRAM, AND PROVIDING FOR
2 THE ADMINISTRATION THEREOF, AND MAKING AN APPROPRIATION
3 THEREFOR.

Bill Summary

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

Establishes a state student loan guarantee program, specifying criteria and procedures therefor. Provides authority for issuance of bonds and makes an appropriation for initial funding.

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

5 SECTION 1. Title 23, Colorado Revised Statutes 1973, as
6 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

7 ARTICLE 3.1

8 Student Loan Guarantee Program

9 PART 1

10 ADMINISTRATION OF PROGRAM

11 23-3.1-101. Legislative declaration. The general assembly
12 hereby declares that the availability of improved access to and
13 choice of higher education opportunities in this state will

1 benefit the residents of this state and that the establishment of
2 a loan guarantee program will assist such residents in meeting
3 the expenses incurred in availing themselves of such
4 opportunities.

5 23-3.1-102. Definitions. As used in this article, unless
6 the context otherwise requires:

7 (1) "Commission" means the Colorado commission on higher
8 education.

9 (2) "Department" means the department of higher education.

10 (3) "Director" means the director of the division.

11 (4) "Division" means the loan guarantee division in the
12 department.

13 (5) "Institution of higher education" means an educational
14 institution which:

15 (a) Admits as regular students persons having a certificate
16 of graduation from a school providing secondary education or
17 comparable qualifications and persons for enrollment in courses
18 which they reasonably may be expected to complete successfully;

19 (b) Is accredited by a nationally recognized accrediting
20 agency or association and, in the case of private vocational
21 schools located in Colorado, holds a certificate of approval as
22 required by article 59 of title 12, C.R.S. 1973;

23 (c) (I) Provides an educational program for which it awards
24 a bachelor's degree;

25 (II) Provides not less than a two-year program which is
26 acceptable for full credit towards such a degree;

1 (III) Provides not less than a one-year program of training
2 to prepare students for gainful employment in a recognized
3 occupation; or

4 (IV) Is a private vocational school providing not less than
5 a six-month program of training to prepare students for gainful
6 employment in a recognized occupation.

7 (6) "Lender" means any bank operating within Colorado under
8 a national or state charter, any domestic savings and loan
9 association operating within Colorado under national or state
10 charter, any credit union operating within Colorado established
11 pursuant to federal law, any insurance company authorized to do
12 business within this state, any institution of higher education
13 that applies for and receives formal approval of the division as
14 an eligible lender pursuant to the rules of the division, any
15 pension fund eligible under the federal "Higher Education
16 Amendments of 1968", as amended, or any secondary market
17 operation established pursuant to the federal "Education
18 Amendments of 1972", as amended.

19 (7) "Resident" means any person attending an institution of
20 higher education in Colorado or any person attending institutions
21 of higher education outside Colorado who would qualify for
22 in-state tuition status under article 7 of this title.

23 23-3.1-103. Division created - director - staff. There is
24 hereby created the loan guarantee division in the department of
25 higher education and the office of director of the division, and
26 the division and the director shall exercise their powers and

1 perform their functions under this article as if the same were
2 transferred to the department by a type 2 transfer. The director
3 shall be appointed by the executive director of the commission.
4 The director with the approval of the executive director of the
5 commission, shall employ such professional and clerical personnel
6 as deemed necessary to carry out the duties and functions of the
7 division. The director and professional personnel are declared
8 to hold educational offices and to be exempt from the state
9 personnel system.

10 23-3.1-104. Duties and powers of division. (1) The
11 division shall:

12 (a) Promulgate rules and regulations for administration of
13 the loan guarantee program established by this article, including
14 but not limited to the following:

15 (I) Criteria for eligibility of students, lenders, and
16 institutions of higher education to participate in the program;

17 (II) Procedures to be followed by participating students,
18 lenders, and institutions of higher education;

19 (b) Approve loan applications for guarantee;

20 (c) Assist lenders in seeking payment from delinquent
21 borrowers;

22 (d) Purchase defaulted loans promptly;

23 (e) Collect or provide for the collection of defaulted
24 loans purchased from lenders;

25 (f) Recruit lenders to participate in the program;

26 (g) Train lenders in the requirements of the program;

1 (h) Evaluate lender performance in the program;

2 (i) Train personnel of institutions of higher education in

3 the requirements of the program;

4 (j) Evaluate the performance of institutions of higher

5 education in the program;

6 (k) Educate students in the requirements of the program;

7 (l) Communicate on a periodic basis with student borrowers

8 to inform them of the status of their loans;

9 (m) Bill the federal government for administrative

10 allowances and reinsurance payments.

11 (2) The division may:

12 (a) Permit lenders to require cosigners;

13 (b) Establish the level of the insurance premium charged to

14 the student borrower up to the amount permitted by federal law;

15 (c) Provide incentives to lenders, which may include but

16 are not limited to:

17 (I) Billing the federal government for interest payments

18 owed to lenders;

19 (II) Preparing federal reports required of lenders;

20 (III) Consolidating loans held by small lenders for sale to

21 a secondary market in cooperation with a major lender;

22 (IV) Verifying in-school status of students;

23 (d) Employ legal counsel;

24 (e) Garnish wages and claim tax refunds of defaulted

25 borrowers;

26 (f) Enter into contracts and guarantee agreements with

1 approved lenders, approved institutions of higher education,
2 state and federal governmental agencies, and corporations,
3 including agreements for federal insurance of losses resulting
4 from death, default, bankruptcy, or total and permanent
5 disability of student borrowers. Contracts with corporations to
6 provide services shall clearly specify the role and duties of
7 such corporation.

8 23-3.1-105. Advisory committee established - duties -
9 membership. (1) There is hereby established an advisory
10 committee on loan guarantees which shall advise the director on
11 the administration of this article and shall maintain liaison
12 with the general assembly, lenders, and institutions of higher
13 education. The advisory committee shall consist of not less than
14 twelve members to be appointed in the following manner:

15 (a) Four members shall be members of the general assembly,
16 two senators, one from each major political party, to be
17 appointed by the president of the senate, and two
18 representatives, one from each major political party, to be
19 appointed by the speaker of the house of representatives. Said
20 four members shall be appointed for terms of two years, and
21 successors shall be appointed in the same manner as the original
22 members.

23 (b) (I) Five members shall represent lenders and shall be
24 appointed as follows:

25 (A) Three members shall be appointed by the Colorado
26 bankers association;

1 (B) One member shall be appointed by the savings league of
2 Colorado;

3 (C) One member shall be appointed by the Colorado credit
4 union league.

5 (II) Said five members shall be appointed for terms fixed
6 by their respective associations, and successors shall be
7 appointed in the same manner as original members.

8 (c) Three members shall represent public, private, and
9 private vocational institutions of higher education and shall be
10 appointed by the commission. At least one of said members shall
11 have experience as a financial aid administrator.

