APPENDIX F
MATERIALS RELATING TO BILL DRAFTING

The following is Part I of a memorandum written by Rebecca C. Lennahan in 1971 concerning the one-subject and original purpose rules found in the state Constitution for bills and bill titles. No effort has been made to update any part of the memo -- the case law it cites goes only through 1971. **Please note:** Part II of the memo, Compilation of Colorado Cases and Opinions, can be accessed via the shared directory at the following storage: **S:\LLS\MANUALS\Drafting Manual 2008\APP_F_Memo_Part_II.wpd**

BILLS TO CONTAIN ONE SUBJECT

Summary

This memorandum deals with two sections of article V of the Colorado Constitution. Section 21 requires that a bill treat only one subject and that the subject be clearly expressed in the title of the bill. Section 17 forbids amendments to a bill which would change its original purpose.

The policy behind the one-subject rule is twofold: First, to discourage the practice of combining unrelated measures in one bill in order to enlist the supporters of each measure and thereby form a majority; and second, to facilitate the orderly conduct of legislative business. The purpose of requiring that the subject of a bill be expressed in its title is to make legislators and the public aware of the contents of proposed legislation. Finally, the prohibition against changing the original purpose of a bill seeks to assure that unrelated subjects are not substituted or added at a point late in the legislative process, thus affording proper consideration of all legislative proposals. These policies were thought to be sufficiently important that their violation was made to result in an invalid statute and a disappointing misapplication of the legislature's time.

The Colorado Supreme Court's interpretations of these rules suggest that legislators and draftsmen should keep in mind the following propositions, as well as the policies which underlie the constitutional rules:

(1) Broad, general titles of bills are the safest from a constitutional standpoint, since a general title is most likely to encompass every matter treated in the bill. An enumeration of the provisions of the bill is neither necessary nor desirable, since anything germane to the general subject stated in the title may be included in the bill.

(2) Broad, general titles have the disadvantage of allowing amendments which may jeopardize the passage of the bill or are unrelated to its sponsor's aims. Careful

draftsmanship can often provide a narrow, specific title to avoid this problem, although a narrow title could conceivably foreclose amendments which the sponsor subsequently found desirable.

(3) Titles may be amended in the legislative process to cover the original purpose of a bill as extended by amendments. Indeed, the rule which requires that the title reflect the contents of the bill may demand amendments to a title in some cases.

(4) The "subject" of a bill and its "original purpose" are similar concepts. An amendment which alters the original purpose of a bill may well cause the bill to embrace two subjects.

(5) The subject of a bill whose title refers to the amendment or repeal of a named section of the statutes is determined by looking at the subject of the section named and analyzing the effect of the amendment or repeal provision. The reference to a specific section thus defines and limits the subject of the bill only indirectly, and the naming of the section treated does not necessarily foreclose amendments to other statutory sections which treat the same subject.

(6) The general appropriations bill must treat only "appropriations", and other appropriations must be made by separate bills which embrace only one subject. However, an appropriation may be included in any bill if it is germane to the single subject of that bill and is necessary to effectuate its purpose.

Since almost every legislator and legislative staff member is occasionally faced with a problem involving the application of these constitutional rules, it is useful to be acquainted with their background and the way they have been applied to past problems. This memorandum is divided into two parts. Part I contains a narrative discussion and analysis of the rules, the policies which they seek to effect, and the manner in which they are applied. The footnotes to the text may be found following Part I. Part II consists of synopses of the important Colorado interpretations of the constitutional rules. It is hoped that these materials will prove helpful in dealing with future situations involving this kind of constitutional problem.

PART I
Discussion

Introduction

To minimize the possibility that a Colorado statute will be held unconstitutional because of errors in drafting or amending, legislators and those who work with the legislature should give some attention to the requirements of two sections of article V of the Colorado Constitution.

Section 21 requires that:

(1) No bill may concern more than one general subject (the "one-subject rule"); and

(2) The general subject of a bill must be clearly expressed in its title (the "descriptive title rule").

Section 17 prohibits any amendment of a bill which changes its original purpose (the "original purpose rule").

A violation of these rules will result in the objectionable portion of the statute's being declared void.

Although these rules may seem to be simply matters of form, they represent important substantive policies. To avoid the waste of legislative effort which would result from a successful constitutional challenge on the basis of article V, section 21, bills should be carefully conceived and drafted, with due regard for the prohibition of more than one subject and the need for descriptive titles. Moreover, care should be taken throughout the legislative process to assure that a bill which was in proper form as introduced is not invalidated by an amendment which changes its original purpose.

A. Section 21 - One-subject rule and descriptive title rule.

Section 21 of article V of the Colorado constitution provides:

> Section 21. Bill to contain but one subject - expressed in title. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

The Supreme Court of Colorado has held that this section is not simply a recommendation to the legislature but is a command which if disregarded will result in all or part of the subsequent statute's being of no effect.[17]

Similar constitutional requirements exist in thirty-eight other states.[18] Only North Carolina and the six New England states have no such restrictions. New York and Wisconsin

[17] In re Breene, 14 Colo. 401, 24 P. 3 (1890).

[18] Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.

have a one-subject rule which applies only to private and local laws, and the Arkansas and Mississippi provisions apply only to appropriation bills. The federal constitution has no similar requirement; however, the U.S. House of Representatives has a rule which provides that "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

Article V, section 21, consists of two separate but related requirements. For purposes of analysis, they will be discussed separately. First, there is the requirement that each bill shall embrace but one subject. The purpose of this provision was discussed by the Colorado Supreme Court in the case of Catron v. Co. Commissioners, decided in 1893:

> "The practice of putting together in one bill subjects having no necessary or proper connection, for the purpose of enlisting in support of such bill the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits, was undoubtedly one of the evils sought to be eradicated."[19]

More bluntly stated, one purpose of the one-subject rule is to discourage the practice of logrolling. It is argued that the rule serves this purpose only partially and indirectly, since it does not prevent the practice of logrolling by creating a coalition to support a group of bills, each of which treats a single subject. However, the one-subject rule appears to make logrolling more difficult insofar as the effort required to pass a series of bills is greater than that required to get a single omnibus bill passed.[20]

A second purpose of the one-subject rule is to facilitate orderly legislative procedure. If each bill treats only one subject, debate can be limited to the matter at hand without introducing extraneous issues; furthermore, each bill can be more easily grasped and more intelligently discussed.[21]

The one-subject requirement pertains to the substance of a bill and, strictly speaking, has no bearing on the way in which the title of the bill is drafted. If the substantive provisions of a bill can be said to relate to a single general subject, the bill meets the requirements of the one-subject rule, even though its title seems to recite more than one subject.[22]

---

[19] 18 Colo. 553, at 557, 33 P. 513 at 514. See also the discussion of the purpose of the one-subject rule in In re House Bill No. 168, 21 Colo. 46, at 51, 39 P. 1096, at 1098 (1895).

[20] Ruud, "No Law Shall Embrace More Than One Subject", 42 Minn.L.Rev. 389, at 448-451 (1958).

[21] Ruud, supra note 4, at 391.

[22] Harding v. The People, 10 Colo. 387, 15 P. 727 (1887). Objection was made to a title which seemed to name two subjects. The court said, "The constitutional inhibition goes to `acts' containing more than one subject. With respect to the title, the only requirement is that it clearly express the subject of the act. ...It is true that the title expresses both the general and special character of the act; but we see no objection to this." 10 Colo. at 391-92, 15 P. at 729.

> Example: [The same basic example will be used throughout this memorandum to illustrate the various points made about the constitutional rules.] Assume that Representative X wants to increase the fee for motor vehicle safety inspections. He introduces a bill entitled "A bill for an act concerning the regulation of equipment necessary for the safe operation of motor vehicles, and increasing the fee for motor vehicle safety inspections". The bill does not violate the one-subject rule if its substance relates to the single subject of an increase in fees.

However, while a bill does not violate the one-subject rule if it in fact deals with just one subject, it is by far the better practice to draft titles which clearly relate to one general subject, and only one. The Supreme Court has stated:

> "...it would be unreasonable as well as dangerous to require that each and every specific branch or subdivision of the general subject of an act be enumerated by its title. In reciting the several subordinate matters referred to, the hazard of violating that part of the provision which prohibits the treatment of more than one subject in the act is incurred; and, as a rule, it is wiser and safer not to attempt such enumeration, but to select an appropriate general title, broad enough to include all the subordinate matters considered."[23]

In the example above, an appropriate general title might be "A bill for an act concerning motor vehicle safety inspections". This brings us to the second requirement of article V, section 21, which provides that the subject of a bill shall be clearly expressed in its title.

The purpose of the constitutional requirement concerning descriptive titles is to give notice to legislators and the public of the contents of a bill, thus preventing deception and avoiding the passage of a bill which might be defeated if its true subject were disclosed. On the other hand, a requirement that each particular matter treated in the bill be listed in the title would result in cumbersome titles and the possibility that, if one item were omitted from the title, the resulting legislation would be constitutionally defective. Accordingly, the rule that the subject of a bill must be clearly expressed in its title has been interpreted to mean that the general subject must be clearly expressed. Furthermore, anything germane to that subject may be treated in the bill without violating the descriptive title rule or, incidentally, the prohibition against more than one subject. The Colorado Supreme Court in 1893 gave some good advice to legislators and draftsman about the requirement that a bill's title must clearly disclose the subject of the bill:

> "...the generality of a title is oftener to be commended than criticised, the constitution being sufficiently complied with so long as the matters contained in the bill are directly germane to the subject expressed in the title. Legislators, frequently, and sometimes good lawyers, fall into the mistake of

[23] Edwards v. Denver & R.G.R. Co., 13 Colo. 59, at 65, 21 P. 1011, at 1013 (1889).

> entering into particulars in the title, thereby curtailing the scope of the legislation which might properly be enacted within the limits of a single act."[24]

> Example: Assume that Rep. X wanted, in addition to raising the fee for motor vehicle safety inspections, to require inspections four times per year instead of twice, and to transfer the duty of administering the inspection program to the Colorado state patrol. The Supreme Court would criticize a title such as "A bill for an act concerning motor vehicle safety inspections, increasing the fee therefor, prescribing the frequency thereof, and transferring the powers and duties of the department of revenue with respect thereto to the Colorado state patrol". A general title, such as "A bill for an act concerning motor vehicle safety inspections", would suffice to cover all the desired provisions. It should be noted that such a general title would permit amendments concerning subdivisions of the general subject other than those sought by Rep. X; however, the detailed title does not limit the subject matter either, since the one general subject of both bills is "motor vehicle safety inspections".

In spite of the arguments favoring generality in titles, it is sometimes desirable to narrow the scope of a title in order to avoid amendments which might jeopardize the passage of the bill or which are unrelated to the specific purpose for which the bill was introduced. This narrowing of the general subject may be accomplished by careful draftsmanship:

> "If the title of a bill be limited to a particular subdivision of a general subject, the right to embody in the bill matters pertaining to the remaining subdivisions of such subject is relinquished. To hold otherwise would be to disobey the constitutional mandate..."[25]

An example of permissible narrowing of a title occurred in the 1970 session of the General Assembly, when the Attorney General ruled that a bill entitled "A Bill for An Act Changing the Name of `Colorado State College' to the `University of Northern Colorado'" could not be amended to include measures relating to Southern Colorado State College. The amendments would have had the effect of causing the bill to violate article V, section 21.[26]

> Example: The narrowest title for Rep. X's bill dealing only with fees might be "A bill for an act concerning an increase in the fee for motor vehicle safety inspections". This title would foreclose amendments which dealt with the frequency of inspections or with other matters falling under the general heading of safety inspections. It would probably even prohibit amendments which would result in the lowering of fees; this latter concept will be treated in the discussion of the original purpose rule.

---

[24] Catron v. Co. Commissioners, 18 Colo. 553, at 558, 33 P. 513, at 514 (1893).

[25] In re Breene, 14 Colo. 401, 24 P. 3 (1890).

[26] Opinion No. 70-4416, dated January 30, 1970. The opinion also considers the question from the standpoint of section 17 of article V, the original purpose rule.

