

SENATE JOURNAL
Sixty-eighth General Assembly
STATE OF COLORADO
First Extraordinary Session

1st Legislative Day Monday, May 14, 2012

Prayer	By President Shaffer.	1 2 3 4 5 6 7 8 9 10 11 12
Call to Order	The hour of 10:00 having arrived, the Senate of the First Extraordinary Session of the Sixty-eighth General Assembly of the State of Colorado, pursuant to call, was called to order by Senator Shaffer, President of the Senate.	13 14 15 16
Pledge	By Senator Guzman.	17 18
Roll Call	Present--32 Excused--3, Johnston, King K., Spence. Present later--1, Johnston.	19 20 21 22
Quorum	The President announced a quorum present.	23 24 25 26 27

MESSAGE FROM THE GOVERNOR

D 2012-010

EXECUTIVE ORDER

PROCLAMATION

**CALL FOR THE FIRST EXTRAORDINARY SESSION
OF THE SIXTY-EIGHTH GENERAL ASSEMBLY**

Pursuant to the authority vested in the Governor of the State of Colorado, and in particular, pursuant to powers vested in the Governor pursuant to article IV, section 9 of the Colorado Constitution, and as recognized in article V, section 7, I, John W. Hickenlooper, Governor of the State of Colorado, hereby find that the following extraordinary occasions exist to convene the Sixty-Eighth General Assembly to meet in special session.

I. Background

Each year, in order to deal with the business of the people of Colorado, the Colorado General Assembly considers legislation. This year Colorado House of Representatives leadership announced a lack of time to address historic calendared legislation that had passed to the floor. The Colorado House did not consider a number of calendared pieces of legislation scheduled for second reading on the eve of adjournment of the Sixty-Eighth General Assembly. The Colorado House also failed to hold a full floor debate and vote on the merits of Senate Bill 12-002 (commonly known as the "Civil Unions bill") as well as 29 other pieces of legislation.

Much of this legislation had significant bipartisan support and addressed subject matter of significance to the people of Colorado and the effective, efficient operation of state government. The ramifications of the General Assembly's inability to take up the business of the people will negatively impact the State of Colorado and hamper its ability to serve its people. These extraordinary circumstances require a special session of the General Assembly.

There was good legislation that did not pass out of the General Assembly for one reason or another during the recently-concluded session. We are limiting the agenda for this special session, however, to the subject matters of legislation that i) died on the Colorado House

calendar on May 8, 2012 for lack of a full debate and vote on second reading, ii) clearly had bipartisan support in the legislature, and iii) advance good government and economic development, public safety, or other important policy objectives.

This proclamation does not prescribe the specific form that the legislation should take; rather, it defines the appropriate subject matter for legislative consideration. The following section describes the purpose and need for the special session.

II. Purpose and Need

A. Water Projects

Water projects are critical to Colorado, especially as we face historic drought. The Colorado Water Conservation Board Construction Fund consists of moneys appropriated by the General Assembly and funds important water projects, programs, studies, and litigation expenses. We believe the General Assembly should consider taking action to fund the following projects, programs, studies, and litigation expenses at the suggested amounts:

- \$300,000 for satellite monitoring system maintenance;
- \$175,000 for continuation of the weather modification program;
- \$500,000 for continuation of the Colorado floodplain map modernization program;
- \$500,000 for continuation of the watershed restoration program;
- \$300,000 to restore the flood response fund balance;
- \$1,000,000 for continuation of the phreatophyte control cost-sharing program;
- \$2,000,000 for continuation of the Colorado River water availability study;
- \$500,000 to begin implementation of the South Platte groundwater data collection and analysis project;
- \$1,000,000 for continuation of the alternative agriculture water transfer sustainability grant program;
- \$5,000,000 for the planning and implementation of the Rio Grande cooperative project;
- \$5,000,000 for implementation of the Chatfield reservoir reallocation project;
- \$12,000,000 for the third and final installment of the purchase of Colorado's allotment of Animas-La Plata Project water pursuant to House Bill 10-1250, enacted in 2010; and
- \$300,000 to provide legal support and funding for litigation involving protests of individual water rights that the Colorado State Engineer has placed on the abandonment list.
- \$75,857 for DWR to continue management of national hydrograph dataset and GIS analysis.

