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SENATE JOURNAL
Sixty-fourth General Assembly
STATE OF COLORADO

First Regular Session

Ninety-fourth Legislative Day

Friday, April 11, 2003

Prayer By the chaplain, Monsignor Thomas Fryar.

Pledge By Senator Fitz-Gerald.

Call to By the President at 9:00 a.m. Order

Roll Call Present-- 33.

Absent/Excused--2; Evans, Gordon. Present later--Evans, Gordon.

Quorum The President announced a quorum present.

Reading of Journal

On motion of Senator Tapia, reading of the Journal of April 10, 2003 was dispensed with and the Journal was approved as corrected by the Secretary.

MESSAGE FROM THE HOUSE

April 10, 2003 Mr. President:

In response to the request of the Senate, the Speaker has appointed Representatives Lee, chairman, Smith, and Plant as House conferees on the First Conference Committee on SB03-088.

In response to the request of the Senate, the Speaker has appointed Representatives Harvey, chairman, Pommer, and Berry as House conferees on the First Conference Committee on SB03-007.

The Speaker has appointed Representatives Clapp, chairman, Stafford, and Frangas as House conferees on the First Conference Committee on HB03-1172.

INTRODUCTION OF RESOLUTION

The following resolution was read by title and referred to the committee indicated:

SJR03-035 by Senator(s) Grossman, Andrews, Gordon, Groff, Johnson S., McElhany, Sandoval; -- Concerning the recognition of Patriots Day.

Laid over one day under Senate Rule 30(b).

Senate in recess.

Senate reconvened.

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COMMITTEE OF REFERENCE REPORTS

Education

After consideration on the merits, the Committee recommends that **SB03-309** be amended as follows, and as so amended, be referred to the Committee on <u>Appropriations</u> with favorable recommendation.

Amend printed bill, page 5, after line 3, insert the following:

"**SECTION 2.** 22-7-409 (1.2) (d), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

- **22-7-409. Assessments repeal.** (1.2) (d) (IV) (A) FOR ANY ASSESSMENT NOT ADMINISTERED IN THE SPRING SEMESTERS OF 2004 AND 2005, NO SCHOOL DISTRICT SHALL BE REQUIRED TO ADMINISTER THE STATEWIDE ASSESSMENT AT THE DISTRICT'S EXPENSE, NOR TO REPORT DATA ON MODEL CONTENT STANDARDS THAT THE STATEWIDE ASSESSMENTS WOULD HAVE PRODUCED, NOR TO REPORT DATA THAT THE STATEWIDE ASSESSMENT WOULD HAVE PRODUCED FOR ACCREDITATION PURSUANT TO ARTICLE 11 OF THIS TITLE.
- (B) This subparagraph (IV) is repealed, effective July 1, 2005. ".

Renumber succeeding sections accordingly.

Page 6, after line 16, insert the following:

"**SECTION 5.** 22-7-407 (2) (b), Colorado Revised Statutes, is amended to read:

- **22-7-407.** Adoption of content standards by districts. (2) Following adoption of content standards pursuant to this section, the district shall develop a plan for:
- (b) (I) Developing assessments that will adequately measure each student's progress toward and achievement of the adopted content standards for the subject areas that are not tested by the state pursuant to section 22-7-409, including specification of an acceptable performance level. Such performance level shall be continuously reexamined.
- (II) NO DISTRICT SHALL BE REQUIRED TO DEVELOP OR ADMINISTER AN ASSESSMENT FOR A CONTENT STANDARD AREA FOR WHICH THE STATE HAS DEVELOPED A STATEWIDE ASSESSMENT BUT FOR WHICH THE STATE IS NOT ADMINISTERING THE ASSESSMENT.".

Renumber succeeding section accordingly.

Education

After consideration on the merits, the Committee recommends that **SB03-306** be referred to the Committee on <u>Appropriations</u> with favorable recommendation.

Education

After consideration on the merits, the Committee recommends that **HB03-1137** be referred 56 to the Committee on <u>Appropriations</u> with favorable recommendation.

Education

After consideration on the merits, the Committee recommends that **HB03-1333** be referred to the Committee of the Whole with favorable recommendation.

Education

After consideration on the merits, the Committee recommends that **SB03-304** be referred to the Committee of the Whole with favorable recommendation.

INTRODUCTION OF BILLS--FIRST READING

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

SB03-315 by Senator(s) Gordon, Anderson, Chlouber; --Concerning the funding of the motor vehicle business group within the department of revenue from moneys in the highway users tax fund, and making an appropriation therefor.