Several of the cases collected in Part II of this memorandum illustrate the way in which a court applies the descriptive title rule. The cases also illustrate how interrelated the one-subject rule and the descriptive title rule are. For instance, where a title seems to embrace more than one subject, even though the bill in fact deals with only one general subject, a court will often find that general subject stated in the title and will in effect ignore the clauses which merely concern subordinate matters. In the case of Clare v. People, the act being questioned was entitled "An act to facilitate the recovery of ore taken by theft or trespass, to regulate sale and disposition of the same, and for the better protection of mine owners". The Supreme Court said that the first two elements of the title were included in the third, and

> "There being one general subject expressed, the fact that the legislature saw fit to incumber this title with two specifications under that subject does not render it obnoxious to the constitutional objection now urged [the one-subject rule]. One of the two purposes effectuated by this constitutional provision was to prevent uniting with each other in statutes incongruous matters having no necessary connection or proper relation; and where, as in the case at bar, one general subject be clearly expressed, the addition of subdivisions thereof does not necessarily vitiate the whole title."[27]

Therefore, it is important in drafting titles to be sure that the general subject of the bill is expressed in the title; one may question whether a title which contained only a recital of the subordinate matters treated, without clearly stating the one general subject of the bill, would meet constitutional requirements.[28]

> Example: Assume Rep. X's bill deals both with fees and with frequency of inspections, and is entitled "A bill for an act concerning fees for motor vehicle safety inspections, prescribing the frequency thereof, and regulating equipment which is necessary for the safe operation of motor vehicles". A court would probably find that the final clause stated the one general subject of the bill.
>
> If the bill's title were "A bill for an act concerning an increase in the fee for motor vehicle inspections and in the number of inspections required per year", is the one general subject of the bill clearly expressed in its title? Does the bill comply with the one-subject rule?

Consequences of violating the constitutional provision. The constitution states that if a bill concerns a subject not expressed in the title, only that part which is not expressed will be void. When a court is faced with a bill whose title indicates a single subject but whose substance includes matters not expressed in the title, it theoretically has two choices. The court could say that the bill treats two separate subjects, or it could say that the title does not

---

[27] 9 Colo. 122, at 126, 10 P. 799, at 801 (1886).

[28] In re Breene, 14 Colo. 401, at 406, 24 P. 3, at 4 (1890).

give adequate notice of the contents of the bill. In fact, the courts almost always choose the latter alternative and speak as if they were applying the descriptive title rule and the policy of disclosure which that rule embodies. One reason for favoring an application of the descriptive title rule over an application of the one-subject rule is the policy which dictates that legislation should be upheld if it is reasonably possible. Thus if an act concerns matters outside its title, the policy behind the rule on descriptive titles requires only that the portion of the act not disclosed be struck, while the policy behind the one-subject rule -- discouragement of logrolling -- would require that the entire act be invalidated, since a court usually cannot decide which subject the legislature intended to have the greater dignity and since the entire act is the product of the condemned practice of combining minorities to produce a majority.[29] Naturally, where none of the substance of an act is indicated by its title, the entire act has been declared void.

> Example: Assume that Rep. X's bill passes with the title "An act concerning fees for motor vehicle safety inspections" and that the act treats both the subject of fees and the subject of frequency of inspections. A court could say that the act has two subjects and must be stricken in its entirety. However, it would probably find that the title does not adequately disclose the contents of the bill and would invalidate only the portion concerning frequency of inspections.

Repeals. It should be noted that the subject of a provision in an act which repeals substantive law is considered to be the subject of the law repealed, not "repeal". Thus a bill which repeals several provisions, each of which has a different subject, will violate the one-subject rule; the policies embodied in the rule are just as applicable to legislation involving repeals as to the enactment of new law.

In a comparatively recent Colorado case, the rule on drafting of titles was applied to a repeal provision. Where the title of the act referred to loans or advancements of $300 or less, but the act contained a provision repealing a law concerning loans with security in any amount, the Supreme Court held that the repeal provision had no effect on the prior law insofar as that law applied to loans over $300.[30] Of course, repeals which concern the one general subject of a bill do not violate either the descriptive title rule or the one-subject rule.

Amendments to existing sections or acts. Titles are sometimes drafted which specify that the bill is one "amending section ____, Colorado Revised Statutes 1963", and so forth. This kind of title presents the issues of whether the title gives sufficient notice of the contents of the bill and whether the subject of the existing section or act being amended limits the subject of the bill. The answer to both has been in the affirmative. Thus the title of an act which read "An act to amend subdivision fifteen of section five thousand nine hundred and twenty-five of the Revised Statutes of Colorado for the year 1908, the same being a part of

---

[29] Ruud, supra note 4, at 398-399.

[30] Sullivan v. Siegal, 125 Colo. 544, 245 P.2d 800 (1952).

section sixty of chapter one-hundred and twenty-four, in relation to schools" was upheld as properly descriptive of the contents of the bill, but the court indicated that a subject foreign to the one already treated by the statutory section to be amended could not be introduced into that section under this title.[31] This decision, and others construing titles in this form, imply that the general subject of this type of bill is the subject of the section or act being amended, not "amendment of the stated section".[32] Another question, to be discussed in the portion of this memorandum dealing with the original purpose rule, is whether any portion of existing law other than that specified in the title can be amended under such a title, even if the subject of the unspecified section is the same as the subject of the named section.

> Example: Assume that Rep. X's bill to increase fees is entitled "A bill for an act amending 13-5-114 (5), Colorado Revised Statutes 1963, as amended". The specified subsection deals only with fees. The bill would violate the descriptive title rule if it included amendments to that subsection which concerned a subject other than fees. But consider the situation where the title reads "A bill for an act amending 13-5-114 (5), Colorado Revised Statutes 1963, as amended, concerning motor vehicle safety inspections". Does the addition of the final clause evidence an intent to make the subject broad and general, thus permitting amendments in areas other than fees?

Appropriation acts. It will be remembered that section 21 of article V excepts "general appropriation bills" from its provisions. Section 32 of article V, however, provides:

> "Section 32. Appropriation bills. The general appropriation bill shall embrace nothing but appropriations for the expense of the executive, legislative, and judicial departments of the state, state institutions, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

While the technicalities of this section are beyond the scope of this memorandum, it should be observed here that the attempt, in a general appropriation bill, to confer authority on a public official which previously did not exist, to establish a permanent policy, or to enact general legislation has been held to violate provisions of this type.[33] The one general subject of a general appropriation bill is "appropriations", and anything outside that subject -- anything not an appropriation -- is of no effect.

The second sentence of section 32, providing that appropriations in addition to those in the general appropriation act must be made by separate bills, each of which concerns a

---

[31] School District No. 16 v. Union High School District, 25 Colo. App. 510, 139 P. 1039 (1914).

[32] See also Dallas v. Redman, 10 Colo. 297, 15 P. 397 (1887); Edwards v. Denver & R.G.R. Co., 13 Colo. 59, 21 P. 1011 (1889); Board of County Commissioners of Teller County v. Trowbridge, 42 Colo. 449, 95 P. 554 (1908); Board of County Commissioners of Pitkin County v. Aspen Mining & Smelting Co., 3 Colo.App. 223, 32 P. 717 (1893).

[33] Ruud, supra note 4, at 424.

single subject, has been construed in a manner which is consistent with the construction of section 21; that is, it has been interpreted to mean that if an appropriation is necessary to accomplish the purpose of a bill and is incidental to its general subject, the appropriation may be included in the bill without violating the one-subject rule. It has usually been the practice in Colorado to include the words "and making an appropriation therefor" in the title of such a bill; this language furthers the policy of complete disclosure, although it is probably not constitutionally required.

Constitutional amendments - city charters - ordinances. Finally, the rules stated in article V, section 21, have been held not to apply to the proposal of constitutional amendments by the General Assembly;[34] to the submission to the citizens of amendments to a city charter under article XX of the Colorado Constitution;[35] or to municipal ordinances.[36] The constitutional provision applies to "bills", and bills are not required in any of these situations.

B. Section 17 - Original purpose rule

Section 17 of article V provides:

> "No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose."

In 1894 the Colorado Supreme Court stated that the controlling reason for section 17 was to carry out the provisions of article V, section 19, which at that time prohibited the introduction of bills, except the "long" appropriation bill, after the first fifteen days of the legislative session. If bills could be introduced during the prescribed period but amended later to accomplish unrelated aims, the policy behind section 19, namely, the desirability of securing ample time to consider all matters on which legislation is proposed, could be overridden. It might be argued that when the specific constitutional limit on the time for introducing bills was repealed in 1950, the reason for the original purpose rule disappeared or at least was weakened.[37] However, the 1950 amendment to section 19 authorized the general assembly to set time limits for the introduction of bills, and the policy of assuring enough time to give all measures due consideration is still valid. Accordingly, it is assumed that section 17 applies and that the objective of the original purpose rule, while altered in its specifics by the 1950 amendment to section 19, continues to be to discourage the hasty passage of unconsidered bills.

---

[34] Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

[35] People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

[36] Scanlon v. City of Denver, 38 Colo. 401, 88 P. 156 (1906).

[37] It is noteworthy that only one case interpreting the original purpose rule has been decided by the Colorado Supreme Court since 1950. The Attorney General, however, has issued a number of opinions applying the rule since that time. See Part II of this memorandum.

The relationship between the provisions of section 17 and section 21 of article V is a close one. It is revealing that several state constitutions require that a bill have no more than one "object" instead of the more common one-subject rule, and that the courts of those states have construed their one-object rules in a way which is almost identical to the manner of construing one-subject rules.[38] Thus, although the "purpose" or "object" of a bill seems to refer to what the bill is intended to accomplish, and its "subject" might be thought to be a more neutral concept, there has been in practice very little difference in the analysis of problems arising under the two sections. If an amendment which substitutes another concept for the original one causes the bill to violate the original purpose rule, that same amendment in the form of an addition to the bill instead of a substitution would cause it to violate the one-subject rule.

> Example: Rep. X introduces his bill entitled "A bill for an act concerning an increase in the fee for motor vehicle safety inspections". If the bill is amended so as to add provisions governing the frequency of inspections, the bill violates section 21. If an amendment strikes everything below the enacting clause and substitutes the provisions on frequency of inspections, the original purpose of the bill is changed.
>
> If Rep. X's bill is entitled "A bill for an act concerning motor vehicle safety inspections" but the increase in fees is the only matter treated in the bill as introduced, would the amendment concerning frequency of inspections change the original purpose?

The earliest case applying section 17 illustrates the simplest form of an original purpose problem. In 1886 the Colorado Supreme Court held that a bill whose original purpose was to create Logan County out of Weld County could not be amended so as to provide for a new Montezuma County from territory in LaPlata County.[39] Another early case involved an act whose title stated that the act was one "to Provide for the Payment of Salaries to Certain Officers, to Provide for the Disposition of Certain Fees, and to Repeal All Acts Inconsistent Therewith".[40] Demonstrating the similarity of the analyses under sections 21 and 17, the Court first found that the act treated but one subject, namely, the compensation of certain public officers,[41] and that the provisions for disposition of fees were germane to that subject because they related to the source from which salaries would be paid. Then the Court concluded that the omission of certain fee provisions which were included in the bill as passed by the house of introduction did not change the original purpose of the bill, relying expressly on its finding that each provision of the bill continued to be germane to its general subject.

---

[38] Ruud, supra note 4, at 394-396.

[39] Creation of New Counties, 9 Colo. 624, 21 P. 472 (1881).

[40] Airy v. The People, 21 Colo. 144, 40 P. 362 (1895).

[41] Does this title comply with that portion of section 21 which requires that the one general subject of a bill be clearly expressed in its title? The court did not consider the question.

Controversy has occasionally arisen in this area over the amendment of bill titles. It is clear that a title can be amended without necessarily changing the original purpose of a bill;[42] indeed, some amendments to the substance of a bill may be of such a nature as to require corresponding amendments to the title in order to comply with the descriptive title rule. The General Assembly encounters particular problems with titles which are drafted in the form "Amending section(s) _____, Colorado Revised Statutes 1963", and so forth, since amendments to sections of the statutes other than those named in the title are often found to be necessary or desirable, and the deadline for the introduction of bills has passed. One decision has dealt with this problem and has resolved it using reasoning similar to that employed under section 21. In In re Amendments of Legislative Bills,[43] the Supreme Court was faced with a bill entitled "A bill for an act to amend section 124 of chapter 94". The subject of the bill and its purpose, which the Court assumed to be the same, were found to be the reduction of penalties and interest on delinquent taxes.[44] The second house amended sections of existing law other than those specified in the title but which dealt with the subject of the bill, and it wished to amend the title to cover the newly amended sections. The Court authorized the amendments to the bill and to the title, stating that the second house was keeping the subject and original purpose in mind and that the amendment of a title to cover the original purpose of the bill as extended was constitutionally valid.

One may infer from this decision and from decisions which analyze titles under section 21 that the purpose of a bill whose title takes the form "Amending section(s) _____" is to be discerned by looking to the substance of the amendment and the subject matter of the section amended, just as the subject of a bill "Repealing section _____" is the subject of the section repealed, not "repeal". In other words, the purpose of a bill "Amending section(s) _____" is not just to amend, but is to bring about some change in the way behavior is governed. Combining this analysis with the one made in an earlier portion of this memorandum, then, it follows that a title drafted in this form should bring two propositions to mind: First, that while a named section in a title will limit the subject of the bill, amendments to other sections which treat the same subject may be adopted without changing the original purpose of the bill; but second, that an existing section of the statutes may not be amended so as to treat matters having no necessary connection with the substance of that section. In amending bills having titles in this form, however, the mandate of the descriptive title rule should be observed by making appropriate amendments to the original title.

