

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

58th Legislative Day Thursday, March 5, 2009

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Prayer	By the chaplain, Rev. Paul Kottke, University Park United Methodist Church, Denver.	10
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Pledge	By Senator Morse.	12
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Call to Order	By the President at 9:00 a.m.	14
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Roll Call	Present--34	17
	Excused--1, Mitchell.	18
	Present later--1, Mitchell.	19
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Quorum	The President announced a quorum present.	21
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Reading of Journal	On motion of Senator Lundberg, reading of the Journal of Wednesday, March 4, 2009, was dispensed with and the Journal was approved as corrected by the Secretary.	23
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COMMITTEE OF REFERENCE REPORTS

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Business, Labor, & Technology	After consideration on the merits, the Committee recommends that HB09-1108 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.	31
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	Amend reengrossed bill, page 2, line 14, strike "IF" and substitute "IF, TWO OR MORE TIMES WITHIN ANY TWELVE-MONTH PERIOD,".	35
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Business, Labor, & Technology	After consideration on the merits, the Committee recommends that HB09-1076 be referred to the Committee on <u>Appropriations</u> with favorable recommendation.	38
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THIRD READING OF BILLS -- FINAL PASSAGE

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	On Third Reading, the titles of the following bills were publicly read, the reading at length having been dispensed with by unanimous consent:	46
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SB09-228	by Senator(s) Morse, Bacon, Boyd, Foster, Groff, Heath, Hodge, Hudak, Isgar, Keller, Newell, Romer, Schwartz, Shaffer B., Tapia, Tochtrop, Veiga, Williams; also Representative(s) Marostica and Court, Ferrandino, Frangas, Green, Hulinghorst, McCann, McGihon, Merrifield, Miklosi, Pace, Pommer, Todd, Weissmann--Concerning an increase in the flexibility of the general assembly to determine the appropriate use of state revenues.	49
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	Laid over until Friday, March 6, retaining its place on the calendar.	54
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SB09-087	by Senator(s) Carroll M.; also Representative(s) Peniston--Concerning increased accountability requirements for special districts, and making an appropriation in connection therewith.	57
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	The question being "Shall the bill pass?", the roll call was taken with the following result:	61

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

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

Co-sponsors added: Cadman, Harvey, Heath, Hodge, King K., Kopp, Lundberg, Newell, Shaffer B. and Tochtrop.

SB09-075

by Senator(s) Schwartz, Gibbs, Williams, Heath; also Representative(s) Marostica, Curry, Kerr A., Levy, McFadyen, Primavera, Scanlan, Vigil--Concerning the operation of low-speed electric self-propelled vehicles on public rights-of-way, and making an appropriation in connection therewith.

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

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

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

Co-sponsors added: Boyd, Carroll M., Foster, Groff, Hudak, Kester, King K., Kopp, Morse, Newell, Penry, Shaffer B., Tapia and White.

SB09-225

by Senator(s) Boyd; also Representative(s) McGihon--Concerning the definition of contraceptive.

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

YES	24	NO	11	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	N	Isgar	Y	Penry	N	Tapia	Y
Cadman	N	Keller	Y	Renfroe	N	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	Veiga	Y
Foster	Y	King K.	N	Sandoval	Y	White	Y
Gibbs	Y	Kopp	N	Scheffel	N	Williams	Y
Harvey	N	Lundberg	N	Schultheis	N	President	Y
Heath	Y	Mitchell	N	Schwartz	Y		

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

Co-sponsors added: Bacon, Carroll M., Foster, Heath, Hodge, Hudak, Isgar, Newell, Romer, Schwartz, Shaffer B., Veiga and Williams.

On motion of Senator Shaffer, and with a majority of those elected to the Senate having voted in the affirmative, the Senate proceeded out of order for Consideration of Governor's

Appointments.

CONSIDERATION OF GOVERNOR'S APPOINTMENTS

On motion of Senator Sandoval, the following Governor's appointment was confirmed by a roll call vote:

**MEMBER OF THE
PUBLIC EMPLOYEES' RETIREMENT BENEFIT PLANS**

for a term expiring July 10, 2012:

Howard M. Crane of Aurora, Colorado, to serve as a representative with experience and competence in investment, management, finance, banking, economics, accounting, pension administration, or actuarial analysis, and as an Unaffiliated, reappointed.

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

On motion of Senator Boyd, the following Governor's appointments were confirmed by a roll call vote:

**MEMBERS OF THE
SOLID AND HAZARDOUS WASTE COMMISSION**

for terms expiring August 1, 2011:

Roger L. Freeman of Denver, Colorado, to serve as a representative of the academic community and as a Democrat, appointed;

Lynn M. Kornfeld of Denver, Colorado, to serve as a representative of the regulated community and as a Democrat, reappointed;

Aleksandr "Alek" M. Orloff of Denver, Colorado, to serve as a public member and as an unaffiliated, appointed.

