

SENATE JOURNAL
Sixty-seventh General Assembly
STATE OF COLORADO
First Regular Session

31st Legislative Day Friday, February 6, 2009

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| Prayer | By Senator Kopp. | 11 |
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| Pledge | By Senator Hudak. | 13 |
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| Call to Order | By the President at 9:00 a.m. | 15 |
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| Roll Call | Present--35 | 18 |
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| Quorum | The President announced a quorum present. | 20 |
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| Reading of Journal | On motion of Senator Carroll, reading of the Journal of February 5, 2009, was dispensed with and the Journal was approved as corrected by the Secretary. | 22 |
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COMMITTEE OF REFERENCE REPORTS

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| State, Veterans, & Military Affairs | After consideration on the merits, the Committee recommends that SB09-150 be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar. | 30 |
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| Finance | After consideration on the merits, the Committee recommends that SB09-076 be referred to the Committee on <u>Appropriations</u> with favorable recommendation. | 36 |
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| Finance | After consideration on the merits, the Committee recommends that SB09-139 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar. | 40 |
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| | Amend printed bill, page 6, line 6, strike "SENATE BILL 09-____," and substitute "SENATE BILL 09-139,"; | 44 |
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| | strike lines 15 and 16. | 47 |
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| | Renumber succeeding section accordingly. | 49 |
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| Finance | After consideration on the merits, the Committee recommends that SB09-126 be referred to the Committee of the Whole with favorable recommendation. | 52 |
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MESSAGE FROM THE HOUSE

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| | February 5, 2009 | 59 |
| | Mr. President: | 60 |
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| | The House has passed on Third Reading and transmitted to the Revisor of Statutes HB09-1093, amended as printed in House Journal, February 3, page 226. | 62 |
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| | The House has adopted and transmits herewith HJR09-1009, as printed in House Journal. | 65 |
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| | The House has adopted and returns herewith SJR09-010, SJR09-011. | 67 |

MESSAGE FROM THE REVISOR OF STATUTES

February 5, 2009

We herewith transmit:

Without comment, as amended, HB09-1093.

Committee of the Whole

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

GENERAL ORDERS -- SECOND READING OF BILLS -- CONSENT CALENDAR

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:

SB09-014 by Senator(s) Williams, Gibbs, Renfroe, Spence; also Representative(s) Sonnenberg, Fischer, Levy, Marostica, McFadyen, McNulty, Merrifield, Primavera, Rice, Vaad-- Concerning allowing vehicles with deficient splash guards to remain in service for the limited time necessary to replace the splash guards.

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

SB09-055 by Senator(s) Isgar, Keller, Kester, White; also Representative(s) Judd, Roberts-- Concerning the family resource center program.

Amendment No. 1, Health & Human Services Committee Amendment. (Printed in Senate Journal, January 30, page 140 and placed in members' bill files.)

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

SB09-116 by Senator(s) Hodge, Isgar, Schwartz; also Representative(s) Looper--Concerning continuation of the "Colorado Seed Act".

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

SB09-096 by Senator(s) Bacon, Penry, Schwartz; also Representative(s) Sonnenberg, McFadyen, Riesberg--Concerning the exemption of certain capital construction projects funded with federal moneys from certain contract requirements.

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

SB09-112 by Senator(s) Kopp, Bacon, Groff, Heath, Hudak, King K., Romer, Spence; also Representative(s) Scanlan--Concerning the repeal of the on-line learning advisory board.

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

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE -- CONSENT CALENDAR

On motion of Senator Bacon, the Report of the Committee of the Whole was adopted on the following roll call vote:

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| YES | 35 | NO | 0 | EXCUSED | 0 | ABSENT | 0 |
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| Bacon | Y | Hodge | Y | Morse | Y | Shaffer B. | Y |
| Boyd | Y | Hudak | Y | Newell | Y | Spence | Y |
| Brophy | Y | Isgar | Y | Penry | Y | Tapia | Y |
| Cadman | Y | Keller | Y | Renfroe | Y | Tochtrop | Y |
| Carroll M. | Y | Kester | Y | Romer | Y | Veiga | Y |
| Foster | Y | King K. | Y | Sandoval | Y | White | Y |
| Gibbs | Y | Kopp | Y | Scheffel | Y | Williams | Y |
| Harvey | Y | Lundberg | Y | Schultheis | Y | President | Y |
| Heath | Y | Mitchell | Y | Schwartz | Y | | |

The Committee of the Whole took the following action:

Passed on Second Reading: SB09-014, SB09-055 as amended, SB09-116, SB09-096, SB09-112.

Committee of the Whole

On motion of Senator Bacon, the Senate resolved itself into the Committee of the Whole for consideration of General Orders--Second Reading of Bills and Senator Bacon 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:

SB09-064

by Senator(s) King K., Romer, Bacon, Groff, Heath, Hudak, Kopp, Spence, Williams; also Representative(s) Massey, Merrifield, Baumgardner, Benefield, Gardner B., Middleton, Murray, Peniston, Priola, Scanlan, Schafer S., Solano, Summers, Todd--Concerning building inspections relating to utilities.

Amendment No. 1, Education Committee Amendment.

(Printed in Senate Journal, January 22, page 88 and placed in members' bill files.)

Amendment No. 2(L.002), by Senator King.

Amend printed bill, page 2, strike lines 23 through 26 and substitute the following:

"TO THE ELECTRICAL STANDARDS AS ADOPTED BY THE BOARD PURSUANT TO SECTION 12-23-104 (2) (a)."

Page 3, line 21, strike "CODE." and substitute "CODE AS ESTABLISHED BY THE BOARD PURSUANT TO SECTION 12-58-104.5 (1)."

As amended, declared **LOST** on Second Reading.

(For further action, see Amendments to the Report of the Committee of the Whole.)

SB09-080

by Senator(s) Isgar, Romer, White; also Representative(s) Looper--Concerning limited exemptions for water collected from certain residential rooftops.

(Amended in General Orders as printed in Senate Journal, January 30, pages 137-138.)

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

Amend printed bill, page 3, strike lines 17 through 19 and substitute the following:

"COMPLY WITH ONE OF THE FOLLOWING PROVISIONS OF SUB-SUBPARAGRAPHS (A), (B), OR (C) OF THIS SUBPARAGRAPH (III):

(A) A PERSON WHO HAS A WELL PERMIT ISSUED OR RECORDED PURSUANT TO THIS SECTION AND WHO INTENDS TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES AS EXEMPT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (g) SHALL FILE, ON A FORM PRESCRIBED BY THE STATE ENGINEER, A NOTICE AND DESCRIPTION OF THE SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE TO BE USED IN CONJUNCTION WITH THE WELL. NO FEE SHALL BE CHARGED FOR THE FILING OF THIS FORM.

(B) A PERSON WHO APPLIES FOR A NEW WELL PERMIT PURSUANT TO THIS SECTION AND WHO INTENDS TO USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE THAT QUALIFIES AS EXEMPT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (g) SHALL FILE, ON A FORM PRESCRIBED BY THE STATE ENGINEER, A NOTICE AND DESCRIPTION OF THE SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE TO BE USED IN CONJUNCTION WITH THE WELL. NO FEE SHALL BE CHARGED FOR THE FILING OF THIS FORM.

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(C) A PERSON WHO DOES NOT INTEND TO CONSTRUCT AND USE A WELL, BUT WOULD OTHERWISE BE ENTITLED TO THE ISSUANCE OF A WELL PERMIT PURSUANT TO THIS SECTION, INCLUDING THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, SHALL SUBMIT AN APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE STATE ENGINEER FOR A PERMIT TO INSTALL AND USE A SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE AND PAY A FEE IN AN AMOUNT TO BE DETERMINED BY THE STATE ENGINEER. IF THE STATE ENGINEER DETERMINES THAT THE PROPOSED SYSTEM OR METHOD OF ROOFTOP PRECIPITATION CAPTURE MEETS THE REQUIREMENTS OF THIS PARAGRAPH (g), THE STATE ENGINEER SHALL ISSUE A PERMIT FOR THE SYSTEM OR METHOD, BUT NOT OTHERWISE. THE STATE ENGINEER SHALL ENFORCE THE PROVISIONS OF THE PERMIT IN THE SAME MANNER AS THE ENFORCEMENT OF ANY WELL PERMIT ISSUED UNDER THIS SECTION."

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

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SB09-035 by Senator(s) Renfroe; also Representative(s) Sonnenberg--Concerning a penalty for a violation of certain proscribed acts for government officials.

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Laid over until Monday, February 9, retaining its place on the calendar.

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SB09-033 by Senator(s) Sandoval; --Concerning expanding the list of students who qualify to receive a free lunch in Colorado to include children in public school early childhood education programs who are eligible to receive a reduced-cost lunch under the federal "National School Lunch Act".

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

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SB09-039 by Senator(s) Schwartz; also Representative(s) Curry--Concerning the discretionary authority of cooperative electric associations to establish reasonable graduated rates for increased energy consumption by residential customers.

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Amendment No. 1, Local Government & Energy Committee Amendment.
(Printed in Senate Journal, January 30, page 134 and placed in members' bill files.)

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

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SB09-057 by Senator(s) Harvey, Kopp; also Representative(s) Stephens--Concerning searchable budget database web sites containing public education financial information, and, in connection therewith, enacting the "Public School Financial Transparency Act".

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Laid over until Monday, February 9, retaining its place on the calendar.

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SB09-140 by Senator(s) Bacon; --Concerning a requirement that public trustees serve at the pleasure of the governor.

