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

22nd Legislative Day Wednesday, February 2, 2005

Prayer By Senator Hillman.

Pledge By Senator Bacon.

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

Roll Call Present--33.
Absent/Excused--2; Hagedorn, Johnson.

Quorum The President announced a quorum present.

Reading of Journal On motion of Senator Williams, reading of the Journal of February 1, 2005, was dispensed with and the Journal was approved as corrected by the Secretary.

On motion of Senator Gordon, and with a majority of those elected to the Senate having voted in the affirmative, the Second Reading -- General Orders calendar (SB05-061, SB05-024, SB05-003, SB05-012, SB05-069) of February 2, 2005, was laid over until Friday, February 4, 2005, retaining its place on the calendar.

MESSAGE FROM THE GOVERNOR

Appointments Letters of designation and appointment from Governor Owens were read and assigned to Committee as follows:

July 27, 2004

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
CHARTER SCHOOL INSTITUTE BOARD

for terms expiring July 1, 2005:

Peggy S. Kerns of Aurora, Colorado, to serve as a member with detailed knowledge of charter school law, and as a Democrat, appointed;

Dean L. Titterington of Englewood, Colorado, to serve as a member with financial management expertise, and as a Republican, appointed;

for terms expiring July 1, 2006:

Ben L. Alexander of Montrose, Colorado, to serve as a member with board or public service experience, and as a Republican, appointed;

Christine S. Howard of Louisville, Colorado, to serve as a charter school board member or founder of a charter school, and as an Unaffiliated, appointed;

Christopher M. Leland of Colorado Springs, Colorado, to serve as a charter school board member or founder of a charter school, and as a Republican, appointed;

for terms expiring July 1, 2007:

Craig M. Bowman of Aurora, Colorado, to serve as a member with experience as a public school teacher, and as a Democrat, appointed;

Terri Rayburn-Davis of Littleton, Colorado, to serve as a member with curriculum and assessment expertise, and as a Republican, appointed.

Sincerely,
(signed)
Bill Owens
Governor
Rec'd: 8/25/04
Karen Kuhlmann, Asst. Secy. of the Senate

Committee on Education

June 15, 2004

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, reappoint and submit to your consideration, the following:

MEMBERS OF THE
STATE ELECTRICAL BOARD

for terms expiring July 1, 2007:

David B. Wynkoop of Littleton, Colorado, to serve as a representative of electrical utilities, reappointed;

Michael O. Eckstine of Longmont, Colorado, to serve as an electrical contractor who has a masters' license, appointed.

Sincerely,
(signed)
Bill Owens
Governor
Rec'd: 7/19/04
Karen Kuhlmann, Asst. Secy. of the Senate

Committee on Business, Labor & Technology

SENATE SERVICES REPORT

Correctly Printed: SB05-151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180; SCR05-002.

COMMITTEE OF REFERENCE REPORTS

Business, Labor, and Technology — After consideration on the merits, the Committee recommends that **SB05-042** 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, and Technology — After consideration on the merits, the Committee recommends that **HB05-1003** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the consent calendar.

Trans-portation — The Committee on Transportation has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed, and further recommends that the confirmations be placed on the consent calendar:

MEMBERS OF THE
COLORADO AERONAUTICAL BOARD

for terms expiring December 19, 2007:

Larry Romrell of Franktown, Colorado, to serve as a representative familiar with and supportive of the state's aviation issues, interests, and concerns, reappointed;

Dale E. Hancock of Glenwood Springs, Colorado, to serve as a representative of local governments which operate airports and as a member from the western slope, appointed.

Local Government — After consideration on the merits, the Committee recommends that **SB05-043** 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 8, strike "covers" and substitute "~~covers~~ COVERED";

line 9, strike "AS OF DECEMBER 1, 1978;" and substitute "ON OR BEFORE AUGUST 11, 2005;".

