

HOUSE JOURNAL
SIXTY-THIRD GENERAL ASSEMBLY
STATE OF COLORADO
Third Extraordinary Session

First Legislative Day

Monday, July 8, 2002

1 Prayer by the Reverend Doctor Cynthia Cearley, Montview Presbyterian
2 Church, Denver.

3
4 The hour of 10:00 a.m. having arrived, the House of Representatives of
5 the Third Extraordinary Session of the Sixty-third General Assembly of
6 the State of Colorado, pursuant to call, was called to order by Doug Dean,
7 Speaker of the House.

8
9 Pledge of Allegiance led by Representative Webster.

10
11 The roll was called with the following result:

12
13 Present--63.
14 Excused--Representatives Lawrence, Swenson--2.

15
16 The Speaker declared a quorum present.

17
18 _____

19
20 **COMMUNICATION FROM THE SECRETARY OF STATE**

21
22 **STATE OF COLORADO**

23
24 **Department of**
25 **State**

26
27 **UNITED STATES OF AMERICA**)
28 **STATE OF COLORADO**) **SS. Certificate**

29
30 I, DONETTA DAVIDSON, Secretary of State of the State of Colorado,
31 do hereby certify the attached is a true and exact copy of the Executive
32 Order D 020 02 for the Third Extraordinary Session of the Sixty-third
33 General Assembly, as filed in this office on July 5, 2002.

34
35 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
36 the Great Seal of the State of Colorado, at the City of Denver this 5th day
37 of July, A.D., 2002.

38
39 (Signed)
40 Donetta Davidson
41 Secretary of State

42
43 _____

1 EXECUTIVE ORDER D 020 02
2 PROCLAMATION
3 CALL FOR THIRD EXTRAORDINARY SESSION
4 OF THE SIXTY-THIRD GENERAL ASSEMBLY
5

6 Pursuant to the authority vested in the Office of the Governor of the State
7 of Colorado, and in particular vested in the Governor pursuant to Article
8 IV, Section 9 of the Colorado Constitution, and as provided for in Article
9 V, Section 7, I, Bill Owens, Governor of the State of Colorado, hereby
10 issue this Executive Order convening the Sixty-Third General Assembly
11 to meet in extraordinary session.
12

13 1. Background and Need

14
15 A. Capital Punishment Statute
16

17 Colorado's three-judge panel death sentencing system was established in
18 1995 after the United States Supreme Court held that a similar system did
19 not violate the United States Constitution in the case of Walton v.
20 Arizona. On July 1, 1995, the State of Colorado implemented Colorado
21 Revised Statute §16-11-103, which states : "[u]pon conviction of guilt of
22 a defendant of a class 1 felony, a panel of three judges, as soon as
23 practicable, shall conduct a separate sentencing hearing to determine
24 whether the defendant should be sentenced to death or life
25 imprisonment..." In particular, Colorado Revised Statute
26 §16-11-103(2)(a)(I) requires that the panel must unanimously determine
27 "[w]hether at least one aggravating factor has been
28 proved..." in order to impose the death penalty.
29

30 Since July 1, 1995, three convicted defendants have been sentenced to
31 death by a three-judge panel. Colorado's three-judge panel has been a fair
32 and effective system for determining whether the death penalty is
33 appropriate in each case and the death sentence applied in the three cases
34 was the correct decision.
35

36 The United States Supreme Court recently issued an opinion in the case
37 of Ring v. Arizona that overrules the 1990 case of Walton v. Arizona.
38 The Court has ruled that a jury and not a judge must consider and find the
39 presence of aggravating factors that qualify the defendant for the death
40 penalty. This holding places Colorado's current death penalty sentencing
41 system in question for future homicides where the death penalty is
42 sought.
43

44 Immediate measures must be taken to ensure that Colorado has a legally
45 defensible sentencing structure in place for future death sentencing
46 determinations. Due to the import of the Ring v. Arizona decision, an
47 extraordinary occasion has arisen that necessitates that I convene a
48 special session to address the issue of ensuring that Colorado has a
49 Constitutional death penalty statute.
50

51 B. Wildfire and Drought
52

53 Colorado is experiencing the most active and destructive wildfire season
54 in state history. Over 350,000 acres have burned throughout the state,
55 with the vast majority of the fire season still ahead of us. Severe drought
56 conditions continue, making the fire danger ever more serious. Wildfires

1 will continue to be a serious long-term threat to our state. State laws must
2 be drafted and adapted to help Colorado meet the risk of wildfires.
3
4 Human activities have been the most significant cause of wildfires in
5 2002. In response, on June 10, 2002, I ordered a statewide ban on open
6 burning as well as the sale and use of fireworks. Current state laws
7 deterring and punishing human activities responsible for disasters are
8 insufficient. The wildfire situation indicates the possible need to update
9 and clarify Colorado's emergency response laws and related criminal
10 statutes. In particular, wildfires constantly pose a significant threat to our
11 citizens' lives and property and effective laws must be enacted to meet
12 this danger.

13
14 Colorado's drought has also reached historic proportions. Many river
15 basins are currently below 10 percent of their normal water capacity and
16 snow pack levels are currently at less than 2 percent of normal level.
17 Drought has forced many Colorado communities to adopt and enforce
18 mandatory water restrictions. It has severely impacted Colorado farmers
19 and ranchers and threatens economic growth in our state. Colorado's
20 drought situation requires legislation to address the impacts and possible
21 methods to mitigate the drought's impact on Colorado communities, both
22 urban and rural.

23
24 2. Proclamation

25
26 I, Bill Owens, Governor of the State of Colorado, with this
27 proclamation convene the Sixty-Third General Assembly of this state and
28 summon the members of the Sixty-Third General Assembly to meet in
29 Special Session at the State Capitol, in the City and County of Denver, on
30 July 8, 2002, at 10:00 a.m. and designate the following subjects for your
31 consideration and appropriate legislative action:

32
33 A. Concerning the implementation of a capital punishment sentencing
34 structure that comports with the recent decisions of the United
35 States Supreme Court.

36
37 B. Concerning measures to respond to wildfires and drought.

38
39 GIVEN under my hand and the Executive Seal of the State of
40 Colorado this 1st day of July, 2002.

41
42 Bill Owens
43 Governor

44 _____
45
46
47 On motion of Representative Spradley, the Speaker appointed
48 Representatives Cadman, Chairman, Decker, and Williams S. to notify
49 the Senate that the House was organized and ready for business.

50 _____
51
52
53 House in recess.

54
55 _____
56

1 The Speaker recognized a committee from the Senate. Senators
2 Fitz-Gerald, Tate, and Dyer reported that the Senate was organized and
3 ready for business.

4

5

6

House reconvened.

7

8

9 Representative Cadman, Chairman of the Committee to Notify the
10 Senate, reported that the Senate had been notified that the House was
11 organized and ready for business.

12

13

14

15

APPOINTMENTS

16

17 Mr. Speaker announced the following changes in committee assignments
18 for the duration of the Third Extraordinary Session:

19

20 Representative Mitchell to replace Representative Alexander on the
21 Committee on Criminal Justice.

22

23 Representative Cloer to replace Representative Fairbank on the
24 Committee on Finance.

25

26

27

28 Minority Leader Grossman announced the following changes in
29 committee assignments for the duration of the Third Extraordinary
30 Session:

31

32 Representative Tapia to replace Representative Chavez on the Committee
33 on Criminal Justice.

34

35 Representative Marshall to replace Representative Saliman on the
36 Committee on Appropriations.

37

38 Representative Madden to replace Representative Tapia on the
39 Committee on Finance.

40

41 Representative Boyd to replace Representative Garcia on the Committee
42 on State, Veterans, & Military Affairs.

43

44

45

46 Mr. Speaker announced the following temporary changes in committee
47 assignments for July 8 only:

48

49 Representative Smith Vice-Chair of Criminal Justice.

50

51 Representative Williams T. to replace Representative Lawrence on the
52 Committee on Criminal Justice.

53

54 Representative White to replace Representative Lawrence on the
55 Committee on Appropriations.

56

1 **INTRODUCTION AND CONSIDERATION OF RESOLUTION**

2

3 The following resolution was read by title and given immediate
4 consideration:

5

6 **HJR02S-1001** by Representative(s) Spradley, Dean, Grossman; also
7 Senator(s) Thiebaut, Matsunaka, Andrews--Concerning
8 appointing a joint committee to notify the Governor that
9 the Third Extraordinary Session of the Sixty-third
10 General Assembly is now organized and ready for
11 business.

12

13 *Be It Resolved by the House of Representatives of the Sixty-third*
14 *General Assembly of the State of Colorado, the Senate concurring*
15 *herein:*

16

17 That a joint committee of five members, consisting of three
18 members of the House of Representatives and two members of the
19 Senate, be appointed, respectively, by the Speaker of the House of
20 Representatives and the President of the Senate to notify the Honorable
21 Bill Owens, Governor of the State of Colorado, that the Third
22 Extraordinary Session of the Sixty-third General Assembly of the State
23 of Colorado is now organized and ready for the transaction of business.

24

25 On motion of Representative Spradley, the rules were suspended and the
26 resolution given immediate consideration and **adopted** by **viva voce** vote.

27

28 The Speaker appointed Representatives Scott, Chairman, Webster, Bacon
29 pursuant to the resolution.

30

31

32

33 _____

34

35

36

37 Representative Scott, Chairman of the Committee to Notify the Governor,
38 reported that the Governor had been notified that the House was
39 organized and ready for business.

40

41

42

43 Representative Spradley moved that the temporary rules of the First
44 Regular Session of the Sixty-third General Assembly be made the
45 temporary rules of the Third Extraordinary Session of the Sixty-third
46 General Assembly. The motion was declared adopted by **viva voce** vote.

47

48

49

50 _____

51

52 **PRINTING REPORT**
53 The Chief Clerk reports the following bills have been correctly
54 pre-printed: **HB02S-1001, 1002, 1003, 1004, 1005, 1006.**

55

56

MESSAGE FROM THE SENATE

1
2 Mr. Speaker:

3
4 The Senate has adopted and returns herewith: HJR02S-1001. Pursuant
5 to the resolution, the President has appointed Senators Tupa, Chairman
6 and Cairns.

