

## 2017 Session Sine Die Report May 10, 2017

### 2017 Session Facts

Democrat/Republican split in House of Representatives: 37/28

Republican/Democrat split in the Senate: 18/17

Number of bills and resolutions introduced during the 2017 Legislative Session: 788

Number of bills signed by the Governor as of 5/10/17: 215

Number of bills vetoed as of 5/10/17: 1

Last day for the Governor to act: June 9, 2017

When the 2017 legislative session commenced on January 11<sup>th</sup>, no one was quite sure what to expect given the intensity of the 2016 election at the federal and state level. During opening day speeches, President Grantham, Speaker Duran, Senate Minority Leader Guzman, and House Minority Leader Neville shared a commitment to prioritize a solution to address Colorado's failing infrastructure and a commitment to break through the stalemate that existed for the last four years over construction defects reform. A tone of compromise and bipartisanship was set for the beginning. However, with three brand new leaders in place and 33 freshman legislators, there were bound to be bumps in the road. Success ultimately would depend on if the newly elected Democrat Speaker of the House and Republican President of the Senate would be able to work together and hash out compromises between the very divergent chambers.

### The FY 2017-18 Budget and the Hospital Provider Fee

This year the Joint Budget Committee faced the monumental task of setting a budget to fund Colorado's priorities while facing a \$600 million budget deficit. The Committee, with two brand new members, Senator Dominick Moreno and Senator Kevin Lundberg, got to work and ultimately passed a budget that held appeal for the right and the left. The FY 2017-18 budget reflects \$28.6 billion in spending including federal fund pass-through dollars. Highlights include:

- An increase of 2.8% for K-12 education, which is equivalent to an additional \$242 per pupil funding
- An additional \$20 million for higher education institutions
- An increase of \$633.8 million total funds including an increase of \$107.8 million General Fund for Medicaid
- A 1.4% across the board increase for community provider rates
- Allocated \$79 million General Fund for transportation instead of the initially promised \$158 million through SB 228
- \$30.8 million from the Capital Construction Fund for 35 tier one controlled maintenance projects for state agencies and institutions of higher education
- Appropriated \$15 million for affordable housing grants under the Department of Local Affairs
- Increased spending for rural broadband projects by \$9.5 million in funds redirected from the High Cost Support Mechanism
- \$4.1 million for an additional 67 child welfare caseworkers
- Funding for the Healthy Kids Colorado Survey and an additional \$1 million of taxes collected on marijuana to Tony Grampsas Youth Services fund

- Increased spending authority from \$500,000 to \$1.5 million for the Colorado Road and Community Safety Act Program
- Provided \$1.5 million General Fund support for Colorado's Community History Museums
- \$700,000 cash funds, including \$600,000 from limited gaming revenues and \$100,000 from revenue generated at community museums and historic sites for ongoing preservation projects at History Colorado museums and historic sites
- Appropriated \$750,000 for the film incentive program using funds from the Office of the Governor and not from Tourism Promotion

During the original figure setting process, the Joint Budget Committee was forced to make the difficult decision to restrict hospital provider fee revenues by \$264.1 million to avoid a TABOR refund in the next fiscal year. Since the funding is eligible for a federal match, the impact to hospitals was twice the amount of the General Fund reduction. The JBC introduced SB 256 to implement this cut.

Realizing the grave implications of these cuts, lawmakers from both sides of the aisle put their heads together and introduced SB 267, the Rural Sustainability Act. The bill as introduced turned the hospital provider fee into an enterprise, put additional money towards rural schools and roads, and also reset the TABOR revenue cap base (lowering by an equal amount to the hospital provider fee). A bill earlier in the session that solely placed the hospital provider fee in to an enterprise (SB 057) died on a party line vote. For a month after introduction, it was unclear if lawmakers were willing to make the compromises necessary to make sure the bill crossed the finish line. However, in the last full week of session, sponsors President Pro Temp Jerry Sonnenberg, Minority Leader Lucia Guzman, Majority Leader KC Becker, and Representative Jon Becker announced a grand bargain had been reached. The bill as it was approved on the final day of the legislative session contains the following provisions:

- Moved the hospital provider fee to enterprise status, so that it would no longer count toward the state's annual TABOR limit
- Reversed the more than half a billion dollars in cuts to hospitals made in the initial budget
- Lowered the TABOR revenue cap by \$200 million
- Required HCPF to provide a report on how they spend their administration costs and also puts a 3% cap on hospital provider fee administrative fees that can be kept by HCPF
- Increased copays for Medicaid patients to double the current level for outpatient and pharmacy
- Ensured the Senior Homestead Exemption is protected first when a tax refund occurs
- Appropriated \$150 million from state funds over four years to bond \$1.8 billion for transportation projects (25% of the bond must be spent in counties with populations less than 50,000 and 10% of the bond must go to transit projects)
- Secured \$120 million for capital construction projects
- Authorized a business personal property tax credit for small businesses (up to \$18,000) by increasing the retail marijuana tax
- Provided an additional \$30 million for rural/small schools in year one and all K12 schools in the following few years
- Required each state agency to submit a plan for a 2% budget reduction.

Debate on the Senate and House Floor was civil yet passionate. Senator Jerry Sonnenberg and Representative Jon Becker fiercely defended the proposal after fellow Republican colleagues questioned

the bill's constitutionality. In the end, the vote on the Senate Floor was 25 yes votes and 10 no votes and in the House 49 Representatives voted yes and 16 voted no. **The bill is waiting to be sent to the Governor's office.**

### **Balancing Employee and Employer Interests**

Ever since Senate Republicans won the majority in 2015, they've consistently killed legislation opposed by chambers of commerce and other business organizations while Democrats in the House have pushed the conversation on employee rights issues from paid medical leave to prohibiting discrimination based on criminal convictions. The legislature considered the following major bills in this area this session:

- ✓ HB 1001 by Rep. Buckner: Re-enacted a 2009 law which allowed parents to take leave from work for the purpose of attending academic activities for or with their child up to 6 hours per month or 18 hours in an academic year. **Status: Postponed indefinitely in Senate State, Veterans, and Military Affairs Committee on March 15, 2017.**
- ✓ HB 1290 by Rep. Buckner and Rep. Pettersen: Provided a savings plan for private sector workers whose employers do not offer retirement savings plans and would auto-enroll employees who work for an employer of a certain size into an IRA that the employer is required to administer. **Status: Postponed indefinitely in Senate State, Veterans, and Military Affairs Committee on April 26, 2017.**
- ✓ HB 1305 by Reps. Melton, Foote and Sen. Guzman: Prohibited an employer from advertising that someone with a criminal history can not apply for a position, stating in an employment application that someone with a criminal history can not apply, and asking on an initial application about someone's criminal record. **Status: Postponed indefinitely in Senate State, Veterans, and Military Affairs Committee on May 1, 2017.**
- ✓ HB 1307 by Rep. Winter and Sens. Fields and Moreno: Created a family and medical leave insurance program paid for by a premium on all employees' wages. The premium cannot exceed .99%. **Status: Postponed indefinitely in Senate State, Veterans, and Military Affairs Committee on May 3, 2017.**
- ✓ SB 080 by Sen. Merrifield: Changed the current process for wage garnishment by limiting the amount of money that can be garnished to either 25% of an individual's disposable earnings, or if the individual made less than 250% of the federal poverty only 10% of the individual's gross earnings, or zero if the individual's weekly take-home pay is less than 30 times the state's minimum wage. **Status: Postponed indefinitely in Senate Business, Labor, and Technology Committee on February 15, 2017.**

Conversely, Democrats sided with chambers of commerce and business organizations to block legislation initiated by Republicans in the name of protecting freedom of religion. Similar legislation passed in other states has resulted in a nationwide backlash and the loss of millions of dollars of economic activity. Bills in this category debated this legislative session include:

- ✓ HB 1013 by Rep. Humphrey and Rep. Williams: Declared no state action may burden a person's exercise of religion and provided a defense for anyone whose exercise of religion was burdened by state action. **Status: Postponed indefinitely in the House State, Veterans, and Military Affairs Committee on January 25, 2017.**
- ✓ SB 283 by Sen. Lundberg: Clarified that it is not discriminatory practice for an owner of a place of public accommodation to decline to provide goods, services, facilities, or other accommodation

to an individual, group, or event that represents a message with which the owner disagrees.  
**Status: Lost during Senate Second Reading on a Division Vote on April 18, 2017.**

For the past seven legislative sessions, House and Senate Republicans have prioritized legislation to provide a one-time pass for small businesses from first time violations of rules that aren't life threatening or health related. In the last three years, the concept has built bipartisan support, although none of the bills have yet made it across the finish line. This year, the Senate and the House introduced competing "regulatory reliefs acts" but none received final approval.

- ✓ SB 001 by Sen. Neville and Rep. Neville: The first Regulatory Relief Act of 2017. The bill required a state agency to give a small business (which is defined as a business with fewer than 500 employees) a period of time to cure a first-time minor violation of a rule instead of enforcing the rule by imposing a fine. **Status: Postponed indefinitely in the House Business Affairs and Labor Committee on March 2, 2017.**
- ✓ HB 1270 by Rep. Kraft Tharp/Rep. Lawrence and Sen. Williams/Sen. Coram: The bill was a redo of SB 001 except small business was defined as businesses with 50 employees or less. **Status: Postponed indefinitely in the Senate Appropriations Committee on May 9, 2017.**
- ✓ SB 276 by Sen. Neville and Rep. Neville: The bill was a counter to SB 001 being killed and the introduction of HB 1270. The contents of the bill were identical to SB 001. **Status: Postponed indefinitely in the House State, Veterans, and Military Affairs Committee on May 4, 2017.**

## Construction Defects Reform

Over the last three years, the Colorado General Assembly gained momentum in the push to reform construction defect laws in the state of Colorado. Bipartisan legislation has been introduced, however, each year lacking the support of House leadership, never made it across the finish line. The 2017 session saw several bills introduced to address the issue and commitments from the House Democrats and Senate Republicans to find a compromise that will reform the current law to spur development of affordable housing while still providing protections to homeowners.

SB 045 by President Grantham and Speaker Duran was the first bill out of the gate. The legislation allows an insurance company to request that the court apportion the defense costs equitably among all liability insurers who have a duty to defend against the claim in a construction defects case. Although the bill passed out of the Senate Business, Labor, and Technology Committee, it never was scheduled in the Senate Appropriations Committee. SB 156, the Homeownership Opportunity Alliance's priority bill, requires mandatory mediation before a lawsuit can be filed by a homeowner's association related to disputes involving construction defects. Mandatory mediation has been the gold standard for the construction defects reform coalition. **The bill did pass the Senate with strong bipartisan support but was sent to the House State Affairs committee where it died on a party line vote.**

After delaying considerations for two weeks in a row, just an hour before the scheduled hearing for HB 1279 in the House State Affairs Committee, the House Democrats and House Republicans issued a joint press release announcing a breakthrough in negotiations. House Assistant Majority Leader Alec Garnett and House Assistant Minority Leader Cole Wist led negotiations with both sides and came up with a bill that will require the approval of a majority of members of a homeowners association before the HOA board can initiate legal proceedings against a general contractor. It also requires HOA boards to

distribute members a report on the expected costs of proposed litigation, and to notify members that their ability to sell properties may be impaired during the lawsuit. During the House State Affairs Committee hearing, witnesses from both sides of the previously heated debate testified in support of the bill. HB 1279 did not include any provision related to mandatory mediation. **The bill passed the House and Senate with unanimous support and is waiting to be sent to the Governor's Office.**

## **The Future of Transportation in Colorado**

### Funding Options

On opening day of the 2017 legislative session, President Grantham and Speaker Duran made it clear that finding a bipartisan, comprehensive solution to fund Colorado's transportation infrastructure was a top priority for the next 120 days. Leadership spent the months prior to January 11 discussing different proposals, engaging stakeholders throughout the state, and navigating the politics of their own caucuses in an attempt to develop a bill that would not only pass muster with the General Assembly but Colorado voters.

Introduced on March 8<sup>th</sup> with President Grantham and Senate Transportation Chair Baumgardner joining Speaker Duran and House Transportation Chair Mitsch Bush as sponsors, HB 1242 referred a measure to the ballot to increase the state sales tax by .62% (for a total of 3.5%) for a period of 20 years, raising an estimated \$702 million annually for transportation. The bill provided a substantial increase to local communities and gave them flexibility to use their funds in a way that best fit their community, included a set amount of CDOT money and sales tax to pay for a \$3.5 billion bonding project in the state, set aside 15% of the total funding for multi modal options, enhanced transparency and accountability via a website that will allow Coloradans to track the progress costs and timeline for projects, and decreased the existing FASTER Road Safety vehicle registration surcharge. Champions of the proposal included: Fix It Colorado Coalition, the Colorado Contractors Association, the Denver Metro Chamber of Commerce, Club 20, Action 22, Progressive 15, the Metro Mayors Caucus, Colorado Counties Inc, Colorado Municipal League, the Colorado Farm Bureau, Conservation Colorado, the Colorado Association of Commerce and Industry, among many others.

As the bill made its way through the process, it underwent significant edits. Amendments adopted made a number of changes to the bill, including decreased sales tax increase from .62% to .5%, increased the maximum repayment amount for the bonds from \$5 billion to \$5.5 billion, required a \$50 million CDOT buy in for the bond payment, added \$100 million General Fund to pay for the CDOT bond payment, reworked the formula to give CDOT a percentage of money instead of a fixed amount, eliminated the multimodal transportation options committee and eliminated FASTER late fees. **Despite passing the House and Senate Transportation Committee with bipartisan support, HB 1242 was killed on a party line vote in the Senate Finance Committee by members of the Senate President's party.** Proponents of the bill are considering taking the proposal to the ballot in the fall.

A handful of other proposals to address transportation funding exclusively were introduced this session. However, all of these stand-alone proposals fell short. Bills included:

- HB 1171 by Reps. Carver and Buck: Authorize New Transportation Revenue Notes. HB 1171 put a question to voters to allow the state to issue bonds to address critical transportation priorities in the state. Bonds would be paid with from 10% of existing state sales and use tax revenue.

**Status: Postponed indefinitely in the House State, Veterans, and Military Affairs Committee on March 29, 2017.**

- HB 1153 by Reps. McKean and Williams: Highway Congestion Mitigation. HB 1153 required CDOT to prioritize two projects to widen I-25 south and north of the metro area. CDOT was to prioritize these projects above all other unfunded projects using flexible federal money not previously allocated for any other project and must also require any environmental or other study to be completed no later than six months after the bill's effective date, and not allow the findings of any study to prevent the projects from being undertaken. **Status: Postponed indefinitely in the House Transportation Committee on March 8, 2017.**
- SB 188 by Sen. Marble: Repeal Income Tax Credit for Innovative Motor Vehicles. SB 188 repealed the existing tax credit for alternative fuel vehicles and referred a measure to the voters to direct it money saved to the Highway User Tax Fund. **Status: Laid over until May 11<sup>th</sup> (effectively killing the bill).**
- SB 303 by Sen. Neville and Sen. Cooke: State Highway System Funding and Financing. SB 303 puts a question to voters to allow the state to issue bonds to address critical transportation priorities in the state. Bonds would be paid for with an increase in the Special Ownership Tax (SOT). **Status: Laid over until May 11<sup>th</sup> (effectively killing the bill).**

## Telecommunications

Although the telecomm industry was a constant feature in the news and in federal level politics, the industry kept a fairly low profile at the statehouse until the final days of the 2017 legislative session. Industry secured passage of HB 1193 by Representatives Kraft Tharp and J. Becker and Senators Kerr and Tate: Small Cell Facilities Permitting and Installation. After almost a year of negotiations with cities and counties, HB 1193 permits the use by right of small wireless service infrastructure, or "small cell facilities," in any zone — specifically on a local government entity's light poles, light standards, traffic signals, or utility poles in the rights-of-way, but not on any structure with tolling collection or enforcement equipment attached. The bill also clarifies that the right-of-way access available to telecommunications providers extends to broadband providers and includes small cell facilities and required a local government to process a single or a consolidated application for a small cell facilities within 90 days after receiving a completed application. Local governments are prohibited from creating preferences or disadvantages to any provider in granting or withholding permits. **The bill passed the House and Senate and was signed by the Governor on April 18, 2017.**

Due to action taken by Congress and the President to overrule the proposed FCC privacy regulations on internet service providers, rumors spread quickly that the Colorado General Assembly would run legislation to enforce privacy protections. Facing strong resistance to legislation, Representatives Bridges and Wist and Senators Cooke and Fenberg instead introduced a resolution, HJR 1032: Concerning the Protection of Online Privacy for Colorado Citizens. The resolution expressed the General Assembly's commitment to the online privacy of Colorado citizens and encouragement to internet service providers to advertise privacy policies and opt out provisions. Resolutions do not have the force of law but HJR 1032 did pass both chambers and will be sent to Federal Trade Commission, the Federal Communications Commission, and to each member of Colorado's congressional delegation.

During the budget debate, an amendment was added to the Long Bill to provide an additional \$9.5 million in broadband support. The JBC didn't realize that they needed to also run legislation to ensure the technical elements needed to transfer the funds so Representative Hamner and Senator Lambert introduced SB 306 in the last week of session. SB 306 requires the PUC to make a determination on High Cost Support Mechanism (HCSM) funding available for both broadband development and Broadband Development Board administration. Funds for broadband development must be transferred to a separate account within the HCSM, which is maintained by the HCSM third-party contractor, while funds for board administration must be transferred to the Broadband Fund.

What was supposed to be a technical JBC bill turned into one of the last bills up for consideration on sine die, when Majority Leader KC Becker added an amendment on House Second Reading late Monday evening that made substantive policy changes to steer funding in the future from the HCSM to the Broadband Fund. As the bill made its way back to the Senate, the Senate sponsors along with CenturyLink, AT&T, AFL-CIO, and AARP were upset the bill was hijacked and worked with Senators to implore them to reject the House amendments. A conference committee was called and the Majority Leader made it clear she would not back down from her position and that she was livid with industry for opposing her amendment. In the end, the House receded from their position and the Senate version of the bill passed. **SB 306 passed and is waiting to be sent to the Governor's Office.**

#### Future of Vehicles and Infrastructure

In addition to a focus on the condition of Colorado's transportation infrastructure, the legislature also looked forward to future mobility possibilities opened through the development of autonomous vehicles. SB13-213 by Senators Hill and Moreno and Representatives Winter and Bridges specifically authorized the use of automated vehicles in Colorado without a human driver, if the vehicle can follow all applicable state and federal laws. Colorado lawmakers worked through many stakeholder issues and amendments to ensure passage of the bill and keep Colorado front and center in this emerging market. Initiated by General Motors and the Colorado Department of Transportation, the bill gained support from the Colorado Farm Bureau, Lockheed Martin, Panasonic, various chambers of commerce, Securing America's Future Energy, and ARC of Colorado. Initial strong opposition from labor unions, the Colorado Motor Carriers Association and some competitors in the tech sector was muted by the end. **The final bill passed the House and Senate with strong bipartisan support and is waiting signature from the Governor.**

In 2014, Colorado became the first state to pass legislation authorizing Transportation Network Companies (TNC) like Lyft and Uber, to operate under a regulatory framework in the state. When the original bill was moving through the process, Governor Hickenlooper and the Public Utilities Commission both expressed serious concerns about allowing TNCs "free reign." However, TNCs Lyft and Uber have flourished in Colorado and continue to grow. This year, Lyft brought forth legislation to remove a barrier of entry for drivers wishing to join the ride sharing service. SB 043 by Senators Hill and Moreno removed the medical certificate requirements for individuals interested in driving for TNC's. This move will put requirements to drive for TNCs in line with all other states and allow more individuals to become drivers for Lyft and Uber. **Despite only two no votes on the floor of the Senate, the unions came out in force as the bill moved to the House and SB 043 ended up being postponed indefinitely in the House Transportation Committee.**

## Return of the Automobile Dealer Franchise Fights

With only two and a half weeks left in the 2017 legislative session, legislators introduced a bill at the urging of the Colorado Automobile Dealers Association to extensively rewrite franchise law in Colorado. SB 298 by Senator Tate and Representative Kraft Tharp aimed to make significant changes to current franchise law in Colorado. The bill was significantly amended in the face of staunch opposition. Legislation is expected next year related to warranty reimbursements. This provision was removed from the introduced version of SB 298 because no compromise could be developed with such limited time left in session.

## Policies Affecting Local Governments in Colorado

With over 700 bills introduced this legislative session, many of them were either brought by cities and counties or effected cities and counties. Below is a comprehensive list of bill that fall under this category by subject.

### BID/TIF/DDA

HB 1161 by Representative Beckman: Tax Increment Financing Transparency, requires that Urban Renewal Authorities using TIF provide a report about revenues collected in the previous year and progress made on urban renewal projects. **Status: Postponed indefinitely in the House Business Affairs and Labor Committee on February 21, 2017.**

HB 1167 by Representative Leonard: Existing Businesses in the Business (BID) Improvement District, requires that an area included in a BID have existing businesses. **Status: Postponed indefinitely in the House Business Affairs and Labor Committee on February 21, 2017.**

SB 285 by President Grantham: Downtown Development Authorities Fairness Act, revises various requirements in the current Downtown Development Authorities framework. **Status: Postponed indefinitely in the Senate Finance Committee on April 18, 2017.**

### Taxation

HB 1049 by Representatives Thurlow and Gray: Eliminate Property Tax Abatement Refund Interest, changes the current process and percentage for repayment and interest of erroneously collected taxes. **Status: Signed by the Governor on April 24, 2017.**

HB 1063 by Representative Leonard: Reduce Business Personal Property Taxes, creates a \$50,000 business personal property tax exemption starting in 2017. **Status: Postponed indefinitely in the House State, Veterans, and Military Affairs Committee on February 1, 2017.**

HB 1216 by Representatives Kraft Tharp and Sias: Simplification of Sales and Use Taskforce, creates a legislative taskforce to consider the feasibility of potential changes to administration of state and local sales and use taxes. **Status: Passed House and Senate and headed to Governor's Office.**

HB 1342 by Representative Benavidez: County Public Safety Improvements Tax Elections, authorizes a county to propose a county public safety improvement tax at a biennial county election. **Status: Passed House and Senate and headed to Governor's Office.**

SB 009 by Senator Crowder: Business Personal Property Tax Exemption, expands the exemption for business personal property from \$7,300 to \$10,000 in 2017 and 2018. **Status: Postponed indefinitely in the House State, Veterans, and Military Affairs Committee on May 3, 2017.**

SB 078 by Senator: Residential Storage Condo Unit Property Taxation, clarifies that storage units are taxed as residential property if the unit is owned as a condo unit, stores items related to the owners residence, etc. **Status: Postponed indefinitely in the House Finance Committee on April 10, 2017.**

## Energy Industry

Despite being defeated twice at the ballot in 2016, critics of the oil and gas industry pursued legislative remedies. From increased setbacks, changes to forced pooling requirements, and legislation to trump the Colorado Oil and Gas Conservation Commission's authority, House Democrats continued their drum beat for increased regulation on the energy industry.

Representative Foote, constant critic of industry, introduced HB 1256 which clarified that the 1,000 foot setback between a school and an oil and gas well must be measured from the school property line not the building itself. Representative Foote projected a picture of school and a nearby well during the debate on the House floor where the bill passed on a party line vote. **HB 1256 was then promptly killed in the Senate on a party line vote with much less fanfare.** Representative Foote also co-primed HB 1336 with Representative Young, which changed the hearing process for forced pooling applicants. The bill passed the House Floor even though Democrat Rep. Kraft-Tharp joined Republicans in opposition. **HB 1336 died in the Senate.**

After his three original bills failed, Representative Foote introduced HB 1372 on the last Friday of the legislative session. Introduced in response to the tragedy in Firestone, Colorado, the legislation directed the COGCC and local governments to gather information on all oil and gas facilities, including flowlines, gathering lines, and transmission lines and post that information in a searchable, public database. It also attempted to codify Recommendation #20 from the Governor's Oil and Gas Task Force regarding the communication of future development plans, and expand that rule beyond municipalities to also include counties. The bill was heard and approved by the House State Affairs Committee on Friday afternoon with two amendments added – one removed transmission pipelines and the other struck the word "shut-in" while referring to pipelines. **The bill died on the House calendar Monday after the bill failed to pass House Second Reading before midnight.**

Senate Republicans pushed back with proactive legislation to help Colorado's oil and gas industry which has seen a decrease in gas prices over the last year. Senator Sonnenberg introduced SB 035 Prohibit Tampering with Oil and Gas Equipment. The bill added "placing another person in danger of death or serious bodily injury" to the crime of tampering with oil and gas gathering equipment. Opponents of the legislation included the environmental community, which argued that stiff penalties were already in

place. Other citizen opponents argued the bill curtailed their right to free speech. **SB 035 passed the Senate with Democrat Sen. Jahn joining Republicans in support but quickly died on a party line vote in the House.** For the second year in a row, Rep. Perry Buck brought forth legislation to clarify that local governments that choose to ban hydraulic fracturing are liable to the mineral owner for the value of the mineral interest. The bill also states that local governments that enact fracking bans must compensate oil and gas operators, mineral lessees, and royalty owners for all costs, damages and losses of fair market value due to the ban. **The bill died in the House on a party line vote.**

## Energy and Utility Policy

This session there were more than a typical number of bills aimed at changing the rules for investor owned utilities and co-ops. Although much of the legislation didn't move forward, the late introduction SB 301 titled "Regarding Energy Infrastructure" left everyone scrambling until the final hour of sine die.

SB 301 by Senator Scott and Majority Leader KC Becker and Rep. Lori Saine was notable for its extremely broad title. The bill as introduced funded the Colorado Energy Office, repealed some of the office's programs, repealed various incentive and grant programs, increased the electric vehicle registration fee, allowed Colorado's investor owned utilities to purchase reserves of natural gas and added nuclear power and hydroelectric power as clean energy sources. As the bill moved from the Senate to the House in the last three days of session, various amendments were added and stripped. The last day of session involved intense negotiations between the Chambers, the Governor's Office, and many energy and environmental stakeholders. **However, after hours of nail biting back and forth, it became clear that no deal would be reached and the bill died on the House calendar after the Senate refused to take up the House's amended version.** Since the bill failed to pass, the Colorado Energy Office doesn't have state funding to operate past July 1, 2017. The office will continue to receive minimal federal pass through funding for their weatherization program.

### Other Key Bills

SB 089 by Sen. Fenberg required the Colorado Public Utilities Commission (PUC) to adopt rules governing the installation and use of electricity storage systems by residential and small commercial customers of utilities regulated by the PUC. The bill also created certain requirements related to utility interconnection, approval, and charges. SB 089 received opposition from investor owned utilities like Xcel and Black Hills as well as co-ops but did have support from the conservative think tank the Independence Institute. **Status: Postponed indefinitely in Senate State, Veterans, and Military Affairs Committee on February 8, 2017.**

Senator Fenberg was also the sponsor of SB 145 Electric Utility Distribution Grid Resource Acquisition Plan. The legislation required investor-owned utilities and cooperative electric associations to create distributed energy resources plans and submit them to the PUC. SB 145 failed to move forward after concerns that "energy terrorists," would be able to access the plans and interfere with energy distribution. **Although the bill was killed in the Senate Agriculture Committee in early February, Senator Fenberg did successfully amend the provisions into SB 301 with the support of Senator John Cooke before that bill failed.**

HB 1116 by Reps. Hamner and Exum and Sen. Martinez Humenik continued the Colorado low-income energy assistance tax fund and extended the authorization for up to \$13 million through FY 2023-24 from the severance tax operational fund which is paid for by oil and gas operators. Although the bill was introduced early in session it was held up because legislation to reauthorize the Colorado Energy Office was yet to be introduced and the legislation referenced the Energy Office in a few different parts. **After the introduction of SB 301, HB 1116 was back on track and passed Senate 3<sup>rd</sup> Reading on May 10<sup>th</sup>. It is waiting to be sent to the Governor.**

HB 1299 by Reps. Hansen and Coleman and Sens. Donovan and Fenberg introduced legislation to direct the TLRC to hold a hearing on the potential benefits and costs of requiring the PUC to determine targets for the amount of energy storage systems that electric utilities should incorporate in to electric resource acquisition plans. After utilities came to the House sponsors with concerns, they willingly offered amendments to address those concerns. **Despite neutrality from the majority of energy stakeholders, the bill was postponed indefinitely in the Senate, State, Veterans, and Military Affairs Committee.**

### **Continued Regulation of Marijuana in Colorado**

Colorado is one of the first states in the nation to legalize and regulate recreational and medical marijuana. However, due to loopholes in Colorado's current medical marijuana laws, a "gray market" has surfaced across the state, leading to illegal diversion of marijuana out of state, human trafficking, dangerous marijuana home grows, and lack of certainty from law enforcement about their ability to respond to these areas of concern. The Governor's Office with the support of law enforcement, the public health community, Colorado counties, cities, and child protection organizations like the Kempe Foundation and Children's Hospital Colorado introduced two pieces of legislation to close the loopholes. HB 1220 clarifies that individuals can only grow 12 plants (whether recreational or medical) in a residential house unless they register with the state and local government. Breaking the plant cap would result in criminal consequences. HB 1221 creates a grant program for law enforcement in communities with fewer than 200,000 residents to be used for marijuana enforcement purposes. **Both bills have been sent to the Governor's Office for signature.**

Other marijuana regulation bills considered this session include:

- SB 015 by Sen. Aguilar and Rep. Pabon: Unlawful Marijuana Advertising, makes it a level 2 drug misdemeanor for a person not licensed to sell medical or retail marijuana to advertise for the sale of marijuana. **Status: Signed by the Governor on April 4, 2017.**
- SB 017 by Sen. Aguilar and Rep. Singer: Allow Medical Marijuana Use for Stress Disorders, adds PTSD to the list of conditions that can be treated with medical marijuana. Status: Sent to the Governor.
- SB 025 by Sens. Baumgardner and Holbert and Rep. Singer: Marijuana Education Resource Bank, creates a marijuana resource bank for public schools to utilize. **Status: Passed the Senate and House and waiting to be sent to the Governor.**
- SB 063 by Sen. Marble and Rep. Melton: Marijuana Club Licenses, creates the framework for a marijuana club license. **Status: Postponed indefinitely in the Senate Business, Labor, and Technology Committee on March 1, 2017.**

- SB 184 by Sen. Gardner and Rep. Pabon: Private Marijuana Clubs Open and Public Use, allows private membership marijuana clubs if a jurisdiction allows them. **Status: Lost on the last night of session after the House rejected the second conference committee report.**
- SB 192 by Sen. Neville and Reps. Singer and Melton: Marijuana Business Efficiency Measures, creates a market rate for marijuana, allows delivery of medical marijuana in specified areas. **Status: Passed Senate and House and waiting to be sent to the Governor.**

## Immigration

Although ultimate authority on immigration lies at the federal level, it didn't stop the General Assembly from jumping into the fray. Two separate pieces of legislation were introduced addressing the "sanctuary city" designation that has become front and center since the 2016 election. HB17-1134 by Representative Williams was coined by the sponsors as the "Colorado Politicians Accountability Act." The bill created a civil remedy against the state, a political subdivision and its elected officials for passing sanctuary city policies. It also creates a crime that can be brought against an elected official for creating a sanctuary city. The bill received strong opposition from CCI, CML, the County Sheriffs of Colorado and immigrant rights organizations while many private citizens came out in support of the bill. **HB 1134 died on a party line vote in the House State, Veterans, and Military Affairs Committee. A similar bill was introduced in the Senate, SB 281, which also died in the House State Affairs Committee.**

For the second year in a row, lawmakers made a go at improving efficiencies to the SB 251 driver's license program which provides drivers licenses to all Coloradans irrespective of legal status. HB 1206 by Representatives Singer and Arndt and Senators Moreno and Coram fixed an oversight in the original law by allowing Social Security Numbers to be used as a qualifying eligibility document to obtain the SB 251 driver's license and also allowed for online renewals. HB 1206 was supported by the I Drive Coalition, the Colorado Coalition for the Medically Underserved (which represents over 40 organizations throughout the state), and the Dairy Farmers Association. **Even though the bill passed the House with bipartisan support, it was postponed indefinitely in the Senate Transportation on a party line vote.**

In the last week of session, Representative Pabon and Senator Marble introduced HB 1369: Bonds When Person Fails to Appear due to an Immigration Issue. The legislation allowed a bail bond agent who posts a bail bond for a defendant to recover the bond if the agent can provide the court with satisfactory evidence that the defendant was deported. Upon a motion and affidavit from the surety, and if the district attorney does not object, the court may cancel the surety's liability rather than require a forfeiture of the bond. HB 1369 also stated that law enforcement agencies holding a defendant must not notify the defendant's agent before the bond is posted that his or her bond or fees may be forfeited if the defendant is deported. **The bill passed the House and Senate with only one no vote and is waiting to be sent to the Governor.**

## Communities First

In response to legislation going after sanctuary cities, Democrats introduced HB 1230, originally coined the Ralph Carr Freedom Defense Act. If requested by the federal government, the bill required state and local government to consider the constitutionality of sharing information with the feds related to an

individual's race, ethnicity, national origin, immigration status, or religious affiliation. The bill turned into a heated debate about immigration on the House Floor and at the request of Carr's family, his name was removed from the bill's title. **HB 1230 was killed in the Senate Judiciary Committee.**

Colorado has experienced an increase in hate related crimes over the last year. In response, Representative Joe Salazar and Senator Angela Williams introduced and passed HB 1138, the Hate Crimes Reporting Act. The bill required the Department of Public Safety (DPS) to include in its SMART Act presentation information about bias-motivated crimes reported to the department by law enforcement agencies. HB 1138 was supported by Together Colorado, the Anti-Defamation League, and the Jewish Community Relations Council among others. **The bill was signed by the Governor on April 18, 2017.**

## Health Care

Legislators weren't quite sure what a complete repeal and replace of the Affordable Care Act would mean for Colorado if Congress was successful. In his opening day speech, President Grantham announced one of his caucuses top priority bills was legislation to repeal the Colorado's health care exchange, Connect for Health Colorado (SB 003). **Although the bill never received a full vote in the Senate (it was laid over until May 11<sup>th</sup> at the request of the sponsor), it sent a message that changes were coming in the healthcare world.**

### Governor's Office Priorities

Lt. Governor Donna Lynne was a leader in the health care industry prior to joining Hickenlooper's administration last year. She made it clear from the beginning that she was interested in making sure that Colorado's rural communities have choice when it comes to insurance companies, as the current circumstances have left Colorado's rural citizens with access to one insurance provider at rates significantly higher than in other regions. The Lt. Governor worked with members on both sides of the aisle to introduce three bills:

1. HB 1235 by Representatives Hamner and Mitsch Bush as well as Senators Crowder and Coram established a financial assistance program for individuals purchasing insurance through Connect for Health Colorado that met a set of circumstances. The program was limited to \$5.7 million General Fund. **HB 1235 was postponed indefinitely in the Senate State, Veterans, and Military Affairs Committee.**
2. HB 1237 by Representative Hamner and Senators Coram and Crowder allowed local governments to provide health benefits to their employees through the state employee group benefit plans managed by the Department of Personnel and Administration. CCI and CML both supported the bill while the insurance industry was opposed. **The bill was postponed indefinitely in the Senate State, Veterans, and Military Affairs Committee.**
3. HB 1286 by Representative Esgar and Senator Crowder required health insurance carriers that contract with the state to provide their employees benefits must also participate in Connect for Health Colorado, Medicaid, and CHP+. **Similar to the other two bills, HB 1286 was also postponed indefinitely in the Senate, State, Veterans, and Military Affairs committee.**

### Increased Focus on Transparency

Several bills were introduced this session related to transparency in the health care industry.

*SB 065 by Senator Lundberg and Representative Lontine: Transparency in Health Care Prices Act*

After extensive negotiations with hospitals and providers, the Transparency in Health Care Price Act required certain health care professionals and facilities to make a single document available to the public that lists the direct pay prices for the most common health care services provided. The sponsors were sure to clarify in the bill that it doesn't provide any agency with the authority to approve, disapprove, limit, or change the direct pay prices disclosed by health care professionals or facilities. **The bill was signed by the Governor on April 6, 2017.**

*HB 1121 by Representative Buckner and Senator Todd: Patient Safety Act*

HB 1121 required a finger print background check for doctors, nurses and other healthcare providers authorized to prescribe controlled substances. Colorado's current law only requires self-disclosure of past criminal convictions from doctors. This bill was a direct response to a case in Colorado where the action of a surgical tech accused of swapping needles to steal drugs resulted in patients contracting Hepatitis C. **HB 1121 was postponed indefinitely in the Senate State, Veterans, and Military Affairs Committee.**

*HB 1236 by Representative Kennedy and Senators Smallwood and Coram: HCPF Annual Report on Hospital Expenditure*

A bipartisan group of legislators introduced HB 1236 which required the Colorado Department of Health Care Policy and Financing (HCPF) to prepare an annual report detailing the costs of the uncompensated care provided by hospitals in Colorado. The bill came at the request of HCPF. The Colorado Hospital Association worked with HCPF to try to address their concerns; however, they were unable to and opposed the bill because it created more paperwork and red tape. **The bill died in the Senate State, Veterans, and Military Affairs Committee.**

*HB 1318 by Representative Ginal and Senators Kefalas and Coram: Division of Insurance Annual Report on Pharmaceutical Cost Data*

For the second year in a row, Representative Ginal brought forth legislation aimed at increasing transparency requirements on pharmaceutical companies. The bill required health insurers to submit specific information to the Division of Insurance on the cost of pharmaceuticals covered under individual and group health insurance plans. The bill placed limits on data reporting by the DOI to ensure that prices paid by single carriers are not disclosed and that only aggregated information is presented. Proponents included the Insurance Commissioner and the Colorado Consumer Health Initiative while the Colorado Association of Health Plans opposed the bill. **HB 1318 was postponed indefinitely in the Senate State, Veterans, and Military Affairs Committee.**

## **The Opioid Crisis**

Like many areas around the country, Colorado is feeling the effects of the opioid crisis. Lawmakers took notice when in 2015 the state health department reported 472 opioid-related overdose deaths, a significant spike from prior years. Particular communities such as Pueblo in southern Colorado have been hit harder than others. Legislators brought forth a slew of bills aimed at tackling the growing problem.

- SB 074 by Sen. Garcia and Rep. Esgar: Created a pilot program in the College of Nursing in the University of Colorado to make grants for organizations providing medication-assisted treatment to persons with opioid use disorders in Pueblo and Routt counties. **Status: Passed House and Senate and waiting to be sent to the Governor.**
- SB 193 by Sens. Jahn and Lundberg and Reps. Pettersen and Rankin: Created a Research Center for Substance Abuse and Addiction Prevention Strategies and Treatment at CU Health Science Center. The Center's mission is to establish/expand programs for research concerning abuse and addiction to opioids, other controlled substances, and alcohol; establish/expand treatments for the three above afflictions, and expand existing partnerships with national organizations with similar missions. **Status: Passed House and Senate waiting to be sent to the Governor.**
- HB 1350 by Reps. Pettersen and Liston and Sens. Jahn and Smallwood: The bill will allow a pharmacist filing a prescription for a schedule II controlled substance, such as an opioid, to dispense the drug in smaller increments when the partial fill is requested by the patient or practitioner who wrote the prescription. **Status: Postponed indefinitely in the Senate, State, Veterans, and Military Affairs Committee.**
- HB 1351 by Reps. Pettersen and Rankin and Sens. Crowder and Jahn: The bill required HCPF and CDHS to prepare a written report for various committees in the General Assembly concerning the feasibility of providing residential and inpatient substance use disorder treatment as a part of the Medicaid program. **Status: Passed House and Senate and waiting to be sent to the Governor.**
- This year Representative Pettersen requested and Legislative Council voted to approve an Interim Study Committee on Opioid and Other Substance Use Disorders. The 10 member interim committee will meet up to 6 times during the legislative interim and is authorized to bring forward 6 pieces of legislation. Appointments to the committee must be made by June 1, 2017. **Status: Approved.**

## K-12 Education

### Education Funding in Colorado

For the second year in a row, the top priority for the education reform community was equal sharing of local mill levy dollars with charter schools by school districts. On the first day of session SB 061 was introduced. The bill required a school district to distribute revenue it receives from ongoing local property tax mill levies equally, on a per-student basis, with charter schools in the district. As the bill was guided through the Senate by sponsors Owen Hill and Angela Williams, the bill gained increasing support from members on both sides of the aisle. On the Senate Floor, Senators Moreno and Fields offered an amendment that phased in the sharing of funds in order to mitigate any immediate financial impact on the affected school districts while also clarifying that a school district may go to their voters to ask which public school students will benefit from local mill dollars. SB 061 passed the Senate on March 14<sup>th</sup> on a vote of 22-13.

As SB 061 awaited committee assignment in the House, SB 296 the annual school finance act, was introduced. Although the bill was introduced with just the average district appropriation and total spending for K12 specified, sponsor Senator Hill offered an amendment to insert the text of the SB 061 into the school finance act. The success of the amendment politicized the bill immensely as it moved forward. With two bills as a potential vehicle to provide equity to students, House Democrats began

working with supporters including the Colorado League of Charter Schools, Democrats of Education Reform, Colorado Succeeds, school districts, the Colorado Education Association, and others to craft a delicate proposal that all parties could agree on but would also provide equal funding for all students in Colorado's public school system. The result was a compromise proposal which contained the following provisions:

- By 2019-2020, all school districts with charter or innovation schools and mill levy overrides must either share 95% of those mills with their charters and innovation schools or develop a district-wide plan for the equitable sharing of mills that meets the needs of and equitably supports the education of all students enrolled in all of the schools in the district, regardless of the type of public school in which the student is enrolled.
- Beginning in 2018, anyone who files a 990 would need to post a link to it on their financial transparency website; each charter school would need to post a copy of a standardized document developed by the League, CSI, and CDE that explains the automatic waivers and the rationale for why these waivers were added to the automatic waiver list in the first place.
- In 2017 any school with waivers from state statute would need to post a list of those waivers along with a copy of the associated replacement plans.
- Creates the structure for a fund to help equalize funding for CSI schools out of recognition that they have no access to local tax revenue.

As discussion on the compromise continued, the right place for it was a point of contention for all stakeholders, and the decision was made late on Monday, May 8<sup>th</sup> that a brand new bill needed to be introduced to bring the agreement to fruition. HB 1375, the last bill of the 2017 session, was introduced in the early evening hours, heard in the House Education Committee and back on the floor that evening. The bill won strong bipartisan support despite immense pressure from several school districts to oppose. HB 1375 passed the House with 46 yes votes and 19 no votes and then passed the Senate Wednesday morning with only 4 no votes. **HB 1375 is awaiting the Governor's signature.**

The School Finance Act played a prominent role in the education debate this year when the contents of SB 061 were amended into the bill in the Senate Education Committee. Cries of legislators that the school finance act was being "politicized and jeopardized" rang throughout the capitol. The School Finance Act underwent many iterations but in its final version SB 296 increased base per pupil funding to \$6,546.20 and held the negative factor flat at \$828.3 million, replaced the term "negative factor" throughout statute with "budget stabilization factor," created and provided \$500,000 in funding for a grant program for eligible teachers who wish to pursue additional postsecondary education in computer science, and amends the law to permit instructors at higher education institutions to sign a written pledge affirming that they will uphold the United States and Colorado constitutions (currently, it must be a notarized verbal oath). **The bill is headed to the Governor's desk for signature.**

The passage of HB 1340 by Representatives Lundeen and Garnett as well as Senators Hill and Moreno will ensure that much needed conversations on the future of school finance in Colorado occur over the next two years. The Legislative Interim Committee on School Finance is authorized to meet up to 5 times during the 2017 interim and 2018 interim and will look at issues from the costs and benefits of requirements imposed on public schools and school districts by state and federal laws to the amount of property tax revenue that each district collects from total program mill levies and mill levy overrides. **The bill passed the House and Senate and is waiting to be sent to the Governor.**

### Education Policy Priorities

- ✓ HB 1181 tackled the issue of 9<sup>th</sup> grade testing in Colorado. The bill represented an agreement among all stakeholders to repeal the requirement to administer ELA and math assessments to 9<sup>th</sup> grade students and instead administer an assessment aligned with pre-exam and college entrance exams taken by 10<sup>th</sup> and 11<sup>th</sup> grade students. **Status: Awaiting Governor' signature.**
- ✓ HB 1184, Modern Technology in Public Schools, required the State Board of Education to incorporate into the CMAS skills related to the use of information and communications technologies to find, evaluate, create, and communicate information. Sponsored by the Speaker of the House and Senate President, the bill also requires CDE to create and maintain a resource bank of materials pertaining to computer science course material and programs for option use by schools and school district. **Status: Signed by the Governor on April 24, 2017.**
- ✓ HB 1301 was a bipartisan effort by Majority Leader Holbert, Senator Fields, and Representative Michaelson Jenet to prohibit a school district or school from withholding transcripts, grades, or diplomas for unpaid fines, such as library fines. **Status: Passed the House and Senate.**
- ✓ SB 272, Measures of Postsecondary and Workforce Readiness, requires that schools and districts calculate the percentage of high schoolers who demonstrate college and post workforce readiness based on various demonstration options adopted by the State Board of Education. The bill sponsored by Senator Priola and Representatives Pettersen and Lundeen, also required that the State Board of Education set achievement standards for the demonstration options indicating both the minimum achievement level required for high school graduation, and a higher achievement level of student preparedness for higher education without remediation. **Status: Passed the Senate and the House.**

### **Colorado Open Records Act (CORA) Reform**

As technology and communication move into the 21<sup>st</sup> Century, records requesters have pushed for an update to Colorado's CORA laws. Through the summer the Secretary of State convened a working group to look at CORA's current laws and come up with policy solutions to ensure that Colorado's public records continue to be open and accessible. The result was the introduction of HB 1177 and SB 040. HB 1177, Mediation for Disputes under CORA, changed the current three day written notice that a requester is going to take a custodian to court to a 14 day written notice and a conversation between the two opposing sides must occur. During that time the requester and custodian can use any form of dispute resolution they want or have a phone meeting or in person meeting. **The bill passed with near unanimous support and was signed by the Governor.**

Although it took until the final day of the 2017 legislative session, a grand compromise was reached on SB 040: Public Access to Government Files by Senator Kefalas and Representative Pabon. Before a compromise was found, the bill underwent several iterations including allowing judicial records to be accessed. There were many points in negotiations that both custodians and requesters feared no deal would be reached. The final version of the bill made a clearer distinction between records that are sortable, searchable, and digital. It stated that if a custodian has a record in the three formats list above, they must produce it unless it conflicts with the current provisions that allow records to be withheld. **The bill passed the Senate and House and is waiting to be sent to the Governor.**

### **Wrap Up**

Compared to the previous two legislative sessions, significant progress was made on incredibly contentious issues and was achieved through perseverance, bipartisanship, and a willingness to compromise. Construction defects reform saw meaningful progress, the Hospital Provider Fee was placed in an enterprise (a feat that seemed impossible on day 1 of this session), and children in public schools are on the path to receiving funding equity regardless of the public school choice their family makes. Yet despite the passage of these significant measures, one big pothole still remains – a comprehensive statewide solution to address Colorado’s \$9 billion transportation shortfall. Governor John Hickenlooper has threatened a special legislative session to address this issue, though Senate Republican leadership is discouraging it.