> Example: Rep. X's bill is entitled "A bill for an act amending 13-5-114, Colorado Revised Statutes 1963, as amended, concerning motor vehicle safety inspections". The bill raises the inspection fee. The named section also includes provisions for

---

[42] In re Amendments of Legislative Bills, 19 Colo. 356, 35 P. 917 (1894); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971).

[43] 19 Colo. 356, 35 P. 917 (1894).

[44] The determination of subject and purpose was facilitated in this case, since the bill was introduced in a short session where the only permissible subjects were designated in the governor's agenda.

purchase of inspection certificates from the department of revenue by licensed inspection stations. The bill could probably be amended to increase the price of inspection certificates without changing its original purpose. A harder question is whether the bill could be amended to increase the frequency of inspections, a subject now covered in section 13-5-113, on the theory that the general subject of the bill is expressed in the final clause of the title, namely, "motor vehicle safety inspections". Even if the title were amended so as to name the newly amended section, would this amendment change the original purpose of the bill?

If it were determined that the original purpose of the bill was to deal with inspection certificates, and that the inspection fee paid by a vehicle owner and the purchase price paid by the station are subdivisions of that subject, it is interesting to speculate whether the bill could be amended to repeal section 13-5-115 (5), which states that when a station's license is revoked, the department of revenue must refund the fees paid for unused certificates. If the title were amended to include a clause "and repealing 13-5-115 (5)", the bill would probably be constitutionally valid.

WHAT IS GERMANE?

By Brenda Erickson
NCSL - Denver (303) 830-2200
NCSL Legisbrief © May 1994: Vol 2, No. 20

To be germane, an amendment must be closely related to or bear on the subject of the motion to be amended.

Probably one of the most difficult decisions a presiding officer or parliamentarian must make is whether an amendment is germane. According to the fifth edition of *Black's Law Dictionary*, germane means "in close relationship, appropriate, relative or pertinent." The *Glossary of Legislative and Computer Terms*, published by the American Society of Legislative Clerks and Secretaries, defines germaneness as "the relevance or appropriateness of amendments or substitutes." But how does one decide what is germane?

Questions to Test Germaneness

- Does the amendment deal with a different topic or subject?
- Does the amendment unreasonably or unduly expand the subject of the bill?
- Would the amendment introduce an independent question?
- Is the amendment relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal?
- Would the amendment change the purpose, scope or object of the original bill or motion?
- Would the amendment change one type of motion into another type?
- Would the amendment change a private (or local) bill into a general bill?
- Would the amendment require a change in the bill title?

Most states constitutionally limit bills to one subject.

Almost all states have constitutional provisions limiting bills to one subject, and over three-fourths of state legislatures have chamber rules that address germaneness. These rules vary greatly in detail, however. Many rules on germaneness are just a statement that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment." Examples of other legislative rules (emphasis added to highlight their tests or requirements for germaneness) are:

1. An amendment to a bill introduced in the other house is not in order if the amendment *requires a change of the bill title* other than a clerical or technical change. (Alaska Joint)
2. No amendment proposed to a House bill substituting therein a different subject matter may be accepted unless accompanied by the *written consent of its author and coauthors*. (Indiana House)
3. Amendments to the bill shall be germane to the subject of the bill being amended, and the fact that an *amendment is to a section of the same chapter* of Kansas Statutes Annotated as an existing section in the bill *shall not automatically render the amendment germane*. (Kansas Senate)
4. Every amendment must be germane to the subject of the legislative instrument *as introduced*. (Louisiana Senate)
5. No bill shall be altered or amended on its passage through the House so as to change its original *purpose as determined by its total content and not alone by its title*. (Michigan House)
6. No amendment to any bill shall be allowed which shall change *the scope and object* of the bill. (Washington Senate)

A number of authorities on parliamentary rules and procedure have addressed germaneness.

Edward Hughes, who authored *Hughes' American Parliamentary Guide*, stated that when the germaneness rule was first adopted by the U.S. House of Representatives in 1789, it introduced a principle previously unknown in general parliamentary law. He also claimed that is was of high value in the procedure of the House. Hughes went on to say that former U.S. House Speaker John G. Carlisle set this test for germaneness: "After a bill has been reported to the House, no different subject can be introduced into it by amendment whether as a substitute or otherwise. When, therefore, it is objected that a proposed amendment is not

in order because it is not germane, the meaning of the objection is merely that it [the proposed amendment] is a motion or proposition on a subject different from that under consideration."

The 1989 edition of *Mason's Manual* asks if the amendment is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal. To be germane, the amendment is required only to be related to the same subject. It may entirely change the effect of or be in conflict with the spirit of the original motion or measure and still be germane to the subject. An entirely new proposal may be substitute by amendment as long as it is germane to the main purpose of the original proposal.

According to *Robert's Rules of Order*, to be germane, and amendment must in some way involve the same question that is raised by the motion to which it is applied. An amendment cannot introduce an independent question, but it can be hostile to or even defeat the spirit of the original motion and still be germane.

According to Alice Sturgis' *Standard Code of Parliamentary Procedure*, and amendment that would change one type of motion into another type of motion is never in order. For example, if a member moves "that the pending question be referred to the membership committee," it would be out of order for someone to move "that the motion be amended by striking out the words 'referred to the membership committee' and inserting in their place the words 'postpone until the next meeting.'" This would change the motion from one referring a question to on postponing it, which has a different order of precedence. It is therefore out of order.

In *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, Luther Cushin says that it is inappropriate (i.e., not germane) to turn a private (or local) bill into a general bill. If a bill relates to a single individual, it is not in order to add a provision for another individual, other individuals or a general provision.

There is no single test for germaneness.

There is no single, all-inclusive test for determining when a proposed amendment is germane and when it is not. The presiding officer or parliamentarian should (1) look to the state constitution, the chamber's own rules, other chamber precedents and the adopted parliamentary manual for requirement on germaneness; (2) develop a personal check list of test ideas; and (3) use good judgement to make a fair determination. Ultimately, the presiding officer must make the ruling.

Selected References

American Society of Legislative Clerks and Secretaries and National Conference of State Legislatures. *Mason's Manual of Legislative Procedure*. St. Paul, Minn.: West Publishing Company, 1989.

Cushing, Luther Stearns. *Elements of the Law and Practice of Legislative Assemblies in the United States of America.* Boston, Mass.: Little, Brown and Company, 1856.

Hughes, Edward Wakefiled. *Hughes' American Parliamentary Guide*. Columbus, Ohio: The F. J. Heer Printing Company, 1926.

Robert, Henry M. *Robert's Rules of Order Newly Revised*, Ninth Edition. new York, N.Y.: Scott, Foresman and Company, 1990.

Sturgis, Alice. *Standard Code of Parliamentary Procedure*, Third Edition. New York, N.Y.: McGraw-Hill Book Company, 1988.

A Memo on Titles That Is a Good Guideline for Analyzing a Question about Whether an Amendment Fits under the Title of a Bill

MEMORANDUM

April 29, 1994

FROM: Office of Legislative Legal Services

RE: Senate Business Affairs and Labor Committee amendment to H.B. 94-1210, concerning a prohibition on restricting independent pharmacies by contracting with a single sole-source prescription drug provider

This is in response to your request for our opinion as to whether a portion of the Senate Business Affairs and Labor Committee's amendment to H.B. 94-1210 is within the title of the bill. The portion in question is the provision which would make it an unfair method of competition or unfair or deceptive act or practice in the business of insurance to restrict independent pharmacies by contracting with a single sole-source prescription drug provider. Also at issue is similar language which prohibits the health benefit plan advisory committee from recommending differential copayments for pharmaceutical services as a cost containment feature.

The title of H.B. 94-1210 reads, "CONCERNING MEASURES TO IMPROVE THE SYSTEM OF FINANCING HEALTH CARE COSTS USING ARRANGEMENTS WITH PRIVATE THIRD-PARTY PAYORS PURSUANT TO EXISTING MANDATORY COVERAGE PROVISIONS, ..."

Article V, section 21 of the Colorado Constitution provides that "No bill . . . shall be passed containing more than one subject, which shall be clearly expressed in its title; . . . ." Any matter not "germane" to the subject expressed in the title, which means anything not closely allied, appropriate, or relevant to that subject, is declared by the constitution to be void. In re Breene, 14 Colo. 401, 24 P. 3 (1890); Roark v. People, 79 Colo. 181, 244 P. 909 (1926).

Analysis of the title question focuses on whether the provisions added by the committee amendment are "pursuant to existing mandatory coverage provisions". The arguments on both sides of the issue are presented first.

Reasons why the amendment may be beyond the title. "Mandatory coverage provisions", in common terms, would include requirements that insurers cover certain diseases, conditions, or courses of treatment, or that they reimburse certain types of health care providers, or that they pay for certain health care products or services. Since virtually all health care policies cover purchases of prescription drugs, the amendment appears to

mandate that most insurers cover such purchases in more circumstances than are presently required. In this sense, the amendment provides for a new mandated coverage and is not within existing mandatory coverage provisions.

This construction of "mandatory coverage provisions" is consistent with this office's interpretation of section 10-16-103, C.R.S., which requires special legislative procedures for bills which "mandate a health coverage or offering of a health coverage".[1]

Furthermore, the original purpose of H.B. 94-1210 was probably to make health insurance more widely available and more usable. The amendment does not appear to further this purpose, in that it does not affect the availability of insurance one way or the other.

Reasons why the amendment may be within the title. Read strictly, "mandatory coverage provisions" only means those statutes which require an insurer to cover specific diseases, conditions, products, or services. There is no requirement that prescription drugs be covered, and the amendment would not impose such a requirement. It simply regulates how a coverage, if offered, must be implemented or administered. Thus the amendment is within existing mandatory coverage provisions. If the committee amendment is not germane to "existing mandatory coverage provisions" under the arguments advanced above, neither is the provision of H.B. 94-1210 which restricts preexisting condition limitations.

If the original purpose of H.B. 94-1210 was to make health insurance more usable, the extension of coverage to any pharmaceutical provider is consistent with that purpose.

* * * * *

Both sets of arguments set forth above are convincing, and the question is an extremely close one. Since you have asked us to make a choice between these two sets of arguments, we would determine that the arguments that the amendment is beyond the title are more persuasive. Titles are construed strictly by the General Assembly, in the interests of more efficient management of the legislative process. Our office has been instructed by legislative leadership to draft tight titles in the absence of a contrary instruction from the bill sponsor. Construing titles narrowly furthers the purpose of article V, section 21, which is twofold: To prevent the insertion of enactments in bills which are not indicated by their titles, and to forbid the treatment of incongruous subjects in the same bill. Geer v. Board of Comm'rs, 97 F. 436 (8th Cir. 1899).

Accordingly, the construction which gives more respect to a narrow reading of a title should be adopted in a close case like this one. The portion of the committee amendment specified above would therefore be beyond the title. It should be noted, however, that courts

[1] See memorandum dated March 10, 1994, to Senator Norton and Representative Berry, concerning guidelines for determination of bills subject to §10-16-103, C.R.S., concerning special legislative procedures related to mandated health insurance coverages in introduced bills.

have often applied title rules that are not as strict as those applied in the legislative process. If H.B. 94-1210 is enacted with this portion of the committee amendment included, a court would be required to accord the bill the presumption of constitutionality, and the court may well find that the requirements of the constitution are satisfied.

EXAMPLES OF STATUTES SETTING UP TEMPORARY ENTITIES

99-9-999. [Fill in name of board] - establishment - duties - repeal. (1) In order to [fill in the purpose and objective for establishment of the board], there is hereby established the [name of board].

(Alternative #1: All legislative members appointed by legislative leaders -- no additional qualifications are included since being a member of the GA is the only qualification)

(2) (a) The board shall consist of [fill in number] members of the general assembly appointed as follows:

(I) [Fill in number] appointed by the president of the senate;

(II) [Fill in number] appointed by the minority leader of the senate;

(III) [Fill in number] appointed by the speaker of the house of representatives; and

(IV) [Fill in number] appointed by the minority leader of the house of representatives.

(b) The president of the senate shall select the chairperson of the board, and the speaker of the house of representatives shall select the vice-chairperson of the board.

(c) Appointments shall be made no later than [fill in time frame].

(d) Members of the board shall be reimbursed for necessary expenses incurred in connection with attendance at meetings and shall be paid the same per them as other members of interim committees in attendance at meetings. (Optional: All reimbursements and per them shall be paid out of available appropriations to the general assembly.)