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

On motion of Senator Bacon, the following Governor's appointment was confirmed by a roll call vote:

**MEMBER OF THE
COLORADO COMMISSION ON HIGHER EDUCATION**

effective July 2, 2008 for a term expiring July 1, 2011:

Barbara J. "BJ" Scott of Colorado Springs, Colorado, a resident of the 5th Congressional District and a Republican, appointed.

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

On motion of Senator Bacon, the following Governor's appointments were confirmed by a roll call vote:

MEMBERS OF THE
CHARTER SCHOOL INSTITUTE BOARD

for a term expiring July 1, 2009:

Dean L. Titterington of Englewood, Colorado, a Republican who has experience as a charter school board member or founder of a charter school, to fill the vacancy occasioned by the resignation of Christine S. Howard of Louisville, Colorado, appointed;

for terms expiring July 1, 2011:

Wayne D. Eckerling of Denver, Colorado, a Democrat who has experience as a public school teacher and as a public school administrator working with charter schools, appointed;

Patrick A. Grippe of Highlands Ranch, Colorado, an Unaffiliated who has experience as a public school administrator working with charter schools, reappointed.

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

On motion of Senator Bacon, the following Governor's appointment was confirmed by a roll call vote:

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, 2011:

Joanne E. Scanlan of Colorado Springs, Colorado, to serve as a kindergarten, first, second or third grade elementary school teacher and as a Republican, appointed.

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

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

CONSIDERATION OF CONFERENCE COMMITTEE REPORTS

SB09-217 by Senator(s) White, Keller, Tapia; also Representative(s) Ferrandino, Pommer, Marostica-- Concerning the reduction of moneys transferred to certain funds from the portion of limited gaming fund moneys that would otherwise be transferred to the general fund after the transfer to the local government limited gaming impact fund.

Senator **White** moved for the adoption of the First Report of the First Conference Committee on **SB09-217**, as printed in Senate Journal, March 3, page 592.

On a substitute motion, Senator Schwartz moved to reject the First Report of the First Conference Committee on **SB09-217**, that the Conference Committee of **SB09-217** be dissolved, that the Senate Conferees be discharged and that a Second Conference Committee be formed. The motion was **adopted** on the following roll call vote:

YES	28	NO	7	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	Y	Isgar	Y	Penry	Y	Tapia	N
Cadman	Y	Keller	N	Renfroe	N	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	N	Lundberg	N	Schultheis	N	President	Y
Heath	Y	Mitchell	N	Schwartz	Y		

The President appointed Senators Keller, Chair, White, and Tapia, as Senate Conferees on the Second Conference Committee on **SB09-217**.

SB09-185 by Senator(s) Keller, Tapia, White; also Representative(s) Pommer, Ferrandino, Marostica-- Concerning a supplemental appropriation to the department of education.

Senator Keller moved for the adoption of the First Report of the First Conference Committee on **SB09-185**, as printed in Senate Journal, March 3, page 598-599.

On a substitute motion, Senator Hudak moved to reject the First Report of the First Conference Committee on **SB09-185**, that the Conference Committee of **SB09-185** be dissolved, that the Senate Conferees be discharged and that a Second Conference Committee be formed. The motion **failed** on the following roll call vote:

YES	6	NO	29	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	N	Morse	N	Shaffer B.	N
Boyd	N	Hudak	Y	Newell	N	Spence	N
Brophy	N	Isgar	N	Penry	N	Tapia	N
Cadman	N	Keller	N	Renfroe	N	Tochtrop	N
Carroll M.	Y	Kester	N	Romer	N	Veiga	N
Foster	Y	King K.	N	Sandoval	Y	White	N
Gibbs	N	Kopp	N	Scheffel	N	Williams	N
Harvey	N	Lundberg	N	Schultheis	N	President	N
Heath	Y	Mitchell	N	Schwartz	N		

Senator Keller moved for the adoption of the First Report of the First Conference Committee on **SB09-185**, as printed in Senate Journal, March 3, page 598-599. The motion was **adopted** on the following roll call vote:

YES	35	NO	0	EXCUSED	0	ABSENT	0
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 question being "Shall the bill, as amended, pass?", the roll call was taken with the following result:

YES	35	NO	0	EXCUSED	0	ABSENT	0
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		

A majority of all members elected to the Senate having voted in the affirmative, the bill, as amended, was declared **repassed**.

COMMITTEE OF REFERENCE REPORTS

State,
Veterans, &
Military
Affairs

After consideration on the merits, the Committee recommends that **HB09-1058** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend reengrossed bill, page 2, line 20, after the period, add "THIS SUBPARAGRAPH (II) SHALL NOT BE CONSTRUED TO AUTHORIZE THE EXHUMATION OF DEAD HUMAN BODIES."