7
8
9
10 **INTRODUCTION OF BILLS**
11 **First Reading**

12
13 The following bills were read by title and referred to the committees
14 indicated:

15
16 **HB02S-1001** by Representative(s) Rippy; also Senator(s) Taylor--
17 Concerning recommendations of the water availability task
18 force relating to measures to address drought conditions.
19 Committee on Agriculture, Livestock, & Natural Resources

20
21 **HB02S-1002** by Representative(s) Kester, Mace; also Senator(s)
22 Hernandez--Concerning the crime of intentionally setting
23 a wildfire.
24 Committee on State, Veterans, & Military Affairs

25
26 **HB02S-1003** by Representative(s) Grossman--Concerning procedures
27 for the determination of sentence in capital offense cases.
28 Committee on Criminal Justice

29
30 **HB02S-1004** by Representative(s) Johnson--Concerning a limitation on
31 the uses to which the Colorado water conservation
32 construction fund may be put.
33 Committee on Agriculture, Livestock, & Natural Resources

34
35 **HB02S-1005** by Representative(s) Hefley; also Senator(s) Gordon--
36 Concerning determination of the death penalty by a jury.
37 Committee on Criminal Justice

38
39 **HB02S-1006** by Representative(s) Alexander; also Senator(s) Anderson--
40 -Concerning wildfires, and, in connection therewith,
41 increasing the penalties for starting fires, and providing
42 local authorities with the power to control and limit fires.
43 Committee on State, Veterans, & Military Affairs

44
45 **HB02S-1007** by Representative(s) Mitchell--Concerning imposition of
46 sentence in capital offense cases.
47 Committee on Criminal Justice

48
49 **HB02S-1008** by Representative(s) Lee--Concerning procedures for the
50 imposition of the death penalty.
51 Committee on Criminal Justice

52
53 **HB02S-1009** by Representative(s) Boyd--Concerning increased
54 penalties for setting fires in violation of a fire ban.
55 Committee on State, Veterans, & Military Affairs

56

1 House in recess. House reconvened.
2
3

4
5 **INTRODUCTION OF BILLS**
6 **First Reading**
7

8 The following bills were read by title and referred to the committees
9 indicated:

10
11 **HB02S-1010** by Representative(s) Young, Miller, Snook; also
12 Senator(s) Taylor--Concerning the deferral of the payment
13 of taxes on the sale of livestock resulting from weather-
14 related conditions.

15 Committee on Finance
16

17 **HB02S-1011** by Representative(s) Tapia, Marshall, Veiga, Vigil; also
18 Senator(s) Perlmutter--Concerning the expansion of the
19 inmate disaster relief program, and making an
20 appropriation therefor.

21 Committee on State, Veterans, & Military Affairs
22 Committee on Appropriations
23

24
25
26 House in recess. House reconvened.
27
28

29
30
31 **REPORTS OF COMMITTEE OF REFERENCE**
32

33 **AGRICULTURE, LIVESTOCK, & NATURAL RESOURCES**

34 After consideration on the merits, the Committee recommends the
35 following:

36
37 **HB02S-1001** be amended as follows, and as so amended, be referred to
38 the Committee of the Whole with favorable
39 recommendation:
40

41 Amend printed bill, page 4, line 17, after "TO", insert "ANY STATE,
42 MUNICIPAL, OR".

43
44 Page 6, line 7, after "ANY", insert "STATE OR".
45
46
47

48 **HB02S-1004** be referred to the Committee of the Whole with favorable
49 recommendation.
50
51
52

53
54
55

INTRODUCTION OF BILLS
First Reading

- 1
2
3
4 The following bills were read by title and referred to the committees
5 indicated:
6
7 **HB02S-1012** by Representative(s) Sanchez; also Senator(s) Owen--
8 Concerning a procedure for persons sentenced to death to
9 obtain genetic testing.
10 Committee on Criminal Justice
11
12 **HB02S-1013** by Representative(s) Spradley, Paschall; also Senator(s)
13 Lamborn--Concerning a refund of state sales and use tax
14 paid in connection with the reconstruction of
15 improvements destroyed by wildfire.
16 Committee on Finance
17
18 **HB02S-1014** by Representative(s) Romanoff, Grossman, Hoppe, Kester,
19 White --Concerning the invalidity of restrictive covenants
20 that limit the use of water-saving landscape measures.
21 Committee on State, Veterans, & Military Affairs
22
23 **HB02S-1015** by Representative(s) Paschall, Cloer, Decker, Fairbank,
24 Harvey, King, Lee, Webster; also Senator(s) Andrews,
25 Epps--Concerning approval by the Colorado water
26 conservation board of high altitude water storage projects.
27 Committee on Agriculture, Livestock, & Natural Resources
28
29 **HB02S-1016** by Representative(s) Witwer; also Senator(s) Anderson--
30 Concerning the establishment by local governments of
31 legal requirements to reduce the risks posed by wildfires.
32 Committee on State, Veterans, & Military Affairs
33

House in recess. House reconvened.

REPORTS OF COMMITTEES OF REFERENCE

- 41
42 **CRIMINAL JUSTICE**
43 After consideration on the merits, the Committee recommends the
44 following:
45
46 **HB02S-1003** be postponed indefinitely.
47
48
49
50
51 **FINANCE**
52 After consideration on the merits, the Committee recommends the
53 following:
54
55 **HB02S-1010** be referred to the Committee of the Whole with favorable
56 recommendation.

1 **STATE, VETERANS, & MILITARY AFFAIRS**
2 After consideration on the merits, the Committee recommends the
3 following:
4
5 **HB02S-1002** be referred favorably to the Committee on Appropriations.
6

7
8
9 **INTRODUCTION OF BILLS**
10 **First Reading**

11
12 The following bills were read by title and referred to the committees
13 indicated:

14
15 **HB02S-1017** by Representative(s) Madden, Plant--Concerning creation
16 of the wildfire review panel.
17 Committee on State, Veterans, & Military Affairs

18
19 **HB02S-1018** by Representative(s) Daniel, Coleman, Jahn, Vigil,
20 Ragsdale, Weddig--Concerning an expansion of the
21 powers of local governments to mitigate the effects of
22 wildfires.
23 Committee on State, Veterans, & Military Affairs

24
25 **HB02S-1019** by Representative(s) Jahn; also Senator(s) Hillman--
26 Concerning increased penalties for setting fires in
27 violation of a fire ban.
28 Committee on State, Veterans, & Military Affairs

29
30
31 **CONSENT GRANTED TO COMMITTEE**

32
33
34 Under House Rule 25(i)(2), Representative Spradley moved that the
35 Committee on Criminal Justice be granted permission to meet while the
36 House is in session. The motion was passed by unanimous consent.

37
38
39
40 On motion of Representative Spradley, **HB02S-1001, 1004, 1010** were
41 made Special Orders on Monday, July 8, 2002, at 4:07 p.m.

42
43
44 The hour of 4:07 p.m., having arrived, on motion of Representative
45 Cadman, the House resolved itself into Committee of the Whole for
46 consideration of Special Orders and he was called to the Chair to act as
47 Chairman.

48
49
50 **SPECIAL ORDERS--SECOND READING OF BILLS**

51
52 The Committee of the Whole having risen, the Chairman reported the
53 titles of the following bills had been read (reading at length had been
54 dispensed with by unanimous consent), the bills considered and action
55 taken thereon as follows:
56

1 (Amendments to the committee amendment are to the printed committee
2 report which was printed and placed in the members' bill file.)
3

4 **HB02S-1001** by Representative(s) Rippy; also Senator(s) Taylor--
5 Concerning recommendations of the water availability task
6 force relating to measures to address drought conditions.
7

8 Amendment No. 1, Agriculture, Livestock, & Natural Resources Report,
9 dated July 8, 2002, and placed in member's bill file; Report also printed
10 in House Journal, July 8, page 7.

11
12 As amended, ordered engrossed and placed on the Calendar for Third
13 Reading and Final Passage.
14

15 **HB02S-1004** by Representative(s) Johnson--Concerning a limitation on
16 the uses to which the Colorado water conservation
17 construction fund may be put.
18

19 Amendment No. 1, by Representative Johnson.
20

21 Amend printed bill, page 2, strike lines 7 through 9 and substitute the
22 following:
23

24 "SHALL BE EXPENDED ONLY FOR EXPENSES AUTHORIZED PURSUANT TO THIS
25 ARTICLE.";
26

27 line 10, strike "ENTITLEMENTS."
28

29 As amended, ordered engrossed and placed on the Calendar for Third
30 Reading and Final Passage.
31

32 On motion of Representative Spradley, the remainder of the Special
33 Orders Calendar (**HB02S-1010**) was laid over until later in the day,
34 retaining place on Calendar.
35

38 ADOPTION OF COMMITTEE OF THE WHOLE REPORT

39
40 Passed Second Reading: **HB02S-1001 amended, 1004 amended.**

41
42 Laid over until later in the day retaining place on Calendar: **HB02S-1010.**
43

44 The Chairman moved the adoption of the Committee of the Whole
45 Report. As shown by the following roll call vote, a majority of those
46 elected to the House voted in the affirmative, and the Report was
47 **adopted.**
48

49	YES 49	NO 1	EXCUSED 15	ABSENT 0				
51	Alexander	Y	Groff	E	Marshall	Y	Spence	E
52	Bacon	Y	Grossman	Y	Miller	Y	Spradley	Y
53	Berry	Y	Harvey	Y	Mitchell	E	Stafford	Y
54	Borodkin	Y	Hefley	E	Paschall	N	Stengel	Y
55	Boyd	Y	Hodge	Y	Plant	Y	Swenson	E
56	Cadman	Y	Hoppe	Y	Ragsdale	Y	Tapia	E

1	Chavez	Y	Jahn	Y	Rhodes	Y	Tochtrop	Y
2	Clapp	E	Jameson	Y	Rippy	Y	Veiga	E
3	Cloer	Y	Johnson	Y	Romanoff	E	Vigil	Y
4	Coleman	Y	Kester	Y	Saliman	Y	Webster	Y
5	Crane	Y	King	Y	Sanchez	E	Weddig	Y
6	Daniel	Y	Larson	Y	Schultheis	Y	White	Y
7	Decker	E	Lawrence	E	Scott	Y	Williams S.	Y
8	Fairbank	Y	Lee	E	Sinclair	Y	Williams T.	E
9	Fritz	Y	Mace	Y	Smith	E	Witwer	Y
10	Garcia	Y	Madden	Y	Snook	Y	Young	Y
11							Mr. Speaker	Y

REPORTS OF COMMITTEES OF REFERENCE

AGRICULTURE, LIVESTOCK, & NATURAL RESOURCES

After consideration on the merits, the Committee recommends the following:

HB02S-1015 be postponed indefinitely.

STATE, VETERANS, & MILITARY AFFAIRS

After consideration on the merits, the Committee recommends the following:

HB02S-1006 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

Amend printed bill page 4, line 16, after "BURNING" insert "LAWFULLY";
line 18, strike "CITY" and substitute "STATE, MUNICIPALITY,".

HB02S-1016 be postponed indefinitely.

House in recess. House reconvened.

REPORTS OF COMMITTEES OF REFERENCE

APPROPRIATIONS

After consideration on the merits, the Committee recommends the following:

HB02S-1002 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 2, strike lines 17 through 27 and substitute the
2 following:

3
4 "SECTION 2. Part 1 of article 1 of title 17, Colorado Revised
5 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
6 read:

7
8 **17-1-144. Appropriation to comply with section**
9 **2-2-703.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING
10 STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE
11 NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 02S-1002, ENACTED
12 AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL
13 ASSEMBLY:

14
15 (a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION
16 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
17 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
18 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
19 SECTION 17-1-116, THE SUM OF FOUR THOUSAND TWELVE DOLLARS
20 (\$4,012).

21
22 (b) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION
23 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
24 DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL
25 FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE THOUSAND FIVE
26 HUNDRED SEVENTY-FOUR DOLLARS (\$1,574).