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Amendment No. 1, State, Veterans & Military Affairs Committee Amendment.
(Printed in Senate Journal, Monday, February 4, page 160 and placed in members' bill files.)

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

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SB09-078 by Senator(s) Newell; also Representative(s) Rice--Concerning the abandonment of portions of the state highway system to local jurisdictions.

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Laid over until Monday, February 9, retaining its place on the calendar.

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SB09-086 by Senator(s) Tapia, Hudak, Keller, King K., Kopp, Romer, Spence, White, Bacon, Brophy, Groff, Isgar, Kester, Newell, Penry, Schwartz, Tochtrop; also Representative(s) Marostica, Acree, Baumgardner, Benefield, Ferrandino, Kerr A., Massey, Murray, Pommer, Roberts, Stephens, Summers, Todd, Curry, Fischer, Gardner B., Gardner C., Kefalas, Looper, Middleton, Pace, Sonnenberg--Concerning the creation of an online university to be known as Colorado state university - global campus.

Amendment No. 1, Education Committee Amendment.

(Printed in Senate Journal, February 4, pages 176-177 and placed in members' bill files.)

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

SB09-079 by Senator(s) Newell, Boyd; also Representative(s) Acree and Kefalas, Primavera-- Concerning improving the well-being of children in the foster care system by improving the ability of birth siblings to maintain long-term connections.

Amendment No. 1, Health & Human Services Committee Amendment.

(Printed in Senate Journal, January 30, pages 141-142 and placed in members' bill files.)

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

Call of the Senate.

Call raised.

AMENDMENTS TO THE REPORT OF THE COMMITTEE OF THE WHOLE

SB09-064 by Senator(s) King K., Romer, Bacon, Groff, Heath, Hudak, Kopp, Spence, Williams; also Representative(s) Massey, Merrifield, Baumgardner, Benefield, Gardner B., Middleton, Murray, Peniston, Priola, Scanlan, Schafer S., Solano, Summers, Todd--Concerning building inspections relating to utilities.

Senator King moved to amend the Report of the Committee of the Whole to show that SB 09-064, as amended, did pass.

Less than majority of all members elected to the Senate having voted in the affirmative, the amendment to the Report of the Committee of the Whole was declared **lost** on the following roll call vote:

| YES | 16 | NO | 19 | EXCUSED | 0 | ABSENT | 0 |
|------------|----|----------|----|------------|---|------------|---|
| Bacon | N | Hodge | N | Morse | N | Shaffer B. | N |
| Boyd | N | Hudak | N | Newell | N | Spence | Y |
| Brophy | Y | Isgar | N | Penry | Y | Tapia | N |
| Cadman | Y | Keller | N | Renfroe | Y | Tochtrop | N |
| Carroll M. | N | Kester | Y | Romer | Y | Veiga | N |
| Foster | N | King K. | Y | Sandoval | N | White | Y |
| Gibbs | N | Kopp | Y | Scheffel | Y | Williams | N |
| Harvey | Y | Lundberg | Y | Schultheis | Y | President | Y |
| Heath | N | Mitchell | Y | Schwartz | N | | |

Senator Brophy moved to amend the Report of the Committee of the Whole to show that SB 09-064, as amended, was laid over to the General Orders calendar of February 9, 2009, retaining its place on the calendar.

A majority of all members elected to the Senate having voted in the affirmative, the amendment to the Report of the Committee of the Whole was declared **passed** on the following roll call vote:

| YES | 35 | NO | 0 | EXCUSED | 0 | ABSENT | 0 |
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| Bacon | Y | Hodge | Y | Morse | Y | Shaffer B. | Y |
| Boyd | Y | Hudak | Y | Newell | Y | Spence | Y |
| Brophy | Y | Isgar | Y | Penry | Y | Tapia | Y |
| Cadman | Y | Keller | Y | Renfroe | Y | Tochtrop | Y |
| Carroll M. | Y | Kester | Y | Romer | Y | Veiga | Y |
| Foster | Y | King K. | Y | Sandoval | Y | White | Y |
| Gibbs | Y | Kopp | Y | Scheffel | Y | Williams | Y |
| Harvey | Y | Lundberg | Y | Schultheis | Y | President | Y |
| Heath | Y | Mitchell | Y | Schwartz | Y | | |

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Bacon, the Report of the Committee of the Whole was adopted on the following roll call vote:

| YES | 35 | NO | 0 | EXCUSED | 0 | ABSENT | 0 |
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| Bacon | Y | Hodge | Y | Morse | Y | Shaffer B. | Y |
| Boyd | Y | Hudak | Y | Newell | Y | Spence | Y |
| Brophy | Y | Isgar | Y | Penry | Y | Tapia | Y |
| Cadman | Y | Keller | Y | Renfroe | Y | Tochtrop | Y |
| Carroll M. | Y | Kester | Y | Romer | Y | Veiga | Y |
| Foster | Y | King K. | Y | Sandoval | Y | White | Y |
| Gibbs | Y | Kopp | Y | Scheffel | Y | Williams | Y |
| Harvey | Y | Lundberg | Y | Schultheis | Y | President | Y |
| Heath | Y | Mitchell | Y | Schwartz | Y | | |

The Committee of the Whole took the following action:

Passed on Second Reading: SB09-080 as amended, SB09-033, SB09-039 as amended, SB09-140 as amended, SB09-086 as amended, SB09-079 as amended.
Laid over until Monday, February 9: SB09-035, SB09-057, SB09-078, SB09-064 as amended.

CONSIDERATION OF RESOLUTIONS

HJR09-1004 by Representative(s) Massey and Benefield, Acree, Apuan, Balmer, Baumgardner, Bradford, Carroll T., Casso, Court, Curry, Ferrandino, Fischer, Frangas, Gagliardi, Gardner B., Gardner C., Gerou, Green, Hullinghorst, Judd, Kefalas, Kerr A., Kerr J., King S., Labuda, Lambert, Levy, Liston, Looper, Marostica, May, McCann, McFadyen, McGihon, McKinley, McNulty, Merrifield, Middleton, Miklosi, Murray, Pace, Peniston, Pommer, Primavera, Priola, Rice, Riesberg, Roberts, Ryden, Scanlan, Schafer S., Solano, Sonnenberg, Soper, Stephens, Summers, Swalm, Tipton, Todd, Vaad, Vigil, Waller, Weissmann; also Senator(s) Boyd--Concerning civility in the Colorado general assembly.

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

| YES | 34 | NO | 1 | EXCUSED | 0 | ABSENT | 0 |
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| Bacon | Y | Hodge | Y | Morse | Y | Shaffer B. | Y |
| Boyd | Y | Hudak | Y | Newell | Y | Spence | Y |
| Brophy | Y | Isgar | Y | Penry | Y | Tapia | Y |
| Cadman | Y | Keller | Y | Renfroe | Y | Tochtrop | Y |
| Carroll M. | Y | Kester | Y | Romer | Y | Veiga | Y |
| Foster | Y | King K. | Y | Sandoval | Y | White | Y |
| Gibbs | Y | Kopp | Y | Scheffel | Y | Williams | Y |
| Harvey | Y | Lundberg | Y | Schultheis | N | President | Y |
| Heath | Y | Mitchell | Y | Schwartz | Y | | |

Co-sponsors added: Bacon, Carroll M., Foster, Gibbs, Groff, Heath, Hodge, Hudak, Isgar, Keller, King K., Kopp, Morse, Newell, Penry, Romer, Sandoval, Scheffel, Schwartz, Shaffer B., Spence, Tochtrop, Veiga, White and Williams.

COMMITTEE OF REFERENCE REPORTS

Trans- After consideration on the merits, the Committee recommends that **SB09-092** be referred to the Committee of the Whole with favorable recommendation.

Trans- After consideration on the merits, the Committee recommends that **SB09-133** be referred to the Committee on Finance with favorable recommendation.

Local
Government
and Energy

After consideration on the merits, the Committee recommends that **SB09-104** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, strike everything below the enacting clause and substitute the following:

SECTION 1. 26-5-101 (3) (m) and (3) (n), Colorado Revised Statutes, are amended, and the said 26-5-101 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

26-5-101. Definitions. As used in this article, unless the context otherwise requires:

(3) "Child welfare services" means the provision of necessary shelter, sustenance, and guidance to or for children who are or who, if such services are not provided, are likely to become neglected or dependent, as defined in section 19-3-102, C.R.S. "Child welfare services" includes but is not limited to:

(m) Administration and support functions; ~~and~~

(n) Services described in section 19-3-208, C.R.S.; AND

(o) (I) PROVISION OF VERIFIABLE DOCUMENTS TO YOUTH WHO PLAN TO EMANCIPATE FROM FOSTER CARE.

(II) VERIFIABLE DOCUMENTS SHALL INCLUDE, BUT NEED NOT BE LIMITED TO A CERTIFIED COPY OF THE YOUTH'S BIRTH CERTIFICATE AND A SOCIAL SECURITY CARD. THE COST OF PROVIDING THE VERIFIABLE DOCUMENTS SHALL NOT BE BORNE BY THE YOUTH.

SECTION 2. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 4, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor."

Local
Government
and Energy

After consideration on the merits, the Committee recommends that **SB09-018** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 2, after line 12, insert the following:

"(a) "ACCREDITED COLORADO YOUTH CORPS" MEANS A YOUTH CORPS ORGANIZATION THAT IS ACCREDITED BY THE COLORADO YOUTH CORPS ASSOCIATION."

Reletter succeeding paragraphs accordingly.

