

APPENDIX

**CONSTITUTIONAL
AND
STATUTORY
PROVISIONS**

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West's Colorado Revised Statutes Annotated Currentness
Constitution of the State of Colorado [1876] (Refs & Annos)
 ■ Article II. Bill of Rights

→ § 3. Inalienable rights

All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

C. R. S. A. Const. Art. 2, § 3, CO CONST Art. 2, § 3

Current with amendments adopted through the Nov. 7, 2006 General Election

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West's Colorado Revised Statutes Annotated Currentness
Constitution of the State of Colorado [1876]

■ Article V. Legislative Department (Refs & Annos)
■ In General (Refs & Annos)

→ § 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.
- (2) The first power hereby reserved by the people is the initiative, and signatures 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 secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.
- (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.
- (4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.
- (5) The original draft of the text of proposed initiated constitutional amendments and initiated laws shall be submitted to the legislative research and drafting offices of the general assembly for review and comment. No later than two weeks after submission of the original draft, unless withdrawn by the proponents, the legislative research and drafting offices of the general assembly shall render their comments to the proponents of the proposed measure at a meeting open to the public, which shall be held only after full and timely notice to the public. Such meeting shall be held prior to the fixing of a ballot title. Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

C.R.S.A. Const. Art. 5, § 1

- (5.5) No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls. In such circumstance, however, the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest. The revision and resubmission of a measure in accordance with this subsection (5.5) shall not operate to alter or extend any filing deadline applicable to the measure.
- (6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.
- (7) The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section. In submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.
- (7.3) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall cause to be published the text and title of every such measure. Such publication shall be made at least one time in at least one legal publication of general circulation in each county of the state and shall be made at least fifteen days prior to the final date of voter registration for the election. The form and manner of publication shall be as prescribed by law and shall ensure a reasonable opportunity for the voters statewide to become informed about the text and title of each measure.
- (7.5)(a) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall prepare and make available to the public the following information in the form of a ballot information booklet:
- (I) The text and title of each measure to be voted on;
 - (II) A fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure. Any person may file written comments for consideration by the research staff during the preparation of such analysis.
- (b) At least thirty days before the election, the research staff shall cause the ballot information booklet to be distributed to active registered voters statewide.
- (c) If any measure to be voted on by the voters of the entire state includes matters arising under section 20 of article X of this constitution, the ballot information booklet shall include the information and the titled notice required by section 20(3)(b) of article X, and the mailing of such information pursuant to section 20(3)(b) of article X is not required.

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(d) The general assembly shall provide sufficient appropriations for the preparation and distribution of the ballot information booklet pursuant to this subsection (7.5) at no charge to recipients.

(8) The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

(9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.

(10) This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.

CREDIT(S)

Amended by Laws 1910, Ex.Sess., Ch. 3, § 2; 1979, S.C.R.79-007, § 1, eff. Dec. 19, 1980; 1993, S.C.R.93-004, § 1, eff. Jan. 19, 1995; 1994, S.C.R.94-005, § 1, eff. Jan. 19, 1995.

HISTORICAL NOTES

2001 Main Volume

Senate Concurrent Resolution 93-4 added subsec. (5.5).

Section 1, in part, and §§ 2 and 3 of S.C.R.93-4, provide:

"Section 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:"

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either 'Yes' or 'No' on the proposition: 'An amendment to articles V and XIX of the constitution of the state of Colorado, requiring that any measure proposed by initiative or referendum be confined to a single subject.'

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

The amendment of this section proposed by 1993, S.C.R.93-4, § 1, was ratified by the electorate at the general election of Nov. 8, 1994, effective upon proclamation of the governor, Jan. 19, 1995.

Senate Concurrent Resolution 94-5, § 1, rewrote the second sentence of subsec. (7), and added subsecs. (7.3) and (7.5). Prior to being rewritten, subsec. (7) read:

"The text of all measures to be submitted shall be published as constitutional amendments are published; and, in

C.R.S.A. Const. Art. 5, § 1

submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.";

Section 1, in part, and §§ 2 and 3 of S.C.R.94-5, provide:

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

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either 'Yes' or 'No' on the proposition: 'AN AMENDMENT TO ARTICLES V, X, AND XXIII OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING INFORMATION ABOUT STATEWIDE BALLOT ISSUES, AND, IN CONNECTION THEREWITH, REQUIRING THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY TO PREPARE AND DISTRIBUTE TO THE PUBLIC AT NO CHARGE A BALLOT INFORMATION BOOKLET THAT INCLUDES THE TEXT, THE TITLE, AND A FAIR AND IMPARTIAL ANALYSIS OF EACH STATEWIDE MEASURE, INCLUDING THE MAJOR ARGUMENTS BOTH FOR AND AGAINST THE MEASURE, AND PROVIDING FOR STATEWIDE PUBLICATION BY THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY OF THE TEXT AND TITLE OF STATEWIDE BALLOT ISSUES.'

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

The amendment of this section proposed by 1994, S.C.R.94-5, § 1, was ratified by the electorate at the general election of Nov. 8, 1994, effective upon proclamation of the governor, Jan. 19, 1995.

An amendment of this section proposed by 1995, S.C.R.95-2, was defeated by the electorate at the general election of Nov. 5, 1996.

C. R. S. A. Const. Art. 5, § 1, CO CONST Art. 5, § 1

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C.R.S.A. Const. Art. 9, § 9

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■ Article IX. Education (Refs & Annos)

→ § 9. State board of land commissioners

- (1) The state board of land commissioners shall be composed of five persons to be appointed by the governor, with the consent of the senate, one of whom shall be elected by the board as its president.
- (2) The governor shall endeavor to appoint members of the board who reside in different geographic regions of the state. The board shall be composed of one person with substantial experience in production agriculture, one person with substantial experience in public primary or secondary education, one person with substantial experience in local government and land use planning, one person with substantial experience in natural resource conservation, and one citizen at large.
- (3) The governor shall appoint a new board of land commissioners on or before May 1, 1997. The term of each member shall be for four years; except that of the first board members appointed under this subsection (3), two members shall be appointed for terms that expire June 30, 1999, and three members shall be appointed for terms that expire June 30, 2001. No member shall serve more than two consecutive terms. Members of the board shall be subject to removal, and vacancies on the board shall be filled, as provided in article IV, section 6 of this constitution.
- (4) The board shall, pursuant to section 13 of article XII of this constitution, hire a director with the consent of the governor, and, through the director, a staff, and may contract for office space, acquire equipment and supplies, and enter into contracts as necessary to accomplish its duties. Payment for goods, services, and personnel shall be made from the income from the trust lands. The general assembly shall annually appropriate from the income from the trust lands, sufficient moneys to enable the board to perform its duties and in that regard shall give deference to the board's assessment of its budgetary needs. The members of the board shall not, by virtue of their appointment, be employees of the state; they may be reimbursed for their reasonable and necessary expenses and may, in addition, receive such per diem as may be established by the general assembly, from the income from the trust lands.
- (5) The individual members of the board shall have no personal liability for any action or failure to act as long as such action or failure to act does not involve willful or intentional malfeasance or gross negligence.
- (6) The board shall serve as the trustee for the lands granted to the state in public trust by the federal government, lands acquired in lieu thereof, and additional lands held by the board in public trust. It shall have the duty to manage, control, and dispose of such lands in accordance with the purposes for which said grants of land were made and section 10 of this article IX, and subject to such terms and conditions consistent therewith as may be prescribed by law.
- (7) The board shall have the authority to undertake nonsimultaneous exchanges of land, by directing that the proceeds from a particular sale or other disposition be deposited into a separate account to be established by the state treasurer with the interest thereon to accrue to such account, and withdrawing therefrom an equal or lesser amount to be used as the purchase price for other land to be held and managed as provided in this article, provided that the purchase of lands to complete such an exchange shall be made within two years of the initial sale or

C.R.S.A. Const. Art. 9, § 9

disposition. Any proceeds, and the interest thereon, from a sale or other disposition which are not expended in completing the exchange shall be transferred by the state treasurer to the public school fund or such other trust fund maintained by the treasurer for the proceeds of the trust lands disposed of or sold. Moneys held in the separate account shall not be used for the operating expenses of the board or for expenses incident to the disposition or acquisition of lands.

CREDIT(S)

Amended by Laws 1909, Ch. 149, § 2, eff. Jan. 10, 1911; 1992, H.C.R.92-1003, § 1, eff. Jan. 14, 1993; Initiative Nov. 5 1996, eff. Dec. 26, 1996; 2004, S.C.R.04-005, § 1, eff. upon proclamation of the Governor, eff. Dec. 1, 2004.

HISTORICAL NOTES

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Senate Concurrent Resolution, 04-005, § 1, in subsec. (3), in the first sentence, substituted "commissioners" for "Commissioners"; and deleted the third sentence, which read: "The terms of office of the members of the board appointed prior to the effective date of this subsection (3) shall expire upon the confirmation of the appointment of the first three members of the first board appointed under this subsection (3)."

Sections 2 and 3 of S.C.R. 04-005, provide:

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either 'Yes' or 'No' on the proposition: 'Amendments to articles IV, VII, and IX of the constitution of the state of Colorado, concerning the elimination of obsolete provisions of the state constitution.'

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

The amendment to this section proposed by S.C.R. 04-005, was ratified by the electorate at the general election of November 2, 2004, effective upon proclamation of the governor, Dec. 1, 2004.

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H.C.R.92-1003, § 1, effective upon proclamation of the governor, Jan. 14, 1993, designated subsections; in subsec. (1) deleted provisions relating to the expiration of the terms of office of the president and members of the initial board of land commissioners; and deleted a former second paragraph of subsec. (1), which read:

"On the adoption of this amendment by the electors of this state, it shall not go into full force and effect until the second Tuesday of January, 1911."

Section 1, in part, and §§ 2 and 3 of 1992, H.C.R.92-1003, provide:

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

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a

C.R.S.A. Const. Art. 9, § 9

vote as provided by law either 'Yes' or 'No' on the proposition: 'An amendment to articles VII, IX, XI, and XII of the constitution of the state of Colorado, concerning the repeal of obsolete constitutional provisions.'

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

The amendment to this section proposed by 1992, H.C.R.92-1003, § 1, was ratified by the electorate at the general election of Nov. 3, 1992, effective upon proclamation of the governor, Jan. 14, 1993.

The 1996 amendment rewrote this section, which prior thereto read:

"(1) The state board of land commissioners shall be composed of three persons to be appointed by the governor, with the consent of the senate, who shall have the direction, control, and disposition of the public lands of the state under such regulations as are and may be prescribed by law, one of which persons shall at the time of his appointment be designated as president of the board and one of which persons shall at the time of his appointment be designated as register of the board. The third member of said board shall at the time of his appointment be designated as the engineer of the board and shall always be professionally a civil engineer, who, for at least five years, has been actively engaged in the practice of civil engineering. The successor and successors of the first members of the board shall each be appointed for terms of six years.

"(2) The members of the board shall each receive a salary of three thousand dollars per annum until otherwise provided by law; but the salary of each member of this board is to be paid out of the income of the said state board of land commissioners."

The 1996 amendment to this section, proposed by initiative, was ratified by the electorate at the general election of Nov. 5, 1996, effective upon proclamation of the governor, Dec. 26, 1996.

C. R. S. A. Const. Art. 9, § 9, CO CONST Art. 9, § 9

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C.R.S.A. Const. Art. 10, § 20

"Section 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:"

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either 'Yes' or 'No' on the proposition: 'An amendment to section 20 of article X of the constitution of the state of Colorado, increasing the time period for mailing ballot information to registered voters before a ballot issue election.'

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

The amendment to this section proposed by 1995, S.C.R.95-7, § 1, was ratified by the electorate at the general election of Nov. 5, 1996, effective upon proclamation of the governor, Dec. 26, 1996.

An amendment to this section proposed by 1996, H.C.R.96-1006, was defeated by the electorate at the general election of Nov. 5, 1996.

Former section:

A former § 20, relating to the authority to levy taxes for the 1976 winter olympics, was repealed by 1988, S.C.R.88-8, § 1, eff. Jan. 3, 1989.

C. R. S. A. Const. Art. 10, § 20, CO CONST Art. 10, § 20

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CO CONST Art. 16, § 5

C.R.S.A. Const. Art. 16, § 5

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▣ Article XVI. Mining and Irrigation

▣ Irrigation

→ § 5. Water of streams public property

The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

C. R. S. A. Const. Art. 16, § 5, CO CONST Art. 16, § 5

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C.R.S.A. Const. Art. 27, § 6

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Constitution of the State of Colorado [1876].

■ Article XXVII. Great Outdoors Colorado Program (Refs & Annos)

→ § 6. The State Board of the Great Outdoors Colorado Trust Fund

(1) There shall be established a State Board of the Great Outdoors Colorado Trust Fund. The Board shall consist of two members of the public from each congressional district, a representative designated by the State Board of Parks and Outdoor Recreation, a representative designated by the Colorado Wildlife Commission, and the Executive Director of the Department of Natural Resources. The public members of the Board shall be appointed by the Governor, subject to the consent of the Senate, for terms of four years--provided, however, that when the first such members are appointed, one of the public members from each congressional district shall be appointed for a two-year term, to assure staggered terms of office thereafter. At least two members shall reside west of the Continental Divide. At least one member shall represent agricultural interests. The public members of the board shall be entitled to a reasonable per diem compensation to be determined by the Board plus their actual expenses for each meeting of the Board or a committee of the Board. The Board's composition shall reflect, to the extent practical, Colorado's gender, ethnic and racial diversity, and no two of the representatives of any one congressional district shall be members of the same political party. Members of the Board shall be subject to removal as provided in Article IV, Section 6 of this constitution.

(2) The Board shall be responsible for, and shall have the power to undertake the following actions:

(a) To direct the Treasurer to disburse expendable income from the Trust Fund as the Board may determine by resolution, and otherwise to administer the Trust Fund, provided, however, that the Board shall not have the power to acquire any interest in real property other than (I) temporarily to hold real property donated to it and (II) to acquire leased office space;

(b) To promulgate rules and regulations as are necessary or expedient for the conduct of its affairs and its meetings and of meetings of any committees and generally for the administration of this article, provided, however, that such rules and regulations shall give the public an opportunity to comment on the general policies of the Board and upon specific grant proposals before the Board;

(c) To cause to be published and distributed an annual report, including a financial report, to the citizens, the Governor and the General Assembly of Colorado, which will set out the Board's progress in administering the funds appropriated to it, and the Board's objectives and its budget for the forthcoming year, and to consult with the General Assembly from time to time concerning its objectives and its budget;

(d) To administer the distribution of grants pursuant to Sections 1(1)(c), 1(1)(d), 5(1)(a)(III), and 5(1)(a)(IV) of this article, with the expense of administering said grants to be defrayed from the funds made available to the program elements of said sections;

(e) Commencing July 1, 1993, to determine what portions, if any, of moneys allocated to the Trust Fund should be invested in an interest-bearing Trust Fund account by the Treasurer of the State of Colorado, to remain in the Trust Fund and available for expenditure in future years;

C.R.S.A. Const. Art. 27, § 6

(f) To employ such staff and to contract for such office space and acquire such equipment and supplies and enter into such other contracts as it may consider necessary from time to time to accomplish its purposes, and to pay the cost thereof from the funds appropriated to the Board under this article, provided, however, that to the extent it is reasonably feasible to do so the Board shall (I) contract with the Colorado Department of Natural Resources or other state agency for necessary administrative support and (II) endeavor to keep the level of administrative expense as low as may be practicable in comparison with its expenditures for the purposes set forth in Section 1 of this article, and the Board may contract with the State Personnel Board or any successor thereof for personnel services.

(3) The Board shall be a political subdivision of the state, and shall have all the duties, privileges, immunities, rights, liabilities and disabilities of a political subdivision of the state, provided, however, that its organization, powers, revenues and expenses shall not be affected by any order or resolution of the general assembly, except as provided in this constitution. It shall not be an agency of state government, nor shall it be subject to administrative direction by any department, commission, board, bureau or agency of the state, except to the extent provided in this constitution. The Board shall be subject to annual audit by the state auditor, whose report shall be a public document. The Board shall adopt rules permitting public access to its meetings and records which are no less restrictive than state laws applicable to state agencies, as such laws may be amended from time to time. The Board members, officers and directors of the Board shall have no personal liability for any actions or refusal to act by the Board as long as such action or refusal to act did not involve willful or intentional malfeasance or gross negligence.

CREDIT(S)

Added by Laws 1993, p. 2169, Initiated 1992, eff. Jan. 14, 1993.

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The enactment of this article, consisting of §§ 1 to 11, was proposed by initiative submitted to the electorate and approved at the general election of Nov. 3, 1992, effective upon proclamation of the governor, Jan. 14, 1993.

C. R. S. A. Const. Art. 27, § 6, CO CONST Art. 27, § 6

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C.R.S.A. § 1-40-102

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Title 1. Elections (Refs & Annos)

■ Initiative and Referendum

■ Article 40. Initiative and Referendum (Refs & Annos)

→ § 1-40-102. Definitions

As used in this article, unless the context otherwise requires:

(1) "Ballot issue" means a nonrecall, citizen-initiated petition or legislatively-referred measure which is authorized by the state constitution, including a question as defined in sections 1-41-102(3) and 1-41-103(3), enacted in Senate Bill 93-98.

