

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

49th Legislative Day

Tuesday, March 2, 2010

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Prayer	By the chaplain, Rabbi Eliot J. Baskin, Jewish Family Service of Colorado, Denver.	11
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Call to Order	By the President at 9:00 a.m.	13
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Pledge	By Senator Brophy.	15
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Roll Call	Present--32.	17
	Absent--3, Harvey, Johnston, Williams.	18
	Present later--3, Harvey, Johnston, Williams.	19
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Quorum	The President announced a quorum present.	21
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Reading of Journal	On motion of Senator Foster, reading of the Journal of Monday, March 1, 2010, was dispensed with and the Journal was approved as corrected by the Secretary.	23
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Committee of the Whole	On motion of Senator Gibbs, the Senate resolved itself into the Committee of the Whole for consideration of Special Orders--Second Reading of Bills and Senator Gibbs was called to the chair to act as Chairman.	30
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SPECIAL 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:

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HB10-1041	by Representative(s) Acree, Looper, Primavera, Todd; also Senator(s) Mitchell, Keller-- Concerning applications for home- and community-based services waivers for children as part of the medicaid eligibility modernization.	41
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	Ordered revised and placed on the calendar for third reading and final passage.	45
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SB10-154	by Senator(s) Sandoval; also Representative(s) Middleton--Concerning adding categories to the definition of a "high-risk student" for purposes of determining whether a public school qualifies for designation as an alternative education campus.	48
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	<u>Amendment No. 1, Education Committee Amendment.</u>	52
	(Printed in Senate Journal, February 26, pages 378-379 and placed in members' bill files.)	53
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	<u>Amendment No. 2(L.002), by Senator Hudak.</u>	55
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	Amend printed bill, after line 1 insert:	57
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	"SECTION 1. 22-7-604.5 (1) (a) (VI), Colorado Revised Statutes, is amended to read:	59
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	22-7-604.5. Alternative education campuses - criteria - application - rule-making. (1) A public school may apply to the state board for designation as an alternative education campus. The state board shall adopt rules specifying the criteria and application process for a public school to be designated an alternative education campus. The rules shall include but need not be limited to:	62
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(a) Criteria that a public school must meet to be designated an alternative education campus, including but not limited to the following:

(VI) (A) Serving students who have severe limitations that preclude appropriate administration of the assessments administered pursuant to section 22-7-409;

(B) Serving a student population IN WHICH more than ninety-five percent of ~~whom have~~ THE STUDENTS HAVE EITHER an individual education program pursuant to section 22-20-108 OR MEET THE DEFINITION OF A HIGH-RISK STUDENT CONTAINED IN SUBSECTION (1.5) OF THIS SECTION; OR

(C) Serving students who attend on a part-time basis and who come from other public schools where the part-time students are counted in the enrollment of the other public school; except that the results of the assessments administered pursuant to section 22-7-409 of all part-time students and high-risk students as defined in subsection (1.5) of this section shall be used in determining the levels of attainment on the performance indicators for the public school for which the student is counted for enrollment purposes; ~~or~~

~~(D) Serving a student population in which more than ninety-five percent of the students meet the definition of a high-risk student contained in subsection (1.5) of this section;".~~

Renumber succeeding sections accordingly.

As amended, ordered engrossed and placed on the calendar for third reading and final passage.

SB10-079 by Senator(s) Penry; also Representative(s) Bradford and King S.--Concerning authority to offer additional programs at Mesa state college.

Amendment No. 1(L.001), by Senator King.

Amend printed bill, page 2, line 10, strike "AT THE".

Page 2, strike line 11 and substitute "AND A LIMITED NUMBER OF graduate programs. Mesa state college".

As amended, ordered engrossed and placed on the calendar for third reading and final passage.

SB10-028 by Senator(s) Heath; --Concerning the establishment of the Colorado "Work Share Program" to allow payment of unemployment compensation benefits to eligible employees who have received a reduction in work hours.

Amendment No. 1, Special Orders Amendment.

(Printed in Senate Journal, March 1, page 387 and placed in members' bill files.)

As amended, laid over until Wednesday, March 3, retaining its place on the calendar.

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Gibbs, 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
Bacon	Y	Hodge	Y	Morse	Y	Spence	Y
Boyd	Y	Hudak	Y	Newell	Y	Steadman	Y
Brophy	Y	Johnston	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	White	Y
Foster	Y	King K.	Y	Sandoval	Y	Whitehead	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: SB10-154 as amended, SB10-079 as amended, HB10-1041.
Laid over until Wednesday, March 3: SB10-028 as amended.