The General Assembly should consider taking legislative action to repurpose the flood response program to include drought preparedness and response, and rename the "Flood Response Fund" as the "Flood and Drought Response Fund."

The General Assembly should consider taking legislative action to transfer from the perpetual base account of the severance tax trust fund to the Colorado Water Conservation Board Construction Fund the following:

- \$30,000,000 for the Rio Grande cooperative project, including improvements associated with the Beaver Park reservoir and the Rio Grande reservoir; and
- \$13,000,000 for the implementation of the Chatfield reservoir reallocation project.

The General Assembly should consider taking legislative action to change the Water Supply Reserve Account to the Water Supply Reserve Fund.

The General Assembly should consider taking legislative action to authorize the Colorado State Engineer to receive and expend contributions from the Colorado Water Conservation Board for use in discharging the State Engineer's duties.

B. Driving Under the Influence of Drugs

The State of Colorado has an interest in helping keep its people safe. Many lives are at risk when drivers are under the influence of controlled substances. Current law specifies that a driver whose blood alcohol content is 0.08 percent or greater while driving or within two hours of driving can be charged with Driving Under the Influence (DUI) per se in addition to driving under the influence. There is no corresponding DUI per se for drivers accused of driving under the influence of drugs. Colorado should enact a law that holds drivers under the influence of marijuana, or any other controlled substance, to the same standards as those applied to drivers under the influence of alcohol.

We believe, therefore, that the General Assembly should consider taking appropriate legislative action to enact a law that holds drivers under the influence of drugs to a DUI per se standard.

C. Civil Unions

We believe that it is in the public interest of the State of Colorado to provide any two adult persons with the opportunity to enter into a civil union. Civil union is not marriage. Many couples living in Colorado have publicly expressed a desire to enter into civil unions that would afford them critical legal benefits, protections and responsibilities that the state grants to other couples.

We believe, therefore, that the General Assembly should consider taking appropriate legislative action to define and establish a statutory framework for civil unions between two adults regardless of their gender and to provide benefits, rights and protections in State law that will enable them to take care of each other and their families.

D. Unemployment Insurance (UI) Program

Currently, the Colorado Housing and Finance Authority is authorized to issue unemployment revenue bonds for the Unemployment Insurance Compensation Fund (Fund). We have borrowed money from the federal government to ensure that the Fund is solvent and the State should take advantage of new, less expensive financing opportunities that may evaporate before the next regular session. Colorado law should establish a bond payment structure that allows Colorado employers to receive positive recognition in the calculation of unemployment insurance premium payments for bond repayment in the event that such bonds are issued. Such changes will allow employers making UI payments to see advantages in their UI experience ratings, which favorably impacts the level of UI premium payments. Additionally, prudent management of the Fund is in the best interest of employers and employees. The use of financial tools like bond financing should be used to address the current deficit of the unemployment compensation fund and to produce savings for Colorado businesses.

We believe, therefore, that the General Assembly should consider taking appropriate legislative action to enact a law that will allow employers making UI premium payments to receive commensurate benefit to their UI experience ratings.

E. Benefit Corporations

One of our primary focuses is growing Colorado's economy, creating quality jobs and providing sustainable employment for all workers. Current law only directs Colorado corporations to maximize shareholder value. We believe Colorado law should establish a new and separate status of incorporation that includes ideals such as social responsibility and environmental awareness in the fabric of a business enterprise. By providing entrepreneurs and venture capitalists with innovative options for organizing business enterprises, we can attract new businesses to Colorado and keep Colorado competitive with other states that allow benefit corporations. This new class of corporation will have to meet higher standards of accountability and transparency and it will be required to create and report on its material positive impacts on society and the environment.