(Alternative #2: All members appointed by legislative leaders

(2) (a) The board shall consist of [fill in nu ber] members appointed as follows:

(I) [Fill in number] appointed by the president of the senate, [fill in number] of whom may be (a member) (members) of the senate;

(II) [Fill in number] appointed by the minority leader of the senate, [fill in number] of whom may be (a member) (members) of the senate;

(III) [Fill in number] appointed by the speaker of the house ofrepresentatives, [fill in number] of whom may be (a member) (members) of the house of representatives; and

(IV) [Fill in number] appointed by the minority leader of the house of representatives, [fill in number] of whom may be (a member) (members) of the house of representatives.

(b) **Optional language on qualifications can be added here.**

(c) The president of the senate shall select the chairperson of the board, and the speaker of the house of representatives shall select the vice- chairperson ofthe board.

(d) Appointments shall be made no later than [fill in time frame].

(e) **Option #1** -- All members ofthe board shall serve without compensation.

Option #2 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings.

Option #3 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings, and members who are legislators shall be paid per them as other members of interim committees in attendance at meetings.

(Alternative #3: All legislative members appointed by President and Speaker -- no additional qualifications are included since being a member of the GA is the only qualification)

(2) (a) The board shall consist of [fill in number] members of the general assembly appointed as follows:

(I) [Fill in number] appointed by the president of the senate, no more than [fill in number] of whom are members of the same political party; and

(II) [Fill in number] appointed by the speaker of the house of representatives, no more than [fill in number] of whom are members of the same political party.

(b) The president of the senate shall select the chairperson of the board, and the speaker of the house of representatives shall select the vice- chairperson of the board.

(c) Appointments shall be made no later than [fill in time frame].

(d) Members of the board shall be reimbursed for necessary expenses incurred in connection with attendance at meetings and shall be paid the same per them as other members of interim committees in attendance at meetings. (Optional: All reimbursements and per them shall be paid out of available appropriations to the general assembly.)

(Alternative #4: All members appointed by President and Speaker

(2) (a) The board shall consist of [fill in number] members appointed as follows-

(I) [Fill in number] appointed by the president of the senate, [fill in number] of whom may be (a member) (members) of the senate;

(II) [Fill in number] appointed by the speaker of the house of representatives, [fill in number] of whom may be (a member) (members) of the house of representatives.

(b) **Optional language on qualifications can be added here.**

(c) The president of the senate shall select the chairperson of the board" and the speaker of the house of representatives shall select the vice-chairperson of the board.

(d) Appointments shall be made no later than [fill In time frame].

(e) **Option #1** -- All members of the board shall serve without compensation.

Option #2 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings.

Option #3 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings, and members who are legislators shall be paid per them as other members of interim committees in attendance at meetings.

(Alternative #5: Members appointed by governor, president, and speaker -- should be more appointees by governor than general assembly if the board is performing executive functions)

(2) (a) The board shall consist of [fill in number] members appointed as follows-

(I) [Fill in number] appointed by the governor;

(II) [Fill in number] appointed by the president of the senate, [fill in number] of whom may be (a member) (members) of the senate; and

(III) [Fill in number] appointed by the speaker of the house of representatives, [fill in number] of whom may be (a member) (members) of the house of representatives.

(b) **Optional language on qualifications can be added here**

(c) The (governor) (members of the board) shall select the chairperson and vice-chairperson of the board.

(d) Appointments shall be made no later than [fill in time frame].

(e) **Option #1** -- All members of the board shall serve without compensation.

Option #2 -- Members shall be reimbursed for necessary expenses incurred in connection with the performance of their duties.

Option #3 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings, and members who are legislators shall be paid per them as other members of interim committees in attendance at meetings.

(Alternative #6: Members appointed by governor with president and speaker appointing legislator members only -- should be more appointees by governor than general assembly if the board is performing executive functions)

(2) (a) The board shall consist of [fill in number] members appointed as follows:

(I) [Fill in number] appointed by the governor;

(II) [Fill in number] members of the senate appointed by the president of the senate, no more than [fill in number] of whom are members of the same political party; and

(III) [Fill in number] members of the house of representatives appointed by the speaker of the house of representatives, no more than [fill in number] of whom are members of the same political party.

(b) **Optional language on qualifications can be added here**

(c) The (governor) (members of the board) shall select the chairperson and vice-chairperson of the board.

(d) Appointments shall be made no later than [fill in time frame].

(e) **Option #1** -- All members of the board shall serve without compensation.

Option #2 -- Members shall be reimbursed for necessary expenses incurred in connection with the performance of their duties.

Option #3 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings, and members who are legislators shall be paid per them as other members of interim committees in attendance at meetings.

(Alternative #7: Members appointed by governor and legislative leaders -- should be more appointees by governor than general assembly if the board is performing executive functions)

(2) (a) The board shall consist of [fill in number] members appointed as follows:

(I) [Fill in number] appointed by the governor;

(II) [Fill in number] appointed by the president of the senate, [fill in number] of whom may be (a member) (members) of the senate;

(III) [Fill in number] appointed by the minority leader of the senate, [fill in number] of whom may be (a member) (members) of the senate-,

(IV) [Fill in number] appointed by the speaker of the house of representatives, [fill in number] of whom may be (a member) (members) of the house of representatives; and

(V) [Fill in number] appointed by the minority leader of the house of representatives, [fill in number] of whom may be (a member) (members) of the house of representatives.

(b) **Optional language on qualifications can be added here**

(c) The (governor) (members of the board) shall select the chairperson and vice-chairperson of the board.

(d) Appointments shall be made no later than [fill in time frame].

(e) **Option #1** -- All members of the board shall serve without compensation.

Option #2 -- Members shall be reimbursed for necessary expenses incurred in connection with the performance of their duties.

Option #3 -- Members shall be reimbursed for necessary expenses incurred in attendance at board meetings, and members who are legislators shall be paid per them as other members of interim committees in attendance at meetings.

There may be other alternatives than the 7 listed above.

(3) The board shall hold its first meeting no later than [fill in time frame] and 11 shall meet at least [(monthly) (every two months), etc.].

(4) **(Optional language if the board has specific duties other than those stated subsection (1) stating the purpose and objective or if there are specific issues to be studied by the board)** The board shall (have the following duties) (study the following issues):

(a) [Fill in duties and responsibilities or issues to be studied]

(5) (The legislative council staff), (the office of legislative legal services), (the joint budget committee staff), (the staff of the [fill in executive department, division, agency, etc.]) shall provide staff assistance to the board in carrying out its duties and responsibilities pursuant to this section. The [fill in appropriate staff agency] shall be responsible for working with the chairperson of the board in determining dates and agendas for meetings of the board. (Optional language -- All staff assistance shall be provided within available appropriations to the agency.)

(6) Recommendations made by the board shall be presented to the (general assembly) (governor and the general assembly) no later than [fill in date]. Recommendations of the board that require legislative changes shall be proposed in the form of (one bill) (one or more bills). Proposed legislation shall be presented to the legislative council in the same manner as legislation recommended by an interim legislative council committee and, if approved by the legislative council, shall be treated as interim committee legislation for purposes of bill limitations and introduction deadlines imposed by the Joint rules of the general assembly.

(7) This section is repealed, effective [fill in date].

MEMORANDUM

January 15, 1997

TO: Office of Legislative Legal Services

FROM: Executive Committee of Legislative Council

RE: Use of Safety Clauses [Executive Committee Memo]

For bills prepared after this date, we are hereby directing your Office to implement the following procedures regarding **Safety Clauses**:

(1) You should **no longer assume that members want a safety clause** on their bills. You should **ask each member** making a bill request **whether or not the member wants to include a Safety Clause**.

(2) You should inform the member that a Colorado Supreme Court decision indicates that **bills without a Safety Clause cannot take effect prior to the expiration of the ninety-day period following adjournment** of the General Assembly, the period that is allowed for filing referendum petitions against such bills.

(3) In view of the ninety-day requirement for bills without a safety clause, you should be sure to **inform the members**, particularly newly elected members, that **there are certain bills that may need to take effect on July 1 or before**. These could include bills imposing new criminal penalties and bills that relate to fiscal or tax policy that are intended to apply to either the current fiscal year or to the entire upcoming fiscal year.

(4) For bills that are prepared without a Safety Clause, you should include a standard clause that expresses an effective date for the bill in the context of the requirement for the ninety-day period, unless the member directs otherwise.

MEMORANDUM

January 26, 1999

TO: Members of the General Assembly

FROM: Office of Legislative Legal Services

RE: Use of Safety Clauses [OLLS Memo]

Pursuant to a directive from the Executive Committee, **we must ask you whether or not you want a safety clause on each bill that you request**. To assist you in making a decision, we are providing you with the following information:

If a bill does not contain a safety clause:

- Assuming that a referendum petition is not filed against the bill or any part of it, the earliest the bill can take effect is the day after the expiration of the 90-day period following adjournment.
- If a referendum petition containing sufficient signatures is filed against all or any part of the bill within the 90-day period, the bill or part cannot take effect until approved by the voters at an even-year, statewide election.

If a bill contains a safety clause:

- The bill is not subject to the citizens' right to file a referendum petition against all or any part of a bill.[1]
- The bill can take effect immediately after the Governor signs it or allows it to become law without his signature. This may be necessary for bills that: (1) Affect the current fiscal year or that must take effect on the next July 1; or (2) Address problems that require an immediate change in the law. In addition, bills imposing new criminal penalties often have a July 1 effective date.

[1] This right is recognized in section 1 (3) of article V of the state constitution.

LEGAL MEMORANDUM

TO: Representative Morgan Carroll

FROM: Office of Legislative Legal Services

DATE: January 18, 2008

SUBJECT: Safety Clauses and Effective Date Clauses[2]

Executive Summary

The language of the safety clause is derived from an exception to the referendum power contained in section 1 (3) of Article V of the Colorado constitution. The exceptions are for: 1) Laws "necessary for the immediate preservation of the public peace, health, and safety"; and (2) Appropriations for the support and maintenance of the departments of state and state institutions.

Caselaw surrounding the utilization of the safety clause in legislation has held that the General Assembly may prevent a referendum to the people by declaring that an act is "necessary for the immediate preservation of the public peace, health, and safety" and that the General Assembly is vested with exclusive power to determine that question. The question of including the safety clause in legislation is a matter of debate in the legislative process and the body's decision cannot be reviewed or called into question by the courts.

From the mid-1930's until the mid-1990's, the inclusion of the safety clause was presumed. However, in January 1997, as a result of questions raised by legislators and the public, the Executive Committee of Legislative Council directed the Office of Legislative Legal Services to implement new procedures whereby a safety clause is included only upon direction of the requesting member. The 1997 directive requires the Office to advise members in connection with utilizing the safety clause depending on the type of legislation. The General Assembly may want to re-examine the 1997 directive to the Office, the bill examples in the directive, and whether it places sufficient emphasis on the impact of the use of a safety clause.

[2]This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

I. Background

At your request, this memo is being written to explain the origin of the safety clause, the case law on the use of the safety clause in legislative bills, the legislative practice on the use of the safety clause, and the consequences or drafting issues that arise when a safety clause is or is not used in a bill enacted by the General Assembly. The memo also discusses recent developments.

II. Origin of the Safety Clause

A safety clause is a clause placed at the end of a legislative bill. The text of the safety clause is as follows:

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

The language of the safety clause is derived from an exception to the referendum power contained in section 1 (3) of Article V of the Colorado constitution. The use of a safety clause arises out of the provisions of subsections (1) and (3) of section 1 of Article V of the Colorado Constitution relating to the power of the people to use the referendum process against any act or portion of an act passed by the General Assembly. As originally adopted by the people, the Colorado Constitution vested the legislative power in the General Assembly and the General Assembly alone. In 1910, Colorado adopted an amendment to the state constitution that gave the people the right to propose laws (the right of the initiative) and the right to approve or reject the laws passed by the General Assembly (the right of the referendum).

Article V, section 1 (1) and (3), of the Colorado Constitution provide:

> **Section 1. General assembly - initiative and referendum.** (1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, *but the people* reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and *also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.*
>
> (3) *The second power hereby reserved is the referendum, and it may be ordered,* ***except as to laws necessary for the immediate preservation of the public peace, health, or safety,*** *and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors* in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election *or by the general assembly*. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general

> assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative. (emphasis added)

Subsections (1) and (3) provide for two types of referendum:

- The General Assembly may refer statutes to the voters in a statewide election by attaching a referendum clause to a bill;[3] or

- The voters may submit a petition to the Secretary of State signed by registered electors equal to five percent of the total number of votes cast for the Secretary of State in the previous general election[4] requesting a referendum vote against any act or item, section, or part of any act of the General Assembly.