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

SB10-094 by Senator(s) Steadman, Bacon, Newell, Schwartz, Boyd, Carroll M., Foster, Heath, Hudak, Johnston, Romer, Spence, Tapia, Tochtrop, Whitehead, Williams; also Representative(s) Rice, Benefield, Ferrandino, Fischer, Frangas, Gagliardi, Hullinghorst, Kerr A., Labuda, Massey, McFadyen, Merrifield, Middleton, Miklosi, Peniston, Ryden, Scanlan, Schafer S., Solano, Todd, Vigil--Concerning the definition of capital construction appropriation for purposes of the art in public places program administered by the state council on the arts.

Laid over until Wednesday, March 3, retaining its place on the calendar.

SB10-110 by Senator(s) Williams; also Representative(s) Ryden, Court, Hullinghorst, Judd, Levy, Middleton, Rice--Concerning the enforcement of offenses involving failure of certain persons in a vehicle to use an appropriate restraining device.

Laid over until Wednesday, March 3, retaining its place on the calendar.

SB10-152 by Senator(s) Newell, Bacon, Boyd, Foster, Hodge, Keller, Sandoval, Schwartz, Steadman, Tochtrop; also Representative(s) Gagliardi, Apuan, May, Merrifield, Peniston, Primavera, Todd--Concerning information relating to a referral of suspected child abuse by certain mandatory reporters.

Amendment No. 1(L.001), by Senator Newell.

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

"SECTION 1. 19-1-307 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-1-307. Dependency and neglect records and information - access - fee - rules - records and reports fund - misuse of information - penalty. (2) **Records and reports - access to certain persons - agencies.** Except as otherwise provided in section 19-1-303, only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(e.5) (I) A MANDATORY REPORTER SPECIFIED IN THIS SUBPARAGRAPH (I) WHO IS AND CONTINUES TO BE OFFICIALLY AND

PROFESSIONALLY INVOLVED IN THE ONGOING CARE OF THE CHILD WHO WAS THE SUBJECT OF THE REPORT, BUT ONLY WITH REGARD TO INFORMATION THAT THE MANDATORY REPORTER HAS A NEED TO KNOW IN ORDER TO FULFILL HIS OR HER PROFESSIONAL AND OFFICIAL ROLE IN MAINTAINING THE CHILD'S SAFETY. THIS SUBPARAGRAPH (I) SHALL APPLY TO:

- (A) HOSPITAL PERSONNEL ENGAGED IN THE ADMISSION, CARE, OR TREATMENT OF CHILDREN;
- (B) MENTAL HEALTH PROFESSIONALS;
- (C) PHYSICIANS OR SURGEONS, INCLUDING PHYSICIANS IN TRAINING;
- (D) REGISTERED NURSES OR LICENSED PRACTICAL NURSES;
- (E) DENTISTS;
- (F) PSYCHOLOGISTS;
- (G) UNLICENSED PSYCHOTHERAPISTS;
- (H) LICENSED PROFESSIONAL COUNSELORS;
- (I) LICENSED MARRIAGE AND FAMILY THERAPISTS;
- (J) PUBLIC OR PRIVATE SCHOOL OFFICIALS OR EMPLOYEES;
- (K) SOCIAL WORKERS OR WORKERS WITH ANY FACILITY OR AGENCY THAT IS LICENSED OR CERTIFIED PURSUANT TO PART 1 OF ARTICLE 6 OF TITLE 26, C.R.S.;
- (L) VICTIM'S ADVOCATES, AS DEFINED IN SECTION 13-90-107 (1) (k) (II), C.R.S.; AND
- (M) CLERGY MEMBERS.

(II) WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF A REPORT OF SUSPECTED CHILD ABUSE OR NEGLECT FROM A MANDATORY REPORTER SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (e.5), A COUNTY DEPARTMENT SHALL PROVIDE THE FOLLOWING INFORMATION TO THE MANDATORY REPORTER FOR THE PURPOSE OF ASSISTING THE MANDATORY REPORTER IN HIS OR HER PROFESSIONAL AND OFFICIAL ROLE IN MAINTAINING THE CHILD'S SAFETY:

- (A) THE NAME OF THE CHILD AND THE DATE OF THE REPORT;
- (B) WHETHER THE REFERRAL WAS ACCEPTED FOR ASSESSMENT;
- (C) WHETHER THE REFERRAL WAS CLOSED WITHOUT SERVICES;
- (D) WHETHER THE ASSESSMENT RESULTED IN SERVICES RELATED TO THE SAFETY OF THE CHILD;
- (E) THE NAME OF AND CONTACT INFORMATION FOR THE COUNTY CASEWORKER RESPONSIBLE FOR INVESTIGATING THE REFERRAL; AND
- (F) NOTICE THAT THE REPORTING MANDATORY REPORTER MAY REQUEST ADDITIONAL INFORMATION WITHIN NINETY CALENDAR DAYS AFTER THE COUNTY DEPARTMENT RECEIVED THE REPORT AND INFORMATION CONCERNING THE PROCEDURE FOR OBTAINING ADDITIONAL INFORMATION.