Appropriations

SB03-316 by Senator(s) Dyer; --Concerning the acquisition of private property that is utilized to fulfill a contract with the state.

State Veterans & Military Affairs

SB03-317 by Senator(s) Chlouber; --Concerning the reduction of the amount that vendors are allowed to retain as payment for the collection of taxes imposed by the state.

Appropriations

MESSAGE FROM THE GOVERNOR

April 9, 2003

To the Honorable Senate Sixty-fourth General Assembly First Regular Session Denver, CO 80203

Ladies and Gentlemen:

I have the honor to inform you that I have approved and filed with the Secretary of State the following act:

S.B. 03-086 – Concerning A Limitation On The Use Of Contingent Fee Contracts By Governmental Entities To Retain Private Attorneys.

Approved April 9, 2003 at 4:33 p.m.

Sincerely, (signed) Bill Owens Governor Rec'd 04-10-03 10:30 a.m. Mona Heustis, Secretary of the Senate

SENATE SERVICES REPORT

Senate Services Correctly printed: SB03-314;

SJR03-033, 034.

Correctly engrossed: SB03-121;

SJM03-001, 002, 004.

Correctly reengrossed: SB02-005, 019, 022, 033, 049, 076, 082, 103, 167, 230, 239.

Correctly revised: HB03-1016, 1238;

HJR03-1020, 1032, 1041, 1047;

Correctly rerevised: HB03-1140.

SIGNING OF BILLS--RESOLUTIONS--MEMORIALS

The President has signed: SB03-034, 042, 067, 119, 147, 243.

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Senator Anderson moved a Call of the Senate.

THIRD READING--FINAL PASSAGE OF BILLS

On Third Reading, the titles of the following bills were publicly read, the reading at length having been dispensed with by unanimous consent:

HB03-1256 by Representative(s) Spradley, Fairbank, Fritz, Hefley, McFadyen, Miller, Rippy, Rose, Veiga, Boyd, Briggs, Garcia, Hall, Hoppe, Jahn, Mitchell, Stengel, Weddig, White, Wiens; also Senator(s) Anderson, Kester, Chlouber, Entz, Dyer--Concerning the authority of the state to enter into lease-purchase agreements, and, in connection therewith, authorizing lease-purchase agreements for a high-custody correctional facility and for the university of Colorado health sciences center at Fitzsimons.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	23	NO	12	EXCUSED	0	ABSENT	0
Anderson	Y	Groff	Y	Kester		Y Sandoval	Y
Arnold	Y	Grossman	Y	Lamborn		N Takis	Y
Cairns	Y	Hagedorn	Y	Linkhart		Y Tapia	Y
Chlouber		Hanna	N	May		N Taylor	Y
Dyer	Y	Hillman	N	McElhany		N Teck	N
Entz	Y	Isgar		Nichol		N Tupa	N
Evans	Y	Johnson	Y	Owen		Y Windels	N
Fitz-Gerald	Y	Jones	Y	Phillips		Y Mr. President	N
Gordon	Y	Keller		Reeves		N	

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared passed.

Co-sponsors added: Arnold, Cairns, Hagedorn, and Phillips.

IMMEDIATE RECONSIDERATION OF HB03-1256

by Representative(s) Spradley, Fairbank, Fritz, Hefley, McFadyen, Miller, Rippy, Rose, Veiga, Boyd, Briggs, Garcia, Hall, Hoppe, Jahn, Mitchell, Stengel, Weddig, White, Wiens; HB03-1256 also Senator(s) Anderson, Kester, Chlouber, Entz, Dyer--Concerning the authority of the state to enter into lease-purchase agreements, and, in connection therewith, authorizing lease-purchase agreements for a high-custody correctional facility and for the university of Colorado health sciences center at Fitzsimons.

> Having voted on the prevailing side, Senator Anderson moved for immediate reconsideration of the last Senate action, Third Reading--Final Passage, on HB03-1256. The roll call was taken with the following result:

YES	12	NO	23	EXCUSED	0	ABSENT	0
Anderson	N	Groff	N	Kester	N	Sandoval	N
Arnold	N	Grossman	N	Lamborn	Y	Takis	N
Cairns	N	Hagedorn	N	Linkhart	N	Tapia	N
Chlouber		Hanna	Y	May		Taylor	N
Dyer	N	Hillman	Y	McElhany	Y	Teck	Y
Entz	N	Isgar	Y	Nichol	Y	Tupa	Y
Evans	N	Johnson	N	Owen	N	Windels	Y
Fitz-Gerald	N	Jones	N	Phillips	N	Mr. President	Y
Gordon	N	Keller	N	Reeves	Y		

Less than a majority of all members elected to the Senate having voted in the affirmative, reconsideration lost.