The type of referendum exercised by the voters has been called a "rescission" referendum. In effect, it means that a specified number of registered electors can sign petitions and provide the electorate with the opportunity to *rescind* all or part of a statute.

Subsection (3) provides two exceptions to this "rescission" referendum:

- Laws "necessary for the immediate preservation of the public peace, health, and safety"; and

- Appropriations for the support and maintenance of the departments of state and state institutions.[5]

III. Colorado Case Law on the Use of Safety Clauses

The case law in Colorado is well-settled that a legislative body may prevent a referendum to the people by declaring that the act is "necessary for the immediate preservation of the public peace, health, and safety" and that the legislative body is vested with exclusive power to determine that question. While the use of the safety clause is certainly a matter of debate in the legislative process by the individual members, once that question has been decided by the legislative body, that decision stands and the judiciary will not overturn it.

Specifically, in 1913, the Colorado Senate asked the Colorado Supreme Court whether the General Assembly could lawfully prevent a proposed act on the eight-hour law for persons employed in mines from being referred to the voters by the use of a safety clause declaring

---

[3] Such a bill is often referred to as a "referred bill".

[4] This number varies based upon the election. For 2007-08, the number of signatures required for a statewide initiative or referendum petition is 76,047.

[5] The Office of Legislative Legal Services issued a memorandum dated February 3, 1995, to Senator Elsie Lacy on the appropriations exception entitled "Applicability of constitutional referendum provisions to appropriations bills".

that the act was a law necessary for the immediate preservation of the public health and safety. In *In re Senate Resolution No. 4*, 54 Colo. 262, 130 P. 333 (1913), the Supreme Court held that the General Assembly had the authority under the constitutional language to make such a determination and that "such declaration is conclusive upon all departments of government, and all parties, in so far as it abridges the right to invoke the referendum."[6] The General Assembly passed the bill that was the subject of the interrogatory in *In re Senate Resolution No. 4.* Subsequently, the Supreme Court addressed the issue of whether the General Assembly could use the safety clause to except a bill from the referendum and whether the legislature or the judiciary had the authority to make this determination. In *Van Kleeck v. Ramer*, 62 Colo 4, 156 P. 1108 (1916), the Colorado Supreme Court noted that except as limited by the federal or the state constitutions, the authority of the General Assembly is plenary and the judicial branch cannot exercise any authority or power except that granted by the Constitution. The Supreme Court noted that under article V, section 1, the constitution provided that the power of the referendum may be ordered "except as to laws necessary for the immediate preservation of the public peace, health or safety". The Court held that during the process of the enactment of a law the legislature is required to pass upon all questions of necessity and expediency connected with a bill:

> The existence of such necessity is a question of fact, which the general assembly in the exercise of its legislative functions must determine; and under the constitutional provision...that fact cannot be reviewed, called in question, nor be determined by the courts....The general assembly has full power to pass laws for the purposes with respect to which the referendum cannot be ordered, and when it decides by declaring in the body of an act that it is necessary for the immediate preservation of the public peace, health or safety, it exercises a constitutional power exclusively vested in it, and hence, such declaration is conclusive upon the courts in so far as it abridges the right to invoke the referendum.[7]

The Court responded to the argument that the people would be deprived of the right to refer a law, if the legislature either intentionally or through mistake, declares falsely or erroneously that a law is necessary for the immediate preservation of the public peace, health or safety. The Court said:

> The answer to this proposition is, that under the Constitution the general assembly is vested with exclusive power to determine that question, and its decision can no more be questioned or reviewed than the decisions of this court in a case over which it has jurisdiction.[8]

---

[6] *In re Senate Resolution No. 4*, 54 Colo. 262, 271, 130 P. 333, 336 (1913).

[7] *Van Kleeck v. Ramer,* 62 Colo. 4, 10-11, 156 P. 1108, 1110 (1916).

[8] *Id.* at 11-12, 156 P. at 1111.

The *Van Kleeck* case has been cited in four other Colorado cases involving the use of the public exception clause in municipal ordinances or actions taken by a governmental body.[9]

IV. Legislative Practice on Using the Safety Clause

Sometime in the mid-1930's, the use of the safety clause in bills became a regular practice of the General Assembly. The inclusion of the safety clause was presumed.

In the mid-1990's, questions were raised regarding the practice of the General Assembly in using the safety clause. The criticism generally was: That the General Assembly was preventing the right of the people to do rescission referendums; and that bills to which the General Assembly had attached a safety clause were not truly measures critical to the immediate preservation of the public peace, health, or safety.

Legislators also began asking the Office of Legislative Legal Services (hereafter the "Office") to not include safety clauses on their bills.

In January of 1997, the Executive Committee of Legislative Council directed the Office to implement a new procedure regarding safety clauses. A copy of the directive is attached [see page F-23 of this Appendix F]. The directive, which has been continued to the present day, changed the default position of the Office from automatic inclusion of a safety clause to inclusion only upon direction of the requesting member. The directive requires drafters to specifically ask every member whether or not they want a safety clause. The practice of the Office has been to attempt to ask the question either when a legislator initially files the bill request with the Office or prior to putting the bill on billpaper for introduction.

V. Issues for Consideration in Using a Safety Clause under the Executive Committee's Directive

The decision to place a safety clause on a bill should not be made lightly. By exercising this exception, the General Assembly prevents the people from exercising their constitutional right to petition and vote on whether an act or a part of an act passed by the General Assembly should become law.

The 1997 directive directs the Office to inform the members to consider that some bills may require a safety clause if it is necessary for the bills to take effect on or before July 1.

Some of the drafting issues to be considered by a sponsor who elects to not use a safety clause on a bill include the following:

---

[9] *Fladung v. City of Boulder,* 160 Colo. 271, 417 P. 2d 787 (1966); *Enger v. Walker Field,* 181 Colo. 253, 508 P. 2d 1245 (1973); *McKee v. Louisville,* 200 Colo. 525, 616 P.2d 969 (1980); *Cavanaugh v. State, Dept. of Social Services,* 644 P. 2d 1 (Colo. 1982).

Does the bill have an effective date? As noted in the 1997 directive, in *In re Interrogatories of the Governor*, 66 Colo. 319, 181 P. 197 (1919), the Colorado Supreme Court held that, in order to allow the opportunity for filing a "rescission" referendum petition for ninety days after the legislative session, any bill without a safety clause could not take effect for ninety days. Because of that decision, the Office is directed to inform the member that if he or she wants to be sure that a bill adopted by the General Assembly and approved by the Governor would take effect prior to the ninety-first day after the session, the bill would need to have a safety clause.

This advice is based on the position that the holding in the case cited above means that a bill could not specify an effective date before or during the 90-day period. The rationale for this position is that it would lead to absurd results if a bill was purported to become effective and have consequences imposed under the terms of the bill on one date only to have the bill become ineffective, pending an election, if a petition is filed.

Does a particular bill require a safety clause? The 1997 directive indicates that examples of bills that a member might consider necessary to take effect prior to the end of the 90-day period following adjournment include bills that impose new criminal penalties or bills that relate to fiscal or tax policy that are intended to apply to either the current fiscal year or to the entire upcoming fiscal year.

What should the bill use in lieu of a safety clause? For bills that do not have a safety clause, the Office was directed to develop a series of standard clauses that express an effective day for the bill in the context of the 90-day period to provide for certainty about when a bill takes effect. These effective date clauses build in the contingencies that might occur if a referendum petition is filed, if an election is held and approved by the people, and when the official declaration of the vote is proclaimed by the people.

For example, if a member elects to not have a safety clause and it is intended that the bill take effect *at the earliest possible date*, then the following general effective date clause is used in the bill:

> **SECTION __. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

The clause above may be customized to add an applicability clause or a statement that a bill takes effect on a specified fixed date subsequent to the expiration of the 90-day period following adjournment.

VI. Recent Developments.

In recent years, increased attention has been focused on the appropriateness of the use of safety clauses. This has particularly been the case when a safety clause is used solely for the purpose of having a bill take effect coincidentally with the start of a fiscal year that commences on July 1 following a legislative session. Accordingly, the General Assembly may want to direct that the Office re-examine the bill examples contained in the 1997 directive for the purpose of providing more appropriate and clearer assistance to the members when they are making their judgements about whether or not to include a safety clause.

As previously noted in this memorandum, court decisions indicate that the determinations made by the General Assembly regarding the appropriateness of the use of safety clauses are solely the prerogative of the body. However, since this issue has not been formally addressed since 1997, the General Assembly may also want to assess whether the 1997 directive has required this Office and the members to place sufficient emphasis on the fact that the use of a safety clause is in derogation of the right to seek a referendum petition.

MEMORANDUM
BILL TITLES - SINGLE SUBJECT AND ORIGINAL PURPOSE REQUIREMENTS

[Last Revision: November 20, 1997]

This memorandum is intended to provide guidance regarding the single subject and original purpose requirements for bills under the Colorado Constitution. This memorandum discusses the following topics:

I. The single subject and original requirements for bills and bill titles;

II. Factors that should be considered by the Colorado General Assembly when there is a question whether an amendment to a bill fits within the title of the bill; and

III. Title opinions.

I. SINGLE SUBJECT AND ORIGINAL PURPOSE REQUIREMENTS

(1) CONSTITUTIONAL REQUIREMENTS FOR BILL TITLES

Article V, sections 21 and 17 of the Colorado Constitution provide as follows:

> **Section 21. Bill to contain but one subject - expressed in title.** No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

> **Section 17. No law passed but by bill - amendments.** No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Sections 17 and 21 are constitutional rules of legislative procedure. The "subject" of a bill and its "original purpose" are similar concepts. An amendment that alters the original purpose of a bill may well cause the bill to embrace two subjects.

These sections of the Colorado Constitution mandate that each bill contain one subject and that the single subject be clearly expressed in the bill title. In addition, these provisions appear to place fairly strict limits on the types of extraneous amendments that may be added as a bill moves through the legislative process. It is generally agreed that the purpose of

these provisions is to focus debate on pending legislative measures and to avoid "log-rolling" (the joining together of unrelated measures to gain votes for passage of a measure). Another purpose is to provide helpful public notice of the contents of a bill. The importance of these rules is illustrated by the constitutional requirement in Section 21 that failure to comply will invalidate the portion of a bill that is not expressed in the bill title.

Pursuant to these mandates, the Office of Legislative Legal Services (OLLS) has adopted a general policy of composing bill titles in a manner that states the single subject at the beginning of the bill title. To help identify clearly a bill's single subject, a comma is often placed at the end of the subject. Another common practice is to avoid the words "and" and "or" in stating the single subject because these words connote more than one subject. Sometimes additional information is provided after the comma as a "trailer". While trailers must be "germane", or related, to the single subject, the words of the trailer generally are not part of the statement of the single subject.

The OLLS attempts to follow these practices as practicable. These practices have helped members and the public in the application of Sections 17 and 21 and have become generally accepted over a period of many years.

(2) "TIGHT" TITLES

Close adherence to the Colorado legislative custom and practice relating to composition and strict construction of bill titles has contributed to the time-honored practice of employment of "tight" titles. "Tight" titles narrowly express the single subject and purpose of a bill. Sponsors request tight titles anticipating that amendments that do not "fit" within the narrow statement will be deemed out of order during the legislative process. Of course, the tight titles themselves must comply with the mandates of Sections 17 and 21 of Article V.

(3) APPLICATION OF SECTIONS 17 AND 21 IN THE LEGISLATIVE PROCESS AND IN THE COURTS

The OLLS has observed that the requirements of Sections 17 and 21, and the attendant legislative customs and usage, are more often strictly applied in the legislative process. Since these rules are rules of legislative procedure, this seems entirely appropriate.

The courts apply Sections 17 and 21 in a different context than the General Assembly. The courts consider these provisions in legal proceedings after the presumption of constitutionality has attached to the enacted law in question. This has resulted in a more lenient application of the requirements of these sections in judicial proceedings. Only in the most extreme case will an enacted law be ruled unconstitutional by a court on this basis.

(4) CONSEQUENCES OF DEPARTURE FROM THE MANDATES OF SECTIONS 17 AND 21 AND LEGISLATIVE CUSTOM AND USAGE

If the constitutional mandates regarding bill subjects titles and the legislative custom and usage arising from these mandates are not observed in the legislative process, the consequences include:

- Loss of predictability in the consideration of bills;

- Frustration of the purposes of the constitutional mandates, such as focusing debate, avoiding log-rolling, and providing adequate public notice;

- Deprivation of a member's ability to address issues in a limited context through the use of a "tight" title;

- The possibility of increased litigation over bills already passed, with the attendant uncertainty of application of laws; and

- Erosion of the public's confidence in the legislative process.