(III) INFORMATION DISCLOSED TO A MANDATORY REPORTER PURSUANT TO THIS PARAGRAPH (e.5) IS CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY THE MANDATORY REPORTER TO ANY OTHER PERSON

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EXCEPT AS PROVIDED BY LAW.

(IV) UNLESS REQUESTED BY A COUNTY DEPARTMENT, A MANDATORY REPORTER SHALL NOT HAVE THE AUTHORITY TO PARTICIPATE IN ANY DECISION MADE BY THE COUNTY DEPARTMENT CONCERNING A REPORT OF ABUSE OR NEGLECT.

(V) IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., THE STATE DEPARTMENT SHALL PROMULGATE ANY RULES NECESSARY FOR THE IMPLEMENTATION OF THIS PARAGRAPH (e.5).

SECTION 2. Act subject to petition - specified effective date - applicability. (1) This act shall take effect September 1, 2010; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to reports of suspected abuse or neglect made on or after the applicable effective date of this act."

As amended, ordered engrossed and placed on the calendar for third reading and final passage.

SB10-119 by Senator(s) Shaffer B.; also Representative(s) May--Concerning payments made to members of the general assembly in connection with the performance of their legislative duties.

Ordered engrossed and placed on the calendar for third reading and final passage.

SB10-026 by Senator(s) Romer; --Concerning providing to the public information to facilitate successful participation in postsecondary education, and, in connection therewith, transferring the college in Colorado division to the department of education.

Amendment No. 1, Education Committee Amendment.

(Printed in Senate Journal, February 26, pages 375-378 and placed in members' bill files.)

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

Amend the Education Committee Report, dated February 25, 2010, page 2, line 4, strike "23-1.7-103" and substitute "23-1.7-102".

Page 3, line 23, after "NONPROFIT", insert "AND FOR-PROFIT".

Page 3, line 29, strike "EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN," and substitute "STUDENTS' INDIVIDUAL CAREER AND ACADEMIC PLANS,".

Page 4, line 18, strike "OTHER" and substitute "RELATED".

Page 6, strike lines 1 through 3 and substitute "THE INSTITUTE CHARTER SCHOOL MAY USE ANY SOFTWARE OR INTERNET-BASED COLLEGE PREPARATION AND PLANNING SERVICE THAT THE INSTITUTE CHARTER SCHOOL DEEMS USEFUL AND APPROPRIATE IN DEVELOPING AND MAINTAINING THE PLANS. THE INSTITUTE AND THE INSTITUTE CHARTER SCHOOL SHALL COLLABORATE WITH THE SOFTWARE VENDOR OR SERVICE PROVIDER TO ENSURE OPTIMAL INTERACTIVITY AMONG THE VARIOUS DATABASES AND STUDENT RECORD SYSTEMS USED AND TO ENSURE THAT EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN IS POSTED TO

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THE STUDENT'S ACCOUNT ON COLLEGEINCOLORADO.ORG. EACH "

Page 6, strike lines 31 through 34 and substitute "in any grade prior to ninth grade. THE PUBLIC SCHOOL MAY USE ANY SOFTWARE OR INTERNET-BASED COLLEGE PREPARATION AND PLANNING SERVICE THAT THE PUBLIC SCHOOL DEEMS USEFUL AND APPROPRIATE IN DEVELOPING AND MAINTAINING THE PLANS. THE SCHOOL DISTRICT AND PUBLIC SCHOOL SHALL COLLABORATE WITH THE SOFTWARE VENDOR OR SERVICE PROVIDER TO ENSURE OPTIMAL INTERACTIVITY AMONG THE VARIOUS DATABASES AND STUDENT RECORD SYSTEMS USED AND TO ENSURE THAT EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN IS POSTED TO THE STUDENT'S ACCOUNT ON COLLEGEINCOLORADO.ORG. EACH SCHOOL DISTRICT SHALL MAKE AVAILABLE TO".

As amended, ordered engrossed and placed on the calendar for third reading and final passage.

(For further action, see amendments to the report of the Committee of the Whole.)

AMENDMENTS TO THE REPORT OF THE COMMITTEE OF THE WHOLE

SB10-026 by Senator(s) Romer; --Concerning providing to the public information to facilitate successful participation in postsecondary education, and, in connection therewith, transferring the college in Colorado division to the department of education.