12 (2) Members of the advisory committee not otherwise
13 compensated by the state or a public educational institution
14 shall receive thirty dollars per diem for attendance at official
15 meetings and shall be reimbursed for actual and necessary
16 expenses incurred in the conduct of official business.

17 23-3.1-106. Loan guarantee program established. (1) There
18 is hereby established a loan guarantee program, to be
19 administered by the division, which shall guarantee one hundred
20 percent of the unpaid principal and interest on all loans
21 approved by the division. No loan shall be guaranteed to an
22 amount in excess of the limits authorized by federal law nor
23 shall interest charged on any loan exceed the interest rate
24 permitted by federal law, but each guaranteed loan may carry a
25 special loan insurance premium which shall not exceed that
26 permitted by federal law. A loan guarantee made by the division

1 in good faith which does not meet the requirements of this
2 article shall not be invalidated.

3 (2) It is the intent of the general assembly that the loan
4 guarantee program established by subsection (1) of this section
5 shall operate in such a manner that its costs can be fully met by
6 user fees and federal payments.

7 23-3.1-107. Loan guarantee fund created. There is hereby
8 created in the state treasury a fund to be known as the loan
9 guarantee fund which shall be used by the division in the manner
10 and for the purposes prescribed in this article. All moneys
11 deposited or paid into said fund shall be continuously available
12 and are hereby appropriated to the division to be expended in
13 accordance with this article.

14 23-3.1-108. Age qualification. Any person otherwise
15 qualifying for a loan shall not be disqualified to receive a loan
16 under the guarantee loan program by reason of his being under the
17 age of eighteen years. For the purpose of applying for,
18 receiving, and repaying a loan, any person shall be deemed to
19 have full legal capacity to act and shall have all the rights,
20 powers, privileges, and obligations of a person of legal age with
21 respect thereto.

22 23-3.1-109. Subject to audit. The loan guarantee program
23 shall be audited annually by the state auditor. The division
24 shall report annually on its condition to the governor and the
25 general assembly and such report shall include the most recent
26 report of the state auditor. The report shall be made on or

1 before March 1 and shall reflect the condition of the program as
2 of December 31 of the preceding year.

3 23-3.1-110. Designation as sole state agency. The division
4 is the agency authorized to enter into contracts concerning the
5 programs established by the federal "Higher Education Act of
6 1965", 20 U.S.C. 1071, as amended.

7 23-3.1-111. Applicability of other acts. The federal
8 "Civil Rights Act of 1964", 42 U.S.C. 2000d, as amended, federal
9 "Higher Education Act of 1965", as amended, 20 U.S.C. 1071, and
10 the federal "Consumer Credit Protection Act", as amended, 15
11 U.S.C. 1601, et seq., apply to all contracts made with
12 participating institutions of higher education and approved
13 lenders for the guaranteeing of loans pursuant to this article.

14 PART 2

15 LOAN GUARANTEE BONDS

16 23-3.1-201. Definitions. As used in this part 2, unless
17 the context otherwise requires:

18 (1) "Bond" means any bond authorized to be issued by the
19 division pursuant to this part 2, which may consist of bonds,
20 notes, or debt obligations evidencing an obligation to repay
21 borrowed money and payable solely from revenues and other moneys
22 available to the division in accordance with this article and
23 pledged therefor.

24 (2) "Bond resolution" means either the resolution or trust
25 agreement securing the bonds.

26 (3) "Eligible institution" means an institution of higher

1 education or, with respect to students who are citizens of the
2 United States, an institution outside the United States
3 comparable to an institution of higher education which is
4 approved by the division and by the United States commissioner of
5 education for purposes of the guarantee loan program.

6 (4) "Student" means a student who, under rules promulgated
7 by the division is enrolled or accepted for enrollment at an
8 eligible institution and who is making suitable progress in his
9 education toward obtaining a degree or other appropriate
10 certification in accordance with standards promulgated by the
11 division.

12 (5) "Student obligations" means student loan notes and
13 other debt obligations evidencing loans to students which the
14 division may take, acquire, buy, sell, or endorse pursuant to
15 this part 2 and includes a direct or indirect interest in whole
16 or part of the notes or obligations.

17 23-3.1-202. Powers of division relating to bonds. (1) The
18 division has the following powers to effectuate the provisions of
19 this part 2:

20 (a) To borrow money, issue bonds, provide for the rights of
21 the bondholders, and secure the bonds by assignment, pledge, or
22 granting a security interest in its property, including all or a
23 part of a student obligation. The state of Colorado shall not be
24 liable for the repayment of bonds issued by the division, such
25 bonds are not a debt of the state, and each bond shall contain on
26 its face a statement to this effect.

1 (b) To consent to the modification, with respect to
2 security, rate of interest, time of payment of interest or
3 principal, or other term, of a bond contract or agreement between
4 the division and a bondholder or an agency or institution
5 guaranteeing the repayment of a student obligation, subject to a
6 contract with the holders of its bonds, an applicable bond
7 resolution, or a contract with the recipient of a loan, when the
8 division deems it necessary or desirable;

9 (c) To engage the services of private consultants to render
10 professional and technical assistance and advice in carrying out
11 the purposes of this part 2.

12 23-3.1-203. Issuance of bonds - requirements.

13 (1) Division may issue bonds from time to time in the principal
14 amounts necessary to provide funds for achieving its purposes
15 under this article, including the payment of interest on bonds of
16 the division, the establishment of reserves to secure the bonds,
17 and other expenditures of the division incident to and necessary
18 or convenient to carry out its purposes and powers. The division
19 may issue refunding bonds when it deems refunding expedient,
20 whether the bonds to be refunded have or have not matured. The
21 proceeds of the refunding bonds shall be applied to the purchase,
22 redemption, or payment of the bonds refunded. Except as
23 otherwise expressly provided in a resolution authorizing bonds,
24 an issue of bonds shall be a special obligation of the division
25 to be satisfied only out of moneys of the loan guarantee fund.

26 (2) The division shall authorize bonds by bond resolution.

1 The bonds shall be fully negotiable for all purposes, shall bear
2 a date, shall be serial bonds, term bonds, or both and, if serial
3 bonds, shall be payable either semiannually or annually, and
4 shall mature at a time or times, not exceeding forty years after
5 the date of issue, as provided in the bond resolution. The bond
6 resolution shall specify the interest rate, denomination and
7 form, either coupon or registered, registration privileges, and
8 manner of execution.

9 23-3.1-204. State not to impair bondholder rights. The
10 state pledges and agrees with the holders of bonds issued
11 pursuant to this part 2 that the state will not limit or alter
12 the rights vested in the division to fulfill the terms of an
13 agreement made with the holders of the bonds and will not impair
14 the rights and remedies of the bondholders until the bonds,
15 together with the interest on the bonds and interest on any
16 unpaid installments of interest, and all costs and expenses in
17 connection with an action or proceedings by or on behalf of said
18 bondholders are fully met and discharged. The division may
19 include this pledge and agreement of the state in an agreement
20 with the holders of the bonds.