27
28 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION
29 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
30 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
31 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
32 SECTION 17-1-116, THE SUM OF TWENTY-TWO THOUSAND NINE HUNDRED
33 TWENTY-FOUR DOLLARS (\$22,924).

34
35 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION
36 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
37 DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL
38 FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TEN THOUSAND FIVE
39 HUNDRED SIXTY-SEVEN DOLLARS (\$10,567).

40
41 **SECTION 3.** The introductory portion to 24-75-302 (2) and
42 24-75-302 (2) (q), Colorado Revised Statutes, are amended, and the said
43 24-75-302 (2) is further amended BY THE ADDITION OF A NEW
44 PARAGRAPH, to read:

45
46 **24-75-302. Capital construction fund - capital assessment fees**
47 **- calculation.** (2) As of July 1, 1988, and July 1 of each year thereafter
48 through July 1, ~~2005~~, 2006, a sum as specified in this subsection (2) shall
49 accrue to the capital construction fund. The state treasurer and the
50 controller shall transfer such sum out of the general fund and into the
51 capital construction fund as moneys become available in the general fund
52 during the fiscal year beginning on said July 1. Transfers between funds
53 pursuant to this subsection (2) shall not be deemed to be appropriations
54 subject to the limitations of section 24-75-201.1. The amount which shall
55 accrue pursuant to this subsection (2) shall be as follows:

56

1 (q) On July 1, 2004, one hundred million dollars, plus two
2 hundred thirty-three thousand eight hundred seventy-two dollars pursuant
3 to H.B. 00-1201, enacted at the second regular session of the sixty-second
4 general assembly; plus seventy-nine thousand eight hundred eighty-seven
5 dollars pursuant to H.B. 01-1242, enacted at the first regular session of
6 the sixty-third general assembly; plus four hundred eighty-six thousand
7 two hundred sixty-nine dollars pursuant to S.B. 02-050, enacted at the
8 second regular session of the sixty-third general assembly; plus nine
9 hundred seventy-two thousand five hundred thirty-eight dollars pursuant
10 to H.B. 02-1038, enacted at the second regular session of the sixty-third
11 general assembly; PLUS FOUR THOUSAND TWELVE DOLLARS PURSUANT TO
12 H.B. 02S-1002, ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE
13 SIXTY-THIRD GENERAL ASSEMBLY;

14
15 (s) ON JULY 1, 2006, TWENTY-TWO THOUSAND NINE HUNDRED
16 TWENTY-FOUR DOLLARS PURSUANT TO H.B. 02S-1002, ENACTED AT THE
17 THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL
18 ASSEMBLY."

19
20 Page 3, strike lines 1 through 2.

21
22 Page 1, line 101, strike "WILDFIRE." and substitute "WILDFIRE, AND
23 MAKING AN APPROPRIATION IN CONNECTION THEREWITH."

24
25
26
27
28 **CRIMINAL JUSTICE**

29 After consideration on the merits, the Committee recommends the
30 following:

31
32 **HB02S-1005** be amended as follows, and as so amended, be referred to
33 the Committee of the Whole with favorable
34 recommendation:

35
36 Amend printed bill, page 2, line 26, strike "PLEADS" and substitute
37 "PLED".

38
39 Page 3, line 3, strike "TRIAL," and substitute "TRIAL OR WHEN PLEADING
40 GUILTY,".

41
42 Page 5, line 23, strike "unanimously" and substitute "unanimously".

43
44 Page 6, strike lines 17 and 18 and substitute the following:

45
46 "(3.2) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD
47 BEFORE THE";

48
49 line 19, strike "ALONE AND" and substitute "ALONE,".

50
51 Page 7, strike line 5 and substitute the following:

52
53 "following information and materials ~~not later than five days~~ PURSUANT
54 TO COURT RULES after";

55
56 line 7, strike the semicolon and substitute a colon;

- 1 strike lines 8 through 13.
2
3 Page 8, line 7, strike "DEFENDANTS" and substitute "THE DEFENDANT";
4
5 strike line 13 and substitute the following:
6
7 "following information and materials ~~no later than twenty days~~";
8
9 line 15, after "~~felony~~", insert "PURSUANT TO COURT RULES";
10
11 strike lines 16 through 21 and substitute the following:
12
13 "DEFENDANT'S TRIAL:".
14
15 Page 9, strike lines 7 through 21.
16
17 Page 11, line 15, after "sentence", insert "IS".
18
19 Page 13, line 21, strike "PLEADS" and substitute "PLED";
20
21 line 24, strike "TRIAL," and substitute "TRIAL OR WHEN PLEADING
22 GUILTY,".
23
24 Page 15, line 14 after "IMPRISONMENT", insert "FOR".
25
26 Page 16, line 17, strike "~~unanimously~~" and substitute "unanimously".
27
28 Page 17, strike lines 11 and 12 and substitute the following:
29
30 "(2.5) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD
31 BEFORE THE";
32
33 line 13, strike "ALONE AND" and substitute "ALONE,";
34
35 strike line 26 and substitute the following:
36
37 "following information and materials ~~not later than five days~~ PURSUANT
38 TO COURT RULES after".
39
40 Page 18, line 1, strike the semicolon and substitute a colon;
41
42 strike lines 2 through 7.
43
44 Page 19, line 1, strike "DEFENDANTS" and substitute "THE DEFENDANT";
45
46 strike line 7 and substitute the following:
47
48 "following information and materials ~~no later than twenty days~~";
49
50 line 9, after "~~felony~~", insert "PURSUANT TO COURT RULES";
51
52 strike lines 10 through 15 and substitute the following:
53
54 "DEFENDANT'S TRIAL:".
55
56 Page 20, strike lines 1 through 15.

- 1 Page 22, line 9, after "sentence", insert "IS".
2
3 Page 26, line 27, strike "SENTENCE" and substitute "SENTENCED".
4
5 Page 29, line 6, strike "SENATE BILL 54" and substitute "SENATE BILL
6 95-54";
7
8 line 7, strike "TO THE";
9
10 strike lines 8 and 9 and substitute the following:
11
12 "ARE REENACTED AS SECTION";
13
14 line 16, strike "BILL 54" and substitute "BILL 95-54";
15
16 line 19, strike "BILL 54" and substitute "BILL 95-54";
17
18 line 24, strike "1.4".
19
20 Page 30, line 14, strike "PART 11 OF ARTICLE 1.3 OF THIS TITLE," and
21 substitute "PART 4 OF ARTICLE 9 OF TITLE 16, C.R.S., AS IT EXISTED PRIOR
22 TO OCTOBER 1, 2002,".
23
24 Page 31, line 6, strike "TRIAL," and substitute "TRIAL AND".
25
26 Page 35, line 2, after "16-11-309,", insert "C.R.S.,";
27
28 line 6, after "16-11-309,", insert "C.R.S.,".
29
30 Page 38, strike lines 2 through 26, and substitute the following:
31
32 "(7) (a) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION
33 THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID OR
34 UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL
35 NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION, WHICH
36 CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL
37 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
38 SECTION ARE DECLARED TO BE SEVERABLE."
39
40 Page 39, line 5, strike "(7) (b)" and substitute "(7),";
41
42 line 6, strike "Senate Bill ____," and substitute "House Bill 02S-1005,";
43
44 strike lines 10 and 11 and substitute the following:
45
46 **"18-1.4-102. Imposition of sentence in class 1 felonies for**
47 **crimes committed on or after July 1, 1995, and prior to the effective**
48 **date of this article - appellate review.** (1) (a) Upon conviction of guilt
49 of a";
50
51 line 17, strike "part 11 of article 1.3 of this title," and substitute "part 4
52 of article 9 of title 16, C.R.S., as it existed prior to October 1, 2002,".
53
54 Page 40, strike lines 1 and 2 and substitute the following:
55
56 "jurors. If a trial jury was waived or if the defendant pleads guilty, the

1 hearing shall be conducted before the trial judge. THE COURT SHALL
2 INSTRUCT THE DEFENDANT WHEN WAIVING HIS OR HER RIGHT TO A JURY
3 TRIAL OR WHEN PLEADING GUILTY, THAT HE OR SHE IS ALSO WAIVING HIS
4 OR HER RIGHT TO A JURY DETERMINATION OF THE SENTENCE AT THE
5 SENTENCING HEARING.";

6
7 line 6, after "trial," insert "and";

8
9 line 25, strike "NEWLY".

10
11 Page 41, line 10, strike "THIS TITLE." and substitute "TITLE 16, C.R.S.";

12
13 after line 10, insert the following:

14
15 ~~"(7) (a) If any provision of this section or the application thereof~~
16 ~~to any person or circumstances is held invalid or unconstitutional, such~~
17 ~~invalidity or unconstitutionality shall not affect other provisions or~~
18 ~~applications of this section, which can be given effect without the invalid~~
19 ~~or unconstitutional provision or application, and to this end the provisions~~
20 ~~of this section are declared to be severable. IT IS THE EXPRESSED INTENT~~
21 ~~OF THE GENERAL ASSEMBLY THAT THERE BE IN PLACE A VALID AND~~
22 ~~OPERATIVE PROCEDURE FOR THE IMPOSITION OF A SENTENCE OF DEATH~~
23 ~~CONCERNING CLASS 1 FELONIES COMMITTED ON OR AFTER JULY 1, 1995,~~
24 ~~AND PRIOR TO THE EFFECTIVE DATE OF THIS SECTION. TOWARDS THAT~~
25 ~~END, IF ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE~~
26 ~~UNITED STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT~~
27 ~~TO RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT SAID~~
28 ~~SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY~~
29 ~~STATUTE CONCERNING SUCH CLASS 1 FELONIES, AND SEVERANCE OF SUCH~~
30 ~~PROVISIONS WOULD, THROUGH OPERATION OF THE REMAINING PROVISIONS~~
31 ~~OF THIS SECTION, MAINTAIN THIS SECTION AS A VALID AND OPERATIVE~~
32 ~~DEATH PENALTY STATUTE CONCERNING SUCH CLASS 1 FELONIES, IT IS THE~~
33 ~~INTENT OF THE GENERAL ASSEMBLY THAT THOSE REMAINING PROVISIONS~~
34 ~~ARE SEVERABLE AND ARE TO HAVE FULL FORCE AND EFFECT. IF, INSTEAD,~~
35 ~~ANY PROVISIONS OF THIS SECTION ARE DETERMINED BY THE UNITED~~
36 ~~STATES SUPREME COURT OR BY THE COLORADO SUPREME COURT TO~~
37 ~~RENDER THIS SECTION UNCONSTITUTIONAL OR INVALID SUCH THAT THIS~~
38 ~~SECTION DOES NOT CONSTITUTE A VALID AND OPERATIVE DEATH PENALTY~~
39 ~~STATUTE CONCERNING SUCH CLASS 1 FELONIES, AND SEVERANCE OF SUCH~~
40 ~~PROVISIONS WOULD NOT, THROUGH OPERATION OF THE REMAINING~~
41 ~~PROVISIONS OF THIS SECTION, RENDER SAID SECTION A VALID AND~~
42 ~~OPERATIVE DEATH PENALTY STATUTE CONCERNING SUCH OFFENSES, IT IS~~
43 ~~THE INTENT OF THE GENERAL ASSEMBLY THAT THIS ENTIRE ARTICLE BE~~
44 ~~VOID AND INOPERATIVE.";~~

45
46 line 11, strike "(7)";

47
48 strike line 15 and substitute the following:

49
50 "to life imprisonment AFTER CONSIDERATION PURSUANT TO";

51
52 line 16, strike "(8)" and substitute "(9)".