(2) "Ballot title" means the language which is printed on the ballot which is comprised of the submission clause and the title.

(3) Deleted by Laws 1995, H.B.95-1211, § 2, eff. May 8, 1995.

(4) "Draft" means the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes.

(5) Deleted by Laws 1995, H.B.95-1211, § 2, eff. May 8, 1995.

(6) "Section" means a bound compilation of initiative forms approved by the secretary of state, which shall include pages that contain the warning required by section 1-40-110(1), the ballot title, and a copy of the proposed measure; succeeding pages that contain the warning, the ballot title, and ruled lines numbered consecutively for registered electors' signatures; and a final page that contains the affidavit required by section 1-40-111(2). Each section shall be consecutively prenumbered by the petitioner prior to circulation.

(7) Deleted by Laws 1995, H.B.95-1211, § 2, eff. May 8, 1995.

(8) "Submission clause" means the language which is attached to the title to form a question which can be answered by "yes" or "no".

(9) Deleted by Laws 2000, Ch. 339, § 3, eff. Aug. 2, 2000.

(10) "Title" means a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.

CREDIT(S)

Added by Laws 1993, S.B.93-135, § 1, eff. May 4, 1993. Amended by Laws 1993, H.B.93-1255, § 126, eff. July 1, 1993; Laws 1995, H.B.95-1211, § 2, eff. May 8, 1995; Laws 2000, Ch. 339, § 3, eff. Aug. 2, 2000.

C.R.S.A. § 1-40-102

HISTORICAL AND STATUTORY NOTES

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Laws 2000, Ch. 339, § 3, in subsec. (6), deleted "and summary," following "title" and deleted subsec. (9), which read:

" 'Summary' means a condensed statement as to the intent of the proposed law or constitutional amendment. "

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Laws 1993, H.B.93-1255, in subsec. (1), added ", including a question as defined in sections 1-41-102(3) and 1-41-103(3), enacted in Senate Bill 93-98."

Sections 9 and 10 of Laws 1993, S.B.93-135, adding this section, provide:

"Section 9. **Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"Section 10. **Applicability.** This act shall apply to any offense committed on or after the effective date of this act and to any measure pending on such date that was proposed on or after the 1992 general election; except that no action lawfully taken prior to the effective date of this act shall impair the status of any measure."

The 1995 amendment deleted former subsec. (3), which read:

" 'Designated election official' means the secretary of state for all statewide ballot issues and, for local ballot issues, the municipal clerk, a member of a governing board, the secretary of the board, the county clerk and recorder, or any other person who is responsible for conducting a ballot issue election. ";

in subsec. (4), substituted "constitution or statute" for "constitution, statute, charter provision, or ordinance" and "constitution or statutes" for "constitution, statutes, charter, or ordinances"; deleted former subsec. (5), which read:

" 'Local ballot issue' means any ballot issue other than a statewide ballot issue. ";

in subsec. (6), in the first sentence, substituted "secretary of state" for "designated election official" and "ballot title and summary" for "title, the summary and the ballot title if the measure is for a statewide ballot issue", and deleted "or, in the case of a local ballot issue, the title," preceding "and ruled lines"; deleted former subsec. (7), which read:

" 'Statewide ballot issue' means any ballot issue that may be voted on by all registered electors in the state. ";

and in subsec. (9), deleted "ordinance, charter provision," following "proposed law".

Former Section:

A former section 1-40-102, relating to rehearings, was derived from:

C.S.A.1935, c. 86, § 6(1).

Laws 1941, H.B.947, § 1.

C.R.S.1953, § 70-1-2.

C.R.S.A. § 1-40-102

C.R.S.1963, § 70-1-2.
Laws 1977, H.B.1165, §§ 2, 8.
Laws 1987, H.B.1223, § 16.
Laws 1989, H.B.1181, § 3.

C. R. S. A. § 1-40-102, CO ST § 1-40-102

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C.R.S.A. § 1-40-106

West's Colorado Revised Statutes Annotated Currentness
 Title 1. Elections (Refs & Annos)
 ■ Initiative and Referendum
 ■ Article 40. Initiative and Referendum (Refs & Annos)

→ § 1-40-106. Title board--meetings--titles and submission clause

(1) For ballot issues, beginning with the first submission of a draft after an election, the secretary of state shall convene a title board consisting of the secretary of state, the attorney general, and the director of the office of legislative legal services or the director's designee. The title board, by majority vote, shall proceed to designate and fix a proper fair title for each proposed law or constitutional amendment, together with a submission clause, at public meetings to be held at the hour determined by the title board on the first and third Wednesdays of each month in which a draft or a motion for reconsideration has been submitted to the secretary of state. To be considered at such meeting, a draft shall be submitted to the secretary of state no later than 3 p.m. on the twelfth day before the meeting at which the draft is to be considered by the title board. The first meeting of the title board shall be held no sooner than the first Wednesday in December after an election, and the last meeting shall be held no later than the third Wednesday in May in the year in which the measure is to be voted on.

(2) Deleted by Laws 1995, H.B.95-1211, § 4, eff. May 8, 1995.

(3)(a) Deleted by Laws 2000, Ch. 339, § 1, eff. Aug. 2, 2000.

(b) In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board. Immediately upon completion, the secretary of state shall deliver the same with the original to the parties presenting it, keeping the copy with a record of the action taken thereon. Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

CREDIT(S)

Added by Laws 1993, S.B.93-135, § 1, eff. May 4, 1993. Amended by Laws 1995, H.B.95-1211, § 4, eff. May 8, 1995; Laws 2000, Ch. 339, § 1, eff. Aug. 2, 2000; Laws 2004, Ch. 227, § 1, eff. May 12, 2004.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

Laws 2000, Ch. 339, § 1 deleted par. (3)(a); and in par. (3)(b), inserted "and" preceding "submission" and deleted "and summary" following "clause," all in the second sentence. Prior to the amendment by Laws 2000, Ch. 339, par. (3)(a) read:

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"The title board shall prepare a clear, concise summary of the proposed law or constitutional amendment. The summary shall be true and impartial and shall not be an argument, nor likely to create prejudice, either for or against the measure. The title board may request assistance in the preparation of the summary from the legislative council and, if, in the opinion of the title board, the proposed law or constitutional amendment will have a fiscal impact on the state or any of its political subdivisions, shall request assistance in such matter from the office of state planning and budgeting or the department of local affairs. When the title board requests fiscal impact information from the office of state planning and budgeting or the department of local affairs, the fiscal impact information shall be filed with the secretary of state by 12 noon on the Friday before the meeting of the title board at which the draft is to be considered. The legislative council, the office of state planning and budgeting, and the department of local affairs shall furnish any assistance requested, and the summary shall include an estimate of any such fiscal impact, together with an explanation thereof."

Laws 2004, Ch. 227, § 1, in subsec. (1), substituted "the hour determined by the title board" for "2 p.m.".

2000 Main Volume

Sections 9 and 10 of Laws 1993, S.B.93-135, adding this section, provide:

"Section 9. **Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"Section 10. **Applicability.** This act shall apply to any offense committed on or after the effective date of this act and to any measure pending on such date that was proposed on or after the 1992 general election; except that no action lawfully taken prior to the effective date of this act shall impair the status of any measure."

The 1995 amendment, in subsec. (1), in the first sentence, deleted "statewide" preceding "ballot issues"; deleted former subsec. (2), which read:

"For local ballot issues, unless otherwise provided by charter or ordinance, the title board shall consist of the designated election official and the governing board of the political subdivision and shall meet at the regularly scheduled meetings of the governing board. The title board shall by resolution fix a proper fair title for each proposed measure substantially as provided in paragraph (b) of subsection (3) of this section. The governing board may designate when drafts of the text of the proposed amendment shall be submitted to the designated election official prior to the meeting at which the title is to be fixed.";

and in par. (3)(a), in the first sentence, deleted "for statewide ballot issues" preceding "shall prepare".

Former Section:

A former section 1-40-106, relating to a prescribed warning regarding signing of a petition and to requisites of circulators, was derived from:

- C.S.A. 1935, c. 86, § 6(3).
- Laws 1941, H.B.947, § 3.
- C.R.S. 1953, § 70-1-6.
- Laws 1961, S.B.169, § 1.
- C.R.S. 1963, § 70-1-6.
- Laws 1970, H.B.1016, § 24.
- Laws 1971, H.B.1248, § 44.
- Laws 1972, H.B.1091, § 43.

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Laws 1973, H.B.1627, § 49.

Laws 1974, S.B.53, § 39.

Laws 1977, H.B.1165, § 5.

Laws 1981, S.B.224, § 4.

Laws 1982, S.B.97, § 1.

Laws 1989, H.B.1181, § 5.

C. R. S. A. § 1-40-106, CO ST § 1-40-106

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C.R.S.A. § 1-40-106.5

C

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs & Annos)

■ Initiative and Referendum

■ Article 40. Initiative and Referendum (Refs & Annos)

→ § 1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments--legislative declaration

(1) The general assembly hereby finds, determines, and declares that:

(a) Section 1(5.5) of article V and section 2(3) of article XIX of the state constitution require that every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly be limited to a single subject, which shall be clearly expressed in its title;

(b) Such provisions were referred by the general assembly to the people for their approval at the 1994 general election pursuant to Senate Concurrent Resolution 93-4;

(c) The language of such provisions was drawn from section 21 of article V of the state constitution, which requires that every bill, except general appropriation bills, shall be limited to a single subject, which shall be clearly expressed in its title;

(d) The Colorado supreme court has held that the constitutional single-subject requirement for bills was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur, and the intent of the general assembly in referring to the people section 1(5.5) of article V and section 2(3) of article XIX was to protect initiated measures and referred constitutional amendments from similar practices;

(e) The practices intended by the general assembly to be inhibited by section 1(5.5) of article V and section 2(3) of article XIX are as follows:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

(2) It is the intent of the general assembly that section 1(5.5) of article V and section 2(3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

(3) It is further the intent of the general assembly that, in setting titles pursuant to section 1(5.5) of article V, the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills.

C.R.S.A. § 1-40-106.5

CREDIT(S)

Added by Laws 1994, H.B.94-1080, § 1, eff. Jan. 19, 1995.

HISTORICAL AND STATUTORY NOTES

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Section 2 of Laws 1994, H.B.94-1080, adding this section, provides:

"Effective date. This act shall take effect upon proclamation of the governor of the vote of the registered electors at the 1994 general election approving Senate Concurrent Resolution 93-4. This act shall not take effect if the registered electors at the 1994 general election disapprove Senate Concurrent Resolution 93-4."

Senate Concurrent Resolution 93-4 was ratified by the electorate at the general election of Nov. 8, 1994, effective upon proclamation of the governor on Jan. 19, 1995.

C. R. S. A. § 1-40-106.5, CO ST § 1-40-106.5

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C.R.S.A. § 24-75-201

C

West's Colorado Revised Statutes Annotated Currentness

Title 24. Government--State

State Funds

■ Article 75. State Funds (Refs & Annos)

■ Part 2. General Fund

→ § 24-75-201. General fund--general fund surplus--custodial moneys

(1) There is hereby created and established the general fund, to which shall be credited and paid all revenues and moneys not required by the state constitution or the provisions of any law to be credited and paid into a special fund. The surplus fund created before June 30, 1971, is hereby merged into the general fund. Any unrestricted balance remaining in the general fund at the end of any fiscal year shall be designated as the general fund surplus.

(2)(a) The general fund surplus shall be determined based upon the accrual system of accounting, as enunciated by the governmental accounting standards board; except that:

(I) For state fiscal years commencing before July 1, 2003, any general fund revenues that are designated as state revenues in excess of the constitutional limitation on state fiscal year spending shall be included as unrestricted revenues in the general fund surplus for the fiscal year in which such excess revenues were accrued. Such excess revenues shall be restricted in the next fiscal year to preserve their availability for refund unless voters have authorized the state to retain such excess revenues.

(II) General fund revenues shall be restricted only upon the issuance of a commitment voucher to the state controller by the department of health care policy and financing for the payment of a sufficient claim that warrants reimbursement in accordance with the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S., from general fund revenues appropriated for any nonadministrative expenditure that qualifies for federal financial participation under Title XIX of the federal "Social Security Act", except for expenditures under the program for the medically indigent, article 3 of title 25.5, C.R.S., or for the contributions required by 42 U.S.C. sec. 1396u-5(c).

(A) Deleted by Laws 2006, Ch. 200, § 2, eff. May 11, 2006.

(B) Deleted by Laws 2006, Ch. 200, § 2, eff. May 11, 2006.

(III)(A) General fund revenues shall be restricted only upon actual payment on the first working day of July of monthly salaries of state employees for the month of June from general fund revenues.

(B) General fund revenues shall be restricted only upon actual payment in July of any bimonthly salaries of state employees for which all or a portion thereof is for work performed during the month of June from general fund revenues.

(C) For purposes of this subparagraph (III), "state employee" means a person employed by the state whether or not a classified employee in the state personnel system.

(b) Deleted by Laws 2003, Ch. 296, § 1, eff. July 1, 2003 and Laws 2003, Ch. 412, § 1, eff. July 1, 2003.

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(3)(a) Custodial moneys do not include moneys granted by the federal government to the state for the support of general or essential state government services of the type for which expenditures are made in the most recently approved annual general appropriation act, including, but not limited to, additional payments received by the state under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", as amended, (P.L. No. 108-27), received by the state on or after April 30, 2004.

(b) Nothing in this subsection (3) shall cause federal relief payments under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", as amended, (P.L. No. 108-27), received by the state prior to April 30, 2004, to be credited or transferred to the general fund or any other fund of the state or to be subject to annual appropriation by the general assembly.

(c) All federal moneys described in paragraph (a) of this subsection (3) shall be credited and paid to the general fund unless otherwise provided by law and shall be subject to annual appropriation by the general assembly.

CREDIT(S)

Amended by Laws 1979, S.B.165, § 1; Laws 1998, Ch. 229, § 3, eff. May 26, 1998; Laws 2002, Ch. 245, § 1, eff. June 1, 2002; Laws 2003, Ch. 6, § 2, eff. March 5, 2003; Laws 2003, Ch. 8, § 2, eff. March 5, 2003; Laws 2003, Ch. 296, § 1, eff. July 1, 2003; Laws 2003, Ch. 412, § 1, eff. July 1, 2003; Laws 2004, Ch. 213, § 1, eff. April 30, 2004; Laws 2006, Ch. 200, § 2, eff. May 11, 2006; Laws 2006, Ch. 355, § 76, eff. July 1, 2006; Laws 2007, Ch. 123, § 4, eff. July 1, 2007.

HISTORICAL AND STATUTORY NOTES

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Subpar. (2)(a)(II) as added by Laws 2003, Ch. 8, § 2 was renumbered on revision as subpar. (2)(a)(III).

Laws 2003, Ch. 296, § 1 and Laws 2003, Ch. 412, § 1 deleted par. (2)(b), which read:

"(b)(I) For state fiscal years commencing on or after July 1, 2002, the general fund surplus shall be determined as specified in paragraph (a) of this subsection (2); except that an amount of general fund revenues that is designated as state revenues in excess of the constitutional limitation on state fiscal year spending and that is equal to the lesser of the total amount of general fund revenues in excess of the amount needed to fund general fund obligations for the current fiscal year or twenty-five million dollars shall be reserved in the year in which it is accrued. Moneys reserved pursuant to this subparagraph (I) may be expended only if the general assembly by law requires the state to resume the use of the accrual system of accounting, as enunciated by the governmental accounting standards board, to determine the general fund surplus.

"(II) As used in this paragraph (b), 'general fund obligations' means:

"(A) General fund appropriations required by permanent statute or constitutional provision;

"(B) General fund appropriations up to the amount of the statutory limitation on state general fund appropriations set forth in section 24-75-201.1;

"(C) General fund appropriations that are exceptions to the statutory limitation on state general fund appropriations set forth in section 24-75-201.1;

"(D) Any moneys transferred to the controlled maintenance trust fund pursuant to section 24-75-302.5 for designation as all or part of the state emergency reserve required by section 24-77-104(1)(c);

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"(E) Any moneys in excess of the constitutional limitation on state fiscal year spending that are required to be refunded in the current fiscal year or expended in the current fiscal year in a manner approved by the voters of the state pursuant to section 20 of article X of the state constitution; and

"(F) The reserve required to be maintained pursuant to section 24-75- 201.1(1)(d)."

Laws 2006, Ch. 200, § 2, deleted sub-subpars. (2)(a)(II)(A) and (B), which read:

"(A) Medical services premiums; or

"(B) Medical services provided through programs under said act that are administered by the department of human services, except for expenditures for costs incurred in the administration of such programs."

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Derivation:

Laws 1903, S.B.57, § 1.
Rev.St.1908, § 2717.

Comp.Laws 1921, § 333.
C.S.A.1935, c. 153, § 75.
C.R.S.1953, § 130-4-1.
C.R.S.1963, § 130-4-1.
Laws 1971, S.B.181, § 1.