Local Government — After consideration on the merits, the Committee recommends that **SB05-008** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 4, after line 9, insert the following:

"**SECTION 2.** 31-30.5-210 (2), Colorado Revised Statutes, is amended to read:

31-30.5-210. Plan amendment. (2) Upon the request of an employer and with the approval of sixty-five percent of the active AND RETIRED old hire members, the board of directors of the fire and police pension association established pursuant to section 31-31-201 (1), shall permit the modification of any provision of an old hire pension plan established pursuant to this article, if the board determines that such modification will maintain or enhance the actuarial soundness, as defined in section 31-31-102 (1), of such fund. In addition, upon the request of an employer, the board shall permit the modification of any provision of an old hire pension plan necessary to comply with state or federal law. Such modification may be made without the approval of the active AND RETIRED old hire members. This subsection (2) shall not be construed to authorize the board to allow a modification of any such old hire plan so

as to change the nature of the plan from a defined benefit plan to a money purchase plan or to adversely affect the pension benefits of ACTIVE OR retired old hire members.".

Renumber succeeding section accordingly.

Trans-portation

After consideration on the merits, the Committee recommends that **SB05-047** 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 2, before "(69),", insert "(19) and" and, strike "is" and substitute "are";

after line 5, insert the following:

"(19) "Convicted" ~~and~~ OR "conviction" ~~include conviction in any court of record or any municipal court or acceptance of a penalty assessment notice and payment of the prescribed penalty in accordance with the provisions of section 42-4-1701.~~ MEANS:

(a) A PLEA OF GUILTY OR NOLO CONTENDERE;

(b) A VERDICT OF GUILTY;

(c) AN ADJUDICATION OF DELINQUENCY UNDER TITLE 19, C.R.S.; AND

(d) THE PAYMENT OF A PENALTY ASSESSMENT UNDER SECTION 42-4-1701 IF THE SUMMONS STATES CLEARLY THE POINTS TO BE ASSESSED FOR THE OFFENSE.".

Page 12, after line 13, insert the following:

"**SECTION 11.** 42-2-121 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

42-2-121. Records to be kept by the department - admission of records in court. (2) (e) RECORDS OR DOCUMENTS FILED WITH, MAINTAINED BY, OR PREPARED BY ANOTHER STATE THAT ARE EQUIVALENT TO THE RECORDS MAINTAINED IN COLORADO UNDER PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL BE ADMISSIBLE IN A TRIAL OR HEARING IN ACCORDANCE WITH THIS SECTION.".

Renumber succeeding sections accordingly.

Page 12, after line 25, insert the following:

"**SECTION 13.** 42-2-124 (3) and (4), Colorado Revised Statutes, are amended to read:

42-2-124. When court to report convictions. (3) ~~Except as otherwise provided~~ FOR THE PURPOSES OF THIS SECTION, the term "convicted" or "conviction" means a sentence imposed following a plea of guilty or nolo contendere, ~~or~~ a verdict of guilty by the court or a jury, ~~excluding all stays of sentence~~ OR AN ADJUDICATION OF A DELINQUENCY UNDER TITLE 19, C.R.S. The payment of a penalty assessment under the provisions of section 42-4-1701 shall also be considered a conviction if the summons states clearly the points to be assessed for that offense. Whenever suspension or revocation of a license is authorized or required for conviction of any offense under state law, a final finding of guilty of a violation of a municipal ordinance governing a substantially equivalent offense in a city, town, or city and county shall, for purposes of such suspension or revocation, be deemed and treated as a conviction of the corresponding offense under state law. ~~The department has the authority to suspend~~ A STAY OF SENTENCE, PENDING APPEAL, SHALL NOT DEPRIVE THE DEPARTMENT OF THE AUTHORITY TO SUSPEND, REVOKE, OR DENY a driver's or minor driver's license pending any final determination of a conviction on appeal.

(4) ~~For the purposes of section 42-2-125 (1) (g), (1) (g.5), (1) (m), and (1) (n) and section 42-2-127.3, an adjudication of delinquency under title 19, C.R.S., for the acts described in such sections shall be considered to be a conviction for purposes of this section. However,~~ An expungement of an adjudication of delinquency shall not result in a rescission of the revocation or suspension of the driving privilege unless said expungement is a result of a reversal of the adjudication on appeal.