Senator Penry moved to amend the Report of the Committee of the Whole to show that the following Romer floor amendment, (L.007) to SB 10-026, did not pass and that the following new amendment to SB 10-026 did pass.

L.007

Amend the Education Committee Report, dated February 25, 2010, page 2, line 4, strike "23-1.7-103" and substitute "23-1.7-102".

Page 3, line 23, after "NONPROFIT", insert "AND FOR-PROFIT".

Page 3, line 29, strike "EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN," and substitute "STUDENTS' INDIVIDUAL CAREER AND ACADEMIC PLANS,".

Page 4, line 18, strike "OTHER" and substitute "RELATED".

Page 6, strike lines 1 through 3 and substitute "THE INSTITUTE CHARTER SCHOOL MAY USE ANY SOFTWARE OR INTERNET-BASED COLLEGE PREPARATION AND PLANNING SERVICE THAT THE INSTITUTE CHARTER SCHOOL DEEMS USEFUL AND APPROPRIATE IN DEVELOPING AND MAINTAINING THE PLANS. THE INSTITUTE AND THE INSTITUTE CHARTER SCHOOL SHALL COLLABORATE WITH THE SOFTWARE VENDOR OR SERVICE PROVIDER TO ENSURE OPTIMAL INTERACTIVITY AMONG THE VARIOUS DATABASES AND STUDENT RECORD SYSTEMS USED AND TO ENSURE THAT EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN IS POSTED TO THE STUDENT'S ACCOUNT ON COLLEGEINCOLORADO.ORG. EACH "

Page 6, strike lines 31 through 34 and substitute "in any grade prior to ninth grade. THE PUBLIC SCHOOL MAY USE ANY SOFTWARE OR INTERNET-BASED COLLEGE PREPARATION AND PLANNING SERVICE THAT THE PUBLIC SCHOOL DEEMS USEFUL AND APPROPRIATE IN DEVELOPING AND MAINTAINING THE PLANS. THE SCHOOL DISTRICT AND PUBLIC SCHOOL SHALL COLLABORATE WITH THE SOFTWARE VENDOR OR SERVICE PROVIDER TO ENSURE OPTIMAL INTERACTIVITY AMONG THE VARIOUS DATABASES AND STUDENT RECORD SYSTEMS USED AND TO ENSURE THAT EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN IS POSTED TO THE STUDENT'S ACCOUNT ON COLLEGEINCOLORADO.ORG. EACH SCHOOL DISTRICT SHALL MAKE AVAILABLE TO".

New Amendment

Amend the Education Committee Report, dated February 25, 2010, page 2, line 4, strike "23-1.7-103" and substitute "23-1.7-102".

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Page 3, line 23, after "NONPROFIT", insert "AND FOR-PROFIT".

Page 3, line 29, strike "EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN," and substitute "STUDENTS' INDIVIDUAL CAREER AND ACADEMIC PLANS,".

Page 4, line 18, strike "OTHER" and substitute "RELATED".

Page 5, strike lines 18 through 36 and substitute:

~~"(f) Ensure that each student who enrolls in the sixth grade in an institute charter school, on the day of enrollment, is registered with the state-provided, free on-line A college planning and preparation resource. commonly referred to as "CollegeInColorado.org". The institute, the department, and the department of higher education shall collaborate to monitor the implementation of this paragraph (f) and to ensure optimal interactivity between the various data bases and student record systems employed by institute charter schools and college in Colorado~~ BEGINNING NO LATER THAN THE 2010-11 SCHOOL YEAR, INSTITUTE CHARTER SCHOOLS REQUIRE STUDENT INDIVIDUAL CAREER AND ACADEMIC PLANS THAT MEET OR EXCEED THE STANDARDS ADOPTED BY THE STATE BOARD PURSUANT TO SECTION 22-2-136. Each institute charter school shall assist each student and his or her parent or legal guardian to develop and maintain the student's individual career and academic plan no later than the beginning of ninth grade but may assist the student and his or her parent or legal guardian to develop and maintain the student's individual career and academic plan in any grade prior to ninth grade. THE INSTITUTE CHARTER SCHOOL MAY USE ANY SOFTWARE OR INTERNET-BASED COLLEGE PREPARATION AND PLANNING SERVICE THAT THE INSTITUTE CHARTER SCHOOL DEEMS USEFUL AND APPROPRIATE IN DEVELOPING AND MAINTAINING THE PLANS. THE INSTITUTE AND THE INSTITUTE CHARTER SCHOOL SHALL COLLABORATE WITH THE SOFTWARE VENDOR OR SERVICE PROVIDER TO ENSURE OPTIMAL INTERACTIVITY AMONG THE VARIOUS DATABASES AND STUDENT RECORD SYSTEMS USED AND TO ENSURE THAT EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN IS POSTED TO THE STUDENT'S ACCOUNT ON THE STATE-PROVIDED COLLEGE PLANNING AND PREPARATION RESOURCE WEB SITE, COMMONLY REFERRED TO AS "COLLEGEINCOLORADO.ORG". IN ADDITION, EACH INSTITUTE CHARTER SCHOOL SHALL MAKE DATA CONCERNING EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN AVAILABLE TO THE DEPARTMENT."