It cannot be said with certainty in every case that departure from the rules will invalidate a bill. However, in view of the consequences outlined above, we recommend compliance with the rules and with the practices that encourage compliance with those rules. These practices have proven themselves over the long term and are rooted in the integrity of the legislative process.

II. DETERMINING WHETHER AMENDMENTS FIT WITHIN BILL TITLES

To determine whether an amendment fits within a bill title, the following questions should be addressed:

(1) DOES THE AMENDMENT FIT WITHIN THE SINGLE SUBJECT OF THE BILL EXPRESSED IN THE BILL TITLE?

Under the Colorado Constitution, no bill (other than a general appropriation bill) containing more than a single subject may be passed by the General Assembly, and the single subject of a bill must be expressed in the bill's title. Colo. Const., Art. V, § 21. If this provision of the Constitution is violated in an act, then the portions of the act that are not within the title are void. *People ex rel. Seeley v. Hull,* 8 Colo. 485, 9 P. 34 (1885). However, the Colorado Supreme Court has stated that this section of the Constitution should be liberally and reasonably interpreted so as to avert the evils against which it is aimed, while at the same time not unnecessarily obstructing legislation. *In re Breene,* 14 Colo. 401, 758 P.2d 1356 (1890).

In determining whether an amendment fits within the single subject expressed in the title of the bill, the following should be considered:

(a) IS THE AMENDMENT "GERMANE" TO THE SUBJECT MATTER OF THE BILL? -- The Colorado Supreme Court has found that whether an amendment fits within the title of a bill is dependent on whether the amendment is "**germane**" to the subject expressed in the title of the bill. *Bd. of Comm'rs v. Bd. of Comm'rs,* 32 Colo. 310, 76 P. 368 (1904). The Court has further found that in this context "germane" means "**closely allied**", "**appropriate**", or "**relevant**". *Roark v. People,* 79 Colo. 181, 48 P.2d 1013 (1935); *Dahlin v. City & County of Denver,* 97 Colo. 239, 48 P.2d 1013 (1935). The Court has stated that if the matters contained in a bill are "**necessarily or properly connected to each other**", rather than being "**disconnected or incongruous**", then the provisions of Section 21 of the Constitution are not violated. *In re House Bill No. 1353,* 738 P.2d 371 (Colo. 1987).

(b) MAY THE TITLE OF THE BILL BE MODIFIED TO ACCOMMODATE THE AMENDMENT? -- The title to a bill may be narrowed by amendment. If a bill title has been narrowed during the legislative process, then the practice and understanding in the General Assembly has been that the bill title may then be broadened by amendment as long as the amendment does not broaden the single subject or the original purpose of the bill as it was introduced.

The original subject matter of a bill, as expressed in the title of the bill, may not be broadened, although the title may be amended to cover the original purpose of the bill as extended by amendments. *In re Amendments of Legislative Bills,* 19 Colo. 356, 35 P. 917 (1894). This may mean that, while the subject of the bill expressed in the title may not be broadened, the trailer to the title, if any, may be modified when the bill is amended. In view of the constitutional implications that may arise if the single subject or original purpose of a bill is changed, the safest course of action is to avoid broadening the single subject of a bill expressed in the title, while making changes to the trailer as necessary to reflect changes made to the bill.

(2) WOULD THE AMENDMENT CHANGE THE ORIGINAL PURPOSE OF THE BILL AS IT WAS INTRODUCED IN THE GENERAL ASSEMBLY?

The Colorado Constitution prohibits any amendment that changes the **original purpose** of a bill. Colo. Const., Art. V, § 17. The courts have found that this provision does not prohibit an amendment that **extends the provisions of the bill** without changing the original purpose. *In re Amendments of Legislative Bills,* 19 Colo. 356, 35 P. 917 (1894). Further, an amendment to a bill does not violate this section if the amendment is **a change in the means of accomplishing** the bill's original purpose. *Parrish v. Lamm*, 758 P.2d 1356 (Colo. 1988).

(3) ARE THE CONSTITUTIONAL STANDARDS FOR AMENDMENTS APPLIED STRICTLY?

The General Assembly has normally applied the constitutional standards for amendments in a strict fashion, while the courts, when making similar determinations regarding laws that have been enacted, have shown deference to the judgment of the General Assembly. The presumption is that laws that have been enacted are constitutional, and a person who challenges the constitutionality of a statute must prove the unconstitutionality beyond a reasonable doubt. *People v. Rowerdink,* 756 P.2d 986 (Colo. 1988). For this reason, the final outcome reached by a court regarding an amendment should be considered within the appropriate context of the decision and not be applied directly to the legislative process.

EXAMPLES OF TITLE QUESTIONS:

Example 1: The bill title is "Concerning fruit." and the bill as introduced deals with apples and pears. The amendment would add a provision concerning oranges. To determine whether the amendment fits within the title of the bill, it is necessary to determine whether oranges are germane to the subject of fruit and whether this amendment would change the original purpose of the bill. As oranges are a type of fruit, this amendment apparently is germane to the subject of the bill as expressed in the title. Oranges are closely allied with and relevant to the subject of fruit. Further, the addition of oranges appears to extend the provisions of the bill without changing the original purpose of the bill.

Result: The amendment fits within the title of the bill.

Example 2: The bill title is "Concerning apples." and the bill as introduced deals only with apples. The amendment would add a provision concerning oranges. In this case, the question is whether oranges are germane to the subject "apples". Oranges do not appear to be relevant to or closely allied with apples. The original purpose of the bill now regards the more narrow subject of apples, and the addition of oranges apparently will modify this original purpose, rather than simply extending the provisions of the bill or changing the means of accomplishing the original purpose.

Result: The amendment is not within the title of the bill.

Example 3: The bill title is "Concerning fruit, and, in connection therewith, providing for apples and peaches." and the bill as introduced deals only with apples and peaches. The single subject expressed in the title is "Concerning fruit", while the remainder of the title is the trailer. The amendment would add a provision concerning oranges. Oranges appear to be germane to the bill subject as oranges are closely allied with and relevant to the subject of fruit. However, if the amendment is adopted, the original title may no longer accurately describe the subject matter of the bill unless the trailer to the title is also amended.

Result: The amendment is within the title of the bill. The trailer to the title may be modified to reflect the amendment, such as amending the trailer to read: "and, in connection therewith, providing for apples, peaches, and oranges."

III. TITLE OPINIONS

In February of 1995, concern was expressed during a meeting of the Executive Committee of the Legislative Council about opinions of OLLS staff as to whether an amendment would be appropriate under the title of a bill. Discussion focused on the fact that asking for a title opinion may place OLLS staff in an awkward situation that is inappropriate for nonpartisan staff personnel. An OLLS staff member should bring any potential title issues to the attention of his or her team leader and Doug Brown or Becky Lennahan as soon as the issues arise.

The Executive Committee provided the OLLS with the following guidance concerning the issuance of title opinions:

1. An OLLS staff person should continue to consider title issues carefully when drafting bills and amendments and should advise a member when the member requests an amendment that may be beyond the title of a bill.

2. Once a bill or amendment is drafted, the OLLS staff should handle requests for title opinions as follows:

- An OLLS staff member may provide the member with an answer to a title questions, but the staff member should make it clear to the member that **the opinion is advisory only and is not binding on a committee chair or the chair of the committee of the whole**.

- An OLLS staff person should not put title opinions in writing unless the member insists. In this situation, the member should be advised that the OLLS will speak with the members of the Executive Committee from the member's house prior to writing the title opinion.

Note: This is an outline of a presentation by Alice Boler Ackerman for the OLLS in-house training program. The last presentation was made in the fall of 1997. The outline has been updated and is current as of September 1999.

STATUTORY LEGISLATIVE DECLARATION AND INTENT STATEMENTS: THE COLORADO PERSPECTIVE

1. To Include or not Include - That is the Bill Drafter's Dilemma
   - a. There are no rules for including legislative declaration or legislative intent statements in the Colorado drafting manual but here are some "informal" rules.
     - i. A statement should not be characterized as "legislative intent" when it is really a "legislative declaration" and vice versa.
     - ii. A legislative intent statement should accurately reflect the intent of the General Assembly and remain accurate as the bill is amended in the legislative process.
     - iii. A legislative intent statement should not create any kind of right or prohibit any action and not otherwise create substantive law.
     - iv. A legislative intent statement should not be ambiguous.
     - v. A legislative intent statement should not be a substitute for precise and accurate legislative bill drafting.
   - b. Read Legislative Lawyer article
   - c. Purpose of presentation
     - i. Make sure you understand the difference between legislative declaration and legislative intent statements and the different types of statements.
     - ii. Think about whether legislative declaration sections are included in bills at the member's insistence or are you just in the habit of including them.
     - iii. Think more about how to discourage members who are insisting on a legislative declaration or legislative intent statement.
     - iv. Think more about the actual words used in legislative declarations - are they true or do you just think they are true -- do the words accurately reflect the G.A.'s intent.
     - v. Think about whether you are making substantive statements in a legislative declaration section or creating any kind of substantive right.

2. Why Legislators ask for Legislative Declaration Statements or Legislative Intent Statements
   - a. Use facts to justify enactment of the bill and promote its passage
   - b. Provide a brief summary of the bill

c. Provide information to public and guide those who are to administer the law

d. If challenged constitutionally, set forth a justification that will stand up in court

3. Legislative Declaration Statements vs. Legislative Intent Statements

a. Is there a difference?

i. Declaration

(1) Dictionary definition - Explicit or formal statement or announcement

(2) Statement of the reasons for a desired result

ii. Intent

(1) Dictionary definition - That which is intended; aim; purpose; state of mind operative at the time of an action

(2) Statement of the desired result

b. Is there a "real" difference?

i. Legislative declaration statements ("The general assembly hereby finds and declares . . .) occur more often in Colorado statutes than legislative intent statements. ("The general assembly intends . . ." or "It is the intent of the general assembly . . .): Approximately 550 references versus approximately 275 references

ii. Most legislative intent statements are found under statutory sections entitled "**Legislative declaration.**"

iii. Sometimes legislative declaration statements are really legislative intent statements.

4. Types of Legislative Declaration and Legislative Intent Statements

a. "Fluff" or "feel good" statements

i. Example: Establishment of state folk dance -- "joyful expression of the vibrant spirit of the people of the United States and the American people value the display of etiquette among men and women, which is a major element of square dancing"; "It is fitting that the square dance be added to the array of symbols of our state character and pride."

ii. Inclusion as nonstatutory material

b. "Good public policy" or "goal" statements

i. Statements with "no teeth"

ii. Examples:

(1) Encourage non-English-speaking citizens to vote -- 1-1-103 (2), C.R.S. Question: Does making it easier to register really "encourage people to vote"?

(2) Encourage attendance at baseball games by limiting liability -- 13-21-120 (2), C.R.S.

(3) Right of homeless child to educational opportunities -- 22-1-102.5, C.R.S. Question: Is there really a need to single out the education of a homeless child? Not really - the problem here is that the state is required to offer all children a free public education - the law says a child goes to school in the school district in which she and her parents reside - if you are homeless you have no residence, so where do you go to school? - that is the problem the GA which trying to resolve - was there a need to explain that?

(4) Privatization of government services not to result in diminished quality -- 24-50-501, C.R.S.

c. Substantive statements

i. Inclusion solely to show intent

(1) Statements of what the general assembly did intend

(a) Reinstatement of death penalty -- 16-11-801, C.R.S.

(b) Extension of statute of limitations -- 13-80-103.7, C.R.S.

(2) Statements of what the general assembly did not intend

(a) Change of term "visitation" to "parenting time" -- 14-10-103 (3), C.R.S.

(b) Funding for aviation -- 43-10-109 (2) (c), C.R.S.

ii. Inclusion in anticipation of challenge in court case

(1) Residency requirements -- 8-2-120, C.R.S.

(2) Business incentives ("United Airlines") -- 24-46.5-101, C.R.S.

(3) Implementation of tax and spending limit -- 24-77-101, C.R.S.

iii. Inclusion in response to court cases

(1) Funding of public assistance and welfare programs -- 26-1-126.5 and 2-4-215, C.R.S.

(2) Statutory programs subject to available appropriation -- 2-4-216, C.R.S.