Page 4, line 3, strike "MONEYS FROM THE GENERAL";

strike lines 4 through 9 and substitute the following:

"ONE HUNDRED EIGHTY THOUSAND DOLLARS FROM THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND CREATED IN SECTION 39-29-109 (2) (b), C.R.S., TO THE HIGH-RISK COMMUNITIES WILDFIRE MITIGATION GRANT PROGRAM FUND FOR THE 2009-10 FISCAL YEAR AND SHALL CONSIDER MAKING ADDITIONAL APPROPRIATIONS FROM THE OPERATIONAL ACCOUNT TO THE GRANT FUND FOR SUBSEQUENT FISCAL YEARS.";

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line 16, strike "PLANS.", and insert "PLANS, AND UP TO THREE PERCENT OF EACH ANNUAL APPROPRIATION FOR THE COST OF ADMINISTERING THE HIGH-RISK COMMUNITIES WILDFIRE MITIGATION GRANTS.".

Page 5, line 13, strike the second "AND";

line 17, strike "BOTH." and substitute "BOTH; AND";

after line 17, insert the following:

"(III) THE GRANT RECIPIENT OR RECIPIENTS AGREE TO, WHENEVER FEASIBLE, CONTRACT WITH THE COLORADO YOUTH CORPS ASSOCIATION OR AN ACCREDITED COLORADO YOUTH CORPS TO PROVIDE LABOR FOR THE WILDLIFE MITIGATION MEASURE OR MEASURES.".

Health & Human Services

After consideration on the merits, the Committee recommends that **SB09-103** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 2, strike lines 12 through 19 and substitute the following:

"(XVIII) PROVIDING COMPENSATION IN ANY FORM THAT IS BASED ON THE DECISION TO DENY, OR DELAY THE RESOLUTION OF, A CLAIM OR TO CANCEL OR RESCIND AN INSURANCE POLICY.".

Health & Human Services

After consideration on the merits, the Committee recommends that **SB09-100** be referred to the Committee of the Whole with favorable recommendation.

Health & Human Services

After consideration on the merits, the Committee recommends that **SB09-030** be referred to the Committee of the Whole with favorable recommendation.

Health & Human Services

After consideration on the merits, the Committee recommends that **SB09-009** be postponed indefinitely.

Education

The Committee on Education has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed:

MEMBERS OF THE BOARD OF TRUSTEES FOR FORT LEWIS COLLEGE

effective eight o'clock a.m. on January 7, 2009 for a term expiring December 31, 2009:

Karen D. Wilde of Aurora, Colorado, a Democrat, to fill the vacancy occasioned by the resignation of Patricia B. Noyes of Boulder, Colorado, appointed;

effective eight o'clock a.m. on January 7, 2009 for terms expiring December 31, 2012:

Mark R. Larson of Denver, Colorado, a Republican, appointed;

Leonel B. Silva of Centennial, Colorado, a Democrat, reappointed.

Education

The Committee on Education has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed:

MEMBERS OF THE READ-TO-ACHIEVE BOARD

effective as of eight o'clock a.m. on January 7, 2009, for a term expiring April 1, 2010:

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Myra “Desha” Bierbaum of Glenwood Springs, Colorado, to serve as a parent of a child who is enrolled in a public school at the time of appointment and as an Unaffiliated, appointed.

Education

After consideration on the merits, the Committee recommends that **SB09-090** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Page 5, strike lines 13 and 14.

Reorder succeeding subsections accordingly.

Page 6, after line 23, insert the following:

"(9) "SCHOOL-BASED PARENT INFORMATION RESOURCE CENTER" MEANS A CENTER THAT PROVIDES TO PARENTS INFORMATION ON EDUCATION OPPORTUNITIES FOR THEIR CHILDREN, TRAINING FOR PARENTS AND FAMILIES ON EDUCATION ISSUES, AND OTHER SUPPORT SERVICES THAT MAY BE AVAILABLE TO PARENTS, SUCH AS MENTAL HEALTH SERVICES, SOCIAL SERVICES, AND HOUSING REFERRALS."

Reorder succeeding subsection accordingly.

Page 8, line 19, strike the second "AND";

after line 21, insert the following:

"(XIII) A PERSON WITH EXPERTISE IN EARLY CHILDHOOD CARE AND EDUCATION; AND".

Page 9, line 11, after "STATE;", insert "AND";

line 13, strike "DEPARTMENT; AND" and substitute "DEPARTMENT.";

strike lines 14 through 16.

Page 10, line 19, strike "ADVISE," and substitute "INFORM,".

Page 11, line 25, strike "FAMILY" and substitute "PARENT INFORMATION".

Page 14, strike lines 2 through 4 and substitute the following:

"(IV) SCHOOL-BASED PARENT INFORMATION RESOURCE CENTERS."

Page 15, after line 26, insert the following:

"(c) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE STATE BOARD AND THE DEPARTMENT SHALL NOT IMPLEMENT THE PARENT INVOLVEMENT GRANT PROGRAM UNTIL SUCH TIME AS THERE IS AT LEAST TWENTY THOUSAND DOLLARS CREDITED OR APPROPRIATED TO THE FUND.

(d) IN ANY FISCAL YEAR IN WHICH THERE IS AT LEAST TWENTY THOUSAND DOLLARS CREDITED OR APPROPRIATED TO THE FUND, THE DEPARTMENT MAY USE UP TO ONE PERCENT OF THE MONEYS CREDITED OR APPROPRIATED TO THE FUND TO OFFSET THE COSTS INCURRED IN IMPLEMENTING THE PARENT INVOLVEMENT GRANT PROGRAM, AND THE DEPARTMENT MAY USE UP TO AN ADDITIONAL ONE PERCENT OF THE MONEYS CREDITED OR APPROPRIATED TO THE FUND TO OFFSET THE COSTS OF PROVIDING MEETING SPACE, EQUIPMENT, AND STAFF SERVICES TO THE COUNCIL PURSUANT TO SECTION 22-7-303 (6)."

Page 16, line 24, strike "A NEW SUBSECTION," and substitute "THE FOLLOWING NEW SUBSECTIONS,".

Page 18, line 5, after "THAT", insert "THE NUMBER OF PARENTS APPOINTED OR ELECTED TO";

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strike line 6;

line 7, strike "ELECTED";

line 8, strike "AS" and substitute "EXCEEDS";

strike lines 15 through 19 and substitute the following:

"THE SCHOOL DISTRICT. SAID STUDENT".

Page 19, strike lines 9 through 15 and substitute the following:

~~"(4) Any school district that demonstrates that, prior to January 1, 2000, the school district had in place a committee or council that performed at least the duties specified for a school district accountability committee in this section and section 22-7-105 is not required to appoint or elect a school district accountability committee pursuant to subsection (4) of this section. IF A SCHOOL DISTRICT BOARD OF EDUCATION APPOINTS THE MEMBERS OF THE SCHOOL DISTRICT ACCOUNTABILITY COMMITTEE, THE BOARD, TO THE EXTENT PRACTICABLE, SHALL ENSURE THAT:~~

(a) AT LEAST ONE OF THE PARENTS APPOINTED TO THE COMMITTEE IS THE PARENT OF A STUDENT ENROLLED IN A CHARTER SCHOOL AUTHORIZED BY THE SCHOOL DISTRICT BOARD OF EDUCATION, IF THE BOARD HAS AUTHORIZED ANY CHARTER SCHOOLS; AND

(b) AT LEAST ONE OF THE PERSONS APPOINTED TO THE COMMITTEE HAS A DEMONSTRATED KNOWLEDGE OF CHARTER SCHOOLS.

(5) THE MEMBERS OF EACH SCHOOL DISTRICT ACCOUNTABILITY COMMITTEE SHALL SELECT FROM AMONG THE PARENT REPRESENTATIVES SERVING ON THE COMMITTEE A MEMBER TO SERVE AS CHAIR OR CO-CHAIR OF THE COMMITTEE. THE SCHOOL DISTRICT BOARD OF EDUCATION SHALL ESTABLISH THE LENGTH OF TERM FOR WHICH THE COMMITTEE CHAIR OR CO-CHAIR SHALL SERVE.";

strike lines 19 and 20 and substitute the following:

qualifications - elections. (1) (a) ~~Except as provided in subsection (4) of this section,~~ There shall be a school advisory council ACCOUNTABILITY";

line 25, strike "designated, appointed, or elected" and substitute "designated, appointed, or elected";

line 27, strike "school" and substitute "school; ~~elected by a vote of all licensed professionals who provide instruction at the school or have an office in the school;~~";

Page 20, strike lines 1 and 2;

strike lines 4 and 5 and substitute the following:

~~"enrolled in the school; who are elected by a vote of the parents and legal guardians of students enrolled in the school;"~~;

line 6, strike "WHO IS designated by" and substitute "designated by OF";

line 9, strike "community" and substitute "community.";

line 10, strike "who is appointed by the principal." and substitute "who is appointed by the principal.";

line 11, after "EDUCATION", insert "OR THE STATE CHARTER SCHOOL INSTITUTE";

strike line 13 and substitute the following:

"ACCOUNTABILITY COMMITTEE AND THE METHOD FOR SELECTING THE

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MEMBERS OF THE SCHOOL ACCOUNTABILITY COMMITTEE. IF THE BOARD OF EDUCATION OR THE INSTITUTE CHOOSES TO";

line 15, strike "COMMITTEE INCLUDES AT LEAST" and substitute "NUMBER OF PARENTS, AS DESCRIBED IN SUBPARAGRAPH";

strike line 16;

line 17, strike "(1) AS" and substitute "(1), ON THE COMMITTEE EXCEEDS";

line 20, strike "APPOINTED, DESIGNATED, OR ELECTED" and substitute "SELECTED";

strike lines 23 through 25 and substitute the following:

"(a.7) IF THE SCHOOL DISTRICT BOARD OF EDUCATION OR THE INSTITUTE DETERMINES THAT THE MEMBERS OF A SCHOOL ACCOUNTABILITY COMMITTEE SHOULD BE APPOINTED, THE APPOINTING AUTHORITY SHALL, TO";

line 26, strike "SELECT" and substitute "APPOINT".