Page 6, strike lines 1 through 6.

Page 6, strike lines 12 through 36 and substitute:

~~"(nn) To ensure that each student who enrolls in the sixth grade in a public school of the school district, including but not limited to a district charter school, on the day of enrollment is registered with the state-provided, free on-line A college planning and preparation resource. commonly referred to as "CollegeInColorado.org". The school district, the department of education, and the department of higher education shall collaborate to monitor the implementation of this paragraph (nn) and to ensure optimal interactivity between the various data bases and student record systems employed by school districts and college in Colorado.~~ BEGINNING NO LATER THAN THE 2010-11 SCHOOL YEAR, THE PUBLIC SCHOOLS OF THE SCHOOL DISTRICT, INCLUDING THE CHARTER SCHOOLS, REQUIRE STUDENT INDIVIDUAL CAREER AND ACADEMIC PLANS THAT MEET OR EXCEED THE STANDARDS ADOPTED BY THE STATE BOARD PURSUANT TO SECTION 22-2-136. Each public school shall assist each student and his or her parent or legal guardian to develop and maintain the student's individual career and academic plan no later than the beginning of ninth grade but may assist the student and his or her parent or legal guardian to develop and maintain the student's individual career and academic plan in any grade prior to ninth grade. THE PUBLIC SCHOOL MAY USE ANY SOFTWARE OR INTERNET-BASED COLLEGE PREPARATION AND PLANNING SERVICE THAT THE PUBLIC SCHOOL DEEMS USEFUL AND APPROPRIATE IN DEVELOPING AND MAINTAINING THE PLANS. THE SCHOOL DISTRICT AND PUBLIC SCHOOL SHALL COLLABORATE WITH THE SOFTWARE VENDOR OR SERVICE PROVIDER TO ENSURE OPTIMAL INTERACTIVITY AMONG THE VARIOUS DATABASES AND STUDENT RECORD SYSTEMS USED AND TO ENSURE THAT EACH STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN IS POSTED TO THE STUDENT'S ACCOUNT ON THE STATE-PROVIDED COLLEGE PLANNING AND PREPARATION

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RESOURCE WEB SITE, COMMONLY REFERRED TO AS "COLLEGEINCOLORADO.ORG".
IN ADDITION, EACH SCHOOL DISTRICT SHALL MAKE DATA CONCERNING EACH
STUDENT'S INDIVIDUAL CAREER AND ACADEMIC PLAN AVAILABLE TO THE
DEPARTMENT OF EDUCATION."

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 **passed** on the following roll call
vote:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Spence	Y
Boyd	Y	Hudak	Y	Newell	Y	Steadman	Y
Brophy	Y	Johnston	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	White	Y
Foster	Y	King K.	Y	Sandoval	Y	Whitehead	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 Gibbs, the report of the Committee of the Whole was **adopted** on
the following roll call vote:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Spence	Y
Boyd	Y	Hudak	Y	Newell	Y	Steadman	Y
Brophy	Y	Johnston	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	White	Y
Foster	Y	King K.	Y	Sandoval	Y	Whitehead	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: SB10-152 as amended, SB10-119, SB10-026 as amended.
Laid over until Wednesday, March 3: SB10-094, SB10-110.

MESSAGE FROM THE REVISOR OF STATUTES

March 1, 2010

We herewith transmit:

Without comment, as amended, HB10-1236.

COMMITTEE OF REFERENCE REPORTS

Judiciary

After consideration on the merits, the Committee recommends that **HB10-1112** be
amended as follows, and as so amended, be referred to the Committee of the Whole with
favorable recommendation.

Amend reengrossed bill, page 7, line 26, strike "CALENDAR" and
substitute "FISCAL".

Page 8, line 2, strike "CALENDAR" and substitute "FISCAL".

Page 8, line 7, strike "CALENDAR" and substitute "FISCAL".

Judiciary After consideration on the merits, the Committee recommends that **HB10-1058** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend reengrossed bill, page 2, line 23, strike "seized;" and substitute "~~seized~~ PURCHASED OR POSSESSED;".

Judiciary After consideration on the merits, the Committee recommends that **HB10-1023** be referred to the Committee of the Whole with favorable recommendation.

