2015 Session Sine Die Report
May 06, 2015

2015 Session Facts
Democrat/Republican split in House of Representatives: 34/31
Democrat/Republican split in the Senate: 17/18
Number of bills introduced during the 2015 Legislative Session: 761
Number of bills signed by the Governor as of 5/06/15: 183
Number of bills vetoed as of 5/06/15: 0
Last day for the Governor to act: June 5, 2015

The results of the 2014 election primed a new reality for the 70th General Assembly. After two years in control of the House, Senate and Governor's Office, Democrats lost the majority in the Senate and held a slimmer majority in the House. Senate Republicans elected Bill Cadman to serve as their President and Mark Scheffel to serve as their Majority Leader. With Speaker Ferrandino term limited, Dickey Lee Hullinghorst was chosen to lead as the new Speaker of the House and Crisanta Duran was elected as the new House Majority Leader. In addition to split chambers and new majority leadership, 33 of the 100 legislators were freshman. These varying dynamics set the stage for a long, contentious, and "learning" session for leadership and legislators. For 120 days, the House and Senate tackled many high profile issues including workforce development, repeal of gun control and energy mandates, K-12 public school assessments, urban renewal, affordable housing and a delicate TABOR thicket. Although Republicans controlled the Senate and Democrats controlled the House, leadership in both chambers did partner successfully on a handful of bills including legislation to narrow school immunity in the cases of school violence and legislation to change the process related to hospital liens. Split control of the House and the Senate tends to benefit the Governor since the most extreme bills from each majority are killed in the other chamber. The Governor has 30 days after the legislative session to take action on any remaining legislation.

Colorado's Fiscal Future

With the split chambers, the Joint Budget Committee membership changed from a 4-2 Democrat majority to a 3-3 Republican and Democrat split. Of the six-member Joint Budget Committee, three members were new this year. As signed in to law, Colorado's budget totals $26 billion total funds, including state and federal sources. The FY 2015-2016 budget:

- Increased the state's reserve account by $613 million
- Increased funding for K-12 education by 2.8%
- Increased community provider rates by 1.7%

- Keeps whole the promise of SB 09-228 to fund transportation and capital construction at percentages defined in statute (despite 50% transfers because of TABOR implications)
- $7 million for additional child welfare workers
- $105 million increase for higher education
- 12 FTE and $1.36 million to implement the recommendations of the Oil and Gas Taskforce

The budget passed with only 2 no votes in the Senate and 20 no votes in the House.

This session, the legislature was forced to face the impending realities of hitting the TABOR revenue cap. Once the TABOR revenue cap is triggered, state revenues must be refunded to Colorado tax payers. The 2015 March Revenue forecast estimated that TABOR refunds will equal $116.8 million in FY 2015-16 and $434.9 million in FY 2016-17. Critical state needs such as infrastructure, K-12 education, and funding for other state services will continue to be squeezed as a result.

A diverse set of stakeholders including education, the business community, the construction industry, higher education, the Governor's office and legislative leadership engaged in careful negotiations to chart a path forward for TABOR. One possible proposal was to change the hospital provider fee into an enterprise. This measure had the potential to free up $600 - $700 million in revenue against the TABOR cap. However, Senate Republican leadership didn't agree to the terms laid out. Shortly after negotiations broke down, the Governor publicly released a Five Point Plan to address critical funding issues in the state. The plan would continue TABOR refunds for the next two years restructuring the pay outs to benefit the middle class and move the Hospital Provider Fee to an enterprise in 2016-17. Under Hickenlooper's plan, the change in the HPF status would allow for a full pay out of SB 228 transfers to the Highway Users Trust Fund and capital construction, transfer $50 million to K-12 education in FY 2016-17 to buy down the negative factor, and repay the severance tax used to balance the budget this year as well as $75 million of the HPF money that was transferred to the General Fund during the recession. The plan did not gain support from Republicans, but House legislative leadership introduced legislation in the final days to convert the hospital provider fee into an enterprise (HB 1389) to allow the debate to occur.

The first bill of the session was President Cadman's SB 001. SB 001 proposed to create a new system to provide refunds when revenues exceed the constitutional cap under TABOR. The new formula would replace the six tiered refund system with a three tiered system that resulted in a greater portion of excess tax money being directed to the middle class. The bill was amended in the final days of session to strike the Earned Income Tax Credit and fully fund SB 228 transfers to the Highway User Tax Fund and Capital Construction. On the final day of session, both SB 001 and HB 1389 were killed by the other chamber.