Page 21, strike line 1 and substitute the following:

"SCHOOL. IF THE SCHOOL DISTRICT BOARD OF EDUCATION OR THE INSTITUTE DETERMINES THAT PERSONS SHALL BE ELECTED TO SERVE ON THE SCHOOL".

Page 22, strike lines 10 through 22 and substitute the following:

~~"(c) Any appointment or designation required by paragraph (a) of this subsection (1) shall be made by September 1, 2001, and by September 1 of every odd-numbered year thereafter. Any election required by paragraph (a) of this subsection (1) shall be conducted on or before October 31, 2001, October 31, 2003, and on or before October 31 of every year thereafter.~~

~~(2) Members of the council shall serve terms of two years; except that, of the members first elected, the member elected pursuant to subparagraph (II) of paragraph (a) of subsection (1) of this section and the two members with the highest number of votes cast in the election conducted pursuant to subparagraph (III) of paragraph (a) of subsection (1) of this section shall serve terms of three years.";~~

~~line 26, strike "Except for the" and substitute "Except for the principal; no member of the council shall serve more than two consecutive, full terms, plus any balance remaining on an unexpired term if the initial appointment was to fill a vacancy.";~~

~~strike line 27.~~

~~Page 23, strike lines 1 and 2;~~

~~strike lines 6 through 18 and substitute the following:~~

~~"CHAIR OR CO-CHAIR OF THE COMMITTEE.~~

~~(4) The school advisory council required by this section shall not be required in any school or school district that demonstrates that prior to January 1, 2000, the school or school district had in place a committee or council that performed at least the duties specified for school advisory councils in this section and section 22-7-107. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY:~~

~~(a) IF, AFTER MAKING GOOD-FAITH EFFORTS, A PRINCIPAL OR AN ORGANIZATION OF PARENTS, TEACHERS, AND STUDENTS IS UNABLE TO FIND A SUFFICIENT NUMBER OF PERSONS WHO ARE WILLING TO SERVE ON THE SCHOOL ACCOUNTABILITY COMMITTEE, THE PRINCIPAL, WITH ADVICE FROM THE ORGANIZATION OF PARENTS, TEACHERS, AND STUDENTS, MAY~~

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ESTABLISH AN ALTERNATIVE MEMBERSHIP PLAN FOR THE SCHOOL ACCOUNTABILITY COMMITTEE, WHICH PLAN SHALL REFLECT THE MEMBERSHIP SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AS MUCH AS PRACTICABLE;

(b) THE GOVERNING BOARD OF A DISTRICT CHARTER SCHOOL OR AN INSTITUTE CHARTER SCHOOL MAY SERVE AS THE SCHOOL ACCOUNTABILITY COMMITTEE;

(c) IN A SCHOOL DISTRICT WITH FIVE HUNDRED OR FEWER ENROLLED STUDENTS, ONE OR MORE MEMBERS OF THE SCHOOL DISTRICT BOARD OF EDUCATION MAY ALSO SERVE ON A SCHOOL ACCOUNTABILITY COMMITTEE AND THE DISTRICT ACCOUNTABILITY COMMITTEE MAY SERVE AS A SCHOOL ACCOUNTABILITY COMMITTEE."

Page 24, line 3, strike "09-____," and substitute "09-090,";

line 11, strike "09-____," and substitute "09-090,";

strike lines 26 and 27.

Strike pages 25 and 26.

ReNUMBER succeeding sections accordingly.

Page 27, line 11, strike "09-____," and substitute "09-090,";

line 27, strike "09-____," and substitute "09-090,".

Page 31, strike lines 7 through 14.

ReNUMBER succeeding sections accordingly.

Page 32, strike lines 19 through 27.

ReNUMBER succeeding sections accordingly.

Agriculture and Natural Resources

After consideration on the merits, the Committee recommends that **SB09-114** be referred to the Committee of the Whole with favorable recommendation.

Agriculture and Natural Resources

After consideration on the merits, the Committee recommends that **SB09-151** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 11, line 21, strike "**Repeal.**";

line 22, strike "repealed as follows:" and substitute "amended to read:";

strike line 27.

Page 12, strike line 1 and substitute the following:

"(c) Livestock are consigned for slaughter to a licensed slaughterhouse in accordance with section 12-11-111, C.R.S. CUSTOM PROCESSING HOUSE OR PACKING PLANT LICENSED BY THE DEPARTMENT OR BY THE UNITED STATES DEPARTMENT OF AGRICULTURE;"

Agriculture and Natural Resources

After consideration on the merits, the Committee recommends that **SB09-115** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Amend printed bill, page 2, strike lines 11 through 18 and substitute the following:

"**SECTION 2.** 24-34-104 (50), Colorado Revised Statutes, is

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amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.
(50) The following agencies, functions, or both, shall terminate on July 1, 2019:

(c) THE LICENSING OF PUBLIC LIVESTOCK MARKETS PURSUANT TO ARTICLE 55 OF TITLE 35, C.R.S.";

line 24, strike "2014" and substitute "2019".

Agriculture and Natural Resources

After consideration on the merits, the Committee recommends that **SB09-118** be referred to the Committee on Appropriations with favorable recommendation.

Agriculture and Natural Resources

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

MEMBERS OF THE
COLORADO WATER RESOURCES
AND POWER DEVELOPMENT AUTHORITY

for a term expiring October 1, 2012:

Steven O. Sims of Greeley, Colorado, a resident from within the South Platte drainage basin who has experience in water law and water project financing, appointed.

Agriculture and Natural Resources

After consideration on the merits, the Committee recommends that **SB09-127** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 9, line 6, before "TRANSPORTING," insert "LICENSING,".

Agriculture and Natural Resources

After consideration on the merits, the Committee recommends that **SB09-113** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 2, line 6, strike "(2) (d), (2) (j), and (2) (m)" and substitute "~~(2) (d), (2) (j), and (2) (m)~~ (5) (d), (5) (j), AND (5) (m)".

Page 3, strike lines 23 through 25 and substitute the following:

SECTION 6. 35-14-102 (1), (1.7), (4), (7), (11), (14), (16), (17), (18), (20), (20.5), (21), (22), (23), (23.5), (24), (25), (26), (28), (29), (30), (31.5), (31.6), and (33), Colorado Revised Statutes, are amended, and the said 35-14-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to".

Page 4, after line 1, insert the following:

~~"(1) "Approved for commercial use" means a device that has been inspected, tested, and approved by the commissioner.~~

(1.7) "Certificate of conformance" means a document issued by the ~~national institute of standards and technology based on testing in participating laboratories, said document~~ NATIONAL TYPE EVALUATION PROGRAM constituting evidence of conformance of a ~~type~~ WEIGHING AND MEASURING DEVICE with the requirements of national institute of standards and technology ~~handbooks~~ HANDBOOK 44. ~~105-1, 105-2, or 105-3.~~

(4) "Commercial weighing and measuring devices" means those devices commercially used or employed in establishing the size, quantity,

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extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption that are sold or offered or exposed for sale OR hire or award or in computing any basic charge or payment for services rendered on the basis of weight, measure, or count.

(4.5) "COMMISSION" MEANS THE STATE AGRICULTURAL COMMISSION.

(5.5) "COMMODITY" MEANS ANY AGRICULTURAL COMMODITY, CONSUMER COMMODITY, OR ANY OTHER GOODS.

~~(7) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.~~

~~(11) "Grain test scale" means any device which is necessary to determine weight for any grain sample.";~~

after line 4, insert the following:

~~"(16) "Metrology services" means all testing AND calibrating and opening of weights and, when necessary, the making of adjustments to weights and measures. in order to meet tolerances prescribed by the national institute of standards and technology.";~~

after line 8, insert the following:

~~"(18) "Moisture meter charts" means charts and tables used to interpret or interpolate value indications on a particular moisture-determining device into moisture content values.~~

~~(20) "Multiunit package" means a package containing two or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multiunit package but capable of being individually sold in full compliance with all of the requirements of this article.~~

~~(20.5) "National type evaluation program" means a program of cooperation between the national institute of standards and technology; the national conference on weights and measures, the state of Colorado; and the private sector for the purpose of determining, on a uniform basis, conformance of a type with the relevant provisions of the following national institute of standards and technology handbooks: THE EVALUATION PROGRAM ADMINISTERED BY THE NATIONAL CONFERENCE ON WEIGHTS AND MEASURES.~~

~~(a) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices";~~

~~(b) Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures; Specifications and Tolerances for Field Standard Weights (NIST Class F)";~~

~~(c) Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Measuring Flasks"; or~~

~~(d) Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures; Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards.";~~

after line 12, insert the following:

~~"(22) "Not susceptible of repair" means any weight or measure which THAT is designed or constructed in such a fashion so as to fail to~~

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comply with the applicable design or construction standards for such weight or measure ~~as promulgated by the national institute of standards and technology or which~~ THAT cannot be repaired to meet the tolerance standards for such weight or measure. ~~as promulgated by the national bureau of standards.~~