21 23-3.1-205. Authorized purchasers for bonds. The bonds of
22 the division are securities in which state agencies and political
23 subdivisions of this state, municipalities and municipal
24 subdivisions, insurance companies and associations, banks, trust
25 companies, savings and loan associations, investment companies,
26 administrators, guardians, executors, trustees, other

1 fiduciaries, and all other persons who are authorized to invest
2 in bonds or other obligations of the state, may properly and
3 legally invest funds, including capital, in their control or
4 belonging to them.

5 23-3.1-206. Bond exempt from taxation. The bonds issued
6 pursuant to this part 2 and the interest thereon shall be exempt
7 from taxation in this state.

8 32-3.1-207. Default - remedy. (1) If the Board defaults
9 in the payment of principal of or interest on an issue of bonds
10 after the issue becomes due, whether at maturity or upon call for
11 redemption, and the default continues for 30 days, or if the
12 board fails or refuses to comply with this act, or defaults in an
13 agreement made with the holders of an issue of bonds, the holders
14 of 25% in aggregate principal amount of the bonds of the issue
15 then outstanding, may appoint a trustee to represent the holders
16 of the bonds for the purpose provided in this section.

17 (2) The trustee may, and upon written request of the
18 holders of twenty-five percent in principal amount of the bonds
19 then outstanding shall, in his own name by action or proceeding;

20 (a) Enforce all rights of the bondholders, including the
21 right to require the division to collect fees and charges
22 adequate to carry out the agreement as to the pledge of fees and
23 charges and to require the division to carry out other agreements
24 with the holders of the bonds and to perform its duties under
25 this article;

26 (b) Bring an action upon the bonds;

1 (c) Bring an action to require the division to account as
2 if it were the trustee of an express trust for the holders of the
3 bonds due and payable and, if all defaults are made good, then,
4 with the consent of the holders of twenty-five percent of the
5 principal amount of the bonds then outstanding, to annul the
6 declaration and its consequences.

7 (3) The bondholders and the trustee authorized by
8 subsection (2) of this section shall have all of the rights to
9 which they are entitled by virtue of provisions included in the
10 bonds or otherwise available to them under law.

11 23-3.1-208. No personal liability. An employee of the
12 division or any person executing the notes, bonds, or other
13 obligations of the division shall not be held personally liable
14 for the repayment of the note, bond, or other obligation or be
15 subject to personal liability or accountability by reason of the
16 issuance or nonissuance of such note, bond, or other obligation.

17 SECTION 2. 24-1-114 (3), Colorado Revised Statutes 1973, is
18 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19 24-1-114. Department of higher education - creation. (3)
20 (c) The loan guarantee division, created by article 3.1 of title
21 23, C.R.S. 1973. The division and the director thereof shall
22 exercise their powers and perform their functions as if
23 transferred to the department by a type 2 transfer.

24 SECTION 3. Appropriation. There is hereby appropriated,
25 out of any moneys in the state treasury not otherwise
26 appropriated, to the loan guarantee division in the department of

1 higher education, for the fiscal year commencing July 1, 1979,
2 the sum of two hundred thousand dollars (\$200,000), or so much
3 thereof as may be necessary, for the implementation of this act.

4 SECTION 4. Effective date. This act shall take effect July
5 1, 1979.

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

COMMITTEE ON HIGHER EDUCATION

BILL NO. 8

A BILL FOR AN ACT

1 RELATING TO THE CONTRACTING FOR EDUCATIONAL SERVICES, AND
2 PERMITTING THE COLORADO COMMISSION ON HIGHER EDUCATION AND
3 INSTITUTIONS OF HIGHER EDUCATION TO CONTRACT FOR SUCH
4 SERVICES.

Bill Summary

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

Permits the Colorado commission on higher education to contract for educational services and allows any state institution of higher education to contract for educational services to be provided by or for such institution, but limits the state share of the cost of such services.

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

6 SECTION 1. 23-1-112, Colorado Revised Statutes 1973, is
7 amended to read:

8 23-1-112. Powers of commission - tuition. (1) Whenever
9 the governing board of any state institution of higher education
10 having the authority to prescribe tuition rates determines that
11 such rates should be revised, it shall submit its recommendation
12 to revise such rates to the commission, and no such revision in

1 tuition rates shall become effective unless determined by the
2 commission to be consistent with the level of appropriations and
3 other directives set by the general assembly.

4 (2) THE COMMISSION HAS THE POWER TO CONTRACT WITH ANY
5 PUBLIC OR ANY INDEPENDENT NONSECTARIAN INSTITUTION OF HIGHER
6 EDUCATION FOR EDUCATIONAL SERVICES, INCLUDING BUT NOT LIMITED TO
7 FACULTY SERVICES, CLASSROOM SPACE, AND LABORATORY SPACE, BUT OF
8 THE BARGAINED-FOR COST OF ANY SUCH SERVICES, THE STATE SHARE
9 SHALL NOT EXCEED SEVENTY-FIVE PERCENT AND THE STUDENT SHARE SHALL
10 NOT BE LESS THAN TWENTY-FIVE PERCENT.

11 SECTION 2. Article 5 of title 23, Colorado Revised Statutes
12 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to
13 read:

14 23-5-113. Institutions may contract for educational
15 services. Any state institution of higher education may
16 contract, subject to approval by the commission on higher
17 education, with any other public or any other independent
18 nonsectarian institution of higher education for the provision of
19 educational services by or for such institution, but of the
20 bargained-for cost of any such services, the state share shall
21 not exceed seventy-five percent and the student share shall not
22 be less than twenty-five percent. For the purposes of this
23 section, "educational services" includes faculty services,
24 classroom space, and laboratory space.

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

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

COMMITTEE ON HIGHER EDUCATION

BILL NO. 9

A BILL FOR AN ACT

1 CONCERNING TERMINATION OF FACULTY EMPLOYMENT AT EDUCATIONAL
2 INSTITUTIONS.

Bill Summary

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

Rewrites present statutory provisions dealing with grounds and procedures for termination of faculty employment at state institutions of higher education.

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

4 SECTION 1. Article 10 of title 23, Colorado Revised
5 Statutes 973, as amended, is REPEALED AND REENACTED, WITH
6 AMENDMENTS, to read:

7 ARTICLE 10

8 Termination of Faculty Employment

9 23-10-101. Legislative declaration. (1) It is the purpose
10 of this article:

11 (a) To provide a fair and orderly procedure for the
12 termination of employment of faculty members at publicly
13 controlled institutions of higher education in cases involving

1 dismissal or nonrenewal of contract, whether by reason of
2 reduction of force or for other reasons;

3 (b) To adequately protect academic freedom and intellectual
4 inquiry; and

5 (c) To minimize the need for judicial determination of such
6 matters.

7 23-10-102. Definitions. As used in this article, unless
8 the context otherwise requires:

9 (1) "Board" means the governing board of any educational
10 institution.

11 (2) "Chief administrative officer" means the president or
12 chancellor of an educational institution.