Workforce Development

Throughout the 2014 interim, the drum beat from each caucus and legislator was “workforce development.” Democrats and Republicans agreed to a package of legislation to encourage entry into the skilled trades to meet the needs of the construction, tech, and the energy industries in Colorado. Democrats and Republicans joined together in the strongest show of bipartisanship this session to sponsor a Workforce Development Package. The ten bill package included HB 1271 Mobile Learning Labs, HB 1170 Increasing Postsecondary and Workforce Readiness which requires CDE to include percentage of high school student graduates who enroll in a postsecondary education program immediately following graduation as part of Postsecondary Workforce Readiness, HB 1270 which creates partnerships with industries for STEM and IT internships, and HB 1275 Career Pathways which directs the state workforce development council to coordinate with industry to design more career pathways for critical occupations in growing industries among others. HB 1276, WORK ACT, supported by Colorado Contractors and Chambers groups establishes a matching grant program to award matching grants to entities and organizations that offer skilled worker training programs to assist in their outreach, recruiting, and training efforts. The 11-member grant review committee reviews and makes recommendations to the executive directors of the departments of labor and employment and higher education and the director of the office of economic development, who jointly determine the recipients and amounts of the grant awards. The grant review committee is to develop criteria for ranking grant applicants, taking into consideration those applicants that demonstrate partnerships with industry and that have the best potential to reach a broad audience through their recruitment and outreach efforts also significantly increase enrollment in and completion of their skilled worker training program; and fill existing needs for skilled workers in the market The workforce development package successfully passed the House and the Senate.

K-12 Education: More Money and Fewer Assessments

The HB 1202 Assessments and Testing Taskforce that met over the interim aimed to provide a clear path forward on a bill that would rework Colorado’s assessment regime but the recommendations proved far from a settled question. Individual legislators and advocacy groups brought significant pressure to bear on the debate, and teacher’s union advocates and tea party Republicans became unlikely allies, working closely together to pen a handful of significant proposals. A handful of more moderate proposals also brought bipartisan support.

In the end, two competing bills were anointed in the House and Senate to serve as the vehicles to satisfy the call for reductions in assessments. SB 257, the bipartisan brain child of Senators Merrifield, Hill and Holbert encompassed provisions to reduce testing to federal minimums, suspend the use of student assessment results in teacher performance reviews for additional years, and authorize school districts to develop local assessments in lieu of using state assessments. HB 1323, a bipartisan measure from the ranking Republican Education Committee member Representative Wilson and Education Committee Chair John Buckner, closely followed the recommendations of the HB 1202 taskforce with the inclusion of mandatory 9th grade assessment. Tense negotiations between the chambers came to a head in the final days, and HB 1323 with amendments was endorsed by both chambers on the final evening.

Senators Todd/Holbert and Representatives Lebsock/Ransom ran SB 223 in recognition of mass student opt-outs from PARCC testing. The legislation removed penalties for districts, schools, and teachers if parents chose to opt their student out of statewide assessments. Parents came forward during the bill hearing in the Senate to claim their child had been unfairly punished by their school for opting out of the assessments. Opponents were concerned the legislation may encourage opting out of tests in schools and that the bill was too broad. The bill passed the Senate with strong support, 28-7. However, the game changed in the House, when the State found out they weren't going to receive a waiver from federal requirements that 95% of students need to participate in statewide assessments. The letter made it clear that if fewer than 95% of students took statewide assessments nearly $360 million in federal funding could be in jeopardy. The bill was killed in the House Education committee on a vote of 6-5 with three Republicans and three Democrats voting against the bill. One provision from this measure – protecting students from punishment if their parents opt them out of a statewide assessment, and disallowing preferential treatment from school for those students who do take the test – was added to HB 1323.

For the first time since charter schools were authorized in Colorado more than 20 years ago, charters went after exclusive chartering authority currently held by districts. A bipartisan effort by Representative Fields and Senator Hill, would allow the Charter School Institute to charter a school in a district that has been on turn around or priority improvement status for more than three years. The bill passed the Senate with bipartisan support but the Speaker of the House sent the bill to the State Affairs Committee as a demonstration of her opposition. The League of Charter Schools was victorious in passing legislation, which has already been signed by the Governor, defining a charter school network. HB 1184 codified many current practices that charter schools exercise. It allows a network of charter schools to hold the same board if they wish and also allows shared expenditures. The bill requires that each charter school in a network is held accountable independently of the other schools in the same network. The bill passed unanimously in the House and in the Senate.