53
54 Page 42, line 3, strike "Senate Bill __," and substitute "House Bill
55 02S-1005,";

56

1 line 24, strike "NOT LATER THAN" and substitute "PURSUANT TO COURT
2 RULES";
3
4 line 25, strike "TWENTY DAYS";
5
6 strike lines 26 and 27 and substitute the following:
7
8 "SEEK THE DEATH PENALTY:".
9
10 Page 43, strike lines 1 through 5.
11
12 Page 44, strike line 2 and substitute the following:
13
14 "DISCLOSED BY THE DEFENDANT PURSUANT TO PARAGRAPH (d) OF THIS
15 SUBSECTION (3.5),";
16
17 line 8, strike "NO LATER THAN" and substitute "PURSUANT TO COURT
18 RULES";
19
20 line 9, strike "FORTY-FIVE DAYS";
21
22 strike lines 10 through 16 and substitute the following:
23
24 "OF THE DEFENDANT'S TRIAL:".
25
26 Page 45, line 10, strike "DEFENDANTS" and substitute "DEFENDANT";
27
28 line 17, after "SEAL", insert "THAT";
29
30 line 18, strike "JURY CONVICTS THE";
31
32 line 19, after "DEFENDANT", insert "IS CONVICTED";
33
34 line 25, strike "THAT".
35
36 Page 47, line 17, after "WITH", insert "THE PROVISIONS OF", and strike
37 "SUCH" and substitute "THE";
38
39 line 18, after "EVIDENCE", insert "THAT IS THE SUBJECT OF SUCH
40 NONCOMPLIANCE";
41
42 line 19, strike "(a)";
43
44 line 24, strike "(I)" and substitute "(a)".
45
46 Page 48, line 3, strike "(II)" and substitute "(b) (I)";
47
48 line 8, strike "SECTION." and substitute "SECTION; OR";
49
50 after line 8, insert the following:
51
52 "(II) IF THE SUPREME COURT DETERMINES THERE WERE NO
53 AGGRAVATING FACTORS FAIRLY DETERMINED TO EXIST BEYOND A
54 REASONABLE DOUBT BY THE JURY'S VERDICT OR THE DEFENDANT'S GUILTY
55 PLEA, THE SUPREME COURT SHALL REMAND THE CASE TO THE TRIAL COURT
56 FOR A SENTENCING HEARING BEFORE A NEWLY IMPANELED JURY."

1 Page 49, line 3, strike "Senate Bill ____, " and substitute "House Bill
2 02S-1005,";

3

4 strike lines 7 and 8, and substitute the following:

5

6 **"18-1.4-102. Imposition of sentence in class 1 felonies for**
7 **crimes committed on or after July 1, 1995, and prior to the effective**
8 **date of this article - appellate review. (5) For purposes of this**
9 **section,";**

10

11 after line 21, insert the following:

12

13 **"SECTION 16. Legislative declaration.** It is the intent of the
14 general assembly that there be a constitutional death penalty sentencing
15 procedure in effect for offenses committed on or after July 1, 1995, and
16 prior to the effective date of this act. To that end, the general assembly
17 has enacted article 1.4 of title 18, Colorado Revised Statutes, in section
18 12 of this act, which recreates section 16-11-103, Colorado Revised
19 Statutes, as it existed on June 30, 1995. In addition, in sections 13
20 through 15 of this act, the general assembly has enacted amendments to
21 said article 1.4 of title 18, Colorado Revised Statutes, to reflect the
22 changes made to section 16-11-103, Colorado Revised Statutes, on or
23 after July 1, 1995, and prior to the effective date of this act, other than
24 those changes that established a panel of three judges as the sentencing
25 authority in capital cases. In enacting section 12 of this act separately
26 from sections 13 through 15 of this act, it is the intent of the general
27 assembly that, if any of the amendments made in sections 13 through 15
28 of this act are found by the United States Supreme Court or the Colorado
29 Supreme Court, to render section 18-1.4-102, Colorado Revised Statutes,
30 unconstitutional or invalid such that it does not implement a valid and
31 operative procedure for imposition of a sentence of death, any such
32 amendments made in sections 13 through 15 of this act shall be
33 inoperative and severable, and the provisions of article 1.4 of title 18,
34 Colorado Revised Statutes, as enacted in section 12 of this act, shall
35 apply to offenses committed on or after July 1, 1995, and prior to the
36 effective date of this act."

37

38 Renumber succeeding sections accordingly.

39

40

41

42 **HB02S-1007** be postponed indefinitely.

43

44

45 **HB02S-1008** be postponed indefinitely.

46

47

48

49

50 **FINANCE**

51 After consideration on the merits, the Committee recommends the
52 following:

53

54 **HB02S-1013** be amended as follows, and as so amended, be referred to
55 the Committee of the Whole with favorable
56 recommendation:

1 Amend printed bill, page 2, line 11, strike "WATER RIGHT" and substitute
2 "WATER CHANNEL OR IRRIGATION IMPROVEMENT";
3
4 line 12, strike "LAND." and substitute "LAND WITHIN COLORADO.";
5
6 line 14, after "IMPROVEMENT", insert "WITHIN COLORADO";
7
8 line 21, after "TAXPAYER,", insert "THE TAXPAYER'S CONTRACTORS, OR
9 THEIR AGENT".

10
11 Page 3, line 2, after "IMPROVEMENT", insert "WITHIN COLORADO";
12
13 strike lines 14 and 15 and substitute the following:
14
15 "DEPARTMENT. THE APPLICATION SHALL BE SUBMITTED NO LATER THAN
16 OCTOBER 15 OF THE CALENDAR YEAR".

17
18 Page 4, line 7, strike "GOVERNMENT." and substitute "GOVERNMENT,
19 SPECIAL DISTRICT, OR ANOTHER STATE."
20
21
22
23

24 **STATE, VETERANS, & MILITARY AFFAIRS**

25 After consideration on the merits, the Committee recommends the
26 following:

27
28 **HB02S-1011** be postponed indefinitely.
29

30
31 **HB02S-1014** be postponed indefinitely.
32

33
34
35 **INTRODUCTION OF BILL**
36 **First Reading**
37

38 The following bill was read by title and referred to the committee
39 indicated:

40
41 **HB02S-1020** by Representative(s) Stafford; also Senator(s) Evans--
42 Concerning state planning for infrastructure for a
43 sustainable supply of water for drought cycles, and, in
44 connection therewith, directing the Colorado water
45 conservation board, with the involvement of private
46 enterprise and local governmental entities, to integrate
47 water infrastructure facilities and organizational
48 requirements necessary to accomplish such planning and
49 authorizing the issuance of bonds by the Colorado housing
50 and finance authority for the purpose of financing such
51 infrastructure.

52 Committee on Agriculture, Livestock, & Natural Resources
53

54
55 House in recess. House reconvened.
56

REPORT OF COMMITTEE OF REFERENCE**APPROPRIATIONS**

After consideration on the merits, the Committee recommends the following:

HB02S-1006 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

Amend printed bill, page 6, strike lines 24 through 27 and substitute the following:

"SECTION 7. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-144. Appropriation to comply with section 2-2-703.

(1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 02S-1006, ENACTED AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2002, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FIFTY-SIX THOUSAND SEVEN HUNDRED THIRTY-ONE DOLLARS (\$56,731).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 2003, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWENTY-TWO THOUSAND TWO HUNDRED FIFTY-FIVE DOLLARS (\$22,255).

(e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWENTY-TWO THOUSAND TWO HUNDRED FIFTY-FIVE DOLLARS (\$22,255).

SECTION 8. 24-75-302 (2) (o) is amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation. (2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2005, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(o) On July 1, 2002, nine million four hundred eighty-nine

1 thousand dollars; plus four hundred eighty-six thousand two hundred
2 sixty-nine dollars pursuant to S.B. 02-050, enacted at the second regular
3 session of the sixty-third general assembly; plus four hundred eighty-six
4 thousand two hundred sixty-nine dollars pursuant to H.B. 02-1038,
5 enacted at the second regular session of the sixty-third general assembly;
6 plus sixty-nine thousand four hundred sixty-seven dollars pursuant to
7 H.B. 02-1283, enacted at the second regular session of the sixty-third
8 general assembly; plus sixty-nine thousand four hundred sixty-seven
9 dollars pursuant to H.B. 02-1396, enacted at the second regular session
10 of the sixty-third general assembly; PLUS FIFTY-SIX THOUSAND SEVEN
11 HUNDRED THIRTY-ONE DOLLARS PURSUANT TO H.B. 02S-1006, ENACTED
12 AT THE THIRD EXTRAORDINARY SESSION OF THE SIXTY-THIRD GENERAL
13 ASSEMBLY;"

14

15 Page 7, strike lines 1 through 9.

16

17 Page 1, line 104, strike "**FIRES.**" and substitute "**FIRES, AND MAKING AN**
18 **APPROPRIATION IN CONNECTION THEREWITH.**"

19

20

21

22 On motion of Representative Spradley, **HB02S-1013, 1002, 1005** were
23 added to the Special Orders Calendar on Monday, July 8, 2002.

24

25

26 On motion of Representative Williams T., the House resolved itself into
27 Committee of the Whole for consideration of Special Orders and she was
28 called to the Chair to act as Chairman.

29

30

31 **SPECIAL ORDERS--SECOND READING OF BILLS**

32

33 The Committee of the Whole having risen, the Chairman reported the
34 titles of the following bills had been read (reading at length had been
35 dispensed with by unanimous consent), the bills considered and action
36 taken thereon as follows:

37

38 (Amendments to the committee amendment are to the printed committee
39 report which was printed and placed in the members' bill file.)

40

41 **HB02S-1002** by Representative(s) Kester, Mace; also Senator(s)
42 Hernandez--Concerning the crime of intentionally setting
43 a wildfire.

44

45 Amendment No. 1, Appropriations Report, dated July 8, 2002, and placed
46 in member's bill file; Report also printed in House Journal, July 8,
47 pages 11-13.

48

49 As amended, ordered engrossed and placed on the Calendar for Third
50 Reading and Final Passage.

51

52 **HB02S-1013** by Representative(s) Spradley, Paschall; also Senator(s)
53 Lamborn--Concerning a refund of state sales and use tax
54 paid in connection with the reconstruction of
55 improvements destroyed by wildfire.

56

1 Amendment No. 1, Finance Report, dated July 8, 2002, and placed in
2 member's bill file; Report also printed in House Journal, July 8,
3 pages 18-19.

4
5 Amendment No. 2, by Representative Spradley.

6
7 Amend the Finance Committee Report, dated July 8, 2002, page 1, strike
8 line 7 and substitute the following:

9
10 "Page 3, line 2, strike "DESTROYED" and substitute "WITHIN COLORADO
11 DESTROYED OR DAMAGED";

12
13 line 7, strike "IMPROVEMENT" and substitute "MATERIAL PORTION OF THE
14 IMPROVEMENTS THAT WERE DESTROYED OR DAMAGED";".