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THIRD READING--FINAL PASSAGE OF BILLS -- CONTINUED

by Senator(s) McElhany; also Representative(s) Williams T.--Concerning the preparation of SB03-121 a cost-benefit analysis of rules proposed for adoption by state agencies under the "State Administrative Procedure Act" to determine the impact of the proposed rules on the state's economy.

Laid over until Monday, April 14, retaining its place on the calendar.

HB03-1238 by Representative(s) Brophy; also Senator(s) McElhany--Concerning a requirement that the general fund surplus be determined based upon the accrual system of accounting, as enunciated by the governmental accounting standards board.

Laid over until Monday, April 14, retaining its place on the calendar.

by Representative(s) Mitchell; also Senator(s) Dyer--Concerning the effective duration of HB03-1016 certification of emissions control for motor vehicles.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Anderson	Y	Groff	Y	Kester	7	Y Sandoval	Y
Arnold	Y	Grossman	Y	Lamborn	}	7 Takis	Y
Cairns	Y	Hagedorn	Y	Linkhart	}	7 Tapia	Y
Chlouber		Hanna	Y	May	5	7 Taylor	Y
Dyer	Y	Hillman	Y	McElhany		7 Teck	Y
Entz	Y	Isgar	Y	Nichol	}	Tupa	Y
Evans	Y	Johnson	Y	Owen	}	Windels	Y
Fitz-Gerald	Y	Jones	Y	Phillips	}	Mr. President	Y
Gordon	Y	Keller	Y	Reeves		[

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared passed.

Co-sponsors added: Arnold, Entz, Fitz-Gerald, Jones, and May.

Committee of the Whole

On motion of Senator Jones, the Senate resolved itself into the Committee of the Whole for consideration of General Orders--Second Reading of Bills and Senator Jones was called to the Chair to act as Chairman.

GENERAL ORDERS--SECOND READING OF BILLS

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

SB03-073 by Senator(s) Owen; also Representative(s) Hoppe--Concerning an increase in the state engineer's authority to approve the use of water.

Laid over until Monday, April 14, retaining its place on the calendar.

by Senator(s) Chlouber; --Concerning the office of consumer counsel. SB03-232

Laid over until Monday, April 14, retaining its place on the calendar.

HB03-1314 by Representative(s) Fairbank; also Senator(s) McElhany--Concerning a requirement that a meeting of a school board at which employment contracts are negotiated be open to the public.

Laid over until Monday, April 14, retaining its place on the calendar.

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HB03-1214 by Representative(s) Harvey; also Senator(s) Cairns--Concerning not requiring notification to a parent that the parent's minor child is seeking an abortion in a case of a medical emergency.

Laid over until Monday, April 14, retaining its place on the calendar.

by Senator(s) Dyer, Andrews, Hagedorn, Hillman; also Representative(s) Hoppe, Briggs, Brophy, Cadman, Clapp, Decker, Fritz, Hall, Harvey, Hefley, Johnson R., King, McCluskey, Sinclair, Stengel, Weddig--Concerning an authorization of the issuance of voter-approved revenue bonds for the purpose of financing water infrastructure projects by the state, and, in connection therewith, excluding revenues derived from bond proceeds and projects financed by bonds from state fiscal year spending.

Laid over until Monday, April 14, retaining its place on the calendar.

HB03-1326 by Representative(s) Fritz, Mitchell, Rhodes, Spradley, Fairbank, Jahn, Lee, Spence; also Senator(s) Dyer--Concerning limitations on liability for providers of services for persons with developmental disabilities.

Amendment No. 1(L.006), by Senator Hagedorn.

Amend reengrossed bill, page 6, line 12, after "BY", insert "FEDERAL AND STATE".

Amendment No. 2(L.007), by Senator Hagedorn.

Amend reengrossed bill, page 6, line 21, strike "AND" and substitute "OR".

Amendment No. 3(L.005), by Senator Dyer.