Judiciary After consideration on the merits, the Committee recommends that **HB10-1090** be referred to the Committee of the Whole with favorable recommendation.

Judiciary After consideration on the merits, the Committee recommends that **HB10-1097** be referred to the Committee of the Whole with favorable recommendation.

Business, Labor, & Technology After consideration on the merits, the Committee recommends that **HB10-1003** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Business, Labor, & Technology After consideration on the merits, the Committee recommends that **HB10-1175** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Business, Labor, & Technology After consideration on the merits, the Committee recommends that **HB10-1049** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend reengrossed bill, page 5, strike lines 12 through 17 and substitute:

"(v) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE OR THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, FOR ANY REASON OTHER THAN THAT THE MOTOR VEHICLE DEALER COMMITS FRAUD, MAKES A MISREPRESENTATION, OR COMMITS ANY OTHER CRIME WITHIN THE SCOPE OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE DEALERSHIP, TO FAIL TO REIMBURSE A MOTOR VEHICLE DEALER FOR THE COST DEPRECIATED BY FIVE PERCENT PER YEAR OF ANY UPGRADES OR ALTERATIONS TO THE MOTOR VEHICLE DEALER'S FACILITIES REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS."

Page 5, after line 17 insert:

"**SECTION 4.** 12-6-120.3 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules.
(3) As used in this section:

(c) "RIGHT OF FIRST REFUSAL AREA" MEANS A FIVE-MILE RADIUS EXTENDING FROM THE LOCATION OF WHERE A MOTOR VEHICLE DEALER HAD A FRANCHISE TERMINATED, CANCELLED, OR NOT RENEWED IF THE FRANCHISE WAS IN A COUNTY WITH A POPULATION OF MORE THAN ONE HUNDRED FIFTY THOUSAND OR A TEN-MILE RADIUS IF THE FRANCHISE WAS IN A COUNTY WITH A POPULATION OF ONE HUNDRED FIFTY THOUSAND OR LESS."

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Renumber succeeding sections accordingly.

Page 5, line 24, strike "RELEVANT" and substitute "RIGHT OF FIRST REFUSAL".

Page 5, line 25, strike "MARKET".

Page 6, line 5, strike "RELEVANT MARKET" and substitute "RIGHT OF FIRST REFUSAL".

Page 6, line 14, strike "MARKET AREA" and substitute "FIRST REFUSAL AREA PRIOR TO MAKING SUCH OFFER TO ANY OTHER PERSON.".

Page 6, strike lines 20 through 24 and substitute "PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO SEVEN YEARS AFTER THE FRANCHISE IS TERMINATED, CANCELLED, OR NOT RENEWED.".

Page 6, after line 24 insert:

"(d) WHEN A MANUFACTURER OR DISTRIBUTOR OFFERS IN WRITING TO A MOTOR VEHICLE DEALER A FRANCHISE AGREEMENT PURSUANT TO THIS SUBSECTION (5), THE FORMER MOTOR VEHICLE DEALER SHALL EITHER ACCEPT OR REJECT THE OFFER WITHIN SIXTY DAYS AFTER THE MOTOR VEHICLE DEALER RECEIVES THE OFFER. IF THE FORMER MOTOR VEHICLE DEALER FAILS TO ACCEPT THE OFFER WITHIN SIXTY DAYS, THE OFFER IS DEEMED REJECTED BY THE MOTOR VEHICLE DEALER."

Reletter succeeding paragraph accordingly.

Page 6, after line 26 insert:

"(f) THE RIGHT OF FIRST REFUSAL SURVIVES A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR PREDECESSOR THEREOF, AWARDED A FRANCHISE WITHIN THE SAME MARKET FOR THE SAME LINE-MAKE TO A PERSON OR ENTITY OTHER THAN THE FORMER MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS TERMINATED, CANCELLED, OR NOT RENEWED."

Page 8, line 5, strike "A NEW SECTION" and substitute "THE FOLLOWING NEW SECTIONS".

Page 8, line 18, after the period add "THIS SECTION SHALL NOT PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF SUCH PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO THE MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO SUCH PAYMENTS IF THE MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE DEALER WRITTEN NOTICE THEREOF."

Page 8, after line 18 insert:

12-6-129. Reinstatement following insolvency. (1) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED, CANCELLED, OR NOT RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE FOR A LINE-MAKE DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR BETWEEN MAY 1, 2009, AND THE EFFECTIVE DATE OF THIS SECTION, THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL OFFER THE MOTOR VEHICLE DEALER A FRANCHISE WITHIN THE SAME RELEVANT MARKET AREA WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY. THE FRANCHISE AGREEMENT SHALL GIVE THE MOTOR VEHICLE DEALER THE RIGHT TO SELL ALL VEHICLES WITHIN THE LINE-MAKE.