~~(23) "Official grain sample" means that portion of a grain, seed, or other agricultural commodity which this state uses as the official transfer standard to test the accuracy of a commercial grain moisture-testing device.~~

~~(23.5) "Participating laboratory" means any state measurement laboratory that has been certified by the national institute of standards and technology, in accordance with its program for the certification of capability of measurement laboratories, to conduct a type evaluation under the national type evaluation program.~~

~~(24) "Placing in service" means placing in use any new, used, REPAIRED, or previously rejected RECONDITIONED WEIGHING AND MEASURING device. which is being returned to service after repair.";~~

after line 25, insert the following:

~~"(28) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.~~

~~(29) "Scale status report" means a report of the condition of the scale, including scale indication with applied known weights, upon completion of installation or repair.".~~

Page 5, after line 2, insert the following:

~~"(30.5) "STANDARD" MEANS A WEIGHT OR MEASURE USED AS A REFERENCE TO ESTABLISH A MEASURED QUANTITY VALUE.~~

~~(31.5) "Type" means a model or models of a particular measurement system, instrument, element, or field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.";~~

after line 5, insert the following:

~~"(33) "Weight" means net weight AS USED IN CONNECTION WITH ANY COMMODITY OR SERVICE; except that, where the label states that the product is sold by drained weight, the term "weight" means net drained weight.";~~

after line 20, insert the following:

~~"SECTION 8. 35-14-105, Colorado Revised Statutes, is amended to read:~~

35-14-105. Technical requirements for weighing and measuring devices - certificate required. The specifications, tolerances, and other technical requirements, INCLUDING USER REQUIREMENTS, for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in this state, except as modified or rejected OR AS OTHERWISE SPECIFIED by this article or any rule or regulation promulgated pursuant to this article. ~~The commissioner shall require~~ Any weight or measure or any weighing or measuring instrument or device ~~to~~ SHALL be issued a certificate of conformance from the national type evaluation program prior to use for commercial or law enforcement purposes.

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SECTION 9. 35-14-107 (1) (a), (1) (d), (1) (i), (1) (k), (1) (l), and (1) (o), Colorado Revised Statutes, are amended, and the said 35-14-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

35-14-107. Powers and duties of the commissioner. (1) The commissioner shall:

(a) Maintain traceability of this state's standards to the STANDARDS OF THE national institute of standards and technology;

(d) Grant any exemptions from ~~the provisions of this article or any rules or regulations promulgated pursuant thereto~~ TO THIS ARTICLE if appropriate to the maintenance of good commercial practices IN THE COMMISSIONER'S OPINION SUCH EXEMPTION WOULD SERVE THE PUBLIC INTEREST;

(i) Inspect and test, to ascertain if they are correct, ~~weights and measures commercially used:~~ ALL COMMERCIAL WEIGHING AND MEASURING DEVICES FOR WHICH THE OWNER IS REQUIRED TO BE LICENSED UNDER THIS ARTICLE.

~~(f) In determining the weight, measure, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or count, or~~

~~(H) In computing the basic charge or payment for services rendered on the basis of weight, measure, or count;~~

(k) Approve for use, and may mark, such weights and measures as he OR SHE finds to be correct and ~~shall~~ MAY reject and mark as rejected such weights and measures as he OR SHE finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in an unauthorized manner. The commissioner ~~shall~~ MAY condemn and ~~may~~ seize weights and measures found to be incorrect and ~~which~~ THAT are not capable of being made correct.

(l) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this article and the rules ~~and regulations~~ promulgated pursuant ~~thereto~~ TO THIS ARTICLE. Accuracy of weight, measure, or count shall be determined by procedures set forth in the national institute of standards and technology handbook 133 as adopted by the national conference on weights and measures 1980, and any supplements or revisions thereto UNLESS OTHERWISE SPECIFIED BY THE COMMISSIONER BY RULE. When the nature of the packaged commodity requires assistance in testing, the commissioner may request the person in possession of the package to furnish equipment and assistance to complete the test.

(o) Promulgate such rules ~~and regulations~~ as are necessary for the implementation and administration of this article in accordance with article 4 of title 24, C.R.S., including ~~but not limited to,~~ rules ~~and regulations~~ regarding THE USE OF WEIGHTS AND MEASURES, methods of sale, unit pricing, declaration of quantity, retail sales price representations FOR COMMODITIES AND SERVICES, including requirements for cents-off and introductory offer promotions, and labeling requirements; ~~related to the use and representation of measurement standards;~~

(2) THE COMMISSIONER MAY, UPON REQUEST, INSPECT AND TEST ANY WEIGHT, MEASURE, OR STANDARD USED BY A GOVERNMENTAL ENTITY.

SECTION 10. 35-14-108, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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35-14-108. Special police powers. (2) THE COMMISSIONER MAY ADMINISTER OATHS AND TAKE STATEMENTS, ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES BEFORE HIM OR HER AND THE PRODUCTION OF ALL BOOKS, MEMORANDA, PAPERS, AND OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS, AND COMPEL THE DISCLOSURE BY SUCH WITNESSES OF ALL FACTS KNOWN TO THEM RELATIVE TO THE MATTERS UNDER INVESTIGATION. UPON THE FAILURE OR REFUSAL OF ANY WITNESS TO OBEY ANY SUBPOENA, THE COMMISSIONER MAY PETITION THE DISTRICT COURT, AND, UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. FAILURE TO OBEY SUCH AN ORDER OF THE COURT SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

(3) IF THE OWNER, OR THE OWNER'S AGENT, OF ANY COMMERCIAL PREMISES OR VEHICLE REFUSES TO ADMIT THE COMMISSIONER TO INSPECT SUCH PREMISES OR VEHICLE, THE COMMISSIONER MAY OBTAIN FROM THE DISTRICT OR COUNTY COURT FOR THE DISTRICT OR COUNTY IN WHICH SUCH PREMISES OR VEHICLE IS LOCATED A WARRANT TO ENTER AND INSPECT SUCH PREMISES OR VEHICLE.

SECTION 11. Repeal. 35-14-109, Colorado Revised Statutes, is repealed as follows:

~~**35-14-109. Contract services.** (1) Whenever a local government maintains a weights and measures division or employs an inspector and desires to enter into a contract with the department to render services prescribed by this article, the commissioner, at the time the contract is officially signed by both parties, shall certify the division personnel or inspector who is qualified to carry out the provisions of said contract. The average cost of such services rendered by a local government may not exceed the average cost of such services if rendered by the department.~~

~~(2) Repealed.~~

SECTION 12. 35-14-112, Colorado Revised Statutes, is amended to read:

35-14-112. Method of sale - general. Except as otherwise provided by the commissioner BY RULE, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the method of sale provides accurate quantity AND PRICING information.

SECTION 13. Repeal. 35-14-113, Colorado Revised Statutes, is repealed as follows:

~~**35-14-113. Method of sale - special food products.** (1)(a) Meat, poultry, and seafood shall be sold by weight, except that the following items may be sold by weight, measure, or count:~~

~~(I) Shellfish;~~

~~(II) Items cooked on the premises and sold as ready for immediate consumption;~~

~~(III) Items sold as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold;~~

~~(IV) Items sold as part of a sandwich;~~

~~(V) Live fish for stocking purposes, unprocessed fish, fowl, or animals acquired through the lawful pursuit of recreational activities.~~

~~(b) When meat, poultry, or seafood is combined with some other food element to form a distinctive food product, the quantity representation need not be made for each element.~~

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~~(c) In the case of ready-to-cook stuffed poultry products, the label must show the total net weight of the stuffed poultry product and the net weight of the poultry in the product.~~

~~(2)(a) At the time of delivery of bulk meat sold by carcass, side, or primal cut, the seller shall provide the purchaser with a written statement containing the following information:~~

- ~~(I) The name and address of the seller;~~
- ~~(II) The date of the sale;~~
- ~~(III) The name and address of the purchaser;~~
- ~~(IV) The identity of the meat in the most descriptive terms commercially practicable;~~
- ~~(V) The quality grade and yield grade of the meat, if so represented;~~
- ~~(VI) The price per pound of the meat before cutting and wrapping and the total price of the sale;~~
- ~~(VII) The total net weight (hanging weight) of the carcass, side, or primal cut prior to cutting or processing;~~
- ~~(VIII) The total net weight of the cut and processed meat delivered to the purchaser;~~
- ~~(IX) A list by name of all cuts of meat delivered;~~
- ~~(X) An itemized list of any and all charges over and above the original sale price of the carcass, side, or primal cut;~~
- ~~(XI) A separate indication of the quantity of any meat or other commodity received by a consumer purchaser as an inducement in connection with the purchase of the carcass, side, or primal cut.~~

~~(b) The written statement shall not include the weight of any meat or other commodities received by the purchaser as a bonus offer or gift in connection with the purchase of the carcass, side, or primal cut. The statement shall include a description of whether the sale is from the forequarter or hindquarter.~~

SECTION 14. Repeal. 35-14-114, Colorado Revised Statutes, is repealed as follows:

35-14-114. Method of sale - special nonfood products. ~~(1) All coal, coke, and charcoal shall be sold by weight. All bulk sales shall be accompanied by a weight certificate, ticket, or invoice, as set forth in section 35-14-122 (6).~~

~~(2) Repealed.~~

SECTION 15. 35-14-117 (1), Colorado Revised Statutes, is amended to read:

35-14-117. Unit pricing - application - inch pound or metric.
(1) Except for random-weight packages unit priced in accordance with rules and regulations and uniform weight packages of cheese and cheese products unit priced in the same manner and by the same type of equipment as random-weight packages PROMULGATED PURSUANT TO THIS ARTICLE, any retail establishment providing unit price information in addition to the total price for any commodity shall also provide the unit price information for all such commodities as required by rules and regulations PROMULGATED PURSUANT TO THIS ARTICLE.