C. R. S. A. § 24-75-201, CO ST § 24-75-201

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C.R.S.A. § 1-40-107

C

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs & Annos)

¹ Initiative and Referendum ² Article 40. Initiative and Referendum (Refs & Annos)

→ § 1-40-107. Rehearing--appeal--fees--signing

(1) Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or who is not satisfied with the titles and submission clause provided by the title board and who claims that they are unfair or that they do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for a rehearing with the secretary of state within seven days after the decision is made or the titles and submission clause are set. The motion for rehearing shall be heard at the next regularly scheduled meeting of the title board; except that, if the title board is unable to complete action on all matters scheduled for that day, consideration of any motion for rehearing may be continued to the next available day, and except that, if the titles and submission clause protested were set at the last meeting in May, the motion shall be heard within forty-eight hours after the expiration of the seven-day period for the filing of such motions.

(2) If any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within five days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

(3) The secretary of state shall be allowed a fee which shall be determined and collected pursuant to section 24-21-104(3), C.R.S., for certifying a record of any proceedings before the title board. The clerk of the supreme court shall receive one-half the ordinary docket fee for docketing any such cause, all of which shall be paid by the parties desiring a review of such proceedings.

(4) No petition for any initiative measure shall be circulated nor any signature thereto have any force or effect which has been signed before the titles and submission clause have been fixed and determined as provided in section 1-40-106 and this section.

(5) In the event a motion for rehearing is filed in accordance with this section, the period for filing a petition in accordance with section 1-40-108 shall not begin until a final decision concerning the motion is rendered by the title board or the Colorado supreme court; except that under no circumstances shall the period for filing a petition be extended beyond three months prior to the election at which the petition is to be voted upon.

(6) Deleted by Laws 2000, Ch. 339, § 5, eff. Aug. 2, 2000.

(7) Deleted by Laws 1995, H.B.95-1211, § 5, eff. May 8, 1995.

C.R.S.A. § 1-40-107

CREDIT(S)

Added by Laws 1993, S.B.93-135, § 1, eff. May 4, 1993. Amended by Laws 1995, H.B.95-1211, § 5, eff. May 8, 1995; Laws 1998, Ch. 185, § 9, eff. May 6, 1998; Laws 2000, Ch. 97, § 1, eff. Aug. 2, 2000; Laws 2000, Ch. 339, §§ 2, 5, eff. Aug. 2, 2000; Laws 2004, Ch. 227, § 2, eff. May 12, 2004.

HISTORICAL AND STATUTORY NOTES

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Laws 2000, Ch. 97, § 1, in subsec. (6), substituted "director of research of the legislative council" for "secretary of state" and substituted "section 1-40-124.5" for "article XXIII of the state constitution".

Laws 2000, Ch. 339, § 2, in subsec. (1), the first sentence, inserted "who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or" following "elector", inserted "and" following "titles", deleted "and summary" following "clause", and substituted "decision is made or the titles and submission clause" for "and summary" at the end of the sentence and substituted "submission clause" for "summary" at in the final sentence; rewrote subsec. (2); and in subsec. (4), inserted "and" preceding "submission" and deleted "and summary" following "clause".

Prior to the amendment by Laws 2000, Ch. 339, subsec. (2) read:

"If any person who filed a motion for a rehearing pursuant to subsection (1) of this section, is overruled by the title board, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles submission clause and summary of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within five days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error."

Laws 2000, Ch. 339, § 5 deleted subsec. (6) as amended by Laws 2000, Ch. 97, which provided:

"The summary of any proposed initiated law or constitutional amendment shall be included in the publication of measures by the director of research of the legislative council pursuant to section 1-40-124.5."

Laws 2004, Ch. 227, § 2, in subsec. (1), substituted "expiration of the seven-day period for the filing of such motions" for "motion is filed".

2000 Main Volume

Sections 9 and 10 of Laws 1993, S.B.93-135, adding this section, provide:

"Section 9. **Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"Section 10. **Applicability.** This act shall apply to any offense committed on or after the effective date of this act and to any measure pending on such date that was proposed on or after the 1992 general election; except that no action lawfully taken prior to the effective date of this act shall impair the status of any measure."

The 1995 amendment, in subsec. (1), in the first sentence, substituted "an initiative petition" for "a statewide

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initiative petition"; and deleted former subsec. (7), which read:

"Any hearing concerning the title of a local ballot issue shall be as provided by ordinance, resolution, or charter provision."

Laws 1998, Ch. 185, § 9, in subsec. (2), in the second sentence, substituted "disposed of promptly, consistent with the rights of the parties" for "docketed as a cause there pending, which shall be placed at the head of the calendar and disposed of summarily".

Former Section:

A former section 1-40-107, relating to the prescribed form for a petition and to requisites regarding representatives of signers, was derived from:

- C.S.A.1935, c. 86, § 6(4).
- Laws 1941, H.B.947, § 4.
- C.R.S.1953, § 70-1-7.
- C.R.S.1963, § 70-1-7.
- Laws 1977, H.B.1165, § 6.
- Laws 1981, S.B.224, § 5.
- Laws 1989, H.B.1181, § 6.

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Title 24. Government--State

Principal Departments

■ Article 32. Department of Local Affairs

■ Part 26. Colorado Emergency Planning Commission

→ § 24-32-2603. Colorado emergency planning commission--creation--duties

(1)(a) There is hereby created in the department of local affairs the Colorado emergency planning commission, which shall exercise its powers and perform its duties and functions under the department of local affairs as if the same were transferred to the department by a type 2 transfer; except that the commission shall have full authority to promulgate rules and regulations related to the administration of this part 26. The commission shall consist of twelve members. Five of the twelve members shall be the following representatives of state government or their designees: The director of the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety, the director of the division of local government in the department of local affairs, the director of the division of emergency management in the department of local affairs, who shall be a cochairperson, the director of the division in the department of public health and environment responsible for hazardous materials and waste management, who shall also be a cochairperson, and a representative of the Colorado state patrol in the department of public safety. The remaining seven members of the commission shall be appointed by the governor for two-year terms. Of those seven members, two shall represent local governments, two shall be from either public interest groups or community groups, one shall represent a local emergency planning committee, and two shall represent affected industries. The governor shall fill any vacancy by appointment.

(b) The members of the Colorado emergency planning commission, as such existed prior to March 12, 1992, shall become the initial members of the commission on March 12, 1992.

(2) Members of the commission shall receive no compensation or per diem for their services on the commission; except that members may be reimbursed for travel expenses incurred in connection with activities other than attending meetings of the commission.

(3) The commission shall also assist in the appropriate training of personnel to react to emergency response situations.

CREDIT(S)

Added by Laws 1992, S.B.92-36, § 5, eff. March 12, 1992. Amended by Laws 1993, H.B.93-1245, § 1, eff. June 6, 1993; Laws 1994, H.B.94-1029, § 373, eff. July 1, 1994; Laws 2002, Ch. 300, § 9, eff. June 3, 2002; Laws 2004, Ch. 314, § 18, eff. Aug. 4, 2004.

HISTORICAL AND STATUTORY NOTES

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Section 4 of Laws 1993, H.B.93-1245, amending par. (1)(a), provides:

"**Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid,

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such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Derivation:

Laws 1990, H.B.90-1238, § 1.

C.R.S.A., § 24-33.5-1503.

C. R. S. A. § 24-32-2603, CO ST § 24-32-2603

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Title 25. Health

Environmental Control

Article 7. Air Quality Control (Refs & Annos)

Part 1. Air Quality Control Program (Refs & Annos)

→ § 25-7-102. Legislative declaration

In order to foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards. To that end, it is the purpose of this article to require the use of all available practical methods which are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado; to require the development of an air quality control program in which the benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs of such measures; and to maintain a cooperative program between the state and local units of government. It is further declared that the prevention, abatement, and control of air pollution in each portion of the state are matters of statewide concern and are affected with a public interest and that the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further recognizes that a current and accurate inventory of actual emissions of air pollutants from all sources is essential for the proper identification and designation of attainment and nonattainment areas, the determination of the most cost-effective regulatory strategy to reduce pollution, the targeting of regulatory efforts to achieve the greatest health and environmental benefits, and the achievement of a federally approved clean air program. In order to achieve the most accurate inventory of air pollution sources possible, this article specifically provides incentives to achieve the most accurate and complete inventory possible and to provide for the most accurate enforcement program achievable based upon that inventory.

CREDIT(S)

Repealed and reenacted by Laws 1979, H.B.1109, § 1. Amended by Laws 1992, S.B.92-105, § 4, eff. July 1, 1992.

C. R. S. A. § 25-7-102, CO ST § 25-7-102

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Title 25. Health

Environmental Control

▣ Article 7. Air Quality Control (Refs & Annos)

▣ Part 1. Air Quality Control Program (Refs & Annos)

→ § 25-7-109. Commission to promulgate emission control regulations

(1)(a) Except as provided in sections 25-7-130 and 25-7-131, as promptly as possible, the commission shall adopt, promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls:

(I) For each significant source or category of significant sources of air pollutants;

(II) For each type of facility, process, or activity which produces or might produce significant emissions of air pollutants.

(b) The requirements and prohibitions contained in such regulations shall be set forth with as much specificity and clarity as is practical. Upon adoption of an emission control regulation under subparagraph (II) of paragraph (a) of this subsection (1) for the control of a specific facility, process, or activity, such regulation shall apply to the exclusion of other emission control regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1); prior to such adoption, the general regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1) shall be applicable to such facility, process, or activity. In the formulation of each emission control regulation, the commission shall take into consideration the following:

(I) The state policy regarding air pollution, as set forth in section 25-7-102;

(II) Federal recommendations and requirements;

(III) The degree to which altitude, topography, climate, or meteorology in certain portions of the state require that emission control regulations be more or less stringent than in other portions of the state;

(IV) The degree to which any particular type of emission is subject to treatment, and the availability, technical feasibility, and economic reasonableness of control techniques;

(V) The extent to which the emission to be controlled is significant;

(VI) The continuous, intermittent, or seasonal nature of the emission to be controlled;

(VII) The economic, environmental, and energy costs of compliance with such emission control regulation;

(VIII) Whether an emission control regulation should be applied throughout the entire state or only within specified areas or zones of the state, and whether it should be applied only when a specified class or type of pollution is concerned.

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(2) Such emission control regulations may include, but shall not be limited to, regulations pertaining to:

- (a) Visible pollutants;
- (b) Particulates;
- (c) Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides, and any other chemical substance;
- (d) Odors, except for livestock feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1(2)(b);
- (e) Open burning activity;
- (f) Organic solvents;
- (g) Photochemical substances;
- (h) Hazardous air pollutants.

(3) Emission control regulations adopted pursuant to this section shall include, but shall not be limited to, regulations pertaining to the following facilities, processes, and activities:

- (a) Incinerator and incinerator design;
- (b) Storage and transfer of petroleum products and any other volatile organic compounds;
- (c) Activities which frequently result in particulate matter becoming airborne, such as construction and demolition operations;
- (d) Specifications, prohibitions, and requirements pertaining to fuels and fuel additives, such as tetraethyl lead;
- (e) Wigwam waste burners, pulp mills, alfalfa dehydrators, asphalt plants, and any other industrial or commercial activity which tends to emit air pollutants as a by-product;
- (f) Industrial process equipment;
- (g) Industrial spraying operations;
- (h) Airplanes;
- (i) Diesel-powered machines, vehicles, engines, and equipment;
- (j) Storage and transfer of volatile compounds and hazardous or toxic gases or other hazardous substances which may become airborne.

(4) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants.

(5) The commission shall promulgate appropriate regulations setting conditions and time limitations for periods of start-up, shutdown, or malfunction or other conditions which justify temporary relief from controls. Operations of any air pollution source during periods of start-up, shutdown, and malfunction shall not constitute representative

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conditions for the purpose of a performance or compliance test.

(6) The commission shall establish test methods and procedures for determining compliance with emission control regulations promulgated under this section and, in so doing, shall, to the maximum degree consistent with the purposes of this article, consider the test methods and procedures established by the United States environmental protection agency and shall adopt such test methods and procedures as shall minimize the possibility of inconsistency or duplication of effort.

(7) All regulations promulgated pursuant to this section shall conform with the provisions of part 5 of this article concerning asbestos control.

(8) (a) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1(2)(b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602(j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.

(b) Nothing in paragraph (a) of this subsection (8), as amended by House Bill 05-1180, [FN1] as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(9)(a) The commission shall adopt a procedure consistent with the federal environmental protection agency requirements for determining when there has been a net significant emissions increase which results in a major modification that subjects a source to the permitting requirements of the prevention of significant deterioration program or the nonattainment area new source review. The commission's procedure shall also prohibit sources from circumventing the new source review requirements in a manner consistent with the federal environmental protection agency guidance. Such procedure shall be the same for both the prevention of significant deterioration program and the nonattainment area new source review program and shall not apply to hazardous air pollutants. Such net emissions increase procedure shall be as described in paragraph (b) of this subsection (9), unless and until the federal environmental protection agency requires otherwise or unless after January 1, 1998, the commission:

(I) Undertakes a collaborative process with the affected industries to determine the cost and emission impacts associated with any proposed changes in this procedure;

(II) Reviews at least three years of emissions increases and decreases under the procedures described in paragraph (b) of this subsection (9);

(III) Delivers reports on the matters required in subparagraphs (I) and (II) of this paragraph (a) to the general assembly for its review;

(IV) Determines through rule-making that an applicability procedure for major modifications more stringent than that described in paragraph (b) of this subsection (9) is equitable when considering minor, area, and mobile source controls; and

(V) Determines through rule-making that such more stringent applicability procedure is necessary to attain and to maintain the national ambient air quality standards.

(b) The procedure for determining when there has been a net significant emissions increase shall be consistent with

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requirements of the federal environmental protection agency and:

(I) Such requirements shall apply only if there is, in the first instance, a significant emissions increase from an individual proposed project or modification. If the individual proposed project or modification will not result in a significant emissions increase, it shall be exempt from the prevention of significant deterioration program and the nonattainment area new source review requirements.

(II) If a project or modification is not exempt under subparagraph (I) of this paragraph (b), each pollutant for which the project results in a significant emissions increase shall be subject to the prevention of significant deterioration program or the nonattainment area new source review requirements only if the sum of all source-wide, non-de minimis, contemporaneous, and creditable emissions increases and decreases of that pollutant or that regulated precursor exceed applicable significance levels. Each specific regulated precursor shall be considered independently in determining applicable significance levels.

(III) In determining the non-de minimis net emissions increase during the contemporaneous period, the commission's procedures shall be consistent with the federal environmental protection agency's review procedure for determining net emissions increases and decreases. Non-de minimis increases shall exclude all increases which would be exempt under commission rules from a requirement to obtain a construction permit under section 25-7-114.2.

CREDIT(S)

Repealed and reenacted by Laws 1979, H.B.1109, § 1. Amended by Laws 1987, H.B.1239, § 3; Laws 1992, S.B.92-105, § 12, eff. July 1, 1992; Laws 1994, H.B.94-1264, § 1, eff. May 25, 1994; by initiative 1998, eff. Dec. 30, 1998; Laws 2005, Ch. 100, § 4, eff. Aug. 8, 2005.

[FN1] Enacted as Laws 2005, Ch. 100, eff. Aug. 8, 2005.

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The amendment to this section, proposed by initiative in 1998, was ratified by the electorate at the general election of Nov. 3, 1998, effective upon proclamation of the governor, Dec. 30, 1998.

C. R. S. A. § 25-7-109, CO ST § 25-7-109

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Title 25. Health

Environmental Control

Article 8. Water Quality Control (Refs & Annos)

Part 1. General Provisions

→ § 25-8-102. Legislative declaration

(1) In order to foster the health, welfare, and safety of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to prevent injury to beneficial uses made of state waters, to maximize the beneficial uses of water, and to develop waters to which Colorado and its citizens are entitled and, within this context, to achieve the maximum practical degree of water quality in the waters of the state consistent with the welfare of the state. It is further declared that pollution of state waters may constitute a menace to public health and welfare, may create public nuisances, may be harmful to wildlife and aquatic life, and may impair beneficial uses of state waters and that the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states.

(2) It is further declared to be the public policy of this state to conserve state waters and to protect, maintain, and improve, where necessary and reasonable, the quality thereof for public water supplies, for protection and propagation of wildlife and aquatic life, for domestic, agricultural, industrial, and recreational uses, and for other beneficial uses, taking into consideration the requirements of such uses; to provide that no pollutant be released into any state waters without first receiving the treatment or other corrective action necessary to reasonably protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; and to cooperate with other states and the federal government in carrying out these objectives.

(3) It is further declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest, and the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(4) This article and the agencies authorized under this article shall be the final authority in the administration of water pollution prevention, abatement, and control. Notwithstanding any other provision of law, no department or agency of the state, and no municipal corporation, county, or other political subdivision, having jurisdiction over water pollution prevention, abatement, and control, shall issue any authorization for the discharge of pollutants into state waters unless authorized to do so in accordance with this article.