(2) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE THAT VIOLATES THIS SECTION COMMITS A MISDEMEANOR, PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS.

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EACH DAY FOLLOWING THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION THAT THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE FAILS TO ENTER INTO A FRANCHISE AGREEMENT IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION OF THIS SECTION.

SECTION 9. 12-6-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-6-502. Definitions. As used in this part 5, unless the context otherwise requires:

(9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE AND REPAIR POWERSPORTS VEHICLES OF A DESIGNATED LINE-MAKE GRANTED THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

SECTION 10. 12-6-523 (1) (r) (II), Colorado Revised Statutes, is amended, and the said 12-6-523 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

12-6-523. Unlawful acts. (1) It shall be unlawful and a violation of this part 5 for any powersports vehicle manufacturer, distributor, or manufacturer representative:

(r) To fail to pay to a powersports vehicle dealer:

(II) Within ninety days after the termination, elimination, or cessation of a line-make OR THE TERMINATION OF A FRANCHISE DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market value of the powersports vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under subparagraphs (I) to (V) of paragraph (1) of this subsection (1); and

(t) TO CHARGE BACK, DENY POWERSPORTS VEHICLE ALLOCATION, WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A POWERSPORTS VEHICLE DEALER IF A POWERSPORTS VEHICLE SOLD BY THE POWERSPORTS VEHICLE DEALER IS EXPORTED FROM COLORADO UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE PROVES THAT THE POWERSPORTS VEHICLE DEALER KNEW OR REASONABLY SHOULD HAVE KNOWN A POWERSPORTS VEHICLE WAS INTENDED TO BE EXPORTED, WHICH SHALL OPERATE AS A REBUTTABLE PRESUMPTION THAT THE POWERSPORTS VEHICLE DEALER DID NOT HAVE SUCH KNOWLEDGE; AND

(u) TO FAIL TO REIMBURSE A POWERSPORTS VEHICLE DEALER WITHIN NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE FOR THE COST OF ANY UPGRADES OR ALTERATIONS TO THE POWERSPORTS VEHICLE DEALER'S FACILITIES REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS.

SECTION 11. 12-6-524, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-6-524. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules. (5) (a) NO MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL OFFER OR AWARD A PERSON A FRANCHISE OR PERMIT THE RELOCATION OF AN EXISTING FRANCHISE TO THE RELEVANT MARKET AREA UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS COMPLIED WITH PARAGRAPH (b) OF THIS SUBSECTION (5) OR UNLESS PARAGRAPH (b) OF THIS SUBSECTION (5) DOES NOT APPLY.

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(b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED, CANCELLED, OR NOT RENEWED A POWERSPORTS VEHICLE DEALER'S FRANCHISE FOR A LINE-MAKE WITHIN THE RELEVANT MARKET AREA ON ACCOUNT OF THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR THAT WAS HELD BY THE POWERSPORTS VEHICLE DEALER IMMEDIATELY PRIOR TO THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT RENEWED WITHIN THE AMOUNT OF TIME THE RIGHT OF FIRST REFUSAL IS GRANTED UNDER PARAGRAPH (c) OF THIS SUBSECTION (5), THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR THE SUCCESSOR THEREOF, SHALL OFFER THE FORMER POWERSPORTS VEHICLE DEALER WHOSE FRANCHISE WAS TERMINATED, CANCELLED, OR NOT RENEWED A FRANCHISE WITHIN THE SAME MARKET AREA FOR THE SAME LINE-MAKE UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS ACTUALLY MADE THE PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) TO THE POWERSPORTS VEHICLE DEALER.

(c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO THE GREATER OF TEN YEARS OR THE AMOUNT OF TIME BETWEEN THE FRANCHISE BEING AWARDED AND THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT RENEWED. THE RIGHT OF FIRST REFUSAL BEGINS WHEN THE FRANCHISE IS TERMINATED, CANCELLED, OR NOT RENEWED.

(d) THE RIGHT OF FIRST REFUSAL SURVIVES A COURT VOIDING THE PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r).

SECTION 12. 12-6-526.5 (1) and (2), Colorado Revised Statutes, are amended to read:

12-6-526.5. Audit reimbursement limitations - dealer claims.

(1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a powersports vehicle dealer for ~~fifteen months~~ ONE HUNDRED EIGHTY DAYS after the date the claim was submitted.

(b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a powersports vehicle dealer more than ~~twenty-four~~ TWELVE months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than ~~fifteen months~~ ONE HUNDRED EIGHTY DAYS after the date the claim was submitted.