This year K-12 education saw a 2.8% increase in funding, lower than the Governor's placeholder of a 4.8% increase. Members followed JBC staff recommendations to constrain the amount committed because of budget realities. SB 267, this year's School Finance Act, was only three pages long and appropriated $25 million to the School Finance Act. Funding approved places next year's per pupil funding at $6,292.39, a $171.39 increase from the previous year. JBC members Representative Rankin and Representative Hamner sponsored legislation to study Colorado's school finance formula. The bill passed the House with significant support but was subsequently killed in the Senate Appropriations Committee.

Higher Education

Last year higher education funding received quite the shake up when the legislature passed a comprehensive funding formula reform (HB 14-1319). Higher education institutions, in collaboration with the Department, worked throughout the interim to negotiate an agreement on the funding request to the legislature. SB 117 by Senator Lambert and Representative Joshi was offered as a counter to one specific factor in the formula as agreed to by the institutions. The bill specifically prohibits distributing money to an institution based on race. The Department was opposed to the bill and it died in the House Education Committee.

JBC Chairman Lambert introduced SB 072. The bill would have changed Metropolitan State University of Denver's admission standards from "modified open" to "modified selective." The University was opposed to the bill and it was killed in the Senate Education Committee.

For the second year in a row, Representative Salazar introduced legislation to extend in-state tuition to any Native American of a federally recognized tribe with ties to Colorado. The bill failed in the Senate. Sexual assault on college campuses was a key topic this year. HB 1296 by Representative Fields originally aimed to require Universities to adopt a policy of affirmative consent. The bill was amended to create a sexual assault task force to study the issue instead. Despite the amendments, the bill was killed.

Prioritizing Roads and Infrastructure

In 2009, the legislature passed SB 228 which guaranteed that when personal income growth hit 5%, two percent of the total General Fund would transfer to the HUTF for five consecutive years and one percent would transfer to the Capital Construction fund. The law contained a provision that transfers would be reduce by half if TABOR refunds were expected to be between 1-3% and completely eliminated if TABOR refunds exceeded 3%. No one imagined that when the 5% income was finally hit, which happened in FY 2014-15, the state would also be reaching their TABOR revenue limit. The first year of SB 228 transfers is expected in FY 2015-16, however, due to TABOR the transfer to the HUTF will be about $100 million, half of what was originally expected. Minority Leader DelGrosso introduced HB 1109 this year, which would add a year to the SB 228 the transfers every time a year is removed due to TABOR, to ensure a full five years of funding occurs. Although the bill passed the House Finance Committee it was killed in the Appropriations Committee. With no current legislative relief to the revenue under the TABOR trigger, the SB 228 transfers to the HUTF will essentially disappear next year.

SB 272 hoped to tackle the important issue of infrastructure funding through the late introduction of TRANS2. The legislation allowed the state to borrow up to $3.5 billion for specific transportation projects by issuing Transportation Revenue Anticipation Notes (TRANs). If passed, the issue would be referred to voters at the November 3, 2015, election, and would require approval of a majority of voters to become law. SB 272 is modeled after the 1999 TRANs bond program the state passed for highway projects. Despite strong support from the Colorado Counties Inc., other key stakeholders including the construction industry, Denver Chamber, Progressive 15 and the Colorado Department of Transportation were concerned that it detracted from the goal of finding a more permanent funding source for transportation in the state. Opponents also argued it was irresponsible to pay for current infrastructure needs by pushing off the debt incurred by the projects to future generations. Although the bill narrowly passed the Senate, it was killed in the House State Veterans and Military Affairs Committee.

Senator Matt Jones took a second stab at increasing transparency regarding public private partnerships following the veto of SB 09-197 last year. SB 172 sought to replicate the language in SB 197 related to contract review for public private partnerships. The bill was killed in the Senate Transportation committee.

Colorado At Work

The business community played just about as much offense as defense this legislative session. They were actively engaged in passing workforce development bills and gained notable progress in ballot reform through the passage of HB 1057. HB 1057 by Representatives DelGrosso/Court and Senator Hodge requires Legislative Council to prepare fiscal impact statements for all ballot measures submitted to the title board. Conservation Colorado, the Colorado Education Association and AFL/CIO worked in vigorous opposition to the bill. They claimed the legislation would only provide voters with partial information. Proponents including Colorado Concern, Independent Bankers of Colorado, Douglas County Business Alliance, the Colorado Children’s Campaign, and the Colorado Farm Bureau countered that the fiscal information provided in the ballots give voters a clearer picture on how measures will affect their community and family. The bill provided drama on the last day of session as it was initially killed on the Senate floor but then brought up for reconsideration and passed by a one vote margin.