(5) It is further declared that the general assembly intends that this article shall be construed to require the development of a water quality program in which the water quality benefits of the pollution control measures utilized have a reasonable relationship to the economic, environmental, energy, and public health costs and impacts of such measures, and that before any final action is taken, with the exception of any enforcement action, consideration be given to the economic reasonableness of the action. Such consideration shall include evaluation of the benefits derived from achieving the goals of this article and of the economic, environmental, public health, and energy impacts to the public and affected persons.

C.R.S.A. § 25-8-102

CREDIT(S)

Repealed and reenacted by Laws 1981, S.B.10, § 1.

C. R. S. A. § 25-8-102, CO ST § 25-8-102

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Title 25. Health

Environmental Control

■ Article 8. Water Quality Control (Refs & Annos)

■ Part 2. Water Quality Control Commission (Refs & Annos)

→ § 25-8-201. Water quality control commission created

(1)(a) There is hereby created in the department of public health and environment a water quality control commission which shall exercise its powers and perform its duties and functions as if it were transferred to said department by a type 1 transfer. The commission shall consist of nine citizens of the state who shall be appointed by the governor, with the consent of the senate, for terms of three years each; except that, of the members appointed to take office in 1984, one shall be appointed for a one-year term, one shall be appointed for a two-year term, and three shall be appointed for three-year terms. Members of the commission shall be appointed so as to achieve geographical representation and to reflect the various interests in water in the state. At least two members shall reside in that portion of the state which is west of the continental divide.

(b) Repealed by Laws 2005, Ch. 78, § 24, eff. Aug. 8, 2005.

(c) Whenever a vacancy exists, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy, subject to confirmation by the senate.

(2)(a) The governor may remove any appointed member of the commission for malfeasance in office, failure to regularly attend meetings, or for any cause that renders such a member incapable or unfit to discharge the duties of his office.

(b) If any member of the commission is absent from two consecutive meetings, the chairman of the commission shall determine whether the cause of such absences was reasonable. If he determines that the cause of the absences was unreasonable, he shall so notify the governor who may remove such member and appoint a qualified person for the unexpired portion of the regular term, subject to confirmation by the senate.

(3) Each member of the commission not otherwise in full-time employment of the state shall receive a per diem which shall be the same amount paid to the general assembly for attendance at interim committees for each day actually and necessarily spent in the discharge of official duties, not to exceed twelve hundred dollars in any one year; and each member shall receive traveling and other necessary expenses actually incurred in the performance of his official duties as a member of the commission.

(4) The commission shall select from its own membership a chairman, a vice-chairman, and a secretary. The commission shall keep a record of its proceedings.

(5) The commission shall hold regular public meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of each meeting shall be mailed to each member at least five days in advance.

(6) All members shall have a vote. Two-thirds of the commission shall constitute a quorum, and the concurrence

C.R.S.A. § 25-8-201

of a majority of the quorum in any matter within its powers and duties shall be required for any determination made by the commission.

CREDIT(S)

Repealed and reenacted by Laws 1981, S.B.10, § 1. Amended by Laws 1984, H.B.1066, § 1; Laws 1996, S.B.96-208, § 22, eff. June 1, 1996; Laws 2005, Ch. 78, § 24, eff. Aug. 8, 2005.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

Laws 2005, Ch. 78, § 24 repealed par. (1)(b), which read:

"(1)(b) Only commission members appointed by the governor and serving on July 1, 1981, shall continue to serve the remainder of their terms. On and after July 1, 1981, appointments shall be made in accordance with the provisions of this subsection (1)."

C. R. S. A. § 25-8-201, CO ST § 25-8-201

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Title 25. Health

Environmental Control

■ Article 8. Water Quality Control (Refs & Annos)

■ Part 2. Water Quality Control Commission (Refs & Annos)

→ § 25-8-205. Control regulations

(1) The commission may promulgate control regulations for the following purposes:

(a) To describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in section 25-8-204, that any person may discharge into any specified class of state waters;

(b) To describe pretreatment requirements, prohibitions, standards, concentrations, and effluent limitations on wastes any person may discharge into any specified class of state water from any specified type of facility, process, activity, or waste pile including, but not limited to, all types specified in section 306(b)(1)(A) of the federal act;

(c) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of any state waters in violation of control regulations or that does cause the quality of any state waters to be in violation of any applicable water quality standard;

(d) To adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with sewage treatment works;

(e) To describe requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids to protect public health and to prevent the discharge of pollutants into state waters, except as authorized by permit. The commission requirements described pursuant to this paragraph (e) shall be no more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act. Fees shall be established as set forth in section 30-20-110.5, C.R.S., and the commission shall have no authority to levy additional or duplicative fees.

(f) To describe requirements, prohibitions, standards, and concentration limitations on the reuse of reclaimed domestic wastewater for purposes other than drinking that will protect public health and encourage the reuse of reclaimed domestic wastewater.

(2) In the formulation of each control regulation, the commission shall consider the following:

(a) The need for regulations that control discharges of specified pollutants that are the subject of water quality standards for the receiving state waters;

(b) The need for regulations that specify treatment requirements for various types of discharges;

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(c) The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and the extent to which the discharge to be controlled is significant;

(d) Control requirements promulgated by agencies of the federal government;

(e) The continuous, intermittent, or seasonal nature of the discharge to be controlled;

(f) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the volume of flow of the receiving water or the extent to which the discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and

(g) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter state waters.

(3) Control regulations may be promulgated for use in connection with any one or more of the classes of state waters authorized pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state waters or to all state waters.

(4) The commission shall coordinate and cooperate with the state engineer, the Colorado water conservation board, the oil and gas conservation commission, the state board of health, and other state agencies having regulatory powers in order to avoid adopting control regulations that would be either redundant or unnecessary.

(5) The commission shall not adopt control regulations that require agricultural nonpoint source dischargers to utilize treatment techniques that require additional consumptive or evaporative use which would cause material injury to water rights. With regard to nonpoint source water pollution control related to agricultural practices, the commission and division shall pursue incentive, grant, and cooperative programs in preference to the promulgation of control regulations. When interested water conservation districts, water conservancy districts, and conservation districts recommend nonpoint source control activities related to agricultural practices to the division and commission, the division and commission, after consultation with such districts, shall give substantial weight to the recommendations of such districts into the approved program. Except as provided by section 25-8-205.5, control regulations related to agricultural practices shall be promulgated only if incentive, grant, and cooperative programs are determined by the commission to be inadequate and such regulations are necessary to meet state law or the federal act. This subsection (5) does not allocate wasteloads or relieve any source from participation in wasteload allocations determined necessary under any duly promulgated regulations established by the water quality control commission under this section.

(6) The division may issue a variance from a control regulation of general applicability, based upon a determination that the benefits derived from meeting the control regulation do not bear a reasonable relationship to the economic, environmental, or energy impacts or other factors which are particular to the applicant in complying with the control regulation; except that such variance shall be consistent with the purposes of this article including the protection of existing beneficial uses. No variance shall be issued for longer than five years. Variances shall be granted or renewed according to the procedure established in section 25-8-401(5).

CREDIT(S)

Repealed and reenacted by Laws 1981, S.B.10, § 1. Amended by Laws 1988, S.B.119, § 1; Laws 1990, S.B.90-126, § 3, eff. July 1, 1990; Laws 1993, S.B.93-182, § 2, eff. July 1, 1993; Laws 2000, Ch. 80, § 2, eff.

C.R.S.A. § 25-8-205

March 31, 2000; Laws 2002, Ch. 163, § 11, eff. July 1, 2002.

C. R. S. A. § 25-8-205, CO ST § 25-8-205

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Title 25. Health

Environmental Control

■ Article 15. Hazardous Waste (Refs & Annos)

■ Part 3. State Hazardous Waste Management Program (Refs & Annos)

→ § 25-15-302. Solid and hazardous waste commission--creation--membership-- rules--administration

(1)(a) There is hereby created in the department of public health and environment a solid and hazardous waste commission, referred to in this part 3 as the "commission", which shall exercise its powers and perform its duties and functions as if it were transferred to said department by a type 1 transfer. The commission shall consist of nine citizens of the state who shall be appointed by the governor, with the consent of the senate, for terms of three years each; except that, of the members appointed to take office initially, three shall be appointed for one-year terms, three shall be appointed for two-year terms, and three shall be appointed for three-year terms. Members of the commission shall be appointed so as to achieve geographical representation and to reflect the various interests in waste management in the state.

(b) Appointments to the commission shall be made so that all persons shall have appropriate scientific, technical, industrial, legal, public health, or environmental training or experience. Three members shall be from the regulated community. Three members shall be from the public at large. Three members shall be from government or the academic community; except that no member shall be an employee of the department. No more than five members of the commission shall be members of the same political party.

(c) The members of the commission shall disclose any potential conflicts of interest to the governor and the committee of reference of the general assembly prior to confirmation and shall disclose any potential conflicts of interest which arise during their terms of membership to the other commission members in a public meeting of the commission.

(d) Whenever a vacancy exists on the commission, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy, subject to confirmation by the senate.

(e) The governor may remove any appointed member of the commission for malfeasance in office, for failure to attend meetings regularly, or for any cause that renders such member incapable or unfit to discharge the duties of such member's office.

(f) If any member of the commission is absent from two consecutive meetings or fails to attend at least seventy-five percent of the regularly scheduled meetings of the commission held in any one year and such absences were without sufficient cause as determined by the commission, the chairman of the commission shall notify the governor, who may remove such member and appoint a qualified person for the remaining portion of such member's term, subject to confirmation by the senate.

(g) Each member of the commission shall receive traveling and other necessary expenses actually incurred in the performance of such member's official duties as a member of the commission.

(h) The commission shall select from its own membership a chairman, a vice-chairman, and a secretary. The

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commission shall keep a record of its proceedings.

(i) The commission shall hold regular public meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of each meeting shall be mailed to each member at least twenty days in advance of such meeting.

(j)(I) The commission shall hold an annual public meeting to hear public comment on hazardous waste issues within the state. At such meeting, the commission shall answer reasonable questions from the public concerning rules, regulations, appeals of penalties, and any other commission activities under the authority of this part 3 occurring during the previous year.

(II) Prior to the meeting required under subparagraph (I) of this paragraph (j), the commission shall prepare and make available to the public a report which shall contain the following specific information:

(A) All rules and regulations promulgated by the commission during the previous year;

(B) All interpretive rules issued by the commission during the previous year;

(C) All appeals of penalties heard before the commission and the commission's determinations in such appeals; and

(D) Any other commission activities as appropriate.

(k) Each member of the commission shall have a vote. Two-thirds of the members of the commission shall constitute a quorum, and, except as otherwise provided in subsection (4) of this section, the concurrence of a majority of the members present at any meeting at which a quorum is present on any matter within its powers and duties shall be required for any determination made by the commission.

(2) The commission shall promulgate rules pertaining to hazardous waste in accordance with this part 3 and in accordance with the procedures and other provisions of article 4 of title 24, C.R.S. Such rules shall provide protection of public health and the environment and shall include:

(a) Criteria for establishing characteristics and listings of hazardous wastes, including mechanisms for determining whether any waste is hazardous for the purpose of this part 3;

(b) Regulations governing those wastes or combinations of wastes which are not compatible and which may not be stored, treated, or disposed of together;

(c) Regulations for the storage, treatment, and disposal of hazardous wastes, including regulations for the issuance of permits based on best engineering judgment, including but not limited to interim status, regulations concerning information required to be submitted to obtain such permits, and regulations concerning the requirement of a permit prior to the construction of a treatment, storage, or disposal facility;

(d) Regulations for the operation and maintenance of hazardous waste treatment, storage, and disposal facilities, including such qualifications and requirements as to ownership, continuity of operation, training of personnel, and closure and postclosure care, as may be necessary or desirable;

(e) Regulations for the design and construction of treatment, storage, and disposal facilities;

(f) Regulations, promulgated in accordance with article 20 of title 42, C.R.S., providing procedures and requirements for:

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- (I) The use of a manifest during transportation of hazardous waste, applying equally to those persons transporting hazardous waste they have generated themselves and to persons who have contracted to transport hazardous waste for other parties, consistent with federal and state regulations on the transportation of hazardous wastes;
- (II) Record-keeping concerning the transportation of hazardous waste, including its source and destination;
- (III) Notification and cleanup of spills or discharges during the transportation of hazardous waste;
- (IV) Transportation of hazardous wastes only if such hazardous wastes are properly labeled and for restricting the transportation of all hazardous wastes only to permitted hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form;
- (g) Regulations requiring reports and record-keeping requirements for hazardous waste management, including notification of accidents;
- (h) Regulations establishing procedures for maintaining confidentiality relating to methods of manufacture or secret processes and establishing fees and financial assurance and ownership requirements, including bonds, required by this part 3;
- (i) Regulations for issuing compliance orders and administrative penalties, for establishing compliance conditions and schedules, and for issuing, modifying, revoking and reissuing, or terminating permits; except that nothing in this paragraph (i) shall be interpreted to impair the department's authority to take such actions pending promulgation of such regulations;
- (j) Regulations for the classification of sites in terms of wastes that can be received and managed thereon and hydrological, soil, and other siting characteristics for assuring long-term isolation of designated wastes from the environment;
- (k) Regulations establishing standards applicable to generators of hazardous waste, including requirements for:
 - (I) Record-keeping practices that accurately identify the quantities of hazardous waste generated, the constituents of such hazardous waste which are significant in quantity or of potential harm to human health or the environment, and the disposition of such hazardous waste;
 - (II) Labeling practices for any container that is used for the storage, transportation, or disposal of hazardous waste so as to identify accurately such waste;
 - (III) The use of appropriate containers for hazardous waste;
 - (IV) The furnishing of information on the general chemical composition of hazardous waste to persons transporting, treating, storing, or disposing of such waste;
 - (V) The use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage, or disposal at a permitted facility;
 - (VI) The submission of reports;
- (l) Regulations requiring contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any hazardous waste.
- (3) The commission shall promulgate rules establishing categories of hazardous wastes and hazardous waste

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management practices based on degree of hazard considerations. Such rules may vary from category to category to reflect the degree of hazard involved in each such category. The commission's rules may also provide for general permits to be issued based on degree of hazard considerations.

(3.5) The commission shall promulgate rules pertaining to the assessment of fees to offset program costs from facilities that treat, store, or dispose of hazardous waste pursuant to a permit or interim status and from generators of hazardous waste in accordance with the following:

(a) On or after July 1, 2000, to July 1, 2002, the fees shall be as follows:

(I) The annual fees for facilities that treat, store, or dispose of hazardous waste pursuant to a permit or interim status shall be as set forth in 6 CCR 1007-3, section 100.31;

(II) The annual fee shall be one thousand nine hundred dollars for generators of hazardous waste who are subject to regulation under this part 3 during any calendar month of the year for which the annual fee is being assessed and who generate in each of any four calendar months in that year an amount greater than one thousand kilograms of hazardous wastes, one kilogram of acute hazardous wastes, or one hundred kilograms of any residue, contaminated soil, waste, or debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes;

(III) The annual fee shall be three hundred dollars for all other generators of hazardous waste that are subject to this part 3 during any calendar month of the year for which the annual fee is being assessed; except that no annual fee shall be assessed against those generators of hazardous waste who generate in every month of that year no more than one hundred kilograms of hazardous wastes, one kilogram of acute hazardous wastes, or one hundred kilograms of any residue, contaminated soil, waste, or debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes;

(IV) The document review and activity fee charged by the department shall be in accordance with 6 CCR 1007-3, section 100.32; except that the hourly charge shall be increased from eighty-five dollars to one hundred dollars;

(V) The document review and activity fee ceiling shall be in accordance with 6 CCR 1007-3, section 100.32; except that the department may, on a case-by-case basis and upon demonstration of need consistent with section 25-15-301.5, request a waiver of the ceiling from a facility subject to the document review and activity fee.

(b) On or after July 1, 2002, the commission may adjust the fees then in effect if the department has demonstrated that it has developed, implemented, and is continuing to improve policies and procedures for carrying out its statutory responsibilities at the lowest possible cost without jeopardizing the intent set out in section 25-15-301.5(1), and that, despite these efforts or as a result of these efforts, the fee adjustments are necessary; except that the adjusted fees shall be subject to the following limitations:

(I) Annual fees for facilities that treat, store, or dispose of hazardous waste pursuant to a permit or interim status shall be established to generate no more than thirty percent of the actual reasonable program costs attributable to such facilities. Such annual fees shall take into account equitable factors including, without limitation, the quantity and degree of hazard of the hazardous waste involved, and whether the hazardous waste is to be disposed of, stored, or treated.

(II) Annual fees for generators of hazardous waste who are subject to regulation under this part 3 during any calendar month of the year for which the annual fee is being assessed shall be established to generate no more than fifty percent of the actual reasonable program costs attributable to generators with an appropriate differentiation between generators described in subparagraphs (II) and (III) of paragraph (a) of this subsection (3.5);

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(III) The hourly charge for the document review and activity fees shall be established at a rate comparable to industry rates for performing similar tasks with maximum levels on document review and activity fees that reflect timely and cost-effective reviews; and

(IV) The overall fee structure shall be consistent with the trend in hazardous waste generation, treatment, storage, disposal, and corrective action in the state and with the authorized funding for the program.