13 (3) "Educational institution" means any postsecondary
14 institution of higher education operated by the state or by a
15 public local district for purposes of providing academic,
16 technical, or vocational training, including, but not limited to,
17 colleges, universities, junior colleges, community colleges, and
18 vocational and technical colleges.

19 (4) "Faculty member" means a full-time faculty member at an
20 educational institution, including, but not limited to, a person
21 holding any academic rank, teacher, counselor, librarian, student
22 service personnel member, division chairman, and department
23 chairman, not covered by the "State Personnel System Act".

24 "Faculty member" does not include anyone employed in a position
25 temporary in nature at an educational institution, emeritus
26 appointees, or any academic employee in a position whose funding

1 is dependent upon sources other than state-appropriated funds.
2 Faculty members who are involuntarily assigned positions whose
3 funding is dependent upon sources other than state-appropriated
4 funds shall be fully covered by the provisions of this article.

5 (5) "Program area" means a curriculum area or a service or
6 support program.

7 23-10-103. Grounds for dismissal or nonrenewal. The
8 grounds for dismissal or nonrenewal of a faculty member shall be
9 mental disability, neglect of duty, conviction of a felony,
10 insubordination, moral turpitude, incompetency, or other good and
11 just cause as determined by the failure to meet reasonable
12 written and published standards promulgated by the board. The
13 board of each educational institution shall publish the list of
14 grounds for dismissal or nonrenewal of a faculty member at such
15 institution and shall make copies of such published list
16 available to all faculty members. No faculty member may be
17 dismissed or nonrenewed due to temporary illness, as defined by
18 board policy, leave of absence granted previously, or military
19 leave of absence.

20 23-10-104. Procedure. (1) (a) Notice of dismissal may be
21 given at any reasonable time.

22 (b) Except as provided in section 23-10-105 (1)(c), notice
23 of nonrenewal shall be given by the board no later than December
24 15 of the year prior to the year in which the nonrenewed contract
25 is to expire; except that, in the case of a faculty member's
26 first contract, the notice of nonrenewal shall be given no later

1 than April 15 of the year in which the contract is to expire.

2 (c) Any such notice pursuant to this section shall be in
3 writing, shall be served personally as evidenced by a written
4 certification or sent by registered mail to the faculty member,
5 and shall state the reasons for dismissal or nonrenewal of
6 contract.

7 (2) (a) If the faculty member makes a request in writing
8 for a hearing not more than ten calendar days after receipt of
9 the notice of dismissal or nonrenewal, he shall be entitled to
10 the following procedure: Within twenty school days after the
11 written request for a hearing, a campus hearing committee shall
12 convene and attempt to reach an informal resolution of any
13 dispute. The campus hearing committee shall consist of one person
14 selected by the faculty member, one person selected by the chief
15 administrative officer, and a third person mutually selected by
16 the two appointees. All three members of the campus hearing
17 committee shall be employees of that educational institution.
18 The campus hearing committee shall have the power to adopt its
19 own rules of procedure. The faculty member and the chief
20 administrative officer shall have the option of attending all
21 meetings of the campus hearing committee.

22 (b) (I) The campus hearing committee and administration
23 shall exchange all available pertinent data required for a
24 complete investigation of the action, if requested by a member of
25 the campus hearing committee. The campus hearing committee shall
26 make one of the three following recommendations:

- 1 (A) The faculty member be dismissed or nonrenewed;
2 (B) The faculty member be retained; or
3 (C) Some other specified resolution acceptable to both the
4 faculty member and the chief administrative officer be approved.

5 (II) If the campus hearing committee cannot reach a
6 resolution within seven calendar days, unless extended by mutual
7 consent, the faculty member shall be entitled to a full and fair
8 hearing conducted in accordance with the provisions of section
9 24-4-105, C.R.S. 1973, before an impartial hearing officer.

10 (c) The hearing officer shall hold a hearing within five
11 days and shall render his decision within twenty days after his
12 initial appointment. The hearing officer shall make findings of
13 fact and conclusions and prepare and transmit his initial
14 decision to the board, which shall review and take action on the
15 initial decision in accordance with the provisions of section
16 24-4-105 (15), C.R.S. 1973. The action of the board shall be
17 subject to judicial review in accordance with the provisions of
18 section 24-4-106, C.R.S. 1973.

19 (3) (a) A faculty member may be summarily suspended without
20 prior implementation of the relevant procedures provided in this
21 article, for a period not to exceed fifteen days, upon a finding
22 of the chief administrative officer that there is good cause to
23 believe that:

24 (I) The continued presence on the grounds of the
25 educational institution would endanger the safety or well-being
26 of the faculty member or any other members of or persons

1 associated with the educational institution; or

2 (II) The continued functioning of the faculty member in his
3 position would substantially impair or substantially disrupt the
4 normal functions of the educational institution.

5 (b) Benefits and salary shall remain in force during the
6 term of any suspension.

7 (c) (I) The chief administrative officer shall convene a
8 hearing on the reason for summary suspension before a hearing
9 officer within five days of such suspension. The hearing officer
10 shall render his decision within ten days of his appointment
11 which shall be one of the following:

12 (A) The faculty member be reinstated;

13 (B) The faculty member be suspended for a stated period,
14 with or without pay;

15 (C) The faculty member be dismissed on a date certain;

16 (D) The faculty member be dismissed immediately for stated
17 cause;

18 (E) Such other recommendation as the facts resulting in the
19 summary suspension may warrant.

20 (II) Any finding of the hearing officer in such a hearing
21 shall be subject to judicial review in accordance with the
22 provisions of section 24-4-106, C.R.S. 1973, and the chief
23 administrative officer may continue the summary suspension during
24 the pendency of such appeal.

25 (4) There need be no hearing granted on nor reasons given
26 for the nonrenewal of a faculty member's first five probationary

1 annual contracts with an educational institution.

2 23-10-105. Reduction in forces - reasons and priorities.

3 (1) Reduction in forces resulting in the termination of a faculty
4 member may take place for any one of the following reasons:

5 (a) When the institution is faced with a justifiable lack
6 of work;

7 (b) When the institution or program area has experienced
8 declining enrollment in any two consecutive fall semesters or
9 fall quarters or the equivalent thereof;

10 (c) When the general assembly has failed to appropriate at
11 or above the previous year's full-time equivalent faculty level,
12 in which case the institution must provide the faculty member
13 with a minimum of sixty days' written notice of termination;

14 (d) Any justifiable change in program.

15 (2) Any reduction in forces shall be effected in accordance
16 with section 23-10-104 and subsections (3) and (4) of this
17 section.

18 (3) Normal attrition shall be considered prior to staff
19 reduction, and part-time instructors in the program area affected
20 shall be reduced prior to staff reduction of any other faculty
21 members.

22 (4) If additional reductions beyond those specified in
23 subsection (3) of this section are necessary and demonstrated
24 competence of faculty members is relatively equal, seniority in
25 the program area affected shall prevail in considering which
26 faculty members shall be reduced.