15
16 As amended, ordered engrossed and placed on the Calendar for Third
17 Reading and Final Passage.

18
19 **HB02S-1005** by Representative(s) Hefley; also Senator(s) Gordon--
20 Concerning determination of the death penalty by a jury.

21
22 Amendment No. 1, Criminal Justice Report, dated July 8, 2002, and
23 placed in member's bill file; Report also printed in House Journal, July 8,
24 pages 13-18.

25
26 Amendment No. 2, by Representative Williams T.

27
28 Amend the Criminal Justice Committee Report, dated July 8, 2002, page
29 1, strike lines 10 through 13 and substitute the following:

30
31 "Page 7, line 7, strike "PENALTY;" and substitute "PENALTY OR WITHIN
32 SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY
33 RULE;";".

34
35 Page 2 of the Committee Report, strike line 1;

36
37 strike lines 3 through 8 of the Committee Report and substitute the
38 following:

39
40 "line 16, strike "TRIAL;" and substitute "TRIAL OR WITHIN SUCH OTHER
41 TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE;".";

42
43 line 18 of the Committee Report, change the semicolon to a period;

44
45 strike line 19 of the Committee Report.

46
47 Page 3 of the Committee Report, strike lines 1 through 4 and substitute
48 the following:

49
50 "Page 18, line 1, strike "PENALTY;" and substitute "PENALTY OR WITHIN
51 SUCH OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY
52 RULE;".";

53
54 strike lines 6 through 11 of the Committee Report and substitute the
55 following:

56

1 "line 10, strike "TRIAL;" and substitute "TRIAL OR WITHIN SUCH OTHER
2 TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE;".
3
4 Page 6 of the Committee Report, strike lines 14 through 19 and substitute
5 the following:
6
7 "line 26, strike "PENALTY," and substitute "PENALTY OR WITHIN SUCH
8 OTHER TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE;".
9
10 strike lines 23 and 24 of the Committee Report and substitute the
11 following:
12
13 "line 10, strike "TRIAL;" and substitute "TRIAL OR WITHIN SUCH OTHER
14 TIME FRAME AS THE SUPREME COURT MAY ESTABLISH BY RULE;".
15
16 Page 7 of the Committee Report, strike lines 1 through 3.
17
18 Amendment No. 3, by Representative Hefley.
19
20 Amend the Criminal Justice Committee Report, dated July 8, 2002, page
21 1, after line 5, insert the following:
22
23 "Page 6, line 9, after "OF", insert "THE";";
24
25 line 6 of the committee report, strike "Page 6,";
26
27 line 9 of the committee report, strike ""ALONE,." and substitute
28 ""ALONE,"";
29
30 after line 9 of the committee report, insert the following:
31
32 "line 24, after "UPON", insert "THE".
33
34 Page 2 of the committee report, line 9, strike ""IS". and substitute ""IS";";
35
36 after line 9 of the committee report, insert the following:
37
38 "line 16, strike "and" and substitute "and, ON APPELLATE REVIEW
39 INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (8) OF THIS
40 SECTION,";
41
42 line 17, strike "AFTER CONSIDERATION PURSUANT TO";
43
44 line 18, strike "SUBSECTION (8) OF THIS SECTION";
45
46 line 21, strike "JURY;" and substitute "JURY OR, IF THE DEFENDANT PLED
47 GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL
48 JUDGE;".
49
50 Page 12, line 12, strike "JURY" and substitute "SENTENCING TRIBUNAL";
51
52 line 15, strike "JURY'S" and substitute "SENTENCING TRIBUNAL'S";
53
54 line 18, strike "JURY" and substitute "SENTENCING TRIBUNAL".
55

1 Page 3 of the committee report, line 12, strike ""is"." and substitute
2 ""is"";";
3
4 after line 12 of the committee report, insert the following:
5
6 "line 10, strike "and" and substitute "and, ON APPELLATE REVIEW
7 INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (8) OF THIS
8 SECTION,"";
9
10 line 11, strike "AFTER CONSIDERATION";
11
12 line 12, strike "PURSUANT TO SUBSECTION (8) OF THIS SECTION";
13
14 line 15, strike "JURY;" and substitute "JURY OR, IF THE DEFENDANT PLED
15 GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL
16 JUDGE;".
17
18 Page 23, line 6, strike "JURY" and substitute "SENTENCING TRIBUNAL";
19
20 line 9, strike "JURY'S" and substitute "SENTENCING TRIBUNAL'S";
21
22 line 12, strike "JURY" and substitute "SENTENCING TRIBUNAL".".
23
24 Page 4 of the committee report, line 4, strike "2002,." and substitute
25 "2002,,"";
26
27 after line 4 of the committee report, insert the following:
28
29 "line 27, strike "PLED" and substitute "PLEADED".";
30
31 line 5 of the committee report, strike "AND"." and substitute "AND";";
32
33 after line 5 of the committee report, insert the following:
34
35 "strike lines 14 and 15 and substitute the following:
36
37 "DEATH. FOR OFFENSES COMMITTED BEFORE JULY 1, 1985, THE JURY
38 SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT
39 THE POSSIBILITY OF PAROLE FOR TWENTY CALENDAR YEARS. FOR
40 OFFENSES COMMITTED ON OR AFTER JULY 1, 1985, THE JURY SHALL BE
41 INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE
42 POSSIBILITY OF PAROLE FOR FORTY CALENDAR YEARS. FOR OFFENSES
43 WITHIN THE PURVIEW OF SECTION 17-22.5-104 (2) (d), C.R.S., THE JURY
44 SHALL BE INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT
45 THE POSSIBILITY OF PAROLE.".
46
47 Page 33, line 11, after "UPON", insert "THE".";
48
49 line 15 of the committee report, strike "SEVERABLE"." and substitute
50 "SEVERABLE.,"";
51
52 after line 15 of the committee report, insert the following:
53
54 "line 27, strike "IS".".
55

1 Page 5 of the committee report, line 1, strike "pleads" and substitute
2 "~~pleaded~~ PLED";
3
4 after line 7 of the committee report, insert the following:
5
6 "strike lines 17 and 18 and substitute the following:
7
8 "a sentence of death. ~~For offenses committed before July 1, 1985, the~~
9 ~~jury shall be instructed that life imprisonment means life without the~~
10 ~~possibility of parole for twenty calendar years. For offenses committed~~
11 ~~on or after July 1, 1985, the jury shall be instructed that life imprisonment~~
12 ~~means life without the possibility of parole for forty calendar years. For~~
13 ~~offenses within the purview of section 17-22.5-104 (2) (d), C.R.S., The~~
14 ~~jury shall be instructed that life imprisonment means IMPRISONMENT FOR~~
15 ~~life without the possibility of parole.";~~
16
17 line 8 of the committee report, strike ""NEWLY." and substitute
18 ""NEWLY";";
19
20 after line 8 of the committee report, insert the following:
21
22 "line 27, strike "SECTION." and substitute "SECTION OR, IF THE DEFENDANT
23 PLED GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, THE SENTENCE
24 SHALL BE DETERMINED BY THE TRIAL JUDGE.".";
25
26 line 23 of the committee report, strike "SAID" and substitute "THIS";
27
28 line 25 of the committee report, strike "AND" and substitute "BUT".
29
30 Page 6 of the committee report, strike line 8 and substitute the following:
31
32 "line 11, strike "(7)", and strike "is" and substitute "IS";";
33
34 strike lines 9 through 11 of the committee report, and substitute the
35 following:
36
37 "line 12, strike "and" and substitute "and, ON APPELLATE REVIEW
38 INCLUDING CONSIDERATION PURSUANT TO SUBSECTION (9) OF THIS
39 SECTION,";
40
41 strike lines 15 and 16 and substitute the following:
42
43 "~~to life imprisonment~~ FOR REASONS OTHER THAN";
44
45 line 20, strike "JURY;" and substitute "JURY OR, IF THE DEFENDANT PLED
46 GUILTY OR WAIVED THE RIGHT TO JURY SENTENCING, BEFORE THE TRIAL
47 JUDGE;".
48
49 Page 7 of the committee report, strike line 14 and substitute the
50 following:
51
52 "line 24, strike "(I)" and substitute "(a)", and strike "VERDICT" and
53 substitute "VERDICTS";
54
55 line 25, strike "PLEA" and substitute "PLEAS".
56

1 Page 48, line 1, strike "VERDICT" and substitute "VERDICTS";
 2
 3 line 2, strike "PLEA;" and substitute "PLEAS;";
 4
 5 line 15 of the committee report, strike "Page 48,";
 6
 7 strike line 16 of the committee report and substitute the following:
 8
 9 "line 5, strike "VERDICT" and substitute "VERDICTS";
 10
 11 line 6, strike "PLEA," and substitute "PLEAS,";
 12
 13 line 8, strike "SUBSECTION (9) OF THIS SECTION." and substitute
 14 "PARAGRAPHS (a) TO (d) OF SUBSECTION (9) OF THIS SECTION; OR";
 15
 16 line 20 of the committee report, strike "VERDICT" and substitute
 17 "VERDICTS";
 18
 19 line 21 of the committee report, strike "PLEA," and substitute "PLEAS,";
 20
 21 line 22 of the committee report, strike "JURY." and substitute "JURY.";
 22
 23 after line 22 of the committee report, insert the following:
 24
 25 "line 18, strike "JURY" and substitute "SENTENCING TRIBUNAL";
 26
 27 line 21, strike "JURY'S" and substitute "SENTENCING TRIBUNAL'S";
 28
 29 line 24, strike "JURY" and substitute "SENTENCING TRIBUNAL".
 30
 31 Amendment No. 4, by Representative Hefley.

32
 33 Amend printed bill, page 49, before line 22, insert the following:

34
 35 **SECTION 16.** 16-8-103.6 (2) (a), Colorado Revised Statutes,
 36 as it exists until October 1, 2002, is amended to read:

37
 38 **16-8-103.6. Waiver of privilege.** (2) (a) A defendant who places
 39 his or her mental condition at issue by pleading not guilty by reason of
 40 insanity pursuant to section 16-8-103, raising the question of
 41 incompetency to proceed pursuant to section 16-8-110, or disclosing
 42 witnesses who may provide evidence concerning the defendant's mental
 43 condition during a sentencing hearing held pursuant to section ~~16-11-103~~
 44 16-11-103 OR 18-1.4-102, C.R.S., or, for offenses committed on or after
 45 July 1, 1999, by seeking to introduce evidence concerning his or her
 46 mental condition pursuant to section 16-8-107 (3) waives any claim of
 47 confidentiality or privilege as to communications made by the defendant
 48 to a physician or psychologist in the course of an examination or
 49 treatment for such mental condition for the purpose of any trial, hearing
 50 on the issue of such mental condition, or sentencing hearing conducted
 51 pursuant to section ~~16-11-103~~ 16-11-103 OR 18-1.4-102, C.R.S. The
 52 court shall order both the prosecutor and the defendant to exchange the
 53 names, addresses, reports, and statements of any physician or
 54 psychologist who has examined or treated the defendant for such mental
 55 condition.
 56

1 **SECTION 17.** 16-8-103.6 (2) (a), Colorado Revised Statutes, as
2 it will become effective October 1, 2002, is amended to read:

3
4 **16-8-103.6. Waiver of privilege.** (2) (a) A defendant who places
5 his or her mental condition at issue by pleading not guilty by reason of
6 insanity pursuant to section 16-8-103, raising the question of
7 incompetency to proceed pursuant to section 16-8-110, or disclosing
8 witnesses who may provide evidence concerning the defendant's mental
9 condition during a sentencing hearing held pursuant to section
10 ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., or, for offenses
11 committed on or after July 1, 1999, by seeking to introduce evidence
12 concerning his or her mental condition pursuant to section 16-8-107 (3)
13 waives any claim of confidentiality or privilege as to communications
14 made by the defendant to a physician or psychologist in the course of an
15 examination or treatment for such mental condition for the purpose of any
16 trial, hearing on the issue of such mental condition, or sentencing hearing
17 conducted pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102,
18 C.R.S. The court shall order both the prosecutor and the defendant to
19 exchange the names, addresses, reports, and statements of any physician
20 or psychologist who has examined or treated the defendant for such
21 mental condition.