(3) Applicability of statute of limitations for sexual offenses against children -- 16-5-401.1, C.R.S.

iv. Inclusion to show connection between special session call item and proposed bill

(1) HB 91S2-1027 - funding of education and medicaid and changes in tax procedures

v. Substantive statements usually are included as statutory material

5. Role of Legislative Declaration and Legislative Intent Statements

a. Statutory provision clearly provides for their use when a statute is ambiguous

i. **Section 2-4-203. Ambiguous statutes - aids in construction.** (1) If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider among other matters: (g) The legislative declaration or purpose.

b. Court decisions

i. Use of statements in construing scope and effect of statute

(1) "In construing the scope and effect of a statute, [the court must] seek out the intent of the legislature in voting its passage. Perhaps the best guide to intent is declaration of policy which frequently forms the initial part of an enactment". *St. Luke's Hosp. v. Industrial Comm'n*, 142 Colo. 28, 32, 349 P.2d 995, 997 (1960).

ii. Use of statements in determining whether the statute promotes a public purpose

(1) "Although the expressed intent of the legislature has no magical quality which validates the invalid, it is entitled to relevant weight in determining whether the Act promotes a public purpose." *Allardice v. Adams County*, 173 Colo. 133, 147, 476 P.2d 982, 989 (1970).

(2) "We conclude that [section] 10-1-127 (1.5) (a) is a clear expression of public policy that is sufficient to support plaintiff's retaliatory discharge claim." *Flores v. American Pharmaceutical Services, Inc.*, 98CA0158 (July 8, 1999).

iii. Weight to be given statements

(1) "And, in construing statutes courts should ascertain and give effect to intention of the legislature as such is expressed in the statute itself and, conversely, courts should not interpret a law to mean that which it does not express. *People ex rel. Marks v. District Court*, 161 Colo. 14, 24, 420 P.2d 236, 241 (1966).

(2) "Legislative intent which is clearly expressed must be given effect. *Pigford v. People*, 197 Colo. 358, 360, 593 P.2d 354, 356 (1979).

(3) "While the statutory declaration [of the legislature] is relevant, it is not binding". *City and County of Denver v. State of Colorado*, 788 P.2d 764, 768 (Colo. 1990).

iv. Weight to be given statements written subsequent to the statute itself

(1) "While subsequent legislative declarations concerning the intent of an earlier statute are not controlling, they are

entitled to significant weight." *People v. Holland*, 708 P.2d 119, 120-121 (Colo. 1985).

6. Consideration of Specific Legislative Declaration or Legislative Intent Statements by Courts

a. Statements considered but disregarded by court

i. Residency requirements -- "In summary, we hold that the residency of the employees of a home rule municipality is of local concern. Thus, section 8-2-120 does not limit the authority of home rule municipalities to enact charter provisions or ordinances requiring employees to reside within the corporate limits of the municipality as a condition of continuing employment." *City and County of Denver v. State of Colorado*, 788 P.2d 764, 772 (Colo 1990)

b. Statements considered and given weight by court

i. Business incentives -- "The General Assembly has found that "the public purpose to be served by the passage of this article outweighs all other individual interests. On this record, and within this original proceeding, we cannot say that the General Assembly's determination of a predominating public purpose is either in bad faith or erroneous." *In re Interrogatory Propounded by Governor*, 814 P.2d 875, 884 (Colo. 1991).

ii. Statute of limitations -- "We conclude that the specific and explicit statement of legislative intent in section 16-5-401.1 is sufficient to overcome the general presumptions relied on by the trial court . . .". *People v. Holland*, 708 P.2d 119, 121 (Colo. 1985).

iii. Statute of limitations -- "We are satisfied that this specific expression of legislative intent . . . is sufficient to overcome the presumption of prospective operation." *People v. Midgley*, 714 P.2d 902, 903 (1986).

iv. Property tax abatement and refund provisions -- "Under these circumstances, we conclude that, in amending 39-10-114 in 1988, the General Assembly intended to provide taxpayers the opportunity to utilize the abatement and refund provisions for the purpose of challenging an overvaluation." Portofino v. Bd. of Assessment Appeals, 820 P.2d 1157, 1160 (Colo. App. 1981).

c. Statements which create substantive rights

i. General rule is that a legislative intent statement does not confer power or determine rights (See Sutherland's Statutory Construction)

(1) Reproductive Health Services v. Webster (U.S. Supreme Court - 1989) -- Supreme Court reviewed legislative findings in the preamble contained in the Missouri

legislation: 1) "Life of each human being begins at conception" 2) "Unborn children have protectable interests in life, health and well-being" 3) "All Missouri laws must be interpreted to provide unborn children with the same rights enjoyed by other persons . . ."

(2) Spawned strange cases probably unintended by the Missouri Legislature or the U.S. Supreme Court

(a) 2 separate cases brought to dismiss criminal trespass charges against anti-abortion demonstrators - under an 1981 law, persons accused of some crimes, including trespassing, may offer a defense that their actions were justified as an emergency measure to avoid an imminent public or private injury - demonstrators alleged actions were justified by the desire to save the lives of unborn children - charges were dismissed

(b) 20-year old charged with drunk driving argued he should be treated as a 21 year old because his actual age should be calculated from conception, not from birth - argument was rejected in circuit court but was appealed - don't know what happened

(c) Pregnant woman jailed for theft and forgery argued that she should be released since her fetus has been wrongfully imprisoned

ii. Civil rights -- "The relevant portions of that statute [24-34-801] confer new rights and duties, unknown at common law . . . *Silverstein v. Sisters of Charity,* 38 Colo. App. 286, 288, 559 P.2d 716 (1976)

7. Rules from Other States on Use of Legislative Declaration and Legislative Intent Statements

a. North Dakota

i. Legislative intent statements "should not be used".

ii. If bill is properly drafted, the intent is self-evident. Additionally, the declaration of finding or intent may be used for a purpose unintended by the drafter.

b. Wisconsin

i. Statement of legislative intent, purpose or findings "should not be included in a measure"

(1) Redundancy

(2) Conflict

(3) Misuse of undefined terms

(4) Unforseen effects

(5) Misuse of argumentative language

ii. Two exceptions

(1) Recodifications - the usual presumption applied to legislation that amends a statute is that a change in statutory language implies an intentional change in substance. A statement of legislative intent or purpose is appropriate in a recodification bill to rebut this presumption

(2) Constitutionality - following are instances in which statements may aid courts in determining that the challenged statutes had reasonable bases when the presumption of constitutionality alone is insufficient: 1) Where it is alleged that an act conflicts with a specific constitutional prohibition, the statement may recite facts that indicate the act's compliance with the constitutional requirements and indicate the legislative view concerning construction and application of constitutional provisions; and 2) Where it is alleged that an act is unreasonable or arbitrary, a statement may be used to show facts or policy that constitute a reasonable basis for the legislature's classification.

iii. No statement of legislative intent, purpose, or findings may be included in a bill without the approval of the chief counsel.

iv. Wisconsin's rules to use in drafting statements

(1) Facts set forth in a statement of findings must either relate directly to an emergency condition necessitating a specific statute or, if more general, must not appear susceptible to significant change.

(2) Statement of intent or purpose must not grant rights, prohibit actions, establish substantive standards or otherwise create substantive law.

(3) Statement of intent or purpose must pertain only to the particular law in question and relate directly to that law.

(4) Statement of intent or purpose must not be so narrowly drawn that it fails to address all of an act's clearly potential infirmities.

(5) Language of statement of intent or purpose must not be equivocal or ambiguous.

8. Conclusion

1-1-103. Election code liberally construed. (2) It is also the intent of the general assembly that non-English-speaking citizens, like all other citizens, should be encouraged to

vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance.

13-21-120. Colorado baseball spectator safety act - legislative declaration - limitation on actions - duty to post warning notice. (2) The general assembly recognizes that persons who attend professional baseball games may incur injuries as a result of the risks involved in being a spectator at such baseball games. However, the general assembly also finds that attendance at such professional baseball games provides a wholesome and healthy family activity which should be encouraged. The general assembly further finds that the state will derive economic benefit from spectators attending professional baseball games. It is therefore the intent of the general assembly to encourage attendance at professional baseball games. Limiting the civil liability of those who own professional baseball teams and those who own stadiums where professional baseball games are played will help contain costs, keeping ticket prices more affordable.

22-1-102.5. Definition of homeless child. (1) The general assembly hereby finds and declares that, because of the growing number of children and families who are homeless in Colorado, there is a need to ensure that all homeless children receive a proper education. It is the intent of the general assembly that no child shall be denied the benefits of a free education in the public schools because the child is homeless.

24-50-501. Legislative declaration. Recognizing that the adoption of section 20 of article X of the state constitution at the 1992 general election has imposed strict new constraints on state government, it is hereby declared to be the policy of this state to encourage the use of private contractors for personal services to achieve increased efficiency in the delivery of government services, without undermining the principles of the state personnel system requiring competence in state government and the avoidance of political patronage. The general assembly recognizes that such contracting may result in variances from legislatively mandated pay scales and other employment practices that apply to the state personnel system. In order to ensure that such privatization of government services does not subvert the policies underlying the civil service system, the purpose of this part 5 is to balance the benefits of privatization of personal services against its impact upon the state personnel system as a whole. The general assembly finds and declares that, in the use of private contractors for personal services, the dangers of arbitrary and capricious political action or patronage and the promotion of competence in the provision of government services are adequately safeguarded by existing laws on public procurement, public contracts, financial administration, employment practices, ethics in government, licensure, certification, open meetings, open records, and the provisions of this part 5. Recognizing that the ultimate beneficiaries of all government services are the citizens of the state of Colorado, it is the intent of the general assembly that privatization of government services not result in diminished quality in order to save money.

16-11-801. Applicability of procedure for the imposition of sentences in class 1 felony cases. (1) It is the expressed intention of the general assembly that there be no hiatus

in the imposition of the death penalty as a sentence for the commission of a class 1 felony in the state of Colorado as a result of the holding of the Colorado supreme court in People v. Young, 814 P.2d 834 (Colo. 1991). Toward that end, the provisions of section 16-11-103, as it existed prior to the enactment of Senate Bill 78, enacted at the Second Regular Session of the Fifty-sixth General Assembly, to the extent such provisions were not automatically revitalized by the operation of law, are reenacted as section 16-11-802 and are hereby made applicable to offenses committed on or after July 1, 1988, and prior to September 20, 1991.

(2) It is the intent of the general assembly that this part 8 is independent from section 16-11-103 and that if any provision of this part 8 or the application thereof to any person or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the application of section 16-11-103 to any offense committed on or after September 20, 1991.

13-80-103.7. General limitation of actions - sexual assault or sexual offense against a child - six years. (3.5) (d) It is the intent of the general assembly in enacting this subsection (3.5) to extend the statute of limitations as to civil actions based on offenses described in subsection (1) of this section as amended on July 1, 1993, for which the applicable statute of limitations in effect prior to July 1, 1993, has not yet run on July 1, 1993.

(4) It is the intent of the general assembly in enacting this section to extend the statute of limitations as to civil actions based on offenses described in subsection (1) of this section for which the applicable statute of limitations in effect prior to July 1, 1990, has not yet run on July 1, 1990.

14-10-103. Definition and interpretation of terms. (3) On and after July 1, 1993, the term "visitation" has been changed to "parenting time". It is not the intent of the general assembly to modify or change the meaning of the term "visitation" nor to alter the legal rights of a noncustodial parent with respect to the child as a result of changing the term "visitation" to "parenting time".

43-10-109. Aviation fund created. (2) (c) It is not the intent of the general assembly that the moneys available for expenditure pursuant to the provisions of this subsection (2) be used to supplant any federal moneys which may be available to airports, governmental entities operating public-accessible airports, or the division pursuant to federal law.

8-2-120. Residency requirements prohibited for public employment - legislative declaration. (1) The general assembly hereby finds, determines, and declares that the imposition of residency requirements by public employers works to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines, and declares that the right of the individual to work in or for any local government is a matter of statewide concern and accordingly the provisions of this section preempt any provisions of any such local government to the contrary. The general assembly declares that the problem and hardships

to the citizens of this state occasioned by the imposition of employee residency requirements far outweigh any gain devolving to the public employer from the imposition of said requirements.

24-46.5-101. Legislative declaration. (1) The general assembly hereby finds and declares:

(a) That the health, safety, and welfare of the people of this state are dependent upon the continued encouragement, development, and expansion of opportunities for employment in the private sector in this state;

(b) That the economic history of this state has been characterized by a "boom and bust" cycle resulting in severe social and economic dislocation and dramatic fluctuation in economic activity and public revenues;

(c) That diversification of the state's economic base will contribute to much-needed economic stability;

(d) That it is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion of existing businesses, that this state provide additional incentives to entities making a commitment to build and operate new business facilities which will result in substantial and long-term expansion of new employment within this state; and

(e) That the public purpose to be served by the passage of this article outweighs all other individual interests.