SECTION 14. The introductory portion to 42-2-125 (1) (o), Colorado Revised Statutes, is amended, and the said 42-2-125 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

42-2-125. Mandatory revocation of license and permit. (1) The department shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has:

(o) Been convicted of: ~~or adjudicated as a juvenile delinquent for:~~

(8) IF A SUSPENSION OR REVOCATION OF A LICENSE IS AUTHORIZED OR REQUIRED FOR CONVICTION OF AN OFFENSE UNDER STATE LAW, A FINAL FINDING OF GUILT FOR A VIOLATION OF A MUNICIPAL ORDINANCE GOVERNING A SUBSTANTIALLY EQUIVALENT OFFENSE IN A MUNICIPALITY, COUNTY, OR ANOTHER STATE FOR PURPOSES OF A SUSPENSION OR REVOCATION SHALL BE DEEMED AS A CONVICTION OF THE CORRESPONDING OFFENSE UNDER STATE LAW. THE DEPARTMENT MAY SUSPEND A DRIVER'S OR MINOR DRIVER'S LICENSE PENDING A FINAL DETERMINATION OF A CONVICTION ON APPEAL.".

Renumber succeeding sections accordingly.

Page 12, strike lines 26 and 27 and substitute the following:

"**SECTION 15.** 42-2-126 (3), Colorado Revised Statutes, is amended to read:".

Page 13, strike line 2 and substitute the following:

"**determination.** (3) (a) Whenever a law enforcement officer has probable cause to believe that a person ~~has violated section 42-4-1301 (2) or whenever a person refuses to take or to complete, or to cooperate with the completing of any test or tests of such person's blood, breath, saliva, or urine as required by section 42-4-1301.1~~ IS SUBJECT TO LICENSE REVOCATION UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, the law enforcement officer having such probable cause ~~or requesting such test or tests~~ shall forward to the department an affidavit containing information relevant to legal issues and facts ~~which~~ THAT must be considered by the department to legally determine if a person's driving privilege should be revoked as provided in subsection (2) of this section. The executive director of the department shall specify to law enforcement agencies the form of the affidavit AND the types of information needed in the affidavit, and MAY SPECIFY any additional documents or copies of documents needed by the department to make its determination in addition to the affidavit. The affidavit shall be dated, signed, and sworn to by the law enforcement officer under penalty of perjury, but need not be notarized or sworn to before any other person.

(b) ~~A law enforcement officer who has probable~~";

after line 11, insert the following:

"**SECTION 16.** 42-2-138 (1) (d), (2), (3), and (4) (b), Colorado Revised Statutes, are amended, and the said 42-2-138 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

42-2-138. Driving under restraint - penalty. (1) (d) (I) ~~Any~~ A person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that such person's license or privilege to drive, either as a resident or nonresident, is restrained under

section 42-2-126 (2) (a), ~~or~~ is restrained solely or partially because of a conviction of a driving offense pursuant to section 42-4-1301 (1) or (2), OR IS RESTRAINED IN ANOTHER STATE SOLELY OR PARTIALLY BECAUSE OF AN ALCOHOL-RELATED DRIVING OFFENSE is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second or subsequent conviction, such person shall be punished by imprisonment in the county jail for not less than ninety days nor more than two years and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than three thousand dollars. The minimum county jail sentence imposed by this subparagraph (I) shall be mandatory, and the court shall not grant probation or a suspended sentence thereof; but, in a case where the defendant is convicted although the defendant established that he or she had to drive the motor vehicle in violation of this subparagraph (I) because of an emergency, the mandatory jail sentence, if any, shall not apply, and, for a first conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than one year and, in the discretion of the court, a fine of not more than one thousand dollars, and, for a second or subsequent conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than two years and, in the discretion of the court, a fine of not more than three thousand dollars.