Amend reengrossed bill, page 6, strike lines 1 through 10 and substitute the following:

"(4) **Duty of care.** The Performance of a service or an act of assistance for the benefit of a person with a developmental disability or adoption or enforcement of a policy, procedure, guideline, or practice for the protection of any such person's health or safety by a provider shall not create any duty of care with respect to a third person, nor shall it create a duty for any provider to perform or sustain such a service or an act of assistance nor to adopt or enforce such a policy, procedure, guideline, or practice; however,".

Page 7, line 22, after "VIOLENCE", insert "AND SERIOUS BODILY INJURY";

strike lines 26 and 27 and substitute the following:

"EXCEPT THAT IF THE PERSON OR PERSONS THREATENED WITH IMMINENT PHYSICAL VIOLENCE AND SERIOUS BODILY INJURY IS A PERSON WITH A DEVELOPMENTAL DISABILITY UNDER THE CARE OF A PROVIDER, THE PROVIDER SHALL TAKE REASONABLE ACTION TO PROTECT SUCH PERSON FROM SERIOUS BODILY INJURY UNTIL THE THREAT CAN REASONABLY BE DEEMED TO HAVE ABATED.".

Page 8, line 1, strike "APPROPRIATE ACTION.".

Page 9, line 15, after "THE", insert "LEGAL";

strike line 16 and 17 and substitute the following:

"DECISIONS AT THE TIME SUCH DECISIONS WERE MADE, OR THE PERSON'S GUARDIAN OR OTHER PERSON OR ENTITY DULY AUTHORIZED TO MAKE MEDICATION OR TREATMENT DECISIONS FOR THE PERSON, DECLINES OR OBSTRUCTS THE";

after line 20, insert the following:

HB03-1326

"(12) When a person with a developmental disability who has the legal capacity to make decisions, or that person's guardian, refuses to comply with restrictions established pursuant to an interdisciplinary team process that are designed to safeguard the health and safety of the person or others, and it can be shown that a provider has made reasonable efforts to secure such compliance from the person or has taken other reasonable actions to safeguard the person or others, a provider of services shall not have civil liability for injuries or damages to the person with a developmental disability that may arise from the refusal by the person with a developmental disability, or that person's guardian, to comply with such restrictions."

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB03-1147 by Representative(s) Frangas, Butcher, Spence, Vigil; also Senator(s) Teck--Concerning existing income tax checkoffs, and, in connection therewith, exempting the western slope military veterans' cemetery income tax checkoff from the requirement that a checkoff must receive ten percent of the total amount contributed to all checkoffs in a year in order to remain on the income tax form the following year.

Amendment No. 1, Finance Committee Amendment. (Printed in Senate Journal, April 9, pages 978-979 and placed in members' bill files.)

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB03-1208 by Representative(s) Spradley; also Senator(s) Owen--Concerning the enterprise zone tax benefit extensions that taxpayers may receive for certain tax benefits after termination of the enterprise zone.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

SB03-253 by Senator(s) Chlouber; also Representative(s) White--Concerning the validation of certain parental liability waivers.

Ordered engrossed and placed on the calendar for Third Reading and Final Passage.

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Jones, the Report of the Committee of the Whole was adopted and, a majority of all members elected to the Senate having voted in the affirmative, the following action was taken:

Passed on Second Reading: HB03-1326 as amended, HB03-1147 as amended, HB03-1208, SB03-253. Laid over until Monday, April 14: SB03-073, SB03-232, HB03-1314, HB03-1214, SB03-236.

MESSAGE FROM THE HOUSE

April 11, 2003 Mr. President:

The House has adopted and transmits herewith HJR03-1037, as printed in House Journal, March 26, pages 1276-1277.

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INTRODUCTION AND CONSIDERATION OF RESOLUTION

The following resolution was read by title:

HJR03-1037

by Representative(s) Garcia, Hodge, May M., Spence, Stafford, Weddig, Williams S.; also Senator(s) Takis, Andrews, Cairns, Chlouber, Evans, Hagedorn--Concerning support for the establishment of a veterans affairs medical center at Fitzsimons.

Senator Anderson moved to suspend the rules for immediate consideration of HJR03-1037.

A two-thirds majority of those elected to the Senate having voted in the affirmative, the rules were suspended and immediate consideration granted.