We believe, therefore, that the General Assembly should look to the benefit corporation statutes adopted in states such as California, Maryland, New Jersey, New York, and Virginia and draft a benefit corporation law that will allow for the formation of Colorado benefit corporations.

F. Special Mobile Machinery Fleets

Current Colorado law regarding registration of Special Mobile Machinery (SMM) is burdensome on the business community and on county clerks who process those requests. Under current law, out-of-state SMM that operate in Colorado for less than one month per year can pay specific ownership tax and registration fees at a port of entry operated by the Department of Revenue. All other transactions including registration tax issues and license plate processing are processed at the county clerk and recorder offices. In addition, rental fleet owners can register vehicles individually through the "two percent program," whereby owners can remit monthly payments of two percent of their rental income fees proportional to the counties where the equipment is used. The process should be simplified. Owners of 10 or more pieces of SMM should be able to register their entire fleet once per year. Additionally, we believe that it is appropriate to allow more flexibility surrounding the requirements for special plate, stickers, certificates, and SMM vehicle registration taxes and fees.

We believe, therefore, that the General Assembly should consider taking appropriate legislative action to enact laws that streamline the registration process for SMM vehicles.

G. Repeal of Unconstitutional Provisions

The people's faith in government is enhanced when the fundamental principles of government are enshrined in a constitution that is accessible and accurately reflects the current law. The Colorado Constitution contains provisions that are obsolete due to court decisions that have found certain provisions unlawful and unenforceable because they are in conflict with provisions of the U.S. Constitution. It is good government to clear up any ambiguities created by the continued inclusion in the Colorado Constitution of language that is no longer valid by amending the Colorado Constitution to remove such language. The Colorado Constitution can be amended only by a vote of the registered electors of the State of Colorado.

We believe, therefore, that the General Assembly should consider repeal of certain campaign finance provisions in Article XXVIII of the state constitution resulting from the decisions in the cases of *In re Interrogatories by Ritter*, 227 P.3d 892 (Colo. 2010) and *Dallman v. Ritter*, 225 P.3d 610 (Colo. 2010) and certain Bill of Rights provisions in Article II of the Colorado Constitution resulting from the decisions in the case of *Evans v. Romer*, 882 P.2d 1335 (Colo. 1994), *aff'd*, 517 U.S. 620 (1996) by submitting appropriate amendments to the Colorado Constitution to the registered electors of the State of Colorado for their approval or rejection at the next election at which such question may be submitted.

III. Proclamation

I, John W. Hickenlooper, Governor of the State of Colorado, with this proclamation find extraordinary occasions exist to convene the Sixty-Eighth General Assembly of this State and summon the members of the Sixty-Eighth General Assembly to meet in Special Session at 10 a.m. on May 14, 2012, at the State Capitol, in the City and County of Denver, and designate the following specific subjects for your consideration and appropriate legislative action:

A. Concerning the funding of Colorado Water Conservation Board projects.

B. Concerning the penalties for persons who drive while under the influence of alcohol or drugs.

C. Concerning authorization of civil unions.

D. Concerning administration of the unemployment insurance program in order stabilize unemployment insurance rates, and, in connection therewith, facilitating the issuance of unemployment revenue bonds and accelerating the creation of the Division of Unemployment Insurance in the Department of Labor and Employment.