(c) In addition to any other review provided in law, any rule adopted, or fee modified, by the commission pursuant to paragraph (b) of this subsection (3.5) may be reviewed by the joint budget committee of the general assembly upon its own motion or upon written request submitted within thirty days after the adoption of the rule by the commission. The joint budget committee shall review such rule for accuracy and compliance with the statutory provision set forth in this subsection (3.5). Request may be made by any person regulated under this part 3. Any review by the joint budget committee shall be completed within ninety days after the date requested. Such rule shall not become effective until approved by the joint budget committee or upon the failure of the joint budget committee to take action within ninety days after the day of the request for review. Such rule may not result in a level of funding for the program that exceeds amounts appropriated or that will be appropriated by the general assembly.

(d) The department shall provide a receipt for the fees paid pursuant to this subsection (3.5) and shall transmit such payments to the state treasurer and take the treasurer's receipt therefor. The state treasurer shall credit all fees received to the hazardous waste service fund as provided in section 25- 15-304.

(3.7) If the department determines that a facility is, and has been, treating, storing, or disposing of hazardous wastes without a permit or interim status, and that facility legally should have been operating pursuant to a permit or interim status, then, in addition to any other remedies the department may have, the department may assess a fee to offset program costs from that facility that is equivalent to the estimated annual fees, without interest, that such facility should have paid the department if the facility had been operating pursuant to a permit or interim status; except that such fee shall not be assessed under any one the following circumstances:

(a) The only hazardous waste being treated, stored, or disposed of is in-place contaminated media or debris, or contaminated structures;

(b) The treatment, storage, and disposal is part of a corrective action plan approved by the department; or

(c) The facility modified the facility's operations within one month after being notified in writing that the facility should be operating pursuant to a permit or interim status so that any treatment, storage, or disposal of hazardous wastes at the facility is no longer subject to a permit or interim status.

(4)(a) Except as provided in paragraph (b) of this subsection (4), the rules promulgated by the commission pursuant to the provisions of this part 3 may be more stringent than the corresponding rules of the federal environmental protection agency promulgated pursuant to the federal act; however, more stringent rules including, without limitation, rules that list or define as a hazardous waste any waste or other material exempted or otherwise not regulated as a hazardous waste under the federal act may only be adopted if the commission makes a written finding, after a public hearing and based upon substantial evidence in the record that such rules are necessary to protect the public health and the environment of the state, and such findings and rules are approved by an affirmative vote of at least six members of the commission. Such findings and rules shall be accompanied by a commission opinion referring to and evaluating the public health and environmental information and studies contained in the record that form the basis for such findings and rules.

(b) The rules promulgated by the commission pursuant to the provisions of this part 3 concerning the regulation of mining and mineral processing wastes, including exploration, mining, milling, and smelting and the refining of

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waste, shall be identical to and no more inclusive than the regulations of the federal environmental protection agency promulgated pursuant to the federal act.

(c) Deleted by Laws 2000, Ch. 239, § 3, eff. July 1, 2000.

(4.5) The commission shall adopt rules concerning solid waste disposal sites and facilities in accordance with part 1 of article 20 of title 30, C.R.S.

(4.6) The commission may adopt rules that specify types of composting facilities, by size, volume, or other suitable criteria that provide equivalent protection of public health and the environment that would not be required to obtain a certificate of designation in accordance with section 30-20-102, C.R.S.

(5) The rules and regulations promulgated by the commission shall be subject to expiration in accordance with sections 24-4-103(8)(c) and 24-4-108, C.R.S.

(6) The commission may advise and consult and cooperate with other agencies of the state, the federal government, and other states and with groups, political subdivisions, and industries affected by the provisions of this article or by the policies or rules of the commission.

(7)(a) The commission may hold hearings. Such hearings shall be held pursuant to and in conformity with article 4 of title 24, C.R.S., and with this article.

(b) The commission shall adopt such rules governing procedures and hearings before the commission as may be necessary to assure that such procedures and hearings will be fair and impartial. Such rules shall be consistent with the pertinent provisions of article 4 of title 24, C.R.S. Such rules shall include a voting rule that excludes a member from voting on any matter arising under section 25-15-305, 25-15-308, or 25-15-309 if such member has a conflict of interest with respect to such matter.

(c) The disclosure of any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered by the commission shall be governed by the provisions of part 2 of article 72 of title 24, C.R.S.

(8)(a) Prior to promulgating any rule authorized by this article, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S.; except that such notice shall include a summary or the text of each proposed rule or rule revision. The commission may, if requested or when otherwise appropriate, lengthen the notice period to provide sufficient time for public review of a proposed rule or revision.

(b) Rules promulgated pursuant to this article shall take effect as provided in section 24-4-103(5) or (6), C.R.S.

(9)(a) The commission shall employ an administrator and shall delegate to such administrator such duties and responsibilities as it may deem necessary; except that no authority shall be delegated to such administrator to promulgate rules or to make determinations as provided in this part 3. Such administrator shall have appropriate practical, educational, technical, and administrative training or experience related to solid and hazardous waste management and shall be employed pursuant to section 13 of article XII of the Colorado constitution.

(b) Notice of meetings of the commission shall be published in the Colorado register at least twenty days prior to the date of such meeting and shall state the time, place, and nature of the subject matter to be considered at such meeting. The administrator shall maintain a mailing list of persons requesting to be included thereon and shall mail notice of any meeting of the commission to such persons at least twenty days prior to such meeting. Opportunity shall be afforded to interested persons to submit views orally or in writing on the proposals under consideration or

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to otherwise participate informally in a commission proceeding. For commission proceedings under this part 3 other than the review of administrative penalties pursuant to section 25-15-309, the department shall furnish such personnel to the commission as the commission may reasonably require.

CREDIT(S)

Repealed and reenacted by Laws 1981, S.B.519, § 1. Amended by Laws 1983, S.B.282, §§ 20, 21; Laws 1992, S.B.92-116, § 5, eff. June 1, 1992. Repealed and reenacted by Laws 1992, S.B.92-116, § 6, eff. Aug. 1, 1992. Amended by Laws 1994, S.B.94-1, § 71, eff. Jan. 1, 1995; Laws 2000, Ch. 239, § 3, eff. July 1, 2000; Laws 2006, Ch. 247, § 10, eff. July 1, 2006.

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Laws 2006, Ch. 247, § 28, provides:

"Effective date. This act shall take effect July 1, 2006."

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Section 32 of Laws 1992, S.B.92-116, provides:

"**Effective date--applicability.** Section 5 of this act shall take effect upon passage. The remainder of this act shall take effect August 1, 1992, and shall apply to violations committed on or after said date."

Section 102 of Laws 1994, S.B.94-1 provides:

"**Effective date--applicability.** This act shall take effect January 1, 1995, and shall apply to offenses committed on or after said date."

Laws 2000, Ch. 239, § 3, eff. July 1, 2000 deleted par. (4)(c), which read:

"The rules promulgated by the commission pursuant to the provisions of this part 3 may not list or define as a hazardous waste any waste or other material exempted or otherwise not regulated as a hazardous waste under the federal act unless the commission makes a written finding after a public hearing and based upon substantial evidence in the record that such rules are necessary to protect the public health and the environment of the state and such findings and rules are approved by a vote of at least six members of the commission. Such findings and rules shall be accompanied by a commission opinion referring to and evaluating the public health and environmental information and studies contained in the record that form the basis for such findings and rules."

In the section heading, "regulations was substituted for "rules" to conform to the state edition.

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Title 25. Health

■ Environmental Control

■ Article 16.5. Pollution Prevention

→ § 25-16.5-104. Pollution prevention advisory board--creation

(1) There is hereby created in the department of public health and environment a pollution prevention advisory board for the purposes of providing overall policy guidance, coordination, and advice to the department on pollution prevention activities and for carrying out the duties specified in section 25-16.5-105. The advisory board shall consist of fifteen members to be appointed by the governor. The members appointed shall include representatives of businesses, agriculture, environmental groups, academic institutions of higher education, community groups, and local governments. In addition, the governor shall appoint two representatives from state agencies to serve as ex-officio members of the advisory board, with at least one of such appointees to be from the department of public health and environment. In making the appointments, the governor shall provide for geographic diversity. The board shall elect its own chairperson. Members of the advisory board shall serve without compensation.

(2) Repealed by Laws 1995, S.B.95-2, § 3, eff. March 31, 1995; Laws 1995, H.B.95-1161, § 2, eff. April 7, 1995.

CREDIT(S)

Added by Laws 1992, H.B.92-1327, § 1, eff. July 1, 1992. Amended by Laws 1995, H.B.95-1161, § 2, eff. April 7, 1995; Laws 1995, S.B.95-2, § 3, eff. March 31, 1995; Laws 2005, Ch. 78, § 34, eff. Aug. 8, 2005.

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Laws 1995, H.B.95-1161, § 2 and Laws 1995, S.B.95-2, § 3 repealed subsec. (2), which had read:

"(a) This section is repealed, effective July 1, 1995.

"(b) Prior to said repeal, the advisory board shall be reviewed as provided for in section 2-3-1203(3)(h), C.R.S."

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Title 33. Wildlife and Parks and Outdoor Recreation
■ Colorado Natural Areas
■ Article 33. Colorado Natural Areas

→ § 33-33-106. Colorado natural areas council

- (1) There is hereby created the Colorado natural areas council as an advisory council to the board. The council shall advise the board on the administration of the program and shall approve the registry and recommend the designation of natural areas by the board.
- (2) The council shall consist of the following seven members: One member each from the membership of the board, the wildlife commission, and the state board of land commissioners appointed by their respective boards or commissions, who shall serve for three-year terms; and four members appointed by the governor, who shall be individuals with a substantial interest in the preservation of natural areas and who shall serve for four-year terms.
- (3) Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term. All members of the council shall be residents of the state of Colorado, and no member appointed by the governor shall serve longer than two successive terms.
- (4) The council shall, by majority vote of all members, elect its chairman from among the members appointed by the governor. A simple majority of the council membership shall constitute a quorum for the transaction of business.
- (5) Members of the council shall receive no compensation for their service on the council but shall be reimbursed for necessary expenses incurred in the performance of their duties.
- (6) The council shall hold at least one regular meeting in each quarter of each calendar year and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairman and shall be called by him upon written request therefor signed by two or more members. A written notice of the time and place of each meeting shall be sent to each member.
- (7) Any person who was a member of the Colorado natural areas council on January 1, 1988, shall continue to serve for the remainder of the term to which he was appointed.

CREDIT(S)

Added by Laws 1988, H.B.1184, § 1, eff. March 23, 1988.

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Title 37. Water and Irrigation

Water Conservation Board and Compacts

General and Administrative

Article 60. Colorado Water Conservation Board (Refs & Annos)

Part 1. General Provisions

→ § 37-60-104. Personnel

(1) The board shall consist of fifteen members. The executive director of the department of natural resources shall be a voting member ex officio. The attorney general, state engineer, director of the division of wildlife, commissioner of agriculture or designee, and director of said board shall be nonvoting members ex officio. The nine remaining members shall be qualified electors of the state, well versed in water matters, and shall be appointed by the governor, by and with the consent of the senate, for terms of three years; except that no appointment shall be made that does not conform to the requirements of subsections (3) and (4) of this section. Members of the board may not vote by proxy. Pursuant to section 1 of article XII of the state constitution, unless removed according to law, members of the board shall exercise the duties of their office until a successor is duly appointed, qualified, and confirmed. Pursuant to section 6(1) of article IV of the state constitution, no person appointed by the governor pursuant to this section to a vacancy occurring while the senate is in session may take office until confirmed by the senate. The appointments shall be made in such a manner that the terms of three members shall expire on February 12 of each year. In case any vacancy occurs in the appointed membership of the board, the governor shall appoint a successor to serve the unexpired term of any member of the board within thirty days after the creation of such vacancy.

(2) The appointed members of said board shall be chosen geographically as follows: Four from the western slope and five from the eastern slope; but, of the five members to be appointed from the eastern slope, one shall be from the Rio Grande drainage basin, one from the North Platte drainage basin, one from the Arkansas drainage basin, one from the South Platte drainage basin outside of the city and county of Denver, and one from the city and county of Denver and intimately familiar with its water problems; and that of the four members to be appointed from the western slope, one shall be from the Yampa-White drainage basin, one from the main Colorado drainage basin, one from the Gunnison-Uncompahgre drainage basin, and one from the San Miguel-Dolores-San Juan drainage basins. Before entering upon the discharge of his duties, each appointed member shall make, subscribe, and file with the secretary of state the oath prescribed by the constitution.

(3) To the extent possible, appointments to the board shall include persons representing the following areas of experience and expertise: Water resource management; water project financing; engineering, planning, and development of water projects; water law; and irrigated farming or ranching. Members of the board shall be residents of the geographic area they represent.

(4) No more than five appointees to the board shall be members of the same political party.

(5) The requirements set forth in subsections (3) and (4) of this section shall be implemented over a three-year period beginning February 12, 1993, so that upon making the appointments for the vacancies which occur on February 12, 1995, all requirements set forth in this section shall have been met.

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CREDIT(S)

Laws 1981, S.B.439, § 1; Laws 1984, H.B.1128, § 8; Laws 1987, H.B.1158, § 1. Amended by Laws 1992, S.B.92-87, § 1, eff. May 27, 1992; Laws 1999, Ch. 82, § 1, eff. Aug. 4, 1999; Laws 2004, Ch. 18, § 1, eff. March 8, 2004; Laws 2004, Ch. 283, § 1, eff. May 21, 2004.

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This section is reprinted to conform to the state edition.

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Derivation:

C.S.A.1935, c. 173B, § 3.
Laws 1937, H.B.6, § 3.
Laws 1945, H.B.688, § 1.
Laws 1947, H.B.355, § 1.
C.R.S.1953, § 148-1-3.
C.R.S.1963, § 149-1-3.
Laws 1967, S.B.157, § 1.

C. R. S. A. § 37-60-104, CO ST § 37-60-104

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C

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Title 37. Water and Irrigation

Water Rights and Irrigation

Water Right Determination and Administration

Article 92. Water Right Determination and Administration (Refs & Annos)

Part 1. General (Refs & Annos)

→ § 37-92-102. Legislative declaration--basic tenets of Colorado water law

(1)(a) It is hereby declared to be the policy of the state of Colorado that all water in or tributary to natural surface streams, not including nontributary ground water as that term is defined in section 37-90-103, originating in or flowing into this state have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with sections 5 and 6 of article XVI of the state constitution and this article. As incident thereto, it is the policy of this state to integrate the appropriation, use, and administration of underground water tributary to a stream with the use of surface water in such a way as to maximize the beneficial use of all of the waters of this state.

(b) A stream system which arises as a natural surface stream and, as a natural or man-induced phenomenon, terminates within the state of Colorado through naturally occurring evaporation and transpiration of its waters, together with its underflow and tributary waters, is a natural surface stream subject to appropriation as provided in paragraph (a) of this subsection (1).

(2) Recognizing that previous and existing laws have given inadequate attention to the development and use of underground waters of the state, that the use of underground waters as an independent source or in conjunction with surface waters is necessary to the present and future welfare of the people of this state, and that the future welfare of the state depends upon a sound and flexible integrated use of all waters of the state, it is hereby declared to be the further policy of the state of Colorado that, in the determination of water rights, uses, and administration of water, the following principles shall apply:

(a) Water rights and uses vested prior to June 7, 1969, in any person by virtue of previous or existing laws, including an appropriation from a well, shall be protected subject to the provisions of this article.

(b) The existing use of ground water, either independently or in conjunction with surface rights, shall be recognized to the fullest extent possible, subject to the preservation of other existing vested rights, but, at his own point of diversion on a natural watercourse, each diverter must establish some reasonable means of effectuating his diversion. He is not entitled to command the whole flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled.

(c) The use of ground water may be considered as an alternate or supplemental source of supply for surface decrees entered prior to June 7, 1969, taking into consideration both previous usage and the necessity to protect the vested rights of others.

(d) No reduction of any lawful diversion because of the operation of the priority system shall be permitted unless such reduction would increase the amount of water available to and required by water rights having senior priorities.