24-77-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state at the 1992 general election, limits fiscal year spending of the state government;

(b) It is within the legislative prerogative of the general assembly to enact legislation which will facilitate the operation of section 20 of article X;

(c) It is a legislative prerogative to facilitate compliance with the state fiscal year spending limit and legislation to implement section 20 of article X as it relates to state government is a reasonable and necessary exercise of the legislative prerogative;

(d) In interpreting the provisions of section 20 of article X, the general assembly has attempted to give the words of said constitutional provision their natural and obvious significance;

(e) Where the meaning of section 20 of article X is uncertain, the general assembly has attempted to ascertain the intent of those who adopted the measure and, when appropriate, the intent of the proponents, as well as to apply other generally accepted rules of construction;

(f) The content of this article represents the considered judgment of the general assembly as to the meaning of the provisions of section 20 of article X as it relates to state government.

26-1-126.5. Effect of supreme court's interpretation of section 26-1-126, creating the county contingency fund for public assistance and welfare programs. The general assembly hereby finds and declares that the Colorado supreme court decision entitled Colorado Department of Social Services v. Board of County Commissioners of the County of Pueblo and Samuel J. Corsentino, No. 83SA316, March 11, 1985, which interpreted section 26-1-126 to require the general assembly to fully fund the county contingency fund, leaving no discretion with the general assembly to determine annually the level of funding of said fund, has not been adopted by the general assembly. The general assembly specifically rejects this interpretation and any implication in such decision which would result in any state liability for amounts not appropriated for such fund in previous fiscal years.

2-4-215. Each general assembly a separate entity - future general assemblies not bound by acts of previous general assemblies. (1) The general assembly finds and declares, pursuant to the constitution of the state of Colorado, that each general assembly is a separate entity, and the acts of one general assembly are not binding on future general assemblies. Accordingly, no legislation passed by one general assembly requiring an appropriation shall bind future general assemblies.

(2) Furthermore, the general assembly finds and declares that when a statute provides for the proration of amounts in the event appropriations are insufficient, the general assembly has not committed itself to any particular level of funding, does not create any rights in the ultimate recipients of such funding or in any political subdivision or agency which administers such funds, and clearly intends that the level of funding under such a statute is in the full and complete discretion of the general assembly.

2-4-216. Limitations on statutory programs. (1) When the general assembly creates statutory programs which are not required by federal law and which offer and provide services or assistance or both to persons in this state, the general assembly gives rise to a reasonable expectation that such services or assistance or both will be provided by the state in a manner consistent with the statutes which created the programs. However, the general assembly does not commit itself or the taxpayers of the state to the provision of a particular level of funding for such programs and does not create rights in the ultimate recipient to a particular level of service or assistance or both. The general assembly intends that the level of funding, and thus the level of service or assistance or both, shall be in the full and complete discretion of the general assembly, consistent with the statute which created the program.

(2) In the statutes creating some of these programs, the general assembly expressly conditions any rights arising under such programs by the use of the words "within available appropriations" or "subject to available appropriations" or similar words of limitation. The purpose of the use of these words of limitation is to reaffirm the principles set forth in subsection (1) of this section.

(3) At the time such a program is created, the general assembly appropriates funds for its implementation, taking into account many factors, including but not limited to the availability of revenues, the importance of the program, and needs of recipients when

balanced with the needs of recipients under other state programs. The amount of the initial appropriation indicates a program's priority in relation to other state programs. The general assembly reasonably expects that the priority of the program will be subject to annual changes which will be reflected in the modification of the annual appropriation for the program. If the general assembly desires a substantive change in the program, or to eliminate the program, that can be accomplished by amendment of the statutory law which created the program.

(4) It is the purpose of the general assembly, through the enactment of this section, to clarify that the rights, if any, created through the enactment of statutory programs are subject to substantial modification through the annual appropriation process, so long as the modification is consistent with the statute which created the program.

16-5-401.1. Legislative intent in enacting section 16-5-401 (6) and (7). (1) The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses specified in said subsections committed on or after July 1, 1979.

18-3-411. Sex offenses against children - unlawful sexual offense defined - limitation for commencing proceedings - evidence - statutory privilege. (2) No person shall be prosecuted, tried, or punished for an unlawful sexual offense other than the misdemeanor offense specified in section 18-3-404, unless the indictment, information, complaint, or action for the same is found or instituted within ten years after commission of the offense. No person shall be prosecuted, tried, or punished for a misdemeanor offense specified in section 18-3-404, unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense. The ten-year statute of limitations shall apply to all offenses specified in subsection (1) of this section which are alleged to have occurred on or after July 1, 1979.

Senate Bill 91-231

SECTION 1. Legislative declaration. The general assembly declares that Senate Bill No. 184 was enacted by the fifty-sixth general assembly in the second regular session with the intent of extending to any taxpayer the right to petition for an abatement or refund of property taxes levied erroneously or illegally due to an overvaluation of such taxpayer's property. In an opinion filed on February 7, 1991, the Colorado court of appeals stated that a more definitive statutory clarification was necessary for the general assembly to effectuate a change in the property tax scheme that would allow a taxpayer to petition for an abatement or refund for essentially all errors in valuation. The general assembly further declares that Senate Bill 91-231 was enacted by the fifty-eighth general assembly in its first regular session with the intent of clarifying that said statutory interpretation by the Colorado court of appeals was incorrect and that said right has existed since the enactment of Senate Bill No. 184 and shall continue to exist.

24-34-801. Legislative declaration. (1) The general assembly hereby declares that it is the policy of the state:

(a) To encourage and enable the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment;

(b) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied unless it is shown that the particular disability prevents the performance of the work involved;

(c) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

(d) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled are entitled to full and equal housing and full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, including restaurants and grocery stores; and that the blind, the visually impaired, the deaf, the partially deaf, or the otherwise physically disabled person assume the liability for any injury that he or she might sustain which is attributable solely to causes originating with the nature of the particular disability involved and otherwise subject only to the conditions and limitations established by law and applicable alike to all persons;

(e) That every totally or partially blind person, every totally or partially deaf person, or any otherwise physically disabled person shall have the right to be accompanied by a guide dog, a service dog, or other dog, which dog is especially trained or is being trained by a qualified trainer for the purpose of aiding any such person, in any of the places listed in paragraph (d) of this subsection (1) without being required to pay an extra charge for any such dog; except that he shall be liable for any damage done to the premises or facilities by such dog. Any qualified trainer who is training a dog for use by a totally or partially blind, totally or partially deaf, or physically disabled person shall also have the right to be accompanied by such dog in the same manner and with the same liability as the disabled person; except that such a qualified trainer shall not have the right to be accompanied by a guide or service dog if the dog presents an imminent danger to the public health or safety. Any dog being trained for the purpose of aiding a disabled person shall be visibly and prominently identified as a guide or service dog in training.

(f) That no person who is totally or partially blind, totally or partially deaf, or otherwise physically disabled and who is the owner of a guide dog, service dog, or other dog trained for the purpose of aiding such person shall be required to pay an annual license fee for such dog.

10-1-127. Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration. (1.5) (a) The general assembly finds and declares that insurance fraud is expensive. Insurance fraud increases

premiums and places businesses at risk. Insurance fraud reduces consumers' ability to raise their standard of living and decreases the economic vitality of this state. The general assembly further finds and declares that the state of Colorado must aggressively confront the problem of insurance fraud by facilitating the detection of and reducing the occurrence of fraud through stricter enforcement and deterrence and by increasing the partnership among consumers, the insurance industry, and the state in coordinating efforts to combat insurance fraud.

(b) Colorado has addressed insurance fraud in various statutes, including but not limited to the civil and administrative provisions found in this section, section 10-4-708.6, part 4 of article 2 of this title, parts 1, 2, 9, and 11 of article 3 of this title, and numerous other provisions of this title. It has also been addressed in criminal provisions found in parts 1, 2, and 3 of article 2 of title 18, part 1 of article 4 of title 18, part 1 of article 5 of title 18, and section 18-5-205, C.R.S. These statutory provisions impose regulatory oversight and severe civil and criminal penalties on authorized and unauthorized insurance companies and other persons who commit insurance fraud. The purpose of this section is to further improve regulatory oversight of licensed persons who commit insurance fraud and provide additional remedies to aggrieved persons.

Drafting an Interim Resolution

Prepared By Legislative Council Staff - March 2000

On occasion, legislators ask for guidance on the structure of an interim committee or ask us to prepare a draft of an interim study resolution. Joint Rule 24A contains some basic requirements for the contents of a resolution. This rule and the following check list of the usual provisions of an interim study resolution should be reviewed as staff assist sponsors in the drafting process. A *customary* provision is identified under each heading. In addition, when appropriate, *alternative, additional*, or *recommended* suggestions are provided.

Membership of the Committee

Joint Rule 24A requires that interim study resolutions specify the membership of an interim committee.

***customary:** an equal number of members from the House and Senate

***alternative:** the number of members proportional to the size of each house (or approximately twice as many House members as Senate members)

***customary:** specify a number of members from 6-11 (these numbers provide enough legislators for a quorum, fit the interim budget, and accommodate the size of the committee tables)

***additional:** non-legislative members (for example: government agency employees, representatives of business groups, and other members of the public) may be included

— note: since Joint Rule 24A provides that a majority vote of legislative members is required to recommend legislation unless the interim study resolution specifies otherwise, the voting status on non-legislative members should be addressed if the sponsor prefers that non-legislative members have the ability to vote

***additional:** the number of appointments made by the Governor or other non-legislative authority should not exceed the number of legislators appointed to the committee

***customary:** specify the number of majority/minority party members. When the resolution does not specify the number of members from each party,

Joint Rule 24A requires the presiding officer of each house to determine the number of members from each party based on the proportion that each party is of the membership of the respective body.

additional: specify a date by which the committee must be appointed

Appointing Authority

Joint Rule 24A requires that interim study resolutions contain the appointing authority for the members of the committee, including the appointing authority for any member who is required to meet specific professional, geographic, or other conditions.

****customary**:* made by the Speaker and the President, except that in the Senate the current practice is for the minority leader to make minority member appointments

additional: minority leaders in addition to the Speaker and the President

additional: the Governor can be identified as appointing non-legislative members

additional: the Speaker and President appoint non-legislative members. If there are conditions related to appointments (i.e., geographic/professional requirements), the resolution must specify which appointing authority is responsible for making those appointments.

Expenses

****customary:*** specify actual and necessary expenses and per diem as established by statute or as otherwise specified and approved by the chairperson of the Legislative Council and paid by vouchers and warrants drawn from funds allocated to the General Assembly from appropriations made by the legislature.

additional: authorize expenses for committee travel to conduct hearings around the state. Expenses for travel must be approved by the Executive Committee prior to travel unless otherwise specified in the resolution.

additional: authorize acceptance of gifts and donations

additional: specify whether expenses and a per diem are to be paid to non-legislative members. Joint Rule 24A prohibits these members from receiving expenses and per diem unless the resolution so specifies.

***customary:** government employees who are non-legislative members are specifically excluded from receiving a per diem

Chairing the Committee

***customary:** specify that the chair will be appointed by the Speaker if a House resolution and by the President if a Senate resolution, with vice-chairs appointed by the presiding officer in the second house. Under Joint Rule 24A, chairmen and vice-chairmen are determined using this method if the resolution does not specify otherwise.

Scope of the Study

***customary:** general statement of purpose of committee followed by the specifics of the study, introduced with the phrase "the interim committee shall consider, but need not be limited to, the following issues:"

***additional:** be very specific about issues committee is to consider; eliminate the phrase "but need not be limited to"

***additional:** prioritize the study issues

Number of Meetings

Joint Rule 24A requires the prior approval of the Executive Committee for an interim committee to meet more than six times, unless the resolution specifies otherwise.

***customary:** unspecified

***alternative:** specify, for example, that the committee must meet at least three times but no more than six times to fulfill its responsibilities

Number of Bills to be Sponsored by the Committee

***customary:** silent

***alternative:** specify a maximum number of bills, or refer to Joint Rule 24 (b) (1)(D) regarding sponsorship of bills recommended by interim Legislative Council committees or other committees created by statute or resolution

Staff Support

Any agencies that are required to provide staff support to an interim committee must be specified in the resolution, per Joint Rule 24A

***customary:** specify that the Legislative Council Staff and the Office of Legislative Legal Services be made available to assist the committee in carrying out its duties

***additional:** specify that the staff of the Joint Budget Committee and/or State Auditor assist the committee

***additional:** specify that executive departments be called upon to assist and cooperate with the interim committee in carrying out the committee's duties

***additional:** other helpers may be specified: federal agencies, quasi governmental agencies, private organizations

Reporting and Due Date

***customary:** the committee reports its findings and recommendations to the Legislative Council by the date specified in Joint Rule 24 (b) (1) (D) and is subject to the limitations on bills contained in the joint rule. Joint Rule 24A requires this procedure if a procedure is not contained in the resolution.

***additional:** the Legislative Council reports the findings and recommendations of the committee to the next regular session of the General Assembly

[This Page Intentionally Blank]