E. Concerning benefit corporations.

F. Concerning the Registration of Special Mobile Machinery Fleets. 1

G. Submitting to the registered electors of the State of Colorado an amendment to the Colorado Constitution repealing provisions deemed obsolete on account of a determination of the unconstitutionality of said provisions by a court of competent jurisdiction upon exhaustion of State appellate remedies. 4-7

GIVEN under my hand and the Executive Seal of the State of Colorado this tenth day of May, 2012. (signed) John W. Hickenlooper Governor

Temporary Rules

On motion of Senator Morse, and with the unanimous consent of the Senate, the Rules of the Second Regular Session of the Sixty-eighth General Assembly were made the Temporary Rules of the First Extraordinary Session of the Sixty-eighth General Assembly. 21-23

A majority of all members elected to the Senate having voted in the affirmative, the motion was **adopted**. 25-26

On motion of Senator Morse, and with the unanimous consent of the Senate, the President appointed Senators Steadman and White as members of the committee to notify the House of Representatives that the Senate was organized and ready for business. 31-33

A majority of all members elected to the Senate having voted in the affirmative, the motion was declared **adopted**. 35-36

Senate in recess. Senate reconvened.

On motion of Senator Morse, and with the unanimous consent of the Senate, the President appointed Senators Guzman and Roberts as members of the committee to notify the Governor that the Senate was organized and ready for business. 46-48

A majority of all members elected to the Senate having voted in the affirmative, the motion was declared **adopted**. 50-51

Senate in recess. Senate reconvened.

INTRODUCTION OF CONCURRENT RESOLUTIONS

The following concurrent resolution was read by title and referred to the committees indicated: 63-64

SCR12S-001 by Senator(s) Steadman; also Representative(s) Ferrandino, Pace--Submitting to the registered electors of the state of Colorado an amendment to the Colorado constitution repealing provisions deemed obsolete on account of a determination of the unconstitutionality of said provisions by a court of competent jurisdiction after the exhaustion of appellate remedies. Judiciary 67-72

INTRODUCTION OF BILLS -- FIRST READING

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

SB12S-001 by Senator(s) Cadman, Tochtrop; --Concerning the registration of special mobile machinery fleets, and, in connection therewith, making an appropriation.
Business, Labor and Technology

SB12S-002 by Senator(s) Schwartz; also Representative(s) Sonnenberg, Hamner, Pace--Concerning the funding of Colorado water conservation board projects, and, in connection therewith, making appropriations.
Agriculture, Natural Resources, and Energy

Senate in recess. Senate reconvened.

INTRODUCTION OF BILLS -- FIRST READING

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

SB12S-003 by Senator(s) Bacon; also Representative(s) Massey--Concerning benefit corporations, and, in connection therewith, making an appropriation.
Judiciary

Senate in recess. Senate reconvened.

COMMITTEE OF REFERENCE REPORTS

Business, Labor, & Technology After consideration on the merits, the Committee recommends that **SB12S-001** be referred to the Committee on Finance with favorable recommendation.

Judiciary After consideration on the merits, the Committee recommends that **SCR12S-001** be referred to the Committee of the Whole with favorable recommendation.

Agriculture, Natural Resources, & Energy After consideration on the merits, the Committee recommends that **SB12S-002** be referred to the Committee on Appropriations with favorable recommendation.

Judiciary After consideration on the merits, the Committee recommends that **SB12S-003** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 21, after line 12 insert:

"**SECTION 5. Effective date.** This act takes effect January 1, 2013."

Renumber succeeding section accordingly.

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Finance After consideration on the merits, the Committee recommends that **SB12S-001** be referred to the Committee on Appropriations with favorable recommendation.

Appropriations After consideration on the merits, the Committee recommends that **SB12S-001** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 4, strike lines 23 through 27 and substitute:

"SECTION 2. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated to the department of revenue, for the fiscal year beginning July 1, 2012, the sum of \$126,563 and 0.8 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$28,426 and 0.8 FTE for personal services in the division of motor vehicles, titles section; said sum is from that portion of the special mobile machinery registration fee revenue that is designated to fund administration and enforcement expenses pursuant to section 42-3-107 (16) (f) (IV) (C), Colorado Revised Statutes;