1 (5) A faculty member who is rehired following termination
2 under the procedures set forth in this section may have any or
3 all prior benefits of rank, tenure, salary, and fringe benefits
4 reinstated.

5 23-10-106. Applicability of article. The procedures
6 established by this article shall be explicitly incorporated into
7 the contract of each faculty member at an educational institution
8 and shall be applicable to all cases involving the termination of
9 employment of faculty members at educational institutions. The
10 procedures relating to termination of employment contained in the
11 "State Personnel System Act" shall not be applicable to
12 proceedings covered by this article.

13 23-10-107. Article provides minimum requirements. This
14 article provides the minimum requirements for dismissal,
15 nonrenewal, and reduction in force. Nothing in this article
16 shall be construed as prohibiting an educational institution from
17 adopting its own procedures which are consistent with the minimum
18 requirements contained in this article.

19 SECTION 2. Effective date - applicability. This act shall
20 take effect July 1, 1979, and shall apply to all faculty
21 terminations or suspensions made on or after said date.

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

LEGISLATIVE COUNCIL
COMMITTEE ON WATER AND COAL SLURRY

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COMMITTEE ON WATER AND COAL SLURRY

Senate Joint Resolution No. 29 directed the Legislative Council to appoint committees to undertake various studies during the 1978 interim. In accordance with the resolution, the Council appointed an interim committee on Water and Coal Slurry. The committee was directed to undertake a study of the following topics:

- (1) Assess the means of enhancing the supplies of water available in the state, including the study of water supplies in deep aquifers and the legal ramifications of surface ownership with respect to reaching and using such supplies. Said committee is directed to avail itself of the wisdom of various public and private agencies and organizations willing to share their knowledge in any areas of the inquiry. The committee may also, through the Legislative Council, contract with any such agency or organization for such specific studies and purposes as it deems necessary.
- (2) A comprehensive study of the implications of coal slurry development in Colorado including the effect on the beneficial use of water in this state.

The committee held five meetings and extensive testimony was received on both topics from representatives of the Department of Natural Resources; San Marco Pipeline; Black Mesa Pipeline; Energy Transportation Systems Inc.; Burlington Northern Railroad; Colorado Energy Research Institute; the Colorado Bar Association; and, various other interested parties. The committee is submitting three bills (Bills 10, 11, and 12) without recommendation and one bill (Bill 13) with recommendation.

I. Committee Findings and Recommendations on Deep Underground Aquifers

In 1973, the General Assembly adopted Senate Bill 213 which added a new provision to Colorado's water law. This provision was meant to provide for the management of those underground aquifers which:

- 1) are not defined as "designated ground water" (37-90-103 (6), C.R.S. 1973);
- 2) are not defined as "underground water" (37-92-103 (11), C.R.S. 1973);
- 3) do not meet the qualifications for exemption for small

capacity wells under the "Colorado Underground Water Management Act" (37-90-105, C.R.S. 1973); and,

- 4) do not meet the qualifications for exemptions as provided under the "Water Right Determination and Administration Act of 1969" (37-92-602, C.R.S. 1973).

Senate Bill 213 provided that to construct a well in those aquifers which do not fall under the above definitions, the user must obtain a permit to construct a well from the state engineer. The applicant for a permit must specify the aquifer from which the water is to be diverted from, the beneficial use to which the water is to be applied, the location of the well, the average annual amount of water to be used in acre feet, and, if the proposed use is irrigation, a description of the land to be irrigated and the name of the owner, along with other reasonable information as the state engineer may designate (37-90-137 (1), C.R.S. 1973).

The state engineer must make a determination as to whether the exercise of the permit will materially injure the vested water rights of others. If the state engineer finds that there is unappropriated water available and that vested water rights will not be materially injured, (substantiated by hydrological and geological facts) he shall issue a permit to construct a well (37-90-137 (2), C.R.S. 1973).

Further, in addition to the above requirements for those certain aquifers the state engineer must, in considering whether the permit shall be issued, consider:

...only that quantity of water underlying the land owned by the applicant or by the owners of the area, by their consent, to be served is considered to be unappropriated; the minimum useful life of the aquifer is one hundred years, assuming that there is no substantial artificial recharge within said period; and no material injury to vested water rights would result from the issuance of said permit.... (37-90-137(4), C.R.S. 1973)

It is presumed that Senate Bill 213 was passed to protect existing wells in nontributary, nondesignated groundwater basins and to conserve these waters to insure an adequate supply. However, it has been maintained that Senate Bill 213 has not provided a workable framework for the administration and withdrawal of nontributary, nondesignated groundwater.

The language of Senate Bill 213 has been interpreted by various parties in different ways and the intent of the Act is unclear regarding the rights of an overlying landowner with regard to the water, and the limitations on those rights. While it may seem that Senate Bill 213 grants statutory recognition of nontributary, nondesignated groundwater as in the Whitten v. Coit decision, [153 Colo. 157 (1963)] it is still unclear whether the intent of the legislature in Senate Bill 213 was the same as the intent of the court in Whitten.

Because of the uncertainties and administrative difficulties apparently created by Senate Bill 213, the Committee on Water and Coal Slurry is forwarding three bills (Bills 10, 11, and 12) without recommendation. These three bills are being submitted as possible alternative ways of managing Colorado's largely nonrenewable deep aquifers. The committee, as a result of its deliberation and the testimony of experts in the area, recognizes the extreme difficulties, both from a legal and technical standpoint, of managing this vital resource. The committee also recognizes that, due to the lack of hydrological knowledge of these aquifers, it may be necessary, at sometime, to modify present rights.

Bill 10 - A Bill For An Act Concerning the Administration Of Underground Water.

Bill 10 attempts to align the intent of Senate Bill 213 with the decision in Whitten v. Coit by granting water rights only to an owner of property overlying a nontributary, nondesignated groundwater aquifer. Additionally, this bill sets specific guidelines for the state engineer in the filing of applications, issuing of permits, and protest procedures as they apply to granting or denying water permits in nontributary, nondesignated groundwater basins. Included in these guidelines is a definition of injury, a formula for the evaluation of applications, protection of preexisting wells, and the establishment of the minimum life of an aquifer at not less than 100 years assuming no artificial recharge during that time period.

Strict procedures for granting of a permit by the state engineer for underground tributary water are included in the bill with emphasis on the protection from injury for preexisting wells.

Bill 11 - A Bill For An Act Concerning Groundwater Conservancy Districts

The intent of Bill 11 is to place control of a nontributary, nondesignated groundwater aquifer with a Groundwater Conservancy District if such a plan is initiated either by county commissioners or local taxpayers and approved by the local taxpayers within the geographic boundaries of such a district.

Groundwater Conservancy Districts are to be established on the premise that water contained in nontributary, nondesignated groundwater basins is essentially non-replenishable and any use of that water is equivalent to the "mining" of that water. The purpose of a Groundwater Conservancy District is to study and equitably distribute the water in the basin and to establish an economic base to ultimately provide for a permanent water supply to those persons reliant upon the water from a nontributary, nondesignated basin.