SECTION 16. 35-14-118 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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35-14-118. Declarations on packages. (1) Except as otherwise provided in this article, any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(c) THE IDENTITY OF THE COMMODITY IN THE MANNER SPECIFIED BY RULE PROMULGATED PURSUANT TO THIS ARTICLE.

SECTION 17. 35-14-121 (5), Colorado Revised Statutes, is amended to read:

35-14-121. Weigher - qualification - certification - revocation. (5) All certificates of certified weighers in existence as of June 30, 1983, shall expire December 31, 1988. ~~All certifications issued on and after July 1, 1983, shall expire~~ five years after issuance. ALL CERTIFICATES ISSUED ON OR AFTER JULY 1, 2009, SHALL EXPIRE ON THE DATE SPECIFIED BY THE COMMISSIONER BY RULE. A CERTIFIED WEIGHER WHO FAILS TO RENEW A CERTIFICATE ON OR BEFORE THE EXPIRATION DATE OF THE CERTIFICATE SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE CERTIFICATE FEE. Renewal applications shall be in such form as the commissioner shall prescribe.

SECTION 18. 35-14-123, Colorado Revised Statutes, is amended to read:

35-14-123. Weighing and measuring device service providers - certification - fees - placing in service - rules. (1) ~~Except as provided in subsection (11) of this section, before installing or performing any repairs or services on~~ NO PERSON, OTHER THAN THE OWNER, MAY REPAIR, SERVICE, OR PLACE IN SERVICE any COMMERCIAL weighing or measuring device FOR which is required to be licensed in this state, ~~a person shall make written application to the commissioner for certification upon forms provided by the department~~ THE OWNER MUST OBTAIN A LICENSE TO OPERATE UNLESS THE PERSON IS CERTIFIED BY THE COMMISSIONER AS A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER. THE COMMISSIONER MAY SPECIFY THE REQUIREMENTS FOR CERTIFICATION OF SERVICE PROVIDERS BY RULE. For the purposes of this section, only one certificate is required for each business employing service persons. THE APPLICATION FOR A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER CERTIFICATE SHALL BE SUBMITTED TO THE COMMISSIONER ON FORMS FURNISHED BY THE COMMISSIONER AND SHALL BE ACCOMPANIED BY A FEE ESTABLISHED BY THE COMMISSION. ALL CERTIFICATES SHALL EXPIRE ON THE DATE SPECIFIED BY THE COMMISSIONER BY RULE. A PROVIDER WHO FAILS TO RENEW A CERTIFICATE ON OR BEFORE THE EXPIRATION DATE OF THE CERTIFICATE SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE CERTIFICATE FEE.

(2) ~~Certificates for scale service persons shall be issued in the following classes~~ THE COMMISSIONER SHALL ADOPT RULES SPECIFYING:

(a) ~~Small capacity, up to one hundred pounds;~~ THE CATEGORIES AND REQUIREMENTS FOR CERTIFICATION OF COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDERS; AND

(b) ~~Medium capacity, up to two thousand pounds;~~ THE PERFORMANCE REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES SERVICE PROVIDERS.

(c) ~~Large capacity, two thousand pounds and over.~~

(3) ~~If ten percent or more of the devices installed or repaired in any one calendar year by a service person are rejected, such person shall be ordered to appear before the commissioner in accordance with the provisions of section 24-4-104, C.R.S., to show cause why the person's certificate should not be revoked.~~

(4) ~~Test weights totaling a minimum of ten percent of the rated capacity of any large capacity scales must be used in the repairing or testing of such scales. Each section of scales having multisection-type~~

~~construction shall be tested. For the repairing or servicing of scales using ratio weights, tests shall be made up to the capacity of the largest denomination of the ratio weight on hand. EACH COMMERCIAL WEIGHING OR MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126 THAT IS PLACED IN SERVICE BY A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER SHALL COMPLY WITH SECTION 35-14-105. WHEN REPAIRING, SERVICING, OR PLACING IN SERVICE ANY SUCH DEVICE, A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER SHALL COMPLY WITH THE MOST CURRENT VERSION OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY HANDBOOK 44, "SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES".~~

~~(5) (a) No scale service person shall possess any test weights other than those weights meeting the requirements of the national institute of standards and technology handbook 105-1: "Field Standard Weights", and any supplements or additions thereto. Weights employed in the testing, servicing, or repairing of a scale shall conform to the tolerances prescribed for such weights as set forth in said handbook 105-1, and any supplements or additions thereto, and scale service persons shall maintain their testing equipment within such tolerances at all times. NO COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER MAY USE A STANDARD WHEN REPAIRING, SERVICING, OR PLACING IN SERVICE A COMMERCIAL WEIGHING OR MEASURING DEVICE THAT IS NOT EXEMPTED PURSUANT TO SECTION 35-14-126 UNLESS THE COMMISSIONER HAS APPROVED THE STANDARD.~~

~~(b) All repairs and adjustments made by weighing or measuring device service persons shall conform to the technical requirements for weighing and measuring devices adopted in accordance with section 35-14-105.~~

~~(6) Each COMMERCIAL WEIGHING AND MEASURING DEVICE service person PROVIDER shall AT LEAST annually submit weights and ALL standards USED TO REPAIR, SERVICE, OR PLACE IN SERVICE ANY COMMERCIAL WEIGHING OR MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126 to the laboratory for certification APPROVAL PURSUANT TO SECTION 35-14-128; except that, if such weights or standards are annually certified APPROVED in another state by that state's NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY-RECOGNIZED metrology laboratory and evidence is shown of current certification APPROVAL, traceable to standards of the national institute of standards and technology, which is less than a year from AFTER date of issuance, the COMMISSIONER MAY EXEMPT THE service person shall be exempt PROVIDER from obtaining a Colorado certificate APPROVAL for the current year.~~

~~(7) Upon the completion of an installation or the repair of any device PLACING IN SERVICE ANY COMMERCIAL WEIGHING OR MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126, the service person PROVIDER shall submit a placing-in-service report to the commissioner within ten days after such completion THE PLACING-IN-SERVICE date. The report shall include a scale status report for scale capacities of five thousand pounds or more. Any weighing or measuring device tagged for repairs by the commissioner shall be repaired by the service person within thirty days after receiving notification from the owner of the device. THE COMMISSIONER SHALL PROMULGATE RULES TO SPECIFY THE INFORMATION TO BE INCLUDED IN PLACING-IN-SERVICE REPORTS.~~

~~(8) Any person shipping, delivering, or installing weighing and measuring devices shall cause a placing-in-service report to be filed with the commissioner within ten days after completing such action. The placing-in-service report shall indicate the date of shipment, delivery, or installation, the name and address of the user or operator, and the serial number, type, and capacity of such device.~~

~~(9) (Deleted by amendment, L. 95, p. 896, § 8, effective July 1, 1995.)~~

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~~(10) All licenses and certificates issued on or after July 1, 1983, shall expire five years after issuance. Renewal application shall be in such form as the commissioner shall prescribe. Persons licensed or certified as service persons shall also have authority to sell weighing and measuring devices.~~

(11) Nothing in this section shall be construed to prohibit any A person from performing any repairs or service on any A weighing or measuring device ~~which is~~ THAT THE COMMISSIONER HAS condemned or placed under work order, ~~by the commissioner~~; but such person may not remove any tag placed on any weighing or measuring device pursuant to ~~the requirements of this article.~~

SECTION 19. 35-14-124, Colorado Revised Statutes, is amended to read:

35-14-124. Inaccurate devices - stickers - tags - wire seals.

(1) A blue tag indicating "Work Order" shall be placed on any COMMERCIAL weighing or measuring device ~~which~~ THAT in the judgment of the commissioner is out of tolerance or in need of minor repairs. ~~The owner or agent of the device shall call or notify a serviceman within two days of the date shown on the tag.~~ Repairs ~~must~~ SHALL be made within thirty days, and, if not so made, the device shall be removed from commercial use. If the ~~serviceman cannot complete~~ CANNOT BE COMPLETED OR THE DEVICE CANNOT BE PLACED INTO SERVICE due to delay in obtaining parts or other justified circumstances, the commissioner may extend the time limit for repair OR PLACING IN SERVICE for a reasonable time.

(2) A red tag indicating "CONDEMNED" shall be placed on any COMMERCIAL weighing or measuring device that is to be removed from use. ~~The tag's~~ A wire seal shall MAY be so placed as to make the device unusable in any form. A DEVICE THAT HAS BEEN CONDEMNED PURSUANT TO THIS SUBSECTION (2) SHALL NOT BE USED FOR ANY COMMERCIAL PURPOSE.

(3) (a) ~~A device which requires a license and for which the license fee has not been paid shall be sealed with a wire seal and a yellow tag indicating that said device is sealed for nonpayment of the license fee. A TAG INDICATING "NO LICENSE FEE PAID" SHALL BE PLACED ON ANY COMMERCIAL WEIGHING OR MEASURING DEVICE THAT THE OWNER IS NOT LICENSED TO OPERATE. A WIRE SEAL MAY BE SO PLACED AS TO MAKE THE DEVICE UNUSABLE IN ANY FORM. A device sealed with ON WHICH a yellow "NO LICENSE FEE PAID" tag HAS BEEN PLACED shall not be used for any commercial purpose. A "NO LICENSE FEE PAID" TAG NEED NOT BE PLACED ON devices which THAT are being held for resale and are not being used. need not be sealed and tagged for nonpayment.~~

(b) When a weighing or measuring device is found in a commercial establishment, it shall be prima facie evidence that said device is being used or employed. IF THE OWNER OF ANY such device ~~must be properly licensed or~~ DOES NOT HAVE A LICENSE FOR ITS USE, THE DEVICE SHALL have a ~~wire seal and yellow~~ "NO LICENSE FEE PAID" OR "NOT APPROVED FOR COMMERCIAL USE" tag attached.