22
23 **SECTION 18.** 16-8-106 (2) (b), (2) (c), and (3) (b), Colorado
24 Revised Statutes, as they exist until October 1, 2002, are amended to
25 read:

26
27 **16-8-106. Examinations and report.** (2) (b) The defendant shall
28 have a privilege against self-incrimination during the course of an
29 examination under this section. The fact of the defendant's
30 noncooperation with psychiatrists and other personnel conducting the
31 examination may be admissible in the defendant's trial on the issues of
32 insanity or competency and in any sentencing hearing held pursuant to
33 section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. This
34 paragraph (b) shall apply to offenses committed on or after July 1, 1995,
35 but prior to July 1, 1999.

36
37 (c) The defendant shall cooperate with psychiatrists and other
38 personnel conducting any examination ordered by the court pursuant to
39 this section. Statements made by the defendant in the course of such
40 examination shall be protected as provided in section 16-8-107. If the
41 defendant does not cooperate with psychiatrists and other personnel
42 conducting the examination, the court shall not allow the defendant to
43 call any psychiatrist or other expert witness to provide evidence at the
44 defendant's trial concerning the defendant's mental condition including,
45 but not limited to, providing evidence on the issues of insanity or
46 competency, or at any sentencing hearing held pursuant to section
47 ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. In addition, the fact
48 of the defendant's noncooperation with psychiatrists and other personnel
49 conducting the examination may be admissible in the defendant's trial to
50 rebut any evidence introduced by the defendant with regard to the
51 defendant's mental condition including, but not limited to, the issues of
52 insanity and competency, and in any sentencing hearing held pursuant to
53 section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S. This
54 paragraph (c) shall apply to offenses committed on or after July 1, 1999.

55
56 (3) (b) To aid in forming an opinion as to the mental condition of

1 the defendant, it is permissible in the course of an examination under this
2 section to use confessions and admissions of the defendant and any other
3 evidence of the circumstances surrounding the commission of the offense,
4 as well as the medical and social history of the defendant, in questioning
5 the defendant. When the defendant is noncooperative with psychiatrists
6 and other personnel conducting the examination, an opinion of the mental
7 condition of the defendant may be rendered by such psychiatrists or other
8 personnel based upon such confessions, admissions, and any other
9 evidence of the circumstances surrounding the commission of the offense,
10 as well as the known medical and social history of the defendant, and
11 such opinion may be admissible into evidence at trial and in any
12 sentencing hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR
13 SECTION 18-1.4-102, C.R.S. It shall also be permissible to conduct a
14 narcoanalytic interview of the defendant with such drugs as are medically
15 appropriate and to subject the defendant to polygraph examination. In
16 any trial or hearing on the issue of the defendant's sanity, eligibility for
17 release, or competency to proceed and in any sentencing hearing held
18 pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION 18-1.4-102, C.R.S.,
19 the physicians and other personnel conducting the examination may
20 testify to the results of any such procedures and the statements and
21 reactions of the defendant insofar as the same entered into the formation
22 of their opinions as to the mental condition of the defendant both at the
23 time of the commission of the alleged offense and at the present time.
24 This paragraph (b) shall apply to offenses committed on or after July 1,
25 1995.

26
27 **SECTION 19.** 16-8-106 (2) (b), (2) (c), and (3) (b), Colorado
28 Revised Statutes, as they will become effective October 1, 2002, is
29 amended to read:

30
31 **16-8-106. Examinations and report.** (2) (b) The defendant shall
32 have a privilege against self-incrimination during the course of an
33 examination under this section. The fact of the defendant's
34 noncooperation with psychiatrists and other personnel conducting the
35 examination may be admissible in the defendant's trial on the issues of
36 insanity or competency and in any sentencing hearing held pursuant to
37 section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-14.1-102, C.R.S. This paragraph
38 (b) shall apply to offenses committed on or after July 1, 1995, but prior
39 to July 1, 1999.

40
41 (c) The defendant shall cooperate with psychiatrists and other
42 personnel conducting any examination ordered by the court pursuant to
43 this section. Statements made by the defendant in the course of such
44 examination shall be protected as provided in section 16-8-107. If the
45 defendant does not cooperate with psychiatrists and other personnel
46 conducting the examination, the court shall not allow the defendant to
47 call any psychiatrist or other expert witness to provide evidence at the
48 defendant's trial concerning the defendant's mental condition including,
49 but not limited to, providing evidence on the issues of insanity or
50 competency, or at any sentencing hearing held pursuant to section
51 ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. In addition, the fact of
52 the defendant's noncooperation with psychiatrists and other personnel
53 conducting the examination may be admissible in the defendant's trial to
54 rebut any evidence introduced by the defendant with regard to the
55 defendant's mental condition including, but not limited to, the issues of
56 insanity and competency, and in any sentencing hearing held pursuant to

1 section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S. This paragraph
2 (c) shall apply to offenses committed on or after July 1, 1999.
3

4 (3) (b) To aid in forming an opinion as to the mental condition of
5 the defendant, it is permissible in the course of an examination under this
6 section to use confessions and admissions of the defendant and any other
7 evidence of the circumstances surrounding the commission of the offense,
8 as well as the medical and social history of the defendant, in questioning
9 the defendant. When the defendant is noncooperative with psychiatrists
10 and other personnel conducting the examination, an opinion of the mental
11 condition of the defendant may be rendered by such psychiatrists or other
12 personnel based upon such confessions, admissions, and any other
13 evidence of the circumstances surrounding the commission of the offense,
14 as well as the known medical and social history of the defendant, and
15 such opinion may be admissible into evidence at trial and in any
16 sentencing hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR
17 18-1.4-102, C.R.S. It shall also be permissible to conduct a narcoanalytic
18 interview of the defendant with such drugs as are medically appropriate
19 and to subject the defendant to polygraph examination. In any trial or
20 hearing on the issue of the defendant's sanity, eligibility for release, or
21 competency to proceed and in any sentencing hearing held pursuant to
22 section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102, C.R.S., the physicians
23 and other personnel conducting the examination may testify to the results
24 of any such procedures and the statements and reactions of the defendant
25 insofar as the same entered into the formation of their opinions as to the
26 mental condition of the defendant both at the time of the commission of
27 the alleged offense and at the present time. This paragraph (b) shall
28 apply to offenses committed on or after July 1, 1995.
29

30 **SECTION 20.** 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado
31 Revised Statutes, as they exist until October 1, 2002, are amended to
32 read:
33

34 **16-8-107. Evidence.** (1) (b) Evidence acquired directly or
35 indirectly for the first time from a communication derived from the
36 defendant's mental processes during the course of a court-ordered
37 examination under section 16-8-108 or acquired pursuant to section
38 16-8-103.6 is admissible at any sentencing hearing held pursuant to
39 section ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION
40 18-1.4-102, C.R.S., only to prove the existence or absence of any
41 mitigating factor.
42

43 (c) If the defendant testifies in his or her own behalf upon the trial
44 of the issues raised by the plea of not guilty or at a sentencing hearing
45 held pursuant to section ~~16-11-103 or 16-11-802~~ 16-11-103 OR 16-11-802
46 OR SECTION 18-1.4-102, the provisions of this section shall not bar any
47 evidence used to impeach or rebut the defendant's testimony.
48

49 (1.5) (b) Evidence acquired directly or indirectly for the first time
50 from a communication derived from the defendant's mental processes
51 during the course of a court-ordered examination under section 16-8-106
52 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing
53 hearing held pursuant to section ~~16-11-103~~ 16-11-103 OR SECTION
54 18-1.4-1201, C.R.S., only to prove the existence or absence of any
55 mitigating factor.
56

1 **SECTION 21.** 16-8-107 (1) (b), (1) (c), and (1.5) (b), Colorado
2 Revised Statutes, as they will become effective October 1, 2002, are
3 amended to read:

4
5 **16-8-107. Evidence.** (1) (b) Evidence acquired directly or
6 indirectly for the first time from a communication derived from the
7 defendant's mental processes during the course of a court-ordered
8 examination under section 16-8-108 or acquired pursuant to section
9 16-8-103.6 is admissible at any sentencing hearing held pursuant to
10 section ~~18-1.3-1201 or 18-1.3-1302~~, 18-1.3-1201, 18-1.3-1302, OR
11 18-1.4-102, C.R.S., only to prove the existence or absence of any
12 mitigating factor.

13
14 (c) If the defendant testifies in his or her own behalf upon the trial
15 of the issues raised by the plea of not guilty or at a sentencing hearing
16 held pursuant to section ~~18-1.3-1201 or 18-1.3-1302~~, 18-1.3-1201,
17 18-1.3-1302, OR 18-1.4-102, C.R.S., the provisions of this section shall
18 not bar any evidence used to impeach or rebut the defendant's testimony.

19
20 (1.5) (b) Evidence acquired directly or indirectly for the first time
21 from a communication derived from the defendant's mental processes
22 during the course of a court-ordered examination under section 16-8-106
23 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing
24 hearing held pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR 18-1.4-102,
25 C.R.S., only to prove the existence or absence of any mitigating factor.

26
27 **SECTION 22.** 16-11-101 (1) (c), Colorado Revised Statutes, as
28 it exists until October 1, 2002, is amended to read:

29
30 **16-11-101. Alternatives in sentencing - repeal.** (1) Within the
31 limitations of the penalties provided by the classification of the offense
32 of which a person is found guilty, and subject to the provisions of this
33 title, the trial court has the following alternatives in entering judgment
34 imposing a sentence:

35
36 (c) The defendant shall be sentenced to death in those cases in
37 which a death sentence is required under section ~~16-11-103~~ 16-11-103 OR
38 16-11-802 OR SECTION 18-1.4-102, C.R.S.