The responsibilities of a Groundwater Conservancy District are to be accomplished by a board of directors with powers to: construct

and operate any necessary water conveyances, diversions and/or storage; condemn property for the construction of physical structures and rights-of-way or easements as provided for by law; to raise revenue by levying taxes on the rights to use water; to issue bonds, when authorized, upon all taxable property within the district; to satisfy all vested rights within or without the district; to sue and be sued in actions at law; to establish standards, rules and regulations for the proper utilization of water; to enter into contracts with other Groundwater Conservancy Districts; and to exercise powers generally held by quasi-municipal corporations.

Bill 12 - A Bill For An Act Concerning Applications For Well Permits Outside Designated Areas, and Specifying the Procedure Therefor

Bill 12 is proposed as an alternative to Bill 11, which allows for establishment of the Groundwater Conservancy Districts. It follows the assumption and current interpretation of the state engineer that water contained in nontributary, nondesignated groundwater basins is subject to the doctrine of appropriation.

This bill amends section 37-90-137 (2) and (4), C.R.S. 1973, to clarify the procedures by which a permit to construct a well outside a designated area would be issued by the state engineer.

The language of section 37-90-137 (4) (a) C.R.S. 1973, is changed to require the state engineer to adopt rules and regulations to assist in the granting or denial of permits to construct wells and for the administration of underground water. These rules and regulations, as specifically outlined by the addition of subsections (b through k) to section 37-90-137 (4) are to be adopted no later than January 1, 1980.

II. Committee Findings and Recommendation on Priorities of Well Rights

The committee is submitting with favorable recommendation Bill 13. This bill will amend 37-92-401 (T) (b) (VI), C.R.S. 1973. This section deals with the preparation of tabulations of water rights, in order of seniority, by the division engineer no later than July 1, 1970. The introductory portion to paragraph (b) provides that "[i]n determining that priority of a water right in relation to other rights deriving their supply from a common source, the following procedures and definitions shall apply:" and is followed by six criteria.

Bill 13 concerns subparagraph (VI) which states:

(VI) If the preceding principles would cause in any particular case a substantial change in the priority of a particular water right to the extent theretofore lawfully enjoyed for a period of not less than eighteen

years, then the division engineer shall designate the priority for that water right in accordance with historic practice.

As a result of a recent Colorado Supreme Court decision (Kuiper vs. Atchison, Topeka and Santa Fe Railway Co.), there is question as to whether an existing use of water, lawfully enjoyed for at least 18 years, gives the user a priority senior to other decreed uses even though the 18 year use was not decreed through the adjudication system.

Bill 13 - A Bill For An Act Concerning Criteria Used In Preparing Water Right Tabulations According to Seniority.

This bill will clarify present language by specifying that designation of a priority to a water right lawfully enjoyed for at least 18 years according to historic practice does not give such a right a priority senior to its actual date of initial appropriation, nor is it exempted from regulation and administration in the priority system.

III. Committee Findings and Recommendations on Coal Slurry Pipelines

Coal slurry pipelines are being looked at as an alternative to railroads in the transportation of coal. In the slurry concept, coal is pulverized into small particles and mixed with water in roughly equal amounts by weight. It is then pumped by pipeline to power plants where the coal component of the slurry is separated from the water through a centrifuge process. The powdered coal can then be burned in power plant furnaces to generate electricity, and the water from the slurry mixture is used to partially off-set the requirements for water in the power plant's cooling system.

The ratio of water to coal in the slurry is approximately 1:1 (the Colorado Department of Natural Resources notes that most of the estimates range from .82 - 1.09:1). The amount of water will vary, however, depending on the amount of coal being piped. For example, if the initial supplies of coal entering the pipeline are small, more water will be required to keep the flow of slurry in the pipeline constant. This is because the coal will separate from the water and clog the pipeline if the flow of the slurry is not constant. Additional volumes of water may also be required if there are interruptions at the end of the pipeline in the separation process. In such an instance, additional water would be required to flush the coal into holding ponds at pumping stations (every 60-100 miles along the route) until the problems are solved at the end point. The quality of the water used in slurry may vary (brackish water may be used, for example), but salt water is not recommended because of its high mineral content which may lead to corrosion of the pipeline and increased air pollution when the coal is burned in power plant furnaces.

Based upon an approximate water:coal ratio of 1:1, it would take approximately 735 acre feet of water per year to transport one million tons of coal. This amount is substantially less than the amounts of water required to convert coal to synthetic natural gas at a coal gassification plant near the source of the coal (roughly twice as much water), or to be used as a coolant in an electric power plant near the source (roughly five to seven times as much water). The use of water to transport coal by rail, however, would be near zero.

Projected Coal Slurry Water Requirements in Colorado

The Colorado Department of Natural Resources estimates that by the period 1990-95, the highest projection of water necessary for use in coal slurry pipelines in this state would be between 4,403-5,852 acre feet per year in order to transport a projected volume of seven million tons of coal per year (based upon an estimate of between 629-836 acre feet of water per one million tons of coal). The Department's low and medium projections call for no coal slurry pipelines in the state by 1990-95. The high projection is based primarily on the eventual approval of the coal slurry pipeline proposed by San Marco Pipeline from Walsenburg, Colorado, to Houston, Texas.

San Marco Pipeline filed an application in an Alamosa water court on December 30, 1976, for the use of a maximum of 15,000 acre feet of brackish water per year from the Closed Basin northeast of Alamosa. Their application also calls for the pumping of 15,000 acre feet of clean water per year from seven wells to be drilled in Costilla County to be delivered into the Rio Grande River to help Colorado meet its water obligations to the states of New Mexico and Texas under the terms of the Rio Grande River Compact. The application has not received a hearing as of this date.

Colorado Legislation

House Bill 1719, passed by the Colorado General Assembly in 1977 prohibits the export of water from Colorado for coal slurry pipelines. The Act also prohibits the exportation of any water connected to an interstate stream in Colorado for use in another state unless Colorado receives credit for the delivery of such water as part of its compact obligations. The effect of this Act upon the San Marco Pipeline application is unclear. San Marco is arguing that the water it would appropriate from the wells in Costilla County is not hydraulically connected to the Rio Grande River. No final determination has yet been made on this contention.

Committee Recommendation

With regard to the coal slurry portion of the committee study charge, after considerable testimony, the committee decided that coal slurry pipelines should be considered on a project by project basis and is not recommending any legislation on this issue.

COMMITTEE ON WATER AND COAL SLURRY

BILL NO. 10

A BILL FOR AN ACT

1 CONCERNING THE ADMINISTRATION OF UNDERGROUND WATER.

Bill Summary

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

Specifies that all waters of this state, surface and underground, are subject to appropriation unless otherwise specified by law. Sets forth procedures and principles for the administration of nontributary groundwater not in designated groundwater basins and requires a permit from the state engineer for diversion or withdrawal of underground water. Repeals a provision in conflict with the act.