(4) ~~The official state seal, showing the condition of the device, is the only seal permitted on a device. No stickers indicating such statements as "Tested and Correct" or "Tested and Sealed" shall be placed on any weighing or measuring device by any operator thereof, serviceman, or other person.~~

SECTION 20. 35-14-124.5 (1) (f), Colorado Revised Statutes, is amended to read:

35-14-124.5. Disciplinary powers. (1) The commissioner may deny an application for, refuse to renew, revoke, or suspend a license or certificate or place a licensee or certificate holder on probation, if such person has:

(f) Used a commercial WEIGHING OR measuring device or moisture-testing device in deceptive trade practices in violation of any state or federal law.

SECTION 21. Repeal. 35-14-125, Colorado Revised Statutes, is repealed as follows:

35-14-125. Household scales. ~~(1) No overload type of spring scale or balance, commonly known as household scales, shall be used or employed in any commercial establishment for the weighing of any commodity sold or offered for sale to the public. Such scales may be sold or offered for sale for household use only.~~

~~(2) No such household scale shall be sold or offered for sale by any manufacturer or vendor for use or service whatsoever unless the dial or reading face is plainly and conspicuously marked with the wording "Not legal for use in trade".~~

~~(3) Any household scale found in commercial use shall be subject to immediate confiscation and condemnation.~~

SECTION 22. The introductory portion to 35-14-126 (1), Colorado Revised Statutes, is amended, and the said 35-14-126 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-14-126. Commercial weighing device exemption - licensing - testing. ~~(1) The following classes of devices shall be exempt from licensing and testing~~ NO LICENSE SHALL BE REQUIRED FOR THE USE OF THE FOLLOWING COMMERCIAL WEIGHING OR MEASURING DEVICES AND SUCH DEVICES SHALL BE EXEMPT FROM TESTING:

~~(f) ANY OTHER DEVICE EXEMPTED BY THE COMMISSIONER BY RULE."~~

strike line 21 and substitute the following:

"SECTION 23. 35-14-127 (1), (2), (3), (4) (a) (I), (4) (c), (5), (11), (12), and (12.5), Colorado Revised Statutes, are";

strike lines 24 and 25, and substitute the following:

~~"(1) Before any person operates~~ OPERATING any scale, textile meter, or cordage meter for commercial purposes, except those exempted in section 35-14-126, ~~he~~ THE OWNER shall first procure from the department a license as provided for in this section FOR THE OPERATION OF THE DEVICE. All such licenses shall expire on the ~~June 30 next succeeding the date of issue~~ DATE ESTABLISHED BY THE COMMISSIONER BY RULE.

(2) Any person desiring to obtain a license for the operation of a scale, textile meter, or cordage meter shall ~~make application therefor to~~ FILE AN APPLICATION WITH the department upon a form furnished by the commissioner, which shall contain such information as the commissioner may ~~by rule~~ require. Every application for license shall be accompanied by the proper fee. ~~as established by this article or by the agricultural commission.~~ A PERSON WHO FAILS TO RENEW A LICENSE ON OR BEFORE THE EXPIRATION DATE OF THE LICENSE SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE LICENSE FEE.

(3) The commissioner shall test or cause to be tested for accuracy every scale, textile meter, or cordage meter for which ~~a license has been issued~~ THE OWNER HAS BEEN ISSUED A LICENSE TO OPERATE at least once every twelve months or more often if necessary. ~~It is the duty of the inspector making the tests to make minor adjustments to all scales, textile meters, and cordage meters that may be necessary to make them measure correctly.~~ UPON TESTING AND APPROVING A DEVICE FOR USE, THE COMMISSIONER SHALL AFFIX AN APPROVAL STICKER TO THE DEVICE AND MAY ISSUE A DEVICE IDENTIFICATION NUMBER. If the design, construction, or location of any scale, textile meter, or cordage meter is

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such as to require a testing procedure involving special equipment or accessories or an abnormal amount of labor, such equipment, accessories, and labor shall be supplied by the LICENSED owner or operator of said THE scale, textile meter, or cordage meter as required by the commissioner. Nothing in this section shall prevent an inspector from testing a scale, textile meter, or cordage meter before the issuance of a license if the license fee is paid or is in the process of being paid.

(4) (a) (I) The agricultural commission shall establish annual license fees for scales THE OPERATION OF COMMERCIAL WEIGHING AND MEASURING DEVICES based on THE NUMBER, capacity, in the following classifications: AND TYPES OF DEVICES.

(c) The annual license fee for belt conveyor and in-motion railroad scales shall be as determined by the agricultural commission.

(5) The annual license fee for textile meters, cordage meters, moisture meters, certified weighers, persons who sell or install weighing and measuring devices, and persons who service weighing and measuring devices shall be as determined by the agricultural commission."

Page 6, after line 8, insert the following:

~~"(11) Upon payment of the required fee, the department shall issue a license certificate and identification sticker for each licensed device. Any license issued under this article shall apply only to the device licensed:~~

~~(12) The fees for special tests where scale test trucks, passenger vehicles, or light duty pickup trucks are used INSPECTION AND TESTING PURSUANT TO SECTION 35-14-107 (2) shall be as determined by the agricultural commission. The agricultural commission shall review and set the fees annually. If any test of a device at one location requires time beyond the first day, the special test fee shall be effective for the balance of time after one day and until the test is completed. The special test fee may be charged for any test made at the request of the owner of the device:~~

(12.5) (a) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the agricultural commission shall establish fees associated with the licensing, testing, inspection, and regulation of scales with a capacity of two ONE thousand pounds or less, cordage meters, and textile meters. Such fees shall cover the direct and indirect costs of administering and enforcing the provisions of this article other than subsection (12) of this section, paragraph (b) of this subsection (12.5), and section 35-14-128 (2).

(b) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, twenty-five percent of the direct and indirect costs associated with the licensing, testing, inspection, and regulation of certified weighers, scales with a capacity of greater than two ONE thousand pounds, belt conveyers, in-motion railroad scales, and moisture meters TESTING DEVICES shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover the remaining direct and indirect costs."

Renumber succeeding sections accordingly.

Page 6, after line 22, insert the following:

"SECTION 25. 35-14-128, Colorado Revised Statutes, is amended to read:

35-14-128. Laboratory approval - service - condemnation.

(1) THE COMMISSIONER MAY INSPECT AND TEST ANY WEIGHTS, MEASURES, OR STANDARDS SUBMITTED TO THE METROLOGY LABORATORY. Weights, and measures, will AND STANDARDS MAY not be approved by the department's laboratory unless the design and construction of the unit complies with the design and construction requirements prescribed by the

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national institute of standards and technology set forth in handbook 105-1: "Field Standard Weights"; handbook 105-2: "Field Measuring Flasks"; handbook 105-3: "Metal Volumetric Field Standards"; and circular 547: "Precision Laboratory Weights"; and any supplements or revisions to such handbooks or circular OR OTHER ENTITY APPROVED BY THE COMMISSIONER. THE COMMISSIONER MAY ESTABLISH APPROVAL PERIODS, CONDITIONS, AND LIMITATIONS BY RULE.

(2) The laboratory may require that specified WEIGHTS, MEASURES, OR standards submitted for calibration be cleaned or sanded, scraped, and painted before submission. ~~Precision weights, volume, and length standards shall be cleaned and dried before submission.~~ The fee for any metrology service shall be established by the agricultural commission. For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, seventy-five percent of the direct and indirect costs associated with metrology laboratory services, including the regulation of weighing and measuring device sales, installation, and service persons, shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover the remaining direct and indirect costs.

(3) The laboratory may seize any weight, measure, or standard ~~which~~ THAT it deems not to be susceptible of repair. Within twenty-four hours after such seizure, the laboratory shall cause notice of such seizure to be served personally or by first-class mail upon the owner of such weight, measure, or standard, advising such owner of the seizure and of the laboratory's intention to destroy such weights, measures, or standards, pursuant to section 35-14-107 (1) (k). Such notice shall also state that the owner of such weights, measures, or standards may, within twenty days after the date of personal service or mailing, request in writing that the commissioner conduct a hearing to determine whether such weights, measures, or standards are not susceptible of repair. If a hearing is requested, it shall be conducted promptly, and the commissioner or ~~his~~ THE COMMISSIONER'S designated agent shall preside over such hearing, and the laboratory shall take no further action pending such hearing. If hearing is not requested, the seized weights, measures, or standards ~~shall~~ MAY be destroyed after the expiration of the twenty-day period.

SECTION 26. The introductory portion to 35-14-129 (1), Colorado Revised Statutes, is amended to read:

35-14-129. Moisture-testing devices - specifications.

(1) Before any ~~moisture-measuring~~ MOISTURE-TESTING device is operated for commercial use, a license ~~must~~ SHALL be obtained from the commissioner. An application for such license shall be made upon a form furnished by the commissioner. A moisture-testing device shall be considered in commercial use if the results of the device are a factor in determining:

SECTION 27. 35-14-130, Colorado Revised Statutes, is amended to read:

35-14-130. Stop sale order. (1) The commissioner ~~shall~~ MAY issue ~~citations or~~ warning notices to anyone who has not complied with ~~the requirements of~~ this article and may establish a time period to correct any minor violation.