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(3) Further recognizing the need to correlate the activities of mankind with some reasonable preservation of the natural environment, the Colorado water conservation board is hereby vested with the exclusive authority, on behalf of the people of the state of Colorado, to appropriate in a manner consistent with sections 5 and 6 of article XVI of the state constitution, such waters of natural streams and lakes as the board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. In the adjudication of water rights pursuant to this article and other applicable law, no other person or entity shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, or for natural surface water levels or volumes for natural lakes, for any purpose whatsoever. The board also may acquire, by grant, purchase, donation, bequest, devise, lease, exchange, or other contractual agreement, from or with any person, including any governmental entity, such water, water rights, or interests in water in such amount as the board determines is appropriate for stream flows or for natural surface water levels or volumes for natural lakes to preserve or improve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner, not to exceed one hundred twenty days unless further time is granted by the requesting person or entity, what terms and conditions it will accept in a contract or agreement for such acquisition. Any contract or agreement executed between the board and any person or governmental entity that provides water, water rights, or interests in water to the board shall be enforceable by either party thereto as a water matter under this article, according to the terms of the contract or agreement. The board may not accept a donation of water rights that either would require the removal of existing infrastructure without approval of the current owner of such infrastructure or that were acquired by condemnation. The board may use any funds available to it, other than the construction fund created in section 37-60-121, for acquisition of water rights and their conversion to instream flow rights. The board may initiate such applications as it determines are necessary or desirable for utilizing water, water rights, or interests in water appropriated, acquired, or held by the board, including applications for changes of water rights, exchanges, or augmentation plans. Prior to the initiation of any such appropriation or acquisition, the board shall request recommendations from the division of wildlife and the division of parks and outdoor recreation. The board also shall request recommendations from the United States Department of Agriculture and the United States Department of the Interior. Nothing in this article shall be construed as authorizing any state agency to acquire water by eminent domain or to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact. Nothing in this subsection (3) shall impact section 37-60-121(2.5). Any appropriation made pursuant to this subsection (3) shall be subject to the following principles and limitations:

(a) Any such appropriation which is based upon water imported from one water division to another by some other appropriator shall not, as against the appropriator of such imported water or his successor in interest, constitute a claim, bar, or use for any purpose whatsoever.

(b) Any such appropriation shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.

(c) Before initiating a water rights filing, the board shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the board's water right, if granted; and that such environment can exist without material injury to water rights.

(c.5) Notwithstanding section 37-92-103(6), as to any application filed by the board on or after July 1, 1994, the board may not acquire conditional water rights or change conditional water rights to instream flow uses.

(d) Nothing in this section is intended or shall be construed to allow condemnation by this state or any person of easements or rights-of-way across private lands to gain access to a segment of a stream or lake where a water right decree has been awarded to the Colorado water conservation board.

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(e) All recommendations, including those of the United States, which are transmitted to the board for water to be retained in streams or lakes to preserve the natural environment to a reasonable degree must be made with specificity and in writing in order that any appropriation made by the board may be integrated into the statewide system for the administration of water rights. Filings for appropriations by the board shall be consistent with other appropriations and with the requirements of this article.

(4) Any appropriation made pursuant to subsection (3) of this section shall also be subject to the following principles and limitations:

(a) Utilizing a public notice and comment procedure, the board, in its discretion, may determine whether or not to appropriate minimum stream flows or natural lake levels, or decrease such an appropriation, to preserve the natural environment to a reasonable degree. The board may adopt conditions attached to an appropriation or decreased appropriation, may file or withdraw statements of opposition in water court cases, and enter into stipulations for decrees or other forms of contractual agreements, including enforcement agreements, that it determines will preserve the natural environment to a reasonable degree. All contractual agreements and stipulations entered into by the board prior to May 23, 1996, regarding enforcement of its appropriations shall be given full force and effect. Any increase to an existing minimum stream flow or natural lake level appropriation or decree shall be made as a new appropriation.

(b)(I) Except as provided pursuant to paragraph (d) of this subsection (4), if the board determines that it is appropriate to consider decreasing an existing decreed appropriation, the board shall proceed through an adequate public notice and comment process to consider such decrease at a public meeting.

(II) For the purposes of this paragraph (b), "adequate public notice and comment process" shall include the following:

(A) Notice of the proposed decrease and the date of the public meeting at which it will first be considered shall be printed in the resume in the water court having jurisdiction over the decree that is the subject of the decrease. The first public meeting of the board at which the decrease is to be considered shall occur at least sixty days after the month in which the resume is published. Notice shall also be published in a newspaper of statewide distribution within thirty to forty-five days prior to such first public meeting.

(B) If the board decides at such first public meeting to consider the proposed decrease, the board shall announce publicly the date of a subsequent public meeting for such purpose.

(C) On the written request of any person made within thirty days after the date of the first public meeting, the board shall delay the subsequent public meeting for up to one year to allow such person the opportunity for the collection of scientific data material to the proposed decrease. Such request may not be interposed solely for delay of the proceedings.

(D) On the written request of any person made within thirty days after the date of the first public meeting, the board shall, within sixty days after such request, establish fair and formal procedures for the subsequent public meeting, including the opportunity for reasonable disclosure, discovery, subpoenas, direct examination, and cross examination, and may promulgate rules that will assure orderly procedures. Subject to these rights and requirements, where a meeting will be expedited and the interests of the participants will not be substantially prejudiced thereby, the board may receive all or part of the evidence in written form.

(III) The board's final written determination regarding the decrease shall state its effective date, be mailed promptly to the persons who appeared by written or oral comment at the board's proceeding, and be filed promptly with the water court. Within thirty days after such effective date, any person who appeared by written or oral comment at the board's proceeding may file with the water court and serve the board a petition for judicial review of the board's

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determination that the decreed appropriation as decreased will preserve the natural environment to a reasonable degree, based on the administrative record and utilizing the criteria of section 24-4-106(6) and (7), C.R.S. Any such person may request a stay in accordance with the criteria of section 24-4-106(5), C.R.S., pending the review proceeding. If no petition is filed, the court shall promptly enter an order decreasing the board's appropriation decree in accordance with the board's written determination. If a petition is filed, the court shall promptly order briefing and oral argument and render its decision to affirm or set aside the board's determination. If the board's determination is affirmed, the court shall promptly enter an order decreasing the board's appropriation decree in accordance with the board's written determination. If the board's determination is set aside, the court shall enter its order of relief under the provisions of section 24-4-106(7), C.R.S. Appellate review of the court's order shall be as allowed in other water matters.

(c) The board's determinations regarding the matters to be determined by the board under paragraph (c) of subsection (3) of this section and paragraph (d) of this subsection (4) for new appropriations shall be subject to judicial review in the water court application and decree proceedings initiated by the board, based on the board's administrative record and utilizing the criteria of section 24-4-106(6) and (7), C.R.S. The board may file applications for changes of water rights and augmentation plans, and the water court shall determine matters that are within the scope of section 37-92-305.

(d) The board may participate in the recovery implementation program for endangered fish species in the upper Colorado river basin and appropriate and obtain decrees for minimum instream flows or natural lake levels, including decree provisions for modification and enforcement, the implementation of which shall not be subject to paragraph (b) of this subsection (4), as it determines will preserve the natural environment of the Colorado river endangered fish within Colorado to a reasonable degree while protecting existing uses within Colorado and not depriving the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

(e) Sub-subparagraphs (A) and (C) of subparagraph (II) of paragraph (b) of this subsection (4) shall not apply to the board's consideration of any proposed decrease which was included in a meeting notice and agenda issued by the board prior to May 23, 1996, whether or not the board had scheduled or taken any action on the proposal by such date. Sub-subparagraph (D) of subparagraph (II) of paragraph (b) of this subsection (4) shall not apply to such a proposal so long as the board establishes fair and formal procedures pursuant to such sub-subparagraph (D) at or before the first public meeting thereon for any subsequent public meeting, including the opportunity for reasonable disclosure, discovery, subpoenas, direct examination, and cross examination of witnesses. All other provisions in paragraph (b) of this subsection (4) shall apply to any decrease after May 23, 1996.

(5) Within thirty days after initiating any water rights filing for the adjudication of a recreational in-channel diversion, any county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district shall submit a copy of the water rights application to the board for review.

(6)(a) Deleted by Laws 2006, Ch. 197, § 1, eff. May 11, 2006.

(b) The board, after deliberation in a public meeting, shall consider the following factors and make written findings as to each:

(I) Whether the adjudication and administration of the recreational in-channel diversion would materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;

(II) Deleted by Laws 2006, Ch. 197, § 1, eff. May 11, 2006.

(III) Deleted by Laws 2006, Ch. 197, § 1, eff. May 11, 2006.

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(IV) Whether exercise of the recreational in-channel diversion would cause material injury to instream flow water rights appropriated pursuant to subsections (3) and (4) of this section; and

(V) Whether adjudication and administration of the recreational in-channel diversion would promote maximum utilization of waters of the state.

(VI) Deleted by Laws 2006, Ch. 197, § 1, eff. May 11, 2006.

(c) Within ninety days after the filing of statements of opposition, the board shall report its findings to the water court for review pursuant to section 37-92-305(13). The board may fully participate in the water court proceedings.

(d) Nothing in subsection (5) of this section or this subsection (6) shall apply in any way to any application for a water right or conditional water right for recreational in-channel diversion purposes that was filed prior to January 1, 2001.

(e) Nothing in subsection (5) of this section or this subsection (6) shall apply in any way to any water right or conditional water right for recreational in-channel diversion purposes for which a decree was entered prior to June 5, 2001, including any proceeding concerning diligence on such conditional water right or any proceeding to make such conditional water right absolute.

CREDIT(S)

Laws 1979, S.B.481, § 4; Laws 1981, S.B.414, § 1; Laws 1985, S.B.5, § 5; Laws 1986, S.B.91, § 1; Laws 1987, S.B.212, § 2. Amended by Laws 1994, S.B.94-54, § 1, eff. April 20, 1994; Laws 1996, S.B.96-64, § 1, eff. May 23, 1996; Laws 2000, Ch. 322, § 1, eff. June 1, 2000; Laws 2001, Ch. 305, § 1, eff. June 5, 2001; Laws 2002, Ch. 149, § 1, eff. Aug. 7, 2002; Laws 2003, Ch. 315, § 63, eff. May 22, 2003; Laws 2006, Ch. 197, § 1, eff. May 11, 2006.

HISTORICAL AND STATUTORY NOTES

2007 Electronic Update

Laws 2006, Ch. 197, § 1, deleted par. (6)(a); rewrote par. (6)(b); and in par. (6)(c), substituted "fully participate" for "defend such findings through participation". Former pars. (6)(a) and (6)(b) read:

"(6)(a) Following a public hearing, if requested by any party, the board shall make findings of fact and a final recommendation as to whether the application should be granted, granted with conditions, or denied.

"(b) In determining whether the board shall recommend that the water court grant, grant with conditions, or deny such application, the board shall consider the following factors and make written findings thereon:

"(I) Whether the adjudication and administration of the recreational in-channel diversion would impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;

"(II) The appropriate reach of stream required for the intended use;

"(III) Whether there is access for recreational in-channel use;

"(IV) Whether exercise of the recreational in-channel diversion would cause material injury to instream flow water rights appropriated pursuant to subsections (3) and (4) of this section; and

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"(V) Whether adjudication and administration of the recreational in-channel diversion would promote maximum utilization of waters of the state as referenced in paragraph (a) of subsection (1) of this section; and

"(VI) Such other factors as may be determined appropriate for evaluation of recreational in-channel diversions and set forth in rules adopted by the board, after public notice and comment."

Laws 2006, Ch. 197, § 4, provides:

"Applicability. This act shall apply only to applications for and the administration of new recreational in-channel diversions filed on or after the effective date of this act and shall not apply to applications for reasonable diligence or to make absolute recreational in-channel diversions that were decreed or applied for prior to the effective date of this act."

2004 Main Volume

Laws 2000, Ch. 322, § 1 rewrote par. (3)(c.5), which read:

"Notwithstanding section 37-92-103(6), as to any application filed by the board on or after July 1, 1994, the board may only acquire conditional water rights or change conditional water rights to instream flow uses when all of the following conditions are satisfied:

"(I) The conditional water rights are located in the Yampa river basin and will be used in the recovery of species that have been determined to be threatened or endangered pursuant to the federal 'Endangered Species Act', 16 U.S.C. sec. 1533;

"(II) The conditional water rights are a recognized component of an ongoing recovery program approved by the federal government to offset jeopardy to a listed species or adverse modification to critical habitat caused by water project depletions;

"(III) The board has determined that the acquisition of conditional water rights will provide benefits to the recovery program that would not be available through initial appropriation by the board; and

"(IV) A change of such conditional water rights is subject to all other provisions of Colorado law."

Laws 2001, Ch. 305, § 1 added subsecs. (5) and (6).

Laws 2002, Ch. 149, § 1 amended subsec.(3) as follows: rewrote the third and fourth sentences, which had read: "The board also may acquire, by grant, purchase, bequest, devise, lease, exchange, or other contractual agreement, from or with any person, including any governmental entity, such water, water rights, or interests in water as the board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner, not to exceed one hundred twenty days unless further time is granted by the requesting person or entity, what terms and conditions it will accept in a contract or agreement for the acquisition by it from such person or governmental entity of water, water rights, or interests in water to be held by the board for minimum stream flows to preserve the natural environment to a reasonable degree."; substituted, in the fifth sentence, "that provides water," for "which provides water"; inserted the sixth sentence, prohibiting acceptance of certain donations of water rights; inserted the seventh sentence, relating to use of funds; and inserted the twelfth sentence, relating to effect of the subsection on Section 37-60-121(2.5).

Laws 2003, Ch. 315, § 63 in par. (6)(c) substituted "37-92-305(13)." for "34-92-305(13), C.R.S."

C.R.S.A. § 37-92-102

Derivation:

C.R.S.1963, § 148-21-2.

Laws 1969, S.B.81, § 1.

Laws 1973, S.B.97, § 2.

C. R. S. A. § 37-92-102, CO ST § 37-92-102

Current through laws effective July 1, 2007

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Proposed Initiative #17*

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APR 23 2007 *11:03 AM*

Be it Enacted by the People of the State of Colorado: The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ELECTIONS/LICENSING
SECRETARY OF STATE**

**ARTICLE XXX
Environmental Conservation**

Section 1. Colorado department of environmental conservation created. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE OPERATION AND MANAGEMENT OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE COMPLIANT WITH PROVISIONS CONTAINED WITHIN THIS ARTICLE XXX AND WITH STATUTORY PROVISIONS FOR LEGISLATIVE DIRECTION FOR A DEPARTMENT CONTAINED WITHIN ARTICLE 7 OF TITLE 2, COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE.

Section 2. Supervision and management of public lands, resources, waters, and wildlife by elected commissioners - responsibilities, conflicts with other provisions. THE SUPERVISION, MANAGEMENT, AND POLICY DETERMINATIONS REGARDING THE PUBLIC'S RESOURCES AND PUBLIC RESOURCE CONSERVATION STEWARDSHIP PROGRAMS WITHIN THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE THE RESPONSIBILITY OF THE ELECTED BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION SHALL BE THE AUTHORITY USED BY THE PUBLIC IN THE FORMATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SHOULD CONFLICT WITH OTHER COLORADO CONSTITUTIONAL PROVISIONS ARISE HEREAFTER, PROVISIONS WITHIN ARTICLE XXX SHALL BE HELD DOMINANT OVER OTHER, PREVIOUS CONSTITUTIONAL PROVISIONS.

Section 3. Colorado department of environmental conservation is created. Boards, divisions, programs and commissions transferred. (1) THE FOLLOWING DEPARTMENTAL DIVISIONS, AND STATE OF COLORADO BOARDS, COMMISSIONS AND PROGRAMS, AND THE ADMINISTRATION THERETO, ARE TRANSFERRED FROM VARIOUS COLORADO GOVERNMENTAL ENTITIES TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND TO THE MANAGEMENT AND PROGRAM SUPERVISION OF THE ELECTED COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

- (a) COLORADO NATURAL AREAS PROGRAM;
- (b) COLORADO WATER CONSERVATION BOARD;
- (c) COLORADO DIVISION OF FORESTRY;
- (d) COLORADO DIVISION OF STATE PARKS;
- (e) COLORADO WATER QUALITY CONTROL DIVISION;
- (f) COLORADO DIVISION OF WILDLIFE;
- (g) COLORADO LAND USE COMMISSION;
- (h) COLORADO CAPTIVE WILDLIFE AND ALTERNATIVE LIVESTOCK BOARD;
- (i) STATE BOARD OF LAND COMMISSIONERS;
- (j) GREAT OUTDOORS COLORADO PROGRAM;
- (k) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER

NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(2) THE FOLLOWING COLORADO BOARDS, COMMISSIONS AND COUNCILS, PROVIDING GUIDANCE, POLICY GUIDELINE TO PROGRAM ADMINISTRATION, AND POLICY DIRECTION, INCLUDING OPERATIONS, TO VARIOUS STATE OF COLORADO GOVERNMENT DEPARTMENTS, DIVISIONS, AND PROGRAMS ARE TRANSFERRED FROM THE OFFICE OF THE GOVERNOR OF COLORADO TO THE MANAGEMENT AND SUPERVISION OF THE ELECTED COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

- (a) STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;
- (b) HAZARDOUS WASTE COMMISSION;
- (c) STATE BOARD OF LAND COMMISSIONERS;
- (d) COLORADO LAND USE COMMISSION;
- (e) COLORADO NATURAL AREAS COUNCIL;
- (f) COLORADO BOARD OF PARKS AND OUTDOOR RECREATION;
- (g) POLLUTION PREVENTION ADVISORY BOARD;
- (h) COLORADO WATER CONSERVATION BOARD;
- (i) COLORADO WATER QUALITY CONTROL COMMISSION;
- (j) WILDLANDS AND URBAN INTERFACE WILDLIFE WORKING GROUP;
- (k) COLORADO WILDLIFE COMMISSION;
- (l) COLORADO JOINT REVIEW PROCESS;

(m) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Section 4. Election of the board of commissioners of the Colorado department of environmental conservation - members from congressional districts. Compensation. (1) THE INDIVIDUAL MEMBERS OF THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ELECTED AT REGULAR STATEWIDE BIENNIAL GENERAL ELECTIONS, WITH COMMISSION MEMBERS ELECTED FROM ELIGIBLE CANDIDATES WHO RESIDE WITHIN ONE OF THE SEVERAL COLORADO CONGRESSIONAL DISTRICTS. THE BOARD OF COMMISSIONER MEMBER SHALL BE ELECTED BY A MAJORITY VOTE OF THOSE VOTING FOR THAT OFFICE IN A STATEWIDE GENERAL ELECTION. BOARD OF COMMISSION MEMBERS ELECTED FROM ODD-NUMBERED COLORADO CONGRESSIONAL

DISTRICTS SHALL SERVE UNTIL THE LAST DAY OF DECEMBER, 2012 ON THE COMMISSION FOR THE INITIAL TERM OF OFFICE. BOARD OF COMMISSION MEMBERS FROM EVEN-NUMBERED COLORADO CONGRESSIONAL DISTRICTS SHALL SERVE UNTIL LAST DAY OF DECEMBER, 2014 ON THE COMMISSION FOR THEIR INITIAL TERM OF OFFICE. NEWLY ELECTED COMMISSIONERS SHALL BE SWORN TO OFFICE ON JANUARY 1 FOLLOWING MEMBER OFFICE ELECTIONS. ALL MEMBER TERMS OF OFFICE SHALL BE FOUR-YEAR TERMS OF OFFICE FOR ALL SUBSEQUENT COMMISSION TERMS.