State,
Veterans, &
Military
Affairs

After consideration on the merits, the Committee recommends that **HB09-1168** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

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State, Veterans, & Military Affairs 1
 After consideration on the merits, the Committee recommends that **HB09-1083** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar. 2
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State, Veterans, & Military Affairs 6
 After consideration on the merits, the Committee recommends that **HB09-1054** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar. 7
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Health & Human Services 11
 After consideration on the merits, the Committee recommends that **HB09-1103** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation. 12
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Amend reengrossed bill, page 3, after line 1, insert the following: 16
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"(d) IF IT IS DETERMINED THAT A RECIPIENT WAS NOT ELIGIBLE FOR MEDICAL BENEFITS AFTER THE RECIPIENT HAD BEEN DETERMINED TO BE ELIGIBLE BASED UPON PRESUMPTIVE ELIGIBILITY, THE STATE DEPARTMENT SHALL NOT PURSUE RECOVERY FROM A COUNTY DEPARTMENT FOR THE COST OF MEDICAL SERVICES PROVIDED TO THE RECIPIENT, AND THE COUNTY DEPARTMENT SHALL NOT BE RESPONSIBLE FOR ANY FEDERAL ERROR RATE SANCTIONS RESULTING FROM SUCH DETERMINATION."; 18
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strike lines 2 through 11 and substitute the following: 26
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"**SECTION 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety." 28
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Health & Human Services 33
 After consideration on the merits, the Committee recommends that **HB09-1056** be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation. 34
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Amend reengrossed bill, page 5, line 12, after "(e)", insert "(I)"; 37
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strike line 21 and substitute the following: 39
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"IN MAKING A DETERMINATION ON A MOTION TO REQUEST AN INTERPRETIVE RULE, THE ADMINISTRATIVE LAW JUDGE SHALL CONSIDER THE FOLLOWING FACTORS: 41
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(A) WHETHER THE PLAIN LANGUAGE OF THE RULE IN QUESTION IS CLEAR AND UNAMBIGUOUS; 45
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(B) WHETHER THE PROPOSED CONSTRUCTION OF THE RULE IN QUESTION WOULD LEAD TO AN ABSURD RESULT; AND 48
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(C) WHETHER THE SOLID AND HAZARDOUS WASTE COMMISSION HAS PREVIOUSLY ISSUED AN INTERPRETIVE RULE CONCERNING THE SUBJECT OF THE REQUEST FOR AN INTERPRETIVE RULE. 51
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(II) NOTWITHSTANDING SECTION 24-4-103 (1), C.R.S., IF THE ADMINISTRATIVE". 55
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Judiciary 59
 The Committee on Judiciary has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed: 60
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**MEMBER OF THE
JUVENILE PAROLE BOARD** 62
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for a term expiring at the pleasure of the Governor: 64
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Mary Beth Buescher of Grand Junction, Colorado, to fill the vacancy occasioned by the resignation of Paul W. Nelson of Grand Junction, Colorado, and to serve as a public member who is not employed by state government, appointed. 67
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Judiciary After consideration on the merits, the Committee recommends that **HB09-1181** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend reengrossed bill, page 2, line 14, strike "A";

line 15, strike "~~parameters~~ TIME LIMIT" and substitute "parameters".

Judiciary After consideration on the merits, the Committee recommends that **SB09-231** be referred to the Committee of the Whole with favorable recommendation.

Judiciary After consideration on the merits, the Committee recommends that **HB09-1183** be referred to the Committee on Appropriations with favorable recommendation.

SENATE SERVICES REPORT

- Correctly Printed:** SB09-242.
- Correctly Engrossed:** SB09-075, 087 and 225; SJR09-018.
- Correctly Reengrossed:** SB09-020, 022, 024, 051, 052, 094, 124, 125, 131, 147, 162, 222, 224 and 237.
- Correctly Rerevised:** HB09-1007, 1046, 1050, 1078, 1148, 1159, 1161, 1257 and 1265.
- Correctly Enrolled:** SB09-001, 086, 209, 214 and 218.

SIGNING OF BILLS -- RESOLUTIONS -- MEMORIALS

The President has signed: SJR09-018.

DELIVERY TO THE GOVERNOR

To the Governor for signature on Wednesday, March 4, 2009, at 3:07 p.m.: SB09-040 and 204.

On motion of Senator Shaffer, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of Thursday, March 5, 2009, was laid over until Friday, March 6, 2009, retaining its place on the calendar.

- General Orders -- Second Reading of Bills -- Consent Calendar: HB09-1153, HB09-1112, HB09-1169, HB09-1241, HB09-1178, SB09-177, HB09-1012, HB09-1122, HB09-1005, HB09-1092, HB09-1090, and HB09-1008.
- General Orders -- Second Reading of Bills: HB09-1082, HB09-1093, HB09-1101, HB09-1052, HB09-1080, HB09-1072, HB09-1215, HB09-1088, HB09-1219, HB09-1162, HB09-1079, HB09-1174, SB09-099, SB09-064, and SB09-168.
- Consideration of Resolutions: SJR09-017.
- Conference Committees to Report: SB09-215, SB09-208, and SB09-210.

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On motion of Senator Shaffer, the Senate adjourned until 9:00 a.m., Friday, March 6, 2009.

Approved:

Peter C. Groff
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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