(2) THE COMMISSIONER MAY ISSUE A STOP SALE ORDER DIRECTING THAT ANY products not meeting the requirements of this article or the rules ~~and regulations~~ promulgated by the commissioner ~~shall~~ be taken off sale. ~~and a citation issued.~~

SECTION 28. 35-14-131, Colorado Revised Statutes, is amended to read:

35-14-131. Civil penalties. (1) ~~Any person who, acting alone, through a servant or agent, or as the servant or agent of another person commits any of the acts enumerated in subsection (2) of this section shall be subject to a civil penalty of not more than seven hundred fifty dollars~~

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~~for each day of violation.~~ A PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE COMMISSIONER OR A COURT OF COMPETENT JURISDICTION. THE MAXIMUM PENALTY SHALL NOT EXCEED SEVEN HUNDRED FIFTY DOLLARS PER VIOLATION; EXCEPT THAT SUCH PENALTY MAY BE DOUBLED IF IT IS DETERMINED, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THAT THE PERSON HAS VIOLATED THE PROVISION OR RULE FOR THE SECOND TIME. EACH DAY THE VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE VIOLATION.

(2) NO CIVIL PENALTY MAY BE IMPOSED BY THE COMMISSIONER UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT SUCH CIVIL PENALTY OR IF A PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY BRING SUIT TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN A COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING A CIVIL PENALTY, THE COMMISSIONER OR A COURT OF COMPETENT JURISDICTION MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE BUSINESS.

~~(2)~~ (5) It is a violation for any person to:

(a) Sell, offer, or expose for sale or hire or have in his OR HER possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure;

(b) Use, or possess for current use or for hire, in the buying or selling of any commodity or thing, in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure ~~which has not been sealed~~ THAT IS NOT APPROVED by the commissioner or the commissioner's designated agent, ~~within the last year~~, unless specific written permission to use such weight or measure has been received from the commissioner;

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or ~~regulation~~ RULE;

(d) Remove, break, or deface, contrary to law or ~~regulation~~ RULE, any tag, seal, or mark placed on any weight or measure pursuant to ~~the requirements of~~ this article, except in the case of the commissioner or a service person, certified pursuant to section 35-14-123, performing duties provided for in this article or any rule adopted pursuant thereto;

(e) Sell, or offer or expose for sale, less than the quantity such person represents of any commodity, thing, or service;

(f) Take more than the quantity such person represents of any commodity, thing, or service when, as a buyer, such person furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) Keep for the purpose of sale, advertise or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to the requirements of this article;

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and medical prescriptions, a weight or measure ~~which~~ THAT is so positioned that its indications may not be accurately read and the weighing or measuring operation observed from some position ~~which~~ THAT may reasonably be assumed by a customer; except that this paragraph (h) shall not apply to livestock scales used in any licensed yard selling livestock;

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(i) Violate any provision of this article or any rule or regulation promulgated under this article for which a specific penalty has not been prescribed;

(j) Act as or represent oneself to be a certified weigher without being certified therefor, or for any certified weigher to: Falsely certify, REPRESENT, OR RECORD the weight of any load, or part of any load, or of any article whatsoever OBTAINED FROM A COMMERCIAL WEIGHING AND MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126; falsely certify, REPRESENT, OR RECORD any net or gross weight required by this article to be in said certificate OR RECORD; refuse to weigh any article or thing which THAT it is such person's duty to weigh; or refuse to state in any weight certificate anything required to be therein;

(k) Alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighed, alter or diminish the quantity thereof;

(l) Hinder or obstruct in any way the commissioner or the commissioner's authorized agent in the performance of the commissioner's official duties under this article;

(m) Act as or represent oneself to be a certified weighing or measuring device service person PROVIDER without being so certified.

~~(3)~~ (6) Any A civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit the same IT to the inspection and consumer services cash fund created in section 35-1-106.5. Penalties shall be determined by the commissioner or the commissioner's designee and may be collected by the department by action instituted in a court of competent jurisdiction for collection of such penalty. In determining the amount of any civil penalty to be assessed, the commissioner shall consider any relevant factors. The final decision of the commissioner or the commissioner's designee shall be subject to judicial review. In the event that IF such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty if such issue is raised by the party against whom the penalty was assessed.

SECTION 29. 35-14-133, Colorado Revised Statutes, is amended to read:

35-14-133. Enforcement. ~~(1) If any person fails to comply with any provision of this article or any rule or regulation promulgated under this article, the commissioner may request the district attorney for the judicial district in which the alleged violation exists or the attorney general to bring, and if so requested it shall be the duty of such district attorney or the attorney general to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation.~~ THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE SHALL ENFORCE THIS ARTICLE.

~~(2) Actions brought under this section shall be brought in the district or county court where the violation occurs. The institution of such injunction proceeding shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such injunctive proceeding and shall not preclude assessment of civil penalties or any other authorized enforcement action.~~ WHENEVER THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, THE COMMISSIONER MAY ISSUE A CEASE-AND-DESIST ORDER, WHICH MAY REQUIRE ANY PERSON TO CEASE VIOLATING ANY PROVISION OF THIS ARTICLE OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE. SUCH CEASE-AND-DESIST ORDER SHALL SET FORTH THE PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE

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CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL ACTIONS CEASE FORTHWITH. AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON MAY REQUEST, AT THE PERSON'S DISCRETION, A HEARING TO BE HELD WITHIN A REASONABLE PERIOD OF TIME TO DETERMINE WHETHER SUCH VIOLATION HAS OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(3) WHENEVER THE COMMISSIONER POSSESSES SUFFICIENT EVIDENCE SATISFACTORY TO HIM OR HER INDICATING THAT A PERSON HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE OR ANY RULE OR ORDER ADOPTED PURSUANT TO THIS ARTICLE, THE COMMISSIONER MAY APPLY TO A COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE OR ORDER ADOPTED PURSUANT TO THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND."

Renumber succeeding sections accordingly.

INTRODUCTION OF RESOLUTIONS

The following resolution was read by title:

HJR09-1009 by Representative(s) Weissmann, May; also Senator(s) Shaffer B.--Concerning authorization for adjournment for more than three days during the 2009 regular session of the general assembly.

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

INTRODUCTION OF MEMORIALS

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

SJM09-001 by Senator(s) Harvey, Brophy, Kester, Cadman, Mitchell, King K., Scheffel, Spence, Kopp, Lundberg, Penry, Renfro, Schultheis, White; also Representative(s) McNulty, Baumgardner, Gardner C., Gerou, Kerr J., King S., Lambert, Massey, May, Murray, Nikkel, Stephens, Summers--Memorializing Congress to amend the "American Recovery and Reinvestment Act of 2009", and, in connection therewith, urging Congress to restrain spending on projects unrelated to infrastructure improvements, to reduce the financial burdens imposed on small businesses by the current version of the bill, and to limit allocations to projects and investments that will effectively stimulate the national economy.
State, Veterans & Military Affairs

INTRODUCTION OF BILLS -- FIRST READING

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

SB09-172 by Senator(s) Boyd, Kester, White; also Representative(s) Kerr A. and Gardner B.--Concerning revisions to the restaurant inspection process.
Business, Labor and Technology

HB09-1004 by Representative(s) Apuan; also Senator(s) Boyd--Concerning the authority of organizations providing all-inclusive care for the elderly to employ physicians.
Health and Human Services

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- HB09-1066** by Representative(s) Vaad; also Senator(s) Gibbs--Concerning the codification of existing practices of the division of aeronautics. Transportation 1-3
- HB09-1080** by Representative(s) Marostica; also Senator(s) Williams--Concerning a grant of qualified immunity to building code officials rendering assistance during a disaster emergency. Judiciary 4-7
- HB09-1090** by Representative(s) Rice; also Senator(s) Williams--Concerning the use of titles associated with interpretation for deaf persons, and, in connection therewith, making unauthorized use of such titles a deceptive trade practice under the "Colorado Consumer Protection Act". Judiciary 8-13
- HB09-1093** by Representative(s) Levy, McGihon, Benefield, Judd, Miklosi, Ferrandino, Fischer, Gagliardi, Green, Merrifield, Pommer, Solano; also Senator(s) Veiga, Carroll M.--Concerning additional income tax reporting requirements for a corporate taxpayer. Finance 14-17
- HB09-1128** by Representative(s) Priola, Balmer, Baumgardner, Bradford, Frangas, Gardner C., Hullinghorst, Liston, Looper, Casso, McNulty, Merrifield, Middleton, Roberts, Sonnenberg, Soper, Swalm, Todd; also Senator(s) Hodge, Penry, Spence, Williams, King K.--Concerning the establishment of an academic license to allow a dentist employed by a school of dentistry to engage in the practice of dentistry in connection with programs affiliated with the school. Education 18-25
- HB09-1139** by Representative(s) Solano; also Senator(s) Tochtrop--Concerning fetal alcohol spectrum disorders. Health and Human Services 26-29

SENATE SERVICES REPORT

Correctly Engrossed: SJR09-010 and 011.
Correctly Reengrossed: SB09-060 and 108.

SIGNING OF BILLS -- RESOLUTIONS -- MEMORIALS

The President has signed: SJR09-010 and 011.

On motion of Senator Shaffer, the Senate adjourned until 10:00 a.m., Monday, February 9, 2009.

Approved:

Peter C. Groff
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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