- (a) A REGISTERED VOTER, RESIDING WITHIN ONE OF THE CONGRESSIONAL DISTRICTS WITHIN COLORADO, SHALL BECOME ELIGIBLE TO BECOME A CANDIDATE FOR ELECTION TO THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION BY SUBMITTING TO THE COLORADO SECRETARY OF STATE ONE HUNDRED FIFTY (150) DAYS PRIOR TO AN ELECTION PETITIONS WITH THE NAMES AND ADDRESSES AFFIXED OF TWO HUNDRED (200) REGISTERED VOTERS FROM THE CONGRESSIONAL DISTRICT TO BE REPRESENTED. AFTER CERTIFICATION BY THE COLORADO SECRETARY OF STATE OF THE NAMES AND ADDRESSES PRESENTED ON THE NOMINATING PETITION TO BE ACCOMPLISHED WITHIN THIRTY (30) DAY AFTER SUBMISSION OF PETITIONS, THE SECRETARY OF STATE SHALL CERTIFY THE NAME OF THE CANDIDATE TO THE BALLOT FOR ELECTION TO THE COMMISSION BOARD.
 - (b) COMMISSIONERS SERVING ON THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESIDE WITHIN THE CONGRESSIONAL DISTRICT THEY ARE TO REPRESENT.
- (2) A STATEWIDE SPECIAL ELECTION, TO BE HELD IN NOVEMBER 2009 AT THE DATE RESERVED FOR STATEWIDE ELECTIONS CONCERNING FISCAL MATTERS , SHALL BE CONDUCTED FOR THE ELECTION OF INITIAL MEMBERS TO THE BOARD OF COMMISSIONERS TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
 - (3) VACANCY ELECTIONS, AS REQUIRED, SHALL BE HELD AT THE NEXT BIENNIAL GENERAL ELECTION AND SHALL BE FOR THE REMAINING PERIOD OF THAT OFFICE TERM. VACANCY ON THE COMMISSION BOARD, UNTIL THAT POSITION CAN BE FILLED AT A REGULAR ELECTION, SHALL BE APPOINTED BY A MAJORITY VOTE OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL.
 - (4) MEMBERS OF THE BOARD OF COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ELECTED TO NO MORE THAN TWO TERMS OF OFFICE, TERMS OF OFFICE BEING COMPLIANT WITH SECTION 11 OF ARTICLE XVIII OF THE CONSTITUTION.
 - (5) COMPENSATION FOR ELECTED MEMBERS OF THE GOVERNING BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE COMMENSURATE WITH COMPENSATION PAID TO EXECUTIVE DIRECTORS OF STATE OF COLORADO GOVERNMENTAL DEPARTMENTS.

Section 5. Appointment of the executive director of the Colorado department of environmental conservation. PROCEDURAL MANAGEMENT RESPONSIBILITIES FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESIDE WITHIN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

- (a) THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL SERVE AT THE PLEASURE OF THE ELECTED BOARD OF COMMISSIONERS OF THE DEPARTMENT.

- (b) MATTERS OF ORGANIZATION, OPERATION, AND MANAGEMENT OF THE DEPARTMENT OF DEPARTMENTAL PROGRAMS AND THEIR OPERATIONS, SHALL BE UNDER THE SUPERVISION OF THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. POLICY DETERMINATIONS REGARDING MATTERS OF ORGANIZATION AND OPERATION OF DEPARTMENTAL PROGRAMS SHALL BE EFFECTIVE UPON AN AFFIRMATIVE AFFIRMATION OF A MAJORITY OF THE COMMISSION MEMBERS.

Section 6. Colorado governmental departmental reorganization in effect. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL COMMENCE DEPARTMENTAL OPERATIONS JANUARY 1, 2010.

Section 7. Trust responsibilities of the Colorado department of environmental conservation. (1) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND THE ELECTED MEMBERS OF THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL HAVE, AS PRIORITY, THE RESPONSIBILITIES TO STEWARD AND PROTECT THE PUBLIC OWNERSHIP AND PUBLIC CONSERVATION VALUES IN LANDS, WATERS, PUBLIC RESOURCES, AND WILDLIFE. CONFLICT BETWEEN ECONOMIC INTEREST AND CONSERVATION STEWARDSHIP RESPONSIBILITIES TO, AND FOR, THE PUBLIC'S RESOURCES AND RESOURCE CONSERVATION VALUES SHALL BE RESOLVED IN FAVOR OF PUBLIC OWNERSHIPS AND PUBLIC VALUES.

- (a) RESPONSIBILITIES OF THE BOARD OF COMMISSIONERS OF COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND OF THE DEPARTMENT, SHALL INCLUDE: POLICY DETERMINATIONS, SUPERVISION, OPERATIONS OF PROGRAMS AND ACTIVITIES, MANAGEMENT, AND STEWARDSHIP OF PUBLIC RESOURCES INCLUDING MANAGEMENT AND POLICY DETERMINATIONS REGARDING PARKS, MONUMENTS, GOVERNMENT MANAGED LANDS, NATURAL HERITAGE AREAS, POLICY REVIEW AND EVALUATION AND OVERSIGHT OF PERMITTING REGARDING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN INCLUDING THOSE MATTERS AND CONCERNS THAT PERTAIN TO RESOURCE DEVELOPMENT AND ENVIRONMENTAL PERMITTING OF DEVELOPMENT ACTIVITIES ON FEDERALLY MANAGED PUBLIC LANDS, AND OF SHORE LANDS; PROTECTION OF ARCHEOLOGICAL RESOURCES; MANAGEMENT AND RESTORATION OF FOREST HEALTH OF STATE FORESTS; WATER CONSERVATION AND THE PROTECTION AND PRESERVATION OF PUBLIC VALUES IN WATER; MANAGEMENT OF CORRECTION EFFORTS TO REDRESS UNRESOLVED HARMFUL IMPACTS TO THE PUBLIC'S RESOURCES; PROTECTION, CONSERVATION, AND RESTORATION OF WILDLIFE RESOURCES, WILDLIFE HABITAT, AND RESPONSIBILITY FOR PREDATOR MANAGEMENT; MANAGEMENT OF WILDLIFE RESOURCES WITHIN ANY WILDLAND AND URBAN LANDS INTERFACE; PROTECTION STRATEGIES FOR MIGRATORY BIRDS; PROTECTION OF STATE AND FEDERALLY DESIGNATED THREATENED AND ENDANGERED SPECIES OF PLANTS AND ANIMALS; PRESERVATION AND PROTECTION OF FISHERIES HABITAT RESOURCES; FISH RESTORATION PROGRAMS, FISH HEALTH, AND AQUATIC RESOURCE STEWARDSHIP PROGRAMS; REGULATION OF AND

LICENSING OF TRANSPORTATION OF FISH, GAME, AND EXOTIC ANIMALS INTO AND WITHIN COLORADO; WATERSHED REVIEW, EVALUATION AND DESIGNATION; FLOODPLAIN REVIEW, EVALUATION, AND DESIGNATION; IMPLEMENTATION AND COORDINATION OF STATE TRAILS SYSTEMS, TRAILS DEVELOPMENT, AND MANAGEMENT OF PUBLIC FUNDS ESTABLISHED FOR THOSE PURPOSES; RURAL ENVIRONMENTAL CONSERVATION PROGRAMS; FOSTERING OF PARTNERSHIPS FOR WILDLIFE ENHANCEMENT; PRESERVATION OF FENS AND WETLANDS INCLUDING THOSE THAT FUNCTION AS POLLUTANT TRAPS, ASSIST IN FLOOD CONTROL, AND HELP CONTROL RUNOFF; PROMOTION OF WETLAND CONSERVATION AND RESERVE PROGRAMS; AND REGULATION OF HUNTING, OFF-ROAD VEHICLES, AND BOATING.

(i) PERMITTING PROGRAM ELEMENTS FOR MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN REGARDING RESOURCE DEVELOPMENT ON FEDERALLY MANAGED PUBLIC LANDS WITHIN COLORADO SHALL BE RETAINED, AS AUTHORIZED, BY COLORADO STATE AND ELIGIBLE LOCAL GOVERNMENT ENVIRONMENTAL PERMITTING AUTHORITIES.

(ii) CRITERIA FOR THE ADMINISTRATION OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN SHALL BE COMPLIANT WITH ARTICLE 65 AND ARTICLE 65.1 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTES.

(b) ANY CITIZEN OF THE STATE OF COLORADO SHALL HAVE STANDING TO PETITION THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO REQUEST THE DEPARTMENT, OR THE COMMISSION, EVALUATE, ANALYZE, AND DESIGNATED ADDITIONAL CONSERVATION STEWARDSHIP MATTERS, WITH ANY ADDITIONAL STEWARDSHIP MATTER BEING ADDED TO DEPARTMENTAL PRIORITY UPON APPROVAL OF THE COMMISSION BOARD.

(2) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL:

(a) SHALL SIT, AND ACT, AS THE COLORADO STATE BOARD OF PARKS AND OUTDOOR RECREATION.

(b) SHALL SIT, AND ACT, AS THE COLORADO LAND USE COMMISSION.

(c) SHALL SIT, AND ACT, AS THE COLORADO WILDLIFE COMMISSION.

(d) SHALL BE RESPONSIBLE FOR THE APPOINTMENT OF MEMBERS OR OFFICERS OR PROGRAM STAFF TO THE FOLLOWING BOARDS, COMMISSIONS, COUNCILS, GROUPS AND PROGRAMS, OR TO SUCCESSOR BOARDS, COMMISSIONS, COUNCILS, GROUPS OR PROGRAMS;

(i) STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;

(ii) HAZARDOUS WASTE COMMISSION;

(iii) STATE OF COLORADO BOARD OF LAND COMMISSIONERS;

(iv) COLORADO LAND USE COMMISSION;

(v) COLORADO NATURAL AREAS COUNCIL;

(vi) POLLUTION PREVENTION ADVISORY BOARD;

(vii) STATE OF COLORADO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO KNOW COUNCIL;

- (VIII) COLORADO WATER CONSERVATION BOARD;
- (IX) COLORADO WATER QUALITY CONTROL COMMISSION;
- (X) WILDLANDS AND URBAN INTERFACE WILDLIFE WORKING GROUP;
- (XI) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
- (XII) APPOINTMENT TO ANY BOARD, COMMISSION, COUNCIL OR ADVISORY GROUP OF A MEMBER OR OFFICER BY THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL NOT BE SUBJECT TO ANY MANNER OF LEGISLATIVE CONFIRMATION.

(3) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH;

(a) THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY CONVENE, EITHER UPON THE INITIATIVE OF ANY DEPARTMENTAL DIVISION THEREOF, OR BY THE BOARD SITTING AS THE COLORADO LAND USE COMMISSION, AS AUTHORIZED IN ARTICLE 65 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, EITHER INDEPENDENTLY OR UPON PETITION FROM A MEMBER OF THE PUBLIC, TO REVIEW, CONSIDER, AND HAVE THE AUTHORITY TO ISSUE COMPLIANCE PERMIT DIRECTIVES, AS AUTHORIZED WITHIN THE COLORADO LAND USE ACT, ARTICLE 65 AND ARTICLE 65.1 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, THAT HAS AS PURPOSE THE DESIGNATING OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN THAT COULD INITIATE STATE GOVERNMENTAL, MULTI-AGENCY REVIEW AND PERMITTING UNDER AUTHORITY OF THE COLORADO JOINT REVIEW PROCESS OF ANY ACTIVITY THAT COULD IMPACT PUBLIC RESOURCE CONSERVATION STEWARDSHIP, OR THE PUBLIC'S OWNERSHIP OR PUBLIC VALUES IN PUBLIC NATURAL RESOURCES.

(b) THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY INITIATE IDENTIFICATION, REQUIRE DESIGNATION, AND MAY REQUIRE PROMULGATION AND ADOPTION OF GUIDELINES FOR PERMITTING OF ACTIVITIES REGARDING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN WITHIN COLORADO. THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO REVIEW AND COMMENT ON LOCAL GOVERNMENT ARTICLE 65.1

OF TITLE 24 COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, AUTHORITIES, AND MAY AUTHORIZE THE DEPARTMENT TO REQUIRE AN ELIGIBLE LOCAL GOVERNMENT, AS IDENTIFIED WITHIN ARTICLE 65.1 OF TITLE 24 COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, TO ADOPT STATE-APPROVED DEPARTMENT OF ENVIRONMENTAL CONSERVATION GUIDELINES FOR REGULATION OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN.

Section 8. Licenses, fees, and revenues necessary for the operation and management of the Colorado department of environmental conservation.

(1) FEES, REVENUES, PAYMENTS, AND ALL MONIES GENERATED WITHIN AND UNDER THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION AS LICENSES, OR AS PENALTIES, OR AS ASSESSMENTS, OR AS INTERGOVERNMENTAL TRANSFERS FROM ANY SOURCES, OR FROM GRANTS OR FROM REVENUES OF ANY MANNER, SHALL BE USED BY THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR DEPARTMENT PROGRAMS AND OPERATIONS OF THE DEPARTMENT.

(2) FUNDS FOR THE OPERATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY BE DERIVED FROM THE COLORADO GENERAL FUND.

(a) DEVELOPMENT OF AN ANNUAL OPERATING BUDGET FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE GENERATED WITHIN THE DEPARTMENTAL BUDGET SETTING PROCESS ESTABLISHED TO GENERATE THE ANNUAL OPERATING BUDGETS FOR STATE OF COLORADO DEPARTMENTS.

(b) THE ANNUAL BUDGET FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ADOPTED BY THE COLORADO GENERAL ASSEMBLY AS PART OF THE BUDGET ENACTING PROCESS ESTABLISHED FOR THE ENACTING OF BUDGETS FOR COLORADO STATE GOVERNMENT DEPARTMENTS.

(3) NO MANNER OF FISCAL REGULATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION, EXCEPT THAT OF THE ABILITY OF THE PUBLIC TO INITIATE FUNDING FOR DEPARTMENTAL PROGRAMS AND FOR PROJECTS USING GUIDELINES AND PROCEDURES ENABLED WITHIN SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION, SHALL APPLY TO THE OPERATION, FUNDING, RESERVES OR EXPENDITURES OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Section 9. Debt for public purpose. DEBT PROVISIONS FOR PUBLIC RESOURCES CONSERVATION PURPOSES AND EFFORTS REGARDING THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE GOVERNED BY ARTICLE XI AND ARTICLE XXVII OF THE COLORADO CONSTITUTION.

Section 10. State board of the great outdoors Colorado trust fund. ARTICLE XXVII OF THE COLORADO CONSTITUTION – GREAT OUTDOORS COLORADO PROGRAM – IS INTEGRATED INTO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR PURPOSES OF PROGRAM MANAGEMENT, PROGRAM OPERATION AND PROGRAM ADMINISTRATION. PROVISIONS OF SECTION 2, 3, 4, AND 5 OF ARTICLE XXVII RELATING TO THE ESTABLISHMENT AND OPERATION OF THE GREAT OUTDOORS COLORADO TRUST FUND SHALL NOT BE OTHERWISE IMPRESSED BY PROVISIONS OF ARTICLE XXX.

Section 11. Provisions within article XXX are self-enacting and self-executing. PROVISIONS OF THIS ARTICLE ARE SELF-ENACTING AND SELF-EXECUTING.