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

3 SECTION 1. 37-82-101, Colorado Revised Statutes 1973, is
4 amended to read:

5 37-82-101. All water property of public. EXCEPT AS
6 OTHERWISE PROVIDED BY LAW, all water originating in or flowing
7 into this state, whether found on the surface or underground, has
8 always been and is hereby declared to be the property of the
9 public, dedicated to the use of the people of the state, subject
10 to appropriation and use in accordance with law.

11 SECTION 2. 37-90-137 (1), Colorado Revised Statutes 1973,

1 is amended to read:

2 37-90-137. Permits to construct wells outside designated
3 areas - fees - permit no ground water right - evidence - time
4 limitation. (1) EXCEPT AS PROVIDED IN SECTION 37-90-137.1, from
5 and after May 17, 1965, no new wells shall be constructed outside
6 the boundaries of a designated ground water basin, nor the supply
7 of water from existing wells outside the boundaries of a
8 designated ground water basin increased or extended, unless the
9 user makes an application in writing to the state engineer for a
10 "permit to construct a well", in a form to be prescribed by the
11 state engineer. The applicant shall specify the particular
12 designated aquifer from which the water is to be diverted, the
13 beneficial use to which it is proposed to apply such water, the
14 location of the proposed well, the name of the owner of the land
15 on which such well will be located, the average annual amount of
16 water applied for in acre-feet per year, the proposed maximum
17 pumping rate in gallons per minute, and, if the proposed use is
18 irrigation, a description of the land to be irrigated and the
19 name of the owner thereof, together with such other reasonable
20 information as the state engineer may designate on the form
21 prescribed.

22 SECTION 3. Article 90 of title 37, Colorado Revised
23 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW
24 SECTION to read:

25 37-90-137.1. Nonexempt, nontributary wells located outside
26 designated ground water basins. (1) (a) The provisions of this

1 section apply to all proposed and existing wells in aquifers
2 governed by the provisions of this section except proposed and
3 existing wells withdrawing designated ground water, as defined in
4 section 37-90-103 (6), or underground water, as defined in
5 section 37-92-103 (11), and except proposed and existing wells
6 provided for by sections 37-90-105 and 37-92-602. Aquifers
7 governed by the provisions of this section shall meet the
8 following criteria:

9 (I) The aquifer does not contain designated ground water,
10 as defined in section 37-90-103 (6) or underground water, as
11 defined in section 37-92-103 (11);

12 (II) The average rate of natural recharge to the aquifer is
13 nonexistent or so insubstantial that it would not materially
14 affect the calculation of permitted withdrawals based upon a
15 one-hundred-year useful life of the aquifer;

16 (III) The aquifer is confined to or consists of
17 well-defined strata situated below the unconsolidated surface
18 alluvium, if any;

19 (IV) The aquifer in its natural state, prior to the
20 diversion and withdrawal of water from such aquifer, was
21 characterized by artesian pressure.

22 (b) As used in this section, "well", "aquifer", and "water"
23 mean wells, aquifers, and water subject to the provisions of this
24 section except as otherwise specifically stated or indicated by
25 the context.

26 (2) (a) Only an owner of property overlying an aquifer

1 governed by this section shall have a right to water from such
2 aquifer. Such owner shall have the right to a reasonable use of
3 the water under his land subject to the terms and provisions of
4 this section. Said right may be assigned under terms and
5 conditions established by the state engineer, and land may be
6 dedicated as specified in paragraph (e) of subsection (4) of this
7 section.

8 (b) The development and use of water in such an aquifer
9 shall be at an annual rate specified by the state engineer based
10 on the minimum useful life of the aquifer as established by the
11 state engineer, which shall be not less than one hundred years
12 assuming there is no artificial recharge during such period, and
13 shall be subject to the provisions of subsection (4) of this
14 section.

15 (3) (a) Applications for proposed wells in such aquifers
16 shall be filed with the state engineer. Only one such well may
17 be included in an application and a filing fee of _____
18 dollars shall be paid at the time of filing.

19 (b) The application shall specify the ownership of the land
20 on which the proposed well is to be located, the legal
21 description and acreage of the land, the exact location of the
22 proposed well, the aquifer from which the water is to be taken,
23 the proposed beneficial use and the location of such use, the
24 average annual amount of water applied for in acre-feet per year,
25 the proposed maximum pumping rate in gallons per minute, and such
26 other reasonable information as the state engineer may designate

1 on forms which he prescribes.

2 (c) On or before the twentieth day of each month, the state
3 engineer shall prepare and publish a resume of all applications
4 filed in his office during the preceding month. Such publication
5 shall be made once and shall be in a newspaper of general
6 circulation in each county in which the aquifer is located. A
7 copy of such resume shall be mailed to any person requesting it
8 upon the payment of a fee of _____ dollars. Any person may
9 receive by mail such resumes on an annual basis by paying an
10 annual fee of _____ dollars in advance.

11 (d) On or before the end of the second month following the
12 month of publication, any person whose well or property interest
13 might be affected by the granting of such application may file a
14 protest with the state engineer on forms prescribed by the state
15 engineer.

16 (e) Within three months following the last month in which
17 a protest may be filed, the state engineer shall render his
18 decision on the application. In connection with his
19 deliberations and the making of his decision, the state engineer,
20 in his discretion, whether or not a protest has been filed, may
21 hold a hearing in which the applicant and all persons who have
22 filed a protest may participate. Notice of such hearing shall be
23 given by registered mail to the applicant and to all those who
24 filed a protest.

25 (f) The applicant or any person who has filed a protest may
26 seek to modify or set aside a decision of the state engineer by

1 instituting a proceeding in the district court in and for the
2 water division in which the proposed well is to be located. Such
3 proceeding shall be instituted within six months following the
4 month in which the decision is rendered. The procedure to be
5 followed shall be that specified in the Colorado rules of civil
6 procedure for civil actions with the state engineer as defendant.
7 If the proceeding is filed by the applicant, all persons who have
8 filed protests shall also be defendants except those who have
9 withdrawn their protests. If the proceeding is filed by a
10 protestant, the applicant and all other protestants shall also be
11 defendants except those who have withdrawn their protests. The
12 judgment in any such proceeding shall either approve, modify, or
13 set aside the decision of the state engineer.

14 (4) The following shall apply with respect to decisions of
15 the state engineer made in accordance with subsection (3) of this
16 section:

17 (a) Wells existing or approved on July 1, 1979, shall be
18 protected to the extent of the use specified in the registration,
19 permit, or court decree therefor or the historic use thereof,
20 subject to any appropriate proceedings which might affect the
21 extent or validity of such use.