39
40 **SECTION 23.** 18-1.3-104 (1) (c), Colorado Revised Statutes, as
41 it will become effective October 1, 2002, is amended to read:

42
43 **18-1.3-104. Alternatives in imposition of sentence - repeal.**
44 (1) Within the limitations of the penalties provided by the classification
45 of the offense of which a person is found guilty, and subject to the
46 provisions of this title, the trial court has the following alternatives in
47 entering judgment imposing a sentence:

48
49 (c) The defendant shall be sentenced to death in those cases in
50 which a death sentence is required under section ~~18-1.3-1201~~
51 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102.

52
53 **SECTION 24.** 16-12-202 (3), Colorado Revised Statutes, as it
54 exists until October 1, 2002, is amended to read:

55
56 **16-12-202. Unitary procedure for appeals - scope and**

1 **applicability.** (3) This part 2 shall apply to any class 1 felony conviction
2 for which the death penalty is imposed as punishment, regardless of
3 whether the sentence is imposed pursuant to section ~~16-11-103~~ or
4 ~~16-11-802~~ 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S.,
5 which death sentence is imposed on or after the date upon which the
6 supreme court adopts rules implementing the unitary system of review
7 established by this part 2.

8
9 **SECTION 25.** 16-12-202 (3), Colorado Revised Statutes, as it
10 will become effective October 1, 2002, is amended to read:

11
12 **16-12-202. Unitary procedure for appeals - scope and**
13 **applicability.** (3) This part 2 shall apply to any class 1 felony conviction
14 for which the death penalty is imposed as punishment, regardless of
15 whether the sentence is imposed pursuant to section ~~18-1.3-1201~~ or
16 ~~18-1.3-1302~~ 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., which
17 death sentence is imposed on or after the date upon which the supreme
18 court adopts rules implementing the unitary system of review established
19 by this part 2.

20
21 **SECTION 26.** 16-13-101 (1) (e), Colorado Revised Statutes, as
22 it exists until October 1, 2002, is amended to read:

23
24 **16-13-101. Punishment for habitual criminals.** (1) (e) Nothing
25 in this subsection (1) is to be construed to prohibit a person convicted of
26 a class 1 felony from being sentenced pursuant to section ~~16-11-103~~
27 16-11-103 OR 16-11-802 OR SECTION 18-1.4-102, C.R.S.

28
29 **SECTION 27.** 18-1.3-801 (1) (e), Colorado Revised Statutes, as
30 it will become effective October 1, 2002, is amended to read:

31
32 **18-1.3-801. Punishment for habitual criminals.** (1) (e) Nothing
33 in this subsection (1) is to be construed to prohibit a person convicted of
34 a class 1 felony from being sentenced pursuant to section ~~18-1.3-1201~~
35 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102.

36
37 **SECTION 28.** 18-1-409 (1), Colorado Revised Statutes, as it
38 exists until October 1, 2002, is amended to read:

39
40 **18-1-409. Appellate review of sentence for a felony.** (1) When
41 sentence is imposed upon any person following a conviction of any
42 felony, other than a class 1 felony in which a death sentence is
43 automatically reviewed pursuant to section 16-11-103 (6) ~~C.R.S., or~~
44 ~~section 16-11-802 (6)~~ OR 16-11-802 (6), C.R.S., OR SECTION 18-1.4-102
45 (6), the person convicted shall have the right to one appellate review of
46 the propriety of the sentence, having regard to the nature of the offense,
47 the character of the offender, and the public interest, and the manner in
48 which the sentence was imposed, including the sufficiency and accuracy
49 of the information on which it was based; except that, if the sentence is
50 within a range agreed upon by the parties pursuant to a plea agreement,
51 the defendant shall not have the right of appellate review of the propriety
52 of the sentence. The procedures to be employed in the review shall be as
53 provided by supreme court rule.

54
55 **SECTION 29.** 18-1-409 (1), Colorado Revised Statutes, as it will
56 become effective October 1, 2002, is amended to read:

1 **18-1-409. Appellate review of sentence for a felony.** (1) When
 2 sentence is imposed upon any person following a conviction of any
 3 felony, other than a class 1 felony in which a death sentence is
 4 automatically reviewed pursuant to section ~~18-1.3-1201 (6) or~~
 5 ~~18-1.3-1302 (6)~~ 18-1.3-1201 (6), 18-1.3-1302 (6), OR 18-1.4-102 (6), the
 6 person convicted shall have the right to one appellate review of the
 7 propriety of the sentence, having regard to the nature of the offense, the
 8 character of the offender, and the public interest, and the manner in which
 9 the sentence was imposed, including the sufficiency and accuracy of the
 10 information on which it was based; except that, if the sentence is within
 11 a range agreed upon by the parties pursuant to a plea agreement, the
 12 defendant shall not have the right of appellate review of the propriety of
 13 the sentence. The procedures to be employed in the review shall be as
 14 provided by supreme court rule.

15
 16 **SECTION 30.** 24-4.1-302.5 (1) (g), Colorado Revised Statutes,
 17 as it exists until October 1, 2002, is amended to read:

18
 19 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
 20 preserve and protect a victim's rights to justice and due process, each
 21 victim of a crime shall have the following rights:

22
 23 (g) The right to be present at the sentencing hearing, including any
 24 hearing conducted pursuant to section ~~16-11-103~~, 16-11-103 OR
 25 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person
 26 convicted of a crime against such victim, and to inform the district
 27 attorney or the court, in writing, by a victim impact statement, or in
 28 person by an oral statement, of the harm that the victim has sustained as
 29 a result of the crime;

30
 31 **SECTION 31.** 24-4.1-302.5 (1) (g), Colorado Revised Statutes,
 32 as it will become effective October 1, 2002, is amended to read:

33
 34 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
 35 preserve and protect a victim's rights to justice and due process, each
 36 victim of a crime shall have the following rights:

37
 38 (g) The right to be present at the sentencing hearing, including any
 39 hearing conducted pursuant to section ~~18-1.3-1201~~ 18-1.3-1201 OR
 40 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person
 41 convicted of a crime against such victim, and to inform the district
 42 attorney or the court, in writing, by a victim impact statement, or in
 43 person by an oral statement, of the harm that the victim has sustained as
 44 a result of the crime;"

45 Renumber succeeding sections accordingly.

46
 47 As amended, ordered engrossed and placed on the Calendar for Third
 48 Reading and Final Passage.

49
 50 **HB02S-1010** by Representative(s) Young, Miller, Snook; also
 51 Senator(s) Taylor--Concerning the deferral of the payment
 52 of taxes on the sale of livestock resulting from weather-
 53 related conditions.

54
 55 Laid over until later in the day, retaining place on Calendar.

56

1 **AMENDMENTS TO THE COMMITTEE OF THE WHOLE REPORT**

2

3 Representative Paschall moved to amend the Report of the Committee of
4 the Whole to show that the following Paschall amendment, to
5 HB02S-1005, did pass, and that **HB02S-1005, as amended**, did pass:

6

7 Amend the Criminal Justice Committee Report, dated July 8, 2002, page
8 1, strike line 5, and substitute the following:

9

10 "Page 5, strike lines 18 through 24 and substitute the following:

11

12 ~~"(b) (I) In the event that no aggravating factors are found to exist~~
13 THERE ARE FEWER THAN NINE JURORS WHO AGREE THAT AT LEAST ONE
14 AGGRAVATING FACTOR, as enumerated in subsection (5) of this section,
15 EXISTS, the ~~panel of judges~~ JURY SHALL RENDER A VERDICT OF LIFE
16 IMPRISONMENT, AND THE COURT shall sentence the defendant to life
17 imprisonment.

18

19 (II) ~~The panel of judges shall not impose a death sentence~~ JURY
20 SHALL NOT RENDER A VERDICT OF DEATH unless, BY THE AGREEMENT OF
21 AT LEAST NINE JURORS, it ~~unanimously~~ finds and specifies in writing
22 that:";

23

24 Page 6, line 6, strike "SHALL BE UNANIMOUS AND"

25

26 strike lines 12 through 16 and substitute the following:

27

28 ~~"(d) If the panel of judges cannot unanimously~~ IN THE EVENT
29 THERE ARE FEWER THAN NINE JURORS WHO agree on a sentence, ~~it shall~~
30 ~~make a record of each judge's position and shall then~~ THE JURY SHALL SO
31 NOTIFY THE TRIAL JUDGE, THE JURY SHALL BE DISMISSED, AND THE COURT
32 SHALL sentence the defendant to life imprisonment.".";

33

34 line 6 of the Committee Report, strike "Page 6,".

35

36 Page 2 of the Committee Report, strike line 9, and substitute the
37 following:

38

39 "Page 11, strike line 15 and substitute the following:

40

41 "(7) (b) (I) IF THE SUPREME COURT OF THE UNITED STATES OR THE
42 SUPREME COURT OF THE STATE OF COLORADO HOLDS THAT THE
43 PROVISIONS OF THIS SECTION ALLOWING A SUPER MAJORITY OF JURORS TO
44 DETERMINE A DEATH SENTENCE ARE UNCONSTITUTIONAL, THEN IT IS THE
45 INTENTION OF THE GENERAL ASSEMBLY THAT THE PROCEDURES SET FORTH
46 IN THIS SECTION SHALL APPLY BUT THAT ALL DETERMINATIONS REQUIRED
47 TO BE MADE BY A JURY SHALL BE UNANIMOUS.

48

49 (II) If any death sentence is imposed upon a defendant
50 pursuant".";

51

52 strike line 4 of the Committee Report, and substitute the following:

53

54 "Page 16, strike lines 12 through 18 and substitute the following:

55

56 ~~"(b) (I) In the event that no aggravating factors are found to exist~~

1 THERE ARE FEWER THAN NINE JURORS WHO AGREE THAT AT LEAST ONE
 2 AGGRAVATING FACTOR, as enumerated in subsection (5) of this section,
 3 EXISTS, the ~~panel of judges~~ JURY SHALL RENDER A VERDICT OF LIFE
 4 IMPRISONMENT, AND THE COURT shall sentence the defendant to life
 5 imprisonment.

6
 7 (II) The ~~panel of judges shall not impose a death sentence~~ JURY
 8 SHALL NOT RENDER A VERDICT OF DEATH unless, BY THE AGREEMENT OF
 9 AT LEAST NINE JURORS, it ~~unanimously~~ finds and specifies in writing
 10 that:";

11
 12 line 27, strike "SHALL BE UNANIMOUS AND".

13
 14 Page 17, strike lines 6 through 10 and substitute the following:

15
 16 "(d) ~~If the panel of judges cannot unanimously~~ IN THE EVENT
 17 THERE ARE FEWER THAN NINE JURORS WHO agree on a sentence, ~~it shall~~
 18 ~~make a record of each judge's position and shall then~~ THE JURY SHALL SO
 19 NOTIFY THE TRIAL JUDGE, THE JURY SHALL BE DISMISSED, AND THE COURT
 20 SHALL sentence the defendant to life imprisonment.".";

21
 22 line 15 of the Committee Report, strike "Page 17,".

23
 24 Page 3 of the Committee Report, line 12, change the period to a
 25 semicolon;

26
 27 after line 12 of the Committee Report, insert the following:

28
 29 "Page 22, strike line 9 and substitute the following:

30
 31 "(7) (b) (I) IF THE SUPREME COURT OF THE UNITED STATES OR THE
 32 SUPREME COURT OF THE STATE OF COLORADO HOLDS THAT THE
 33 PROVISIONS OF THIS SECTION ALLOWING A SUPER MAJORITY OF JURORS TO
 34 DETERMINE A DEATH SENTENCE ARE UNCONSTITUTIONAL, THEN IT IS THE
 35 INTENTION OF THE GENERAL ASSEMBLY THAT THE PROCEDURES SET FORTH
 36 IN THIS SECTION SHALL APPLY BUT THAT ALL DETERMINATIONS REQUIRED
 37 TO BE MADE BY A JURY SHALL BE UNANIMOUS.

38
 39 (II) If any death sentence is imposed upon a defendant"."

40
 41 Page 4 of the Committee Report, after line 5, insert the following:

42
 43 "Page 39, after line 4, insert the following:

44
 45 "**SECTION 13.** 18-1.4-101 (1), Colorado Revised Statutes, as
 46 enacted by House Bill 02S-1005, enacted at the Third Extraordinary
 47 Session of the Sixty-third General Assembly, is amended to read:

48
 49 **18-1.4-101. Applicability of procedure for the imposition of**
 50 **sentences in class 1 felony cases.** (1) It is the expressed intention of the
 51 general assembly that there be no hiatus in the imposition of the death
 52 penalty as a sentence for the commission of a class 1 felony in the state
 53 of Colorado as a result of the holding of the United States supreme court
 54 in *Ring v. Arizona*, 530 U.S. ____ (2002). Toward that end, the provisions
 55 of section 16-11-103, C.R.S., as it existed prior to the passage of Senate
 56 Bill 54, enacted at the first regular session of the sixtieth general

1 assembly, to the extent such provisions were not and are not
2 automatically revitalized by operation of law, are reenacted WITH
3 AMENDMENTS as section 18-1.4-102, and are hereby made applicable to
4 offenses committed on or after July 1, 1995, and prior to the effective
5 date of this article."

6
7 Renumber succeeding sections accordingly.";

8
9 strike line 6 of the Committee Report, and substitute the following:

10
11 "line 5, after "(1) (b).", insert "(2) (b) (I), the introductory portion to
12 18-1.4-102 (2) (b) (II), and 18-1.4-102 (2) (c), (2) (d)," and strike "(7)
13 (b)" and substitute "(7),";";

14
15 line 8 of the Committee Report, change the period to a semicolon;

16
17 after line 8 of the Committee Report, insert the following:

18 "after line 27, insert the following:

19
20 " (2) (b) (I) In the event that ~~no aggravating factors are found to~~
21 ~~exist~~ THERE ARE FEWER THAN NINE JURORS WHO AGREE THAT AT LEAST
22 ONE AGGRAVATING FACTOR, as enumerated in subsection (5) of this
23 section EXISTS, the jury shall render a verdict of life imprisonment, and
24 the court shall sentence the defendant to life imprisonment.

25
26 (II) The jury shall not render a verdict of death unless BY THE
27 AGREEMENT OF AT LEAST NINE JURORS it finds and specifies in writing
28 that:

29
30 (c) In the event that the jury's verdict is to sentence to death, such
31 verdict ~~shall be unanimous~~ and shall be binding upon the court unless the
32 court determines, and sets forth in writing the basis and reasons for such
33 determination, that the verdict of the jury is clearly erroneous as contrary
34 to the weight of the evidence, in which case the court shall sentence the
35 DEFENDANT TO LIFE IMPRISONMENT.

36
37 (d) ~~If the jury's verdict is not unanimous,~~ IN THE EVENT THERE ARE
38 FEWER THAN NINE JURORS WHO AGREE ON A SENTENCE, THE JURY SHALL
39 SO NOTIFY THE TRIAL JUDGE, the jury shall be discharged, and the court
40 shall sentence the defendant to life imprisonment."

41
42 Page 41, strike line 7 and substitute the following:

43
44 "(7) (b) (I) IF THE SUPREME COURT OF THE UNITED STATES OR THE
45 SUPREME COURT OF THE STATE OF COLORADO HOLDS THAT THE
46 PROVISIONS OF THIS SECTION ALLOWING A SUPER MAJORITY OF JURORS TO
47 DETERMINE A DEATH SENTENCE ARE UNCONSTITUTIONAL, THEN IT IS THE
48 INTENTION OF THE GENERAL ASSEMBLY THAT THE PROCEDURES SET FORTH
49 IN THIS SECTION SHALL APPLY BUT THAT ALL DETERMINATIONS REQUIRED
50 TO BE MADE BY A JURY SHALL BE UNANIMOUS.

51
52 (II) If any death sentence is imposed upon a defendant".";

53
54 line 9 of the Committee Report, strike "Page 41,".

55
56 The amendment was declared **lost** by the following roll call vote:

1 **REPORT OF COMMITTEE OF REFERENCE**

2
3 **CRIMINAL JUSTICE**

4 After consideration on the merits, the Committee recommends the
5 following:

6
7 **HB02S-1012** be postponed indefinitely.
8
9

10
11 On motion of Representative Spradley, **HB02S-1006** was added to the
12 Special Orders Calendar on Monday, July 8, 2002.
13

14
15 On motion of Representative Williams T., the House resolved itself into
16 Committee of the Whole for consideration of Special Orders and she was
17 called to the Chair to act as Chairman.
18
19

20 **SPECIAL ORDERS--SECOND READING OF BILLS**

21
22 The Committee of the Whole having risen, the Chairman reported the
23 titles of the following bills had been read (reading at length had been
24 dispensed with by unanimous consent), the bills considered and action
25 taken thereon as follows:
26

27 (Amendments to the committee amendment are to the printed committee
28 report which was printed and placed in the members' bill file.)
29

30 **HB02S-1006** by Representative(s) Alexander; also Senator(s) Anderson-
31 -Concerning wildfires, and, in connection therewith,
32 increasing the penalties for starting fires, and providing
33 local authorities with the power to control and limit fires.
34

35 Amendment No. 1, State, Veterans, & Military Affairs Report, dated
36 July 8, 2002, and placed in member's bill file; Report also printed in
37 House Journal, July 8, page 11.
38

39 Amendment No. 2, Appropriations Report, dated July 8, 2002, and placed
40 in member's bill file; Report also printed in House Journal, July 8,
41 pages 20-21.
42

43 Amendment No. 3, by Representative Spradley.
44

45 Amend printed bill, page 6, after line 23, insert the following:
46

47 "SECTION 7. 39-29-110 (1) (b), Colorado Revised Statutes, is
48 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:
49

50 **39-29-110. Local government severance tax fund - creation -
51 administration - energy impact assistance advisory committee created.**

52 (1) (b) (IV) IN ADDITION TO THE DISTRIBUTION OF MONEYS AUTHORIZED
53 UNDER SUBPARAGRAPHS (I), (II), AND (III) OF THIS PARAGRAPH (b), THE
54 EXECUTIVE DIRECTOR MAY DISTRIBUTE MONEYS TO THOSE PRIVATELY
55 ORGANIZED VOLUNTEER FIRE DEPARTMENTS SERVING AREAS SOCIALLY OR
56 ECONOMICALLY IMPACTED BY THE DEVELOPMENT, PROCESSING, OR

1 ENERGY CONVERSION OF MINERALS AND MINERAL FUELS SUBJECT TO
 2 TAXATION UNDER THIS ARTICLE, FOR THE PURPOSE OF PURCHASING
 3 EQUIPMENT TO FIGHT FIRES."

4
 5 Renumber succeeding sections accordingly.

6
 7 Amendment No. 4, by Representative Fritz.

8
 9 Amend printed bill, page 4, line 20, strike "FORESTER." and substitute
 10 "FORESTER;"

11
 12 after line 20, insert the following:

13
 14 "(IV) LAWFUL ACTIVITIES CONDUCTED PURSUANT TO RULES,
 15 REGULATIONS, OR POLICIES ADOPTED BY THE RELEVANT STATE OR
 16 FEDERAL REGULATORY AGENCY OR AGENCIES.";

17
 18 line 26, after "(q)", insert "(I)".

19
 20 Page 5, after line 2, insert the following:

21
 22 "(II) NOTHING IN THIS PARAGRAPH (q) SHALL BE CONSTRUED TO
 23 PREEMPT OR SUPERCEDE STATE OR FEDERAL LAW CONCERNING THE
 24 CONTROL, LIMITATION, OR OTHER REGULATION OF FIRES DESCRIBED IN
 25 THIS PARAGRAPH (q)."

26
 27 As amended, ordered engrossed and placed on the Calendar for Third
 28 Reading and Final Passage.

29
 30 **HB02S-1010** by Representative(s) Young, Miller, Snook; also
 31 Senator(s) Taylor--Concerning the deferral of the payment
 32 of taxes on the sale of livestock resulting from weather-
 33 related conditions.

34
 35 Laid over until July 9, retaining place on Calendar.

36
 37
 38
 39 **ADOPTION OF COMMITTEE OF THE WHOLE REPORT**

40
 41 Passed Second Reading: **HB02S-1006 amended**.

42
 43 Laid over until date indicated retaining place on Calendar:
 44 **HB02S-1010**--July 9, 2002.

45
 46 The Chairman moved the adoption of the Committee of the Whole
 47 Report. As shown by the following roll call vote, a majority of those
 48 elected to the House voted in the affirmative, and the Report was
 49 **adopted**.

50

51	YES	62	NO	1	EXCUSED	2	ABSENT	0
53	Alexander	Y	Groff	Y	Marshall	Y	Spence	Y
54	Bacon	Y	Grossman	Y	Miller	Y	Spradley	Y
55	Berry	Y	Harvey	Y	Mitchell	Y	Stafford	Y
56	Borodkin	Y	Hefley	Y	Paschall	N	Stengel	Y

1	Boyd	Y	Hodge	Y	Plant	Y	Swenson	E
2	Cadman	Y	Hoppe	Y	Ragsdale	Y	Tapia	Y
3	Chavez	Y	Jahn	Y	Rhodes	Y	Tochtrop	Y
4	Clapp	Y	Jameson	Y	Rippy	Y	Veiga	Y
5	Cloer	Y	Johnson	Y	Romanoff	Y	Vigil	Y
6	Coleman	Y	Kester	Y	Saliman	Y	Webster	Y
7	Crane	Y	King	Y	Sanchez	Y	Weddig	Y
8	Daniel	Y	Larson	Y	Schultheis	Y	White	Y
9	Decker	Y	Lawrence	E	Scott	Y	Williams S.	Y
10	Fairbank	Y	Lee	Y	Sinclair	Y	Williams T.	Y
11	Fritz	Y	Mace	Y	Smith	Y	Witwer	Y
12	Garcia	Y	Madden	Y	Snook	Y	Young	Y
13							Mr. Speaker	Y

14

15

16

17

18 On motion of Representative Spradley, the House adjourned until
 19 9:30 a.m., July 9, 2002.

20

21

22

23

24

25

26

27

28

29

30

31

Approved:

DOUG DEAN,
Speaker

Attest:

JUDITH RODRIGUE,
Chief Clerk