(b) \$21,917 for operating expenses and postage in the central department operations division and the division of motor vehicles, titles section; said sum is from that portion of the special mobile machinery registration fee revenue that is designated to fund administration and enforcement expenses pursuant to section 42-3-107 (16) (f) (IV) (C), Colorado Revised Statutes; and

(c) \$76,220 for the purchase of computer center services in the information technology division; of said sum, \$63,476 is from the Colorado state titling and registration account of the highway users tax fund created in section 42-1-211 (2), Colorado Revised Statutes, and \$12,744 is from that portion of the special mobile machinery registration fee revenue that is designated to fund administration and enforcement expenses pursuant to section 42-3-107 (16) (f) (IV) (C), Colorado Revised Statutes."

Page 5, strike lines 1 through 10.

Appropriations After consideration on the merits, the Committee recommends that **SB12S-002** be referred to the Committee of the Whole with favorable recommendation.

Appropriations After consideration on the merits, the Committee recommends that **SB12S-003** be referred to the Committee of the Whole with favorable recommendation.

Senate in recess. Senate reconvened.

On motion of Senator Morse, and with a two-thirds majority of those elected to the Senate having voted in the affirmative, SCR12S-001, SB12S-001, SB12S-002, SB12S-003 were made Special Orders at 3:30 p.m.

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Committee of the Whole The hour of 3:30 p.m. having arrived, Senator Aguilar moved that the Senate resolve itself into the Committee of the Whole for consideration of Special Orders -- Second Reading of Bills and Senator Aguilar was called to the chair to act as Chairman.

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:

SCR12S-001 by Senator(s) Steadman; also Representative(s) Ferrandino, Pace--Submitting to the registered electors of the state of Colorado an amendment to the Colorado constitution repealing provisions deemed obsolete on account of a determination of the unconstitutionality of said provisions by a court of competent jurisdiction after the exhaustion of appellate remedies.

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

SB12S-001 by Senator(s) Cadman, Tochtrop; --Concerning the registration of special mobile machinery fleets, and, in connection therewith, making an appropriation.

Amendment No. 1, Appropriations Committee Amendment.
(Printed in Senate Journal, May 14, page 6 and placed in members' bill files.)

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

SB12S-002 by Senator(s) Schwartz; also Representative(s) Sonnenberg, Hamner, Pace--Concerning the funding of Colorado water conservation board projects, and, in connection therewith, making appropriations.

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

SB12S-003 by Senator(s) Bacon; also Representative(s) Massey--Concerning benefit corporations, and, in connection therewith, making an appropriation.

Amendment No. 1, Judiciary Committee Amendment.
(Printed in Senate Journal, May 14, page 7 and placed in members' bill files.)

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

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Aguilar, the report of the Committee of the Whole was **adopted** on the following roll call vote:

YES	32	NO	0	EXCUSED	3	ABSENT	0
Aguilar	Y	Guzman	Y	Lambert	Y	Scheffel	Y
Bacon	Y	Harvey	Y	Lundberg	Y	Schwartz	Y
Boyd	Y	Heath	Y	Mitchell	E	Spence	E
Brophy	Y	Hodge	Y	Morse	Y	Steadman	Y
Cadman	Y	Hudak	Y	Neville	Y	Tochtrop	Y
Carroll	Y	Jahn	Y	Newell	Y	White	Y
Foster	Y	Johnston	Y	Nicholson	Y	Williams S.	Y
Giron	Y	King K.	E	Renfroe	Y	President	Y
Grantham	Y	King S.	Y	Roberts	Y		

The Committee of the Whole took the following action:

Passed on second reading: SCR12S-001, SB12S-001 as amended, SB12S-002,
SB12S-003 as amended.

On motion of Senator Morse, the Senate adjourned until 9:00 a.m., Tuesday, May 15,
2012.

Approved:

Brandon C. Shaffer
President of the Senate

Attest:

Cindi L. Markwell
Secretary of the Senate

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