On motion of Senator Takis, the resolution was read at length and adopted by the following roll call vote:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Anderson	Y	Groff	Y	Kester		Y Sandoval	Y
Arnold	Y	Grossman	Y	Lamborn		Y Takis	Y
Cairns	Y	Hagedorn	Y	Linkhart		Y Tapia	Y
Chlouber	Y	Hanna	Y	May		Y Taylor	Y
Dyer	Y	Hillman		McElhany		Y Teck	Y
Entz	Y	Isgar		Nichol		Y Tupa	Y
Evans	Y	Johnson	Y	Owen		Y Windels	Y
Fitz-Gerald	Y	Jones	Y	Phillips		Y Mr. Preside	nt Y
Gordon	Y	Keller		Reeves		Y	

Co-sponsors added: Anderson, Arnold, Dyer, Entz, Fitz-Gerald, Gordon, Groff, Grossman, Hanna, Hillman, Isgar, Johnson, Jones, Keller, Kester, Lamborn, Linkhart, May, McElhany, Nichol, Owen, Phillips, Reeves, Sandoval, Tapia, Taylor, Teck, Tupa, and Windels.

On motion of Senator Anderson, and with a majority of those elected to the Senate having voted in the affirmative, the Senate proceeded out of order for Consideration of Resolution.

CONSIDERATION OF RESOLUTION

by Senator(s) Keller; also Representative(s) Jahn--Concerning National Philanthropy Day. **SJR03-034**

> On motion of Senator Keller, the resolution was read at length and adopted by the following roll call vote:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Sandoval	Y
Arnold	Y	Grossman	Y	Lamborn		Takis Takis	Y
Cairns	Y	Hagedorn	Y	Linkhart	Y	Tapia	Y
Chlouber		Hanna	Y	May		Taylor Taylor	Y
Dyer	Y	Hillman	Y	McElhany		Teck	Y
Entz	Y	Isgar	Y	Nichol	Y	Tupa	Y
Evans		Johnson	Y	Owen	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Phillips	Y	Mr. President	Y
Gordon	Y	Keller	Y	Reeves	Y	7	

Co-sponsors added: Anderson, Andrews, Arnold, Cairns, Chlouber, Dyer, Entz, Evans, Fitz-Gerald, Gordon, Groff, Grossman, Hagedorn, Hanna, Hillman, Isgar, Johnson, Jones, Kester, Lamborn, Linkhart, May, McElhany, Nichol, Owen, Phillips, Reeves, Sandoval, Takis, Tapia, Taylor, Teck, Tupa, and Windels.

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On motion of Senator Anderson, and with a majority of those elected to the Senate having voted in the affirmative, the Senate proceeded out of order for Consideration of House Amendments to Senate Bill **SB03-038**.

CONSIDERATION OF HOUSE AMENDMENTS TO SENATE BILL

SB03-038

by Senator(s) Windels; also Representative(s) Jahn--Concerning a clarification of certain terms contained in the unlawful acts section of the "Mortuary Science Code".

Senator Windels moved that the Senate not concur in House amendments to **SB03-038**, as printed in House Journal, March 25, pages 1285-1286, and that a Conference Committee be appointed.

A majority of all members elected to the Senate having voted in the affirmative, the motion 18 was **adopted**.

CONFERENCE COMMITTEE GRANTED FURTHER POWERS

SB03-038

by Senator(s) Windels; also Representative(s) Jahn--Concerning a clarification of certain terms contained in the unlawful acts section of the "Mortuary Science Code".

Senator Windels moved that the Senate Conferees on the First Conference Committee on **SB03-038** be given the powers to go beyond the scope of the differences between the two Houses.

A majority of all members elected to the Senate having voted in the affirmative, the motion was declared **adopted**.

COMMITTEE OF REFERENCE REPORTS

Agriculture, Natural Resources and Energy

The Committee on <u>Agriculture</u>, <u>Natural Resources</u>, <u>and Energy</u> has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed:

MEMBERS OF THE MINED LAND RECLAMATION BOARD

for terms expiring March 1, 2007:

Michael T. Nelligan of Denver, Colorado to serve as a member with experience in the mining industry, appointed;

Agriculture, Natural Resources and Energy

After consideration on the merits, the Committee recommends that **HJR03-1017** be referred to the Senate for final action.

Agriculture, Natural Resources and Energy After consideration on the merits, the Committee recommends that **HJR03-1016** be amended as follows, and as so amended, be referred to the Senate for final action.

Amend joint resolution, as printed in House Journal, February 14, page 700, line 46, after "wildlife,", insert "destroyed forage for domestic livestock,".

Page 701, after line 23, insert the following:

Secretary of the Senate