22 (b) Protection against injury to existing wells shall not
23 mean that the water table and pressure may not be lowered at a
24 rate which is consistent with the useful life of the aquifer and
25 which does not reduce the useful life of an existing well to less
26 than the useful life of the aquifer at the time such well was

1 drilled. If a new well or wells would cause a lowering in excess
2 of such rate and resulting injury, the application shall be
3 denied unless the owners of any existing wells which would be
4 injured are compensated by the applicant to their reasonable
5 satisfaction as a condition of the approval of the application.
6 Such compensation shall be at least adequate to encompass current
7 expenses of modifying pump facilities or otherwise, together with
8 any increase in the operating expenses for the future and any
9 other expenses and costs attributable to the proposed well.

10 (c) Applications shall be evaluated on the basis of the
11 formula of land area times effective saturation in feet times
12 specific yield divided by the minimum useful life of the aquifer
13 in years to determine the acre-feet per year allowance, subject
14 to any special conditions of recharge.

15 (d) Owners of land on which there are no existing wells are
16 entitled to protection with respect to their potential use of the
17 water under their land. The formula and procedure specified in
18 this subsection (4) are designed and shall be construed to
19 recognize generally the rights, subject to the specific
20 provisions of this subsection (4), of the owners of existing
21 wells, of the owners of land seeking to drill new wells on such
22 land, and of the owners of land who do not presently contemplate
23 drilling wells on their lands. However, owners of land on which
24 no wells have been drilled may be limited to wells of the type
25 described in section 37-92-602 if necessary to prevent
26 noncompensable injury to existing wells.

1 (e) If the owner of land on which no well exists and on
2 which no well is proposed so chooses, he may dedicate all or a
3 part of his land for inclusion in the land area qualifying for a
4 proposed well applied for by another owner of land overlying the
5 aquifer. Such dedication shall be in writing on such forms as
6 may be prescribed by the state engineer. Once made such
7 dedication may not thereafter be withdrawn, and after such
8 dedication any land so dedicated may not have a well drilled on
9 it unless the well for which the land had been previously
10 dedicated is discontinued or modified to the extent that the
11 dedicated land may be released.

12 (f) Any permit issued by the state engineer pursuant to
13 this section shall contain such conditions as are reasonable
14 under the circumstances, including the provision that the permit
15 shall be revoked and the right to use the well discontinued if
16 any condition of such permit is broken.

17 (5) Any permit to construct a well issued pursuant to this
18 section shall expire two years after issuance unless prior to the
19 date of expiration, the applicant to whom such permit was issued
20 furnishes the state engineer, evidence that the water from such
21 well has been put to beneficial use.

22 (6) On and after July 1, 1979, no wells of the type subject
23 to this section shall be adjudicated pursuant to the provisions
24 of article 92 of this title.

25 (7) (a) The state engineer shall prepare a plan for the
26 usage of the water from the aquifers subject to this section.

1 Such plans shall include such provisions as may be necessary or
2 desirable for the evaluation of and decision on applications for
3 permits for wells subject to this section and the administration
4 necessary for the accomplishment of the purposes of this section.
5 A plan may encompass only one aquifer or it may encompass more
6 than one aquifer. Under appropriate circumstances it may specify
7 that all or a portion of an aquifer is critical, to the extent
8 that only wells of a particular type, including those types
9 specified in section 37-92-602, will be permitted, and it may
10 modify uses of existing wells consistent with the principles
11 specified in subsection (4) of this section.

12 (b) A resume of the plan prepared pursuant to paragraph (a)
13 of this subsection (7) shall be prepared and published in a
14 newspaper of general circulation in each county in which the
15 aquifer affected by such plan is located. A copy of such resume
16 shall be mailed to any person requesting it upon the payment of a
17 fee of _____ dollars and to any person who is on the mailing
18 list for the resumes specified in paragraph (c) of subsection (3)
19 of this section.

20 (c) On or before the end of the second month following the
21 month of publication, any person whose well or property interest
22 might be affected by the plan may file a protest with the state
23 engineer on forms prescribed by the state engineer.

24 (d) Within three months following the last month in which a
25 protest may be filed, the state engineer shall finalize the plan,
26 making such changes in his original proposal as he deems

1 necessary and proper. In connection with finalizing the plan,
2 the state engineer, in his discretion, whether or not a protest
3 has been filed, may hold a hearing at which all persons who have
4 filed protests may participate.

5 (e) Within thirty days after the plan is finalized, the
6 state engineer shall publish a resume of the plan in a newspaper
7 of general circulation in each county in which the aquifer
8 affected by such plan is located. A copy of such resume shall be
9 mailed to any person requesting it upon the payment of a fee of
10 _____ dollars and to any person who is on the mailing list for
11 the resumes specified in paragraph (c) of subsection (3) of this
12 section.

13 (f) Any person owning property in the area affected by a
14 final plan who wishes to contest such plan may institute a
15 proceeding in the district court in and for the water division in
16 which a major part of the aquifer in question is located. Such
17 proceeding shall be instituted within six months following the
18 month in which the resume of the final plan is published. The
19 procedure to be followed shall be that specified in the Colorado
20 rules of civil procedure for civil actions with the state
21 engineer as defendant. Any person owning property in the area in
22 question wishing to contest or support the plan may intervene in
23 the proceeding, all pursuant to rule 24 of the Colorado rules of
24 civil procedure.

25 (g) A final plan shall become effective and operative upon
26 the expiration of the time specified in paragraph (f) of this

1 subsection (7) for the filing of an action or, if an action is
2 filed, upon the entry of a final judgment in such action. A
3 final plan shall not be modified for a period of ten years
4 following its effective date except for the reasons specified in
5 rule 60 of the Colorado rules of civil procedure. Thereafter a
6 plan may be modified by the state engineer preparing a modified
7 plan and following the procedure specified in this subsection (7)
8 with respect to the original plan. Any modified plan shall be
9 subject to the limitations and procedures of this paragraph (g)
10 as to when and how it, in turn, may be modified.

11 (h) Any judgment entered in any action instituted pursuant
12 to paragraph (f) of this subsection (7) shall either approve,
13 modify, or set aside the plan that is being considered. If the
14 plan is set aside, the state engineer shall promptly develop a
15 new plan and initiate the procedures specified in this subsection
16 (7) for its consideration.

17 SECTION 4. 37-92-102 (1), Colorado Revised Statutes 1973,
18 is amended to read:

19 37-92-102. Legislative declaration. (1) EXCEPT AS
20 OTHERWISE PROVIDED BY LAW it is hereby declared to be the policy
21 of the state of Colorado that all waters originating in or
22 flowing into this state, whether found on the surface or
23 underground, have always been and are hereby declared to be the
24 property of the public, dedicated to the use of the people of the
25 state, subject to appropriation and use in accordance with law.
26 As incident thereto, it is the policy of this state to integrate

1 the appropriation, use, and administration of underground water
2 tributary to a stream with the use of surface water in such a way
3 as to maximize the beneficial use of all of the waters of this
4 state.

5 SECTION 5. Repeal. 37-90-137 (4), Colorado Revised
6 Statutes 1973, is repealed.

7 SECTION 6. Effective date. This act shall take effect July
8 1, 1979.

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