Proposed Initiative 2007-2008 #17

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ELECTIONS LICENSING
SECRETARY OF STATE

**PROPOSAL FOR FORMATION OF THE COLORADO
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

NEED:

- Colorado utilizes various state departments, and their associated divisions, for the analysis of activities that cause impacts to the public's resources.
- No single state department or agency has legislated authority to comprehensively investigate the potentials of development impacts to the public's resources or manage the public's resources for stewardship values.
- Hearings and permits regarding matters of state interest and activities of state concern are discretionary in Colorado in that counties may, or may not, require local resource development impact permits - impact reviews by Colorado counties are not required / are optional to each county.
- No state department or agency has a mandated statutory requirement to assist any Colorado county in the development of local impact analysis guidelines or permitting procedures.
- Resource development activities, of potential consequence to the public's waters, to public lands and to the public's wildlife resources, on federally managed lands in Colorado, are not included in resource development permitting processes.

BACKGROUND:

- The Colorado constitution recognizes that the waters within the state are the property of the public, subject to use.
- Federal judicial decisions have ratified that state sovereignty can require resource development activities on federally managed lands within Colorado to be subject to state environmental permitting procedures.

SOLUTION:

- Establish a single, comprehensive, state government department to protect the public's interests and values in public resources, and to protect public resource conservation values associated with resource development activities on state and federally managed lands as those matters and activities might impact public resource stewardship.

CHAPTER 192

GOVERNMENT - STATE

HOUSE BILL 05-1063

BY REPRESENTATIVE(S) Pommer, Berens, Butcher, Green, Lindstrom, Schultheis, Boyd, Carroll T., Clepp, Cloer, Coleman, Crane, Curry, Decker, Frangas, Hall, Harvey, Hedley, Hodge, Kerr, King, Knoedler, Massey, Merrifield, Paccione, Peary, Rose, Stafford, Stengel, Sullivan, and White;
also SENATOR(S) Entz, Kester, Tapia, and Tupa.

AN ACT

CONCERNING REVIEW BY THE COLORADO LAND USE COMMISSION OF LOCAL GOVERNMENT ORDERS DESIGNATING MATTERS OF STATE INTEREST.

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

SECTION 1. Repeal. Article 65 of title 24, 24-65.1-401 (1) (b), 24-65.1-405, 24-65.1-406, 24-65.1-407, article 66 of title 24, and 30-28-136 (4), Colorado Revised Statutes, are repealed.

SECTION 2. 24-65.1-301 (1) (e) and (1) (f), Colorado Revised Statutes, are amended to read:

24-65.1-301. Functions of local government. (1) Pursuant to this article, it is the function of local government to:

(e) Send recommendations to other local governments and the Colorado land use commission relating to matters of state interest. ~~and~~

(f) ~~Act, upon request of the Colorado land use commission, with regard to specific matters of state interest.~~

SECTION 3. 24-65.1-302 (1) (a), Colorado Revised Statutes, is amended to read:

24-65.1-302. Functions of other state agencies. (1) Pursuant to this article, it is the function of other state agencies to:

(a) Send recommendations to local governments ~~and the Colorado land use~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

commission relating to designation of matters of state interest on the basis of current and developing information; and

SECTION 4. 24-65.1-404 (2) (a) and (5), Colorado Revised Statutes, are amended to read:

24-65.1-404. Public hearing - designation of an area or activity of state interest and adoption of guidelines by order of local government.

(2) (a) Notice, stating the time and place of the hearing and the place at which materials relating to the matter to be designated and guidelines may be examined, shall be published once at least thirty days and not more than sixty days before the public hearing in a newspaper of general circulation in the county. ~~The local government shall send written notice to the Colorado land use commission of a public hearing to be held for the purpose of designation and adoption of guidelines at least thirty days and not more than sixty days before such hearing.~~

(5) ~~Upon adoption by order, all relevant materials relating to the designation and guidelines shall be forwarded to the Colorado land use commission for review.~~

SECTION 5. 24-65.1-501 (1) (a), (2) (a), and (6), Colorado Revised Statutes, are amended to read:

24-65.1-501. Permit for development in area of state interest or to conduct an activity of state interest required. (1) (a) Any person desiring to engage in development in an area of state interest or to conduct an activity of state interest shall file an application for a permit with the local government in which such development or activity is to take place. ~~The application shall be filed on a form prescribed by the Colorado land use commission.~~ A reasonable fee determined by the local government sufficient to cover the cost of processing the application, including the cost of holding the necessary hearings, shall be paid at the time of filing such application.

(2) (a) Not later than thirty days after receipt of an application for a permit, the local government shall publish notice of a hearing on said application. Such notice shall be published once in a newspaper of general circulation in the county, not less than thirty days nor more than sixty days before the date set for hearing. ~~and shall be given to the Colorado land use commission. The Colorado land use commission may give notice to such other persons as it determines not later than fourteen days before such hearing.~~

(6) After May 17, 1974, any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest who does not obtain a permit pursuant to this section may be enjoined by the ~~Colorado land use commission or the~~ appropriate local government from engaging in such development or conducting such activity.

SECTION 6. 30-28-133 (1), (2), (7), and (8), Colorado Revised Statutes, are amended to read:

30-28-133. Subdivision regulations. (1) Every county in the state ~~which~~ THAT does not have a county planning commission on July 1, 1971, shall create a county planning commission in accordance with the provisions of section 30-28-103. Every

county planning commission in the state shall develop, propose, and recommend subdivision regulations, and the board of county commissioners shall adopt and enforce subdivision regulations for all land within the unincorporated areas of the county in accordance with this section not later than September 1, 1972. Before finally adopting any subdivision regulations, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county. Before adopting any such subdivision regulations, the board of county commissioners may revise, alter, or amend any such subdivision regulations developed, proposed, or recommended by the county planning commission. ~~In the event the board of county commissioners of any county in the state has not adopted subdivision regulations by September 2, 1972, the Colorado land use commission may promulgate such subdivision regulations for such areas of the county for which no subdivision regulations exist. Such subdivision regulations shall be in full force and effect and enforced by the board of county commissioners. If at any time thereafter the board of county commissioners adopts its own subdivision regulations for land within the unincorporated areas of the county, such regulations shall be no less stringent than the regulations promulgated by the Colorado land use commission under this subsection (1). All subdivision regulations, and all amendments thereto, adopted by a board of county commissioners shall be transmitted to the Colorado land use commission.~~

(2) Prior to the adoption of the regulations referred to in this section, a public hearing shall be held thereupon in the county in which said territory or any part thereof is situated. A copy of such regulations shall be ~~certified by the commission and thereupon~~ filed with the county clerk and recorder of the county in which said territory is situated.

(7) ~~The board of county commissioners shall send a copy of the preliminary plan or final plat submission to the Colorado land use commission upon receipt of said submission.~~

(8) ~~Upon adoption and transmittal of subdivision regulations by the board of county commissioners in accordance with this section and upon a finding by the Colorado land use commission that such subdivision regulations are in compliance with this section, the provisions of subsection (7) of this section shall no longer apply, and the Colorado land use commission shall so notify the board of county commissioners.~~

SECTION 7. 31-23-225, Colorado Revised Statutes, is amended to read:

31-23-225. Major activity notice. When a subdivision or commercial or industrial activity is proposed which will cover five or more acres of land, the governing body of the municipality in which the activity is proposed shall send notice to the ~~Colorado land use commission~~, the state geologist and the board of county commissioners of the county in which the improvement is located of the proposal prior to approval of any zoning change, subdivision, or building permit application associated with such a proposed activity. ~~Such notice shall be in a standard form, shall be promulgated as a rule and regulation prescribed by the Colorado land use commission, and shall contain such information as said land use commission prescribes.~~

SECTION 8. 32-7-114 (1), Colorado Revised Statutes, is amended to read:

32-7-114. Duties related to planning powers. (1) To provide for comprehensive planning to promote the orderly and efficient development of the physical, social, and economic elements of the service authority and to encourage and assist local governments within the boundaries of the service authority to plan for the future, the board shall prepare and adopt, ~~after study and after review and comment by the division of planning of the department of local affairs, and~~ AFTER such public hearings as it deems necessary, a comprehensive development guide for the service authority area, consisting of a compilation of policy statements, goals, standards, programs, maps, and those future developments ~~which~~ THAT will have an impact on the entire area, including but not limited to such matters as land use, parks and open space land needs, transportation facilities, public hospitals and health facilities, libraries, schools, other public buildings, domestic water collection, treatment, and distribution, housing, and the delivery and distribution of social services to residents of the service authority. ~~Upon adoption of said comprehensive development guide, the board shall prepare and file, with the Colorado land use commission or any successor thereto, an environmental impact statement outlining the impact of the service authority's plans upon the environment of its area.~~

SECTION 9. 33-11-111, Colorado Revised Statutes, is amended to read:

33-11-111. Cooperation with state agencies. The department of transportation, the state board of land commissioners, ~~the Colorado land use commission,~~ the urban drainage and flood control district, and other state agencies and political subdivisions having jurisdiction or control over or information concerning the use, abandonment, or disposition of highway or utility rights-of-way or other properties ~~which~~ THAT may be suitable for the purpose of improving or expanding the state trails system shall cooperate with the division to assure, to the extent practicable, that any such properties ~~which~~ THAT are suitable for trail purposes may be made available for such use.

SECTION 10. 24-1-135, Colorado Revised Statutes, is amended to read:

24-1-135. Effect of congressional redistricting. (1) Effective January 1, 1983, the terms of office of persons appointed pursuant to sections 11-2-102, 12-22-104, 12-35-104, 12-65-102, 17-2-102, and 23-60-104, C.R.S.; sections 24-32-308 AND 24-32-706; ~~and 24-65-103;~~ and sections 25-1-103, 25-1-902, 25-3.5-104, 26-11-101, 33-11-105, 34-60-104, and 35-65-105, C.R.S., shall terminate. Prior thereto, the appointing authority designated by law shall appoint members to such boards, commissions, and committees for terms to commence on January 1, 1983, and to expire on the date the terms of the predecessors in office of such members would have expired, and any person whose term of office is terminated by this section may be reappointed effective January 1, 1983, and, for the purposes of such reappointment, shall not be deemed to succeed himself. Appointments thereafter shall be made as prescribed by law.

(2) Any member of a board, commission, or committee who was appointed or elected to such office as a resident of a designated congressional district pursuant to section 24 (2) of article VI of the state constitution or sections 11-2-102, 12-22-104, 12-35-104, 12-47.1-301, 22-2-105, 23-1-102, 23-20-102, 23-21-503, or 23-60-104,

C.R.S., or sections 24-32-308 OR 24-32-706, or ~~24-65-103~~, or sections 25-1-103, 25-1-902, 25-3.5-104, 26-11-101, 33-11-105, 34-60-104, or 35-65-401, C.R.S., and who no longer resides in such congressional district solely because of a change made to the boundaries of such district subsequent to the 1990 federal decennial census, is eligible to hold office for the remainder of the term to which the member was elected or appointed, notwithstanding such nonresidency.

SECTION 11. 24-1-135.1 (1) (a), Colorado Revised Statutes, is amended to read:

24-1-135.1. Effect of congressional redistricting related to 2000 federal decennial census. (1) (a) The appointing authority of the boards, commissions, or committees established pursuant to sections 13-91-104, 14-10-115, 21-2-101, 23-1-102, 23-21-503, 23-60-104, 24-32-706, 24-48.5-103, ~~24-65-103~~, 25-1-103, 25-1-902, 25-32-104, 25.5-1-301, 26-11-101, 33-11-105, and 35-65-401, C.R.S., which require members to be appointed as residents of designated congressional districts, shall determine whether the current appointments to such boards, commissions, or committees adequately represent Colorado's new congressional districts. Notwithstanding any provision of law to the contrary, such appointing authority shall terminate the terms of current members and appoint new members to replace such members on the boards, commissions, or committees as is necessary to ensure proper representation from the new congressional districts; except that the term of a member who continues to reside in the district that such member was designated to represent shall not be terminated. Such changes shall be made no later than January 1, 2003. If the current members adequately represent the new congressional districts, the membership of the board, commission, or committee shall remain unchanged. Any member who continues to serve on a board, commission, or committee shall not be required to be reappointed.

SECTION 12. 24-1-137, Colorado Revised Statutes, is amended to read:

24-1-137. Effect of decrease in the length of terms of office for certain state boards, commissions, authorities, and agencies. Persons who are holding office on June 15, 1987, and who were appointed to terms of office pursuant to sections 11-2-102, 12-4-103, 12-22-104, 12-32-103, 12-33-103, 12-36-103, 12-40-106, 12-60-102, 22-80-104, 23-9-103, 23-15-104, 23-40-104, 23-41-102, 24-32-706, 24-42-102, ~~24-65-103~~, 25-25-104, 29-1-503, 29-4-704, 34-60-104, 35-41-101, 35-65-401, 35-75-104, 39-2-123, and 40-2-101, C.R.S., as said sections existed prior to June 15, 1987, shall continue to serve in such office, but such service shall be at the pleasure of the governor who may appoint a replacement to serve for the unexpired term of any member. However, if the governor has not appointed any such replacement on or before November 15, 1987, then the person who is holding such office on June 15, 1987, shall no longer be subject to replacement pursuant to this section but shall be subject to whatever removal provisions may otherwise apply for such office. Any such member for whom a replacement has been appointed shall continue to serve until his or her successor is duly qualified. Appointments to new terms of office made after June 15, 1987, shall be made for terms of four years as prescribed by law; except that such provision shall not apply to terms of office of persons appointed pursuant to section 23-9-103, C.R.S.

SECTION 13. The introductory portion to 24-65.1-101 (1), Colorado Revised Statutes, is amended to read:

24-65.1-101. Legislative declaration. (1) ~~In addition to the legislative declaration contained in section 24-65-102 (1);~~ The general assembly further finds and declares that:

SECTION 14. 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.

Approved: June 1, 2005

B 011 00

EXECUTIVE ORDER

Interagency Wildland/Urban Interface Working Group

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, I, Bill Owens, Governor of the State of Colorado, hereby issue this Executive Order creating the Interagency Wildland/Urban Interface Working Group.

1. Background and Need.

Technological advancements and shifts in societal values have resulted in tremendous rates of growth in Colorado. Increased population densities and areas of urban development within native wildland vegetation magnify the potential for catastrophic impacts from fire. The addition of structures to the wildland has significantly increased the complexity of the fire protection and natural resource management challenges in the wildland/urban interface. Fire protection policies and their interpretation by agencies at different levels of government need to be consistent. The appropriate tools to address the complex issue of mitigating wildfire hazards in interface areas must be developed and are best implemented through locally developed plans and strategies.

2. Mission.

The Wildland/Urban Interface Working Group ("Working Group") is hereby established. The mission of the Working Group is:

- A. To assess and make recommendations to the Governor on fire policies and their statewide funding priorities for implementation in the wildland/urban interface. These policies are critical to preventing future loss of life and property, scenic values, wildlife habitat, and water quality.
- B. To assess and make recommendations to the Governor on processes and systems that will increase cooperation and coordination in the safe use of all appropriate land management practices including prescribed fire as a tool to improve the health of Colorado's forests, rangeland, and prairie ecosystems and to mitigate the fire danger in the wildland/urban interface.

- C. To enhance the involvement of a diverse group of stakeholders, professionals, and decision-makers on fire policy matters. This includes federal, state, tribal, and local governments, the insurance industry, homebuilders, firefighter representatives, home and business owners, and other interested parties.
- D. To focus on: awareness programs; land use development policies; cooperation between landowners, local government, and developers; consistent application of mitigation practices; and the sharing of knowledge and policies that increase public safety, reduce wildfire hazards, and achieve desired ecological goals in interface areas.
- E. To identify barriers to mitigating wildland/urban interface fire hazards and recommend solutions to overcome those barriers.
- F. The Working Group shall submit a written report with an executive summary of its findings and recommendations to the Governor by May 1, 2001.

3. Membership.

- A. The Working Group shall consist of the following representatives to be appointed by the Governor. All representatives of the Working Group shall serve at the pleasure of the Governor.
 - i.) Three county commissioners.
 - ii.) The Regional Forester of the U.S. Forest Service or his/her designee.
 - iii.) The State Director of the U.S. Bureau of Land Management or his/her designee.
 - iv.) The Director of the Colorado Department of Natural Resources or his/her designee.
 - v.) The Dean of the College of Natural Resources, Colorado State University.
 - vi.) A sheriff as recommended by the Emergency Fire Fund Committee.
 - vii.) A fire chief as recommended by the Emergency Fire Fund Committee.

viii.) The Director of the Office of Emergency Management or his/her designee.

ix.) The Director of the Colorado Department of Public Safety or his/her designee.

B. The Director of the Colorado State Forest Service shall serve as the chair of the Working Group.

4. Duration.

The Working Group shall sunset upon submission of its report to the Governor on May 1, 2001, unless otherwise extended or terminated by further executive order of the Governor.

Given under my hand and the
Executive Seal of the State of
Colorado this 31st day of
August, 2000.

Bill Owens
Governor