(II) In any trial for a violation of subparagraph (I) of this paragraph (d), a duly authenticated copy of the record of the defendant's former convictions and judgments for an alcohol-related driving offense pursuant to section 42-4-1301 (1) or (2) OR AN ALCOHOL-RELATED OFFENSE COMMITTED IN ANOTHER STATE from any court of record or a certified copy of the record of any denial or revocation of the defendant's driving privilege under section 42-2-126 (2) (a) from the department shall be prima facie evidence of such convictions, judgments, denials, or revocations and may be used in evidence against such defendant. Identification photographs and fingerprints that are part of the record of such former convictions, judgments, denials, or revocations and such defendant's incarceration after sentencing for any of such former convictions, judgments, denials, or revocations shall be prima facie evidence of the identity of such defendant and may be used in evidence against the defendant.

(2) (a) In ~~any~~ A prosecution for a violation of this section, the fact of the restraint may be established by certification that a notice was mailed by first-class mail pursuant to section 42-2-119 (2), to the last-known address of the defendant, or by the delivery of such notice to the last-known address of the defendant, or by personal service of such notice upon the defendant.

(b) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, THE FACT OF RESTRAINT IN ANOTHER STATE MAY BE ESTABLISHED BY CERTIFICATION THAT NOTICE WAS GIVEN IN COMPLIANCE WITH SUCH STATE'S LAW.

(3) The department, upon receiving a record of conviction or accident report of any person for an offense committed while operating a motor vehicle, shall immediately examine its files to determine if the license or operating privilege of such person has been ~~suspended or revoked~~ RESTRAINED. If it appears that said offense was committed while the license or operating privilege of such person was ~~revoked or suspended~~ RESTRAINED, except as permitted by section 42-2-132.5, the department shall not issue a new license or grant any driving privileges for an additional period of one year after the date such person would otherwise have been entitled to apply for a new license or for reinstatement of a suspended license and shall notify the district attorney in the county where such violation occurred and request prosecution of such person under subsection (1) of this section.

(4) For purposes of this section, the following definitions shall apply:

(b) "Restraint" or "restrained" means any denial, revocation, or suspension of a person's license or privilege to drive a motor vehicle in this state or ~~any combination of denials, revocations, or suspensions~~ ANOTHER STATE.

(5) IT SHALL BE AN AFFIRMATIVE DEFENSE TO A VIOLATION OF THIS SECTION, BASED UPON A RESTRAINT IN ANOTHER STATE, THAT THE DRIVER POSSESSED A VALID DRIVER'S LICENSE ISSUED SUBSEQUENT TO THE RESTRAINT THAT IS THE BASIS OF THE VIOLATION.".

Renumber succeeding sections accordingly.

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On motion of Senator Gordon, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of February 2, 2005, was laid over until Thursday, February 3, 2005, retaining its place on the calendar.

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Senate in recess. Senate reconvened.

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COMMITTEE OF REFERENCE REPORTS

Finance

After consideration on the merits, the Committee recommends that **SB05-039** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 6, strike lines 2 through 7 and substitute the following:

"(c) Notwithstanding paragraph (b) of this subsection (1), on and after July 1, ~~2007~~ 2012, if the available fund balance in the petroleum storage tank fund is greater than eight million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than eight million dollars, the fee imposed by paragraph (a) of this subsection (1) shall be twenty-five dollars per tank truckload.".

Judiciary

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

OFFICE OF ATTORNEY GENERAL

effective January 4, 2005:

John W. Suthers, appointed.

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MESSAGE FROM THE HOUSE

February 2, 2005
Madame President:

The House has adopted and transmits herewith HJR05-1011, and amended as printed in House Journal, February 2.