(2) The powersports vehicle dealer shall have ~~fifteen months~~ ONE HUNDRED EIGHTY DAYS after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer's representative.

SECTION 13. Part 5 of article 6 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-6-534. Payout exemption to execution. A POWERSPORTS VEHICLE DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER OR DISTRIBUTOR REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) IS NOT LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE MANUFACTURER OR DISTRIBUTOR."

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Renumber succeeding section accordingly.

Business,
Labor, &
Technology

After consideration on the merits, the Committee recommends that **HB10-1085** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend reengrossed bill, page 3, after line 21 insert:

"**SECTION 3.** 30-10-906 (3) (c), Colorado Revised Statutes, is amended to read:

30-10-906. Disputed boundaries - notice - establishment of legal corner monument. (3) (c) Any corner monument established pursuant to this section shall be the true and legal monument defining the boundary corner as stated in the record of the survey; except that any affected party may, PURSUANT TO ARTICLE 44 OF TITLE 38, C.R.S., appeal the result within six months after the date the corner monument is established. ~~in accordance with article 44 of title 38, C.R.S.~~"

Renumber succeeding sections accordingly.

INTRODUCTION OF BILLS -- FIRST READING

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

HB10-1188 by Representative(s) Curry, Fischer, Labuda, Massey, Scanlan; also Senator(s) Hodge, Gibbs, Heath, Tochtrop--Concerning clarification of the scope of the existing right of navigation of guides employed by river outfitters.
Judiciary

MESSAGE FROM THE GOVERNOR

Appointment Letters of designation and appointment from Governor Ritter were read and assigned to committees as follows:

February 16, 2010

To the Honorable
Colorado Senate
Colorado General Assembly
State Capitol Building
Denver, CO 80203

Ladies and Gentlemen:

Pursuant to the powers conferred upon me by the Constitution and Laws of the State of Colorado, I have the honor to designate, appoint and submit to your consideration, the following:

MEMBERS OF THE
WILDLIFE COMMISSION

effective March 1, 2010, for terms expiring March 1, 2014:

Dr. Allan J. Jones of Meeker, Colorado, to serve as a representative of agriculture or produce growers, as a member from Wildlife District 1, and as a Republican, appointed;

Honorable Timothy R. Glenn of Salida, Colorado, to serve as a member of the public at-large, as a member from Wildlife District 4, and as a Democrat, appointed;

David R. Brougham of Lakewood, Colorado, to serve as a member of the public at-large, as a member from Wildlife District 5, and as an Unaffiliated, appointed;

effective immediately, for a term expiring March 1, 2011:

Honorable Robert D. Wingfield of Vernon, Colorado, to fill the vacancy occasioned by the resignation of Honorable Timothy R. Glenn of Salida, Colorado, and to serve as a county commissioner, as a member from Wildlife District 3, and as a Democrat, appointed.

Sincerely,
(signed)
Bill Ritter, Jr.
Governor
Rec'd: 2/18/10
Karen Goldman, Secretary of the Senate

Committee on Agriculture and Natural Resources

February 23, 2010

To the Honorable
Colorado Senate
Colorado General Assembly
State Capitol Building
Denver, CO 80203

Ladies and Gentlemen:

Pursuant to the powers conferred upon me by the Constitution and Laws of the State of Colorado, I have the honor to designate, appoint, and submit to your consideration the following:

MEMBER OF THE
COLORADO COMMISSION ON THE AGING

for a term expiring July 1, 2010:

Frederick Calovich of Arvada, Colorado, to fill the vacancy occasioned by the resignation of Frank C. Lay of Lakewood, Colorado, and to serve as a Democrat from Congressional District seven, appointed.

Sincerely,
(signed)
Bill Ritter, Jr.
Governor
Rec'd: 2/25/10
Karen Goldman, Secretary of the Senate

Committee on Health and Human Services

SENATE SERVICES REPORT

Correctly Printed: SB10-176 and 177.
Correctly Engrossed: SB10-071, 093, 101 and 140.

DELIVERY TO THE GOVERNOR

To the Governor for signature on Monday, March 1, 2010, at 1:16 p.m.:
SB10-021, 022, 023, 024, 046, 049 and 053.

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On motion of Senator Morse, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of Tuesday, March 2 was laid over until Wednesday, March 3, retaining its place on the calendar.

Third Reading of Bills -- Final Passage: SB10-060, SB10-093, SB10-140, SB10-101, SB10-071.

Consideration of Resolutions: SJR10-010.

Consideration of Memorials: SJM10-001.

Consideration of Governor's Appointments:
Member of the State Housing Board

On motion of Senator Morse, the Senate adjourned until 9:00 a.m., Wednesday, March 3, 2010.

Approved:

Brandon C. Shaffer
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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