The business community closely monitored and amended HB 1205 which would have created a taskforce to comprehensively review tax credits issued by the state of Colorado. The bill had bipartisan support but was killed in the Senate Appropriations Committee. A second try to establish a sales and use tax refund to the owner, operator or tenant of a qualified data center was partially successful this session. Due to the $10 million fiscal note, the bill original draft of the bill was amended to create a taskforce to study data centers over the interim. The study died unexpectedly on the Senate floor on the session's final afternoon. The telecom industry also sought an increase in tax refunds for broadband equipment deployed in rural areas of Colorado. SB 222 proposed to lift the current $1 million cap to $5 million by FY 2017-18. The bill passed the Senate and two House committees but was PI'd at the sponsor's request in the House Appropriations Committee due to political tangles in the final days.

Leadership in the House and the Senate made a commitment to increase economic activity in rural Colorado, though specific legislative proposals were late to come together. Despite high employment rates in the Denver Metro area and the front-range, rural communities are still struggling to recover from the great recession. SB 282/Jump-Start Colorado was a proposal to help spur employment, economic development and new businesses in economically distressed areas. The program specifically allows businesses that meet a specific set of criteria to operate for up to four years in an approved tax-friendly zone free of sales tax, personal property tax, business personal property taxes, business taxes, corporate taxes, and franchise fees. Although the bill was introduced late in the session, it passed with overwhelming support. The long list of supporters included Denver Metro Chamber of Commerce, Douglas County Business Alliance, Colorado Concern, Economic Development Council of Colorado, Independent Bankers, Colorado Mesa University, Club 20 and many more.

Employee/ Employer Issues

When Democrats controlled the House and Senate in 2013-2014 they passed a handful of bills that were considered harmful to the business community in the name of worker's rights. Democrats were back this year with a handful of measures aimed at expanding on those measures. However, with a split chamber, most of the bills were killed.

The minimum wage debate took center stage during the mid-way point of the legislative session. Three separate proposals were introduced to explore raising the minimum wage and giving local communities independence to set their own minimum wage. Concurrent resolutions 1001 and 003, aimed to put the issue of minimum wage on the ballot. The concurrent resolution would have increased the minimum wage from $8.23 to $12.50 by 2020. Concurrent resolutions require a 2/3rds vote to pass and neither were able to muster enough support, even in the Democrat-controlled House, to move forward. HB 1300 which would have allowed cities and towns in Colorado to set their own minimum wage also died on a partisan vote in the Senate. Legislation around minimum wage is expected to be back in the future as the national conversation intensifies.

For the second year in a row, Senator Ulibarri and Representative Salazar introduced legislation which creates the Family Medical Leave Insurance (FAMLI) Program to provide wage replacement when an individual takes Family Medical Leave from work. The bill would require each employee in the state to pay a premium into the insurance fund. Last year's bill did not pass committee. This year, the bill made it to the House Floor but died on third reading in the House. Representative Salazar brought forth HB 1342 which would allow employees or former employees to request copies of their personnel files from private sector employers. CACI took the lead opposing before the bill was even introduced. It was killed in the Senate. Senate Republicans also killed Senator Kerr's HB 1221 which would have permanently expanded the 2009 law permitting parents to take up to six hours of unpaid leave a month and up to 18 hours in a school year for their children's school activities.

The business community was split over HB 1154 by Representative Becker and Garnett which would have prohibited the collection of an interchange fee. An interchange fee is the fee established by a payment card network to compensate the issuer of debit or credit cards for their involvement in electronic payment transaction. The bill had support from conveniences stores and the National Federation of Independent Businesses. The main opponents were the Independent Bankers of Colorado, Colorado Banking Association, CACI and the Colorado Competitive Council. The sponsors originally amended the bill to study the issue of prohibiting interchange, but opposition remained strong and the bill was killed.

Affordable Housing

Since the previous session, a coalition of more than 70 business organizations, elected officials, and progressive affordable housing organizations joined together to form the Homeownership Opportunity Alliance. The coalition united to support passage of construction defects reform legislation. Senate Republican leadership made SB 177 one of their top priorities while Speaker Hullinghorst was clear she had grave concerns with any changes to current construction defects law.

Knowing the Speaker's opposition to SB 177, Republicans on the JBC blocked a $3.4 million increase to the Division of Housing for the Housing Development Grant Loan Program. After the bill passed the Senate with 6 Democrats joining Republicans in support, it was sent to the House State Veterans and Military Affairs and died on a partisan vote.

The Democrats introduced three affordable housing measures as their alternative to construction defects reform: HB 1383 by Rep. Tyler to extend the low-income tax credit from two to five years; HB 1384 by Rep. Tyler and Esgar to transfer one third of the available balance in the state's unclaimed property trust to the Colorado Housing Finance Authority for affordable housing programs; and HB 1385 by Rep. Tyler and Kraft-Tharp to create a voluntary process for an external review and validation of new multi-family housing construction. This program would be paid for by the builder, conducted by a trained independent contractor, and audited by the Division of Housing in the Department of Local Affairs. HB 1383 and HB 1384 swiftly passed the House and were just as quickly killed in the Senate. The House chose to kill HB 1385 by laying it over until session ended. Colorado has no permanent funding source for affordable housing, so this issue is expected to be at the top of the list in future sessions.

Healthcare

With the Affordable Care Act underway, focus switched to oversight of Connect for Health Colorado after a scathing audit was released this December. The audit found a lack of financial controls which resulted in $489,000 in "unallowable or unreasonable" payments to vendors. The auditor also found more than $32 million in problems with documentation in their sampling and review of exchange payments and contracts. In response to the audit, the legislature introduced two bills: SB 019 and SB 052. SB 019 called for a more comprehensive audit of Connect for Health Colorado. The bill was signed by the Governor. SB 052 required that all salary increases, benefit increases or bonuses for Exchange employees to be approved by the Health Benefit Exchange Implementation Review Committee. The bill died in the House.

Following significant negotiations between the pharmaceutical industry at the state and federal level, the legislature passed legislation this year authorizing biosimilars in Colorado. SB 071 allows a pharmacist to substitute a biological product if the FDA takes action to determine biological products are interchangeable with prescribed products, and if the practitioner has not indicated that the prescription must be dispensed as written. The carefully crafted language had support from a majority of industry and some health consumer advocates and was signed by the Governor. The legislature also passed comprehensive legislation to approve an expansion of telehealth in Colorado. HB 1029 removed the population restriction on receiving telehealth, and precludes a health benefit plan from requiring a person to have an in-person visit when telehealth is appropriate. The bipartisan bill passed with strong support and was signed by the Governor.

Many in the healthcare industry also supported passage of SB 197 Advance Practice Nurse Prescriptive Authority and HB 1182 Scope of Practice Certified Nurse Aides. These were critical bills to rural Colorado. SB 187 will allow advanced practice nurses with required training and experience prescriptive authority, and HB 1182 increased the scope of practice for CNAs.

In a conversation that is sure to resurface, Senator Aguilar brought legislation on out-of-network hospital charges. SB 259 was supported by insurance companies and would have required health care providers who provide emergency services to submit a claim for the entire cost of services to be covered by an individual's insurance even if the provider was out of network. The bill was amended to be limited to disclosure, but was killed in committee with opposition from physicians.

Priorities for Cities and Counties

Colorado's cities and counties were faced with two particularly controversial issues this year: TIF and red light cameras. Tax Increment Financing and Urban Renewal Authorities have been subject to legislative challenges and proposed reform for years. Last year, the Governor vetoed a bill which would have required cities to allocate a part of their sales tax revenue to counties in order to offset property tax revenue dedicated to TIF. He directed the legislature to study the issue further. Two different bills were introduced this year. SB 135 by freshman Senator Martinez-Humenik attempted to change the governance of URAs, requirements for negotiations related to URA plans with TIF provisions, and the allocation of funds when municipalities and affected local tax entities fail to reach an agreement on sharing TIF revenues. The bill sat on the Senate Second Reading calendar awaiting action for nearly two months before dying in the House. Cities and counties ultimately reluctantly agreed upon an alternate option, reflected in HB 1348 as amended in the Senate. The bill puts in place a new "back stop" provision which required a third party expert to determine whether or not municipalities are made whole. If they are not made whole cities must go back to the negotiating table or not move forward with the project. The bill did receive concurrence in the House and is headed to the Governor's desk for signature. He is expected to sign the bill.

The legislature also introduced a bill using TIF provisions in an attempt to prevent the Aurora Gaylord Project from moving forward. Introduced late in the session, SB 284 by President Cadman and Majority Leader Scheffel would have required a city to seek a vote of their constituents to transfer tax-increment financing to agricultural blighted land. The bill was backed by the Denver and Colorado Springs hoteliers who are concerned about the potential competition that will come from the Gaylord development. Opponents included the City of Aurora, builders, and the backers of the Gaylord project, who believed the bill, if retroactive, would effectively destroy the Gaylord project. The bill did pass committee but leadership decided not to bring it to a vote on the Senate floor because it didn't have the votes to pass.

Legislation banning the use of red light cameras has become an annual occurrence at the Capitol. This session there were two bills on this issue