INTRODUCTION OF BILLS--FIRST READING

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

SB05-181 by Senator(s) Johnson; also Representative(s) Jahn--Concerning proceedings pertaining to child support obligations, and, in connection therewith, requiring specified advisements and authorizing the allocation of parental responsibilities at such proceedings.
Health and Human Services

HB05-1007 by Representative(s) Garcia; also Senator(s) Sandoval--Concerning the regulation of notaries public, and, in connection therewith, requiring applicants to obtain training prior to appointment as a notary public and requiring notaries public to keep a journal of all notarial acts.
State, Veterans & Military Affairs

HB05-1016 by Representative(s) White; also Senator(s) Tochtrop--Concerning an exemption from the prohibition against the corporate practice of physical therapy for physical therapists engaged in the practice of physical therapy in a health care agency.
Health and Human Services

HB05-1025 by Representative(s) Stafford, Marshall, Green; also Senator(s) Hagedorn, Anderson, Shaffer, Dyer--Concerning eligibility under the "Colorado Medical Assistance Act".
Health and Human Services

HB05-1026 by Representative(s) King; also Senator(s) Windels--Concerning educator licensure.
Education

HB05-1037 by Representative(s) Harvey; also Senator(s) Groff--Concerning the authority for certain adopted children to receive medical assistance.
Health and Human Services

HB05-1039 by Representative(s) Curry; also Senator(s) Isgar--Concerning the conditions pursuant to which loans of water rights may be made for instream flow purposes.
Agriculture, Natural Resources & Energy

HB05-1042 by Representative(s) Boyd; also Senator(s) Veiga--Concerning the availability of emergency contraception to a survivor of a sexual assault.
Health and Human Services

HB05-1043 by Representative(s) Hodge; also Senator(s) Shaffer--Concerning an increase in the penalty for a moving traffic violation committed in a wildlife crossing zone.
Agriculture, Natural Resources & Energy

HB05-1048 by Representative(s) May M., Garcia, Judd, McCluskey; also Senator(s) Lamborn, Keller, Veiga--Concerning the authority of a special district to enter into a property tax reduction agreement with a taxpayer for the purpose of economic development.
Finance

HB05-1055 by Representative(s) Ragsdale; also Senator(s) Johnson--Concerning the mandatory assessment of restitution in criminal cases that involve the harming of a service animal.
State, Veterans & Military Affairs

HB05-1059 by Representative(s) McFadyen; also Senator(s) Veiga--Concerning specified exemptions from the prohibition against sending unsolicited facsimiles.
Business, Labor and Technology

HB05-1067 by Representative(s) Buescher; also Senator(s) Teck--Concerning the authorization for political subdivisions organized on a county basis to provide fire protection.
Local Government

HB05-1076 by Representative(s) McCluskey, Larson; also Senator(s) Grossman--Concerning peace officer certification granted by the peace officers standards and training board.
Judiciary

HB05-1083 by Representative(s) Balmer; also Senator(s) Hanna--Concerning changes to the department of military and veterans affairs.
State, Veterans & Military Affairs

HB05-1087 by Representative(s) Lindstrom; also Senator(s) Williams--Concerning the provision of international education opportunities in public schools.
Education

HB05-1097 by Representative(s) Hefley, Judd, Marshall; also Senator(s) Grossman, Dyer, Evans, Gordon, Jones--Concerning the enactment of Colorado Revised Statutes 2004 as the positive and statutory law of the state of Colorado.
Judiciary

HB05-1098 by Representative(s) White, Jahn; also Senator(s) Isgar--Concerning the legislative appointments to the board of directors of the Colorado tourism office.
State, Veterans & Military Affairs

INTRODUCTION OF RESOLUTIONS

The following resolution was read by title:

HJR05-1011 by Representative(s) Harvey, May M.; also Senator(s) Wiens--Concerning repudiation of Professor Ward L. Churchill's essay "Some People Push Back: On the Justice of Roosting Chickens".

On motion of Senator Gordon, and with a majority of those elected to the Senate having voted in the affirmative, HJR05-1011 was laid over one day under Senate Rule 30(e).

On motion of Senator Gordon, the Senate adjourned until 9:00 a.m., Thursday, February 3, 2005.

Approved:

Joan Fitz-Gerald
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate