EXECUTIVE BRANCH AGENCIES

I. THE ADMINISTRATIVE ORGANIZATION ACT OF 1968

Article 1 of title 24, C.R.S., was enacted in 1968 and implemented the constitutional amendment approved in 1966 calling for the reorganization of the state government's executive branch into not more than twenty principal departments. The article includes a listing of the principal departments and sets forth the statutorily-created divisions, sections, boards, commissions, etc., placed within a department. To keep article 1 current and to define clearly the status of newly-created agencies within the context of executive reorganization, a bill creating a new executive agency with substantive powers (i.e., an agency other than a strictly advisory board or committee), transferring such an agency from one department to another, or abolishing such an agency must include an appropriate amendment to article 1 of title 24, C.R.S.

Section 24-1-105, C.R.S., defines three types of transfers that determine the relationship between an agency and the principal department. All drafters should be thoroughly familiar with these types of transfers since each new agency and each agency transferred must be designated as functioning pursuant to a specific type of transfer.

A **type 1** transfer denotes a relationship in which the subordinate division, board, or other agency exercises its powers, duties, and functions independently of the executive director of the department within which the agency is placed. The most important powers retained by a **type 1** agency - powers which may be exercised in whatever way the agency determines, even without the approval of the executive director - are the promulgation of rules and the rendering of administrative findings, orders, and adjudications.

In a **type 2** transfer, all powers, duties, and functions of the division, board, or other agency belong to the executive director of the department. In both a **type 1** and a **type 2** transfer, the executive director of the department is vested with "budgeting, purchasing, and related management functions".

A **type 3** transfer involves the transfer of *all* functions of an agency to another agency and the abolition of the old agency; it is rarely used.

Type 1, **2**, and **3** transfers *only* apply to executive branch agencies and not to judicial or legislative branch agencies.

When drafting a bill involving the creation of a new agency or the transfer of an existing one, the drafter must add a new subsection, paragraph, or subparagraph to the section in article 1 of title 24, C.R.S., concerning the department to which the agency is being added or transferred. For a new agency, the text should refer to the type of transfer and state

that the agency shall exercise its powers, etc., *as if* it were transferred by a **type 1** or **type 2** transfer since a new agency is not actually being transferred. If the agency is to be in the department of regulatory agencies, the standard language regarding the applicability of the Sunset Law (section 24-34-104, C.R.S.) must be added in the statute governing the agency, and the agency must be added to the list in section 24-34-104. If the new agency is a department, an entire new section must be added to article 1 of title 24 and section 24-1-110, C.R.S., must be amended to add the new department to the list of principal departments. If a bill involves the transfer of an existing agency, the relevant subsection, paragraph, or subparagraph must be repealed from the section concerning the department from which the agency is transferred.

Besides amending the appropriate section in the Administrative Organization Act, similar language defining the type of transfer should also be included in the substantive law governing the agency created or transferred. For example, see section 24-32-202 (2), C.R.S. Drafters need to be aware that there may be more than one place in the organic act governing the agency that needs to be amended and kept current.

Occasionally certain functions of one agency are transferred to another agency without the agency itself being transferred. Unless such functions are already specified in article 1 of title 24 (for instance, see section 24-1-120 (3)), it is not necessary to amend article 1. The drafter should consult with the sponsor about whether the transfer of duties (or the transfer of agencies) involves the transfer of employees, property, contracts, appropriations, and the continuity of administrative rules and regulations. The drafter should be alert to any potential problems and should include standard provisions in any transfer bill if they are appropriate. Such provisions belong in the substantive law affecting the agency transferred - not in article 1 of title 24, C.R.S. See section 24-37-105, C.R.S.

In past attempts to solve the problem of numerous conforming amendments required by a bill transferring agencies or functions some drafters have included a section to the effect that "Whenever in any law concerning _____ reference is made to the division of _____, such term shall be deemed to refer to the division of _____". These attempts are confusing, and the Office of Legislative Legal Services prefers to include specific conforming amendments to all statutory sections affected by the transfer unless such amendments are absolutely not feasible in light of available time. (See, for example, section 11-30-124 (6), C.R.S., which authorizes the Revisor of Statutes to make conforming amendments in connection with a 1989 bill that created the division of financial services.) The computer statutory search program makes the location of affected sections much easier.

Colorado currently has nineteen principal departments - one less than the constitutional maximum of twenty principal departments. If twenty departments were to be reached again, the creation of a new department would require an existing one to be abolished. (See section 22 of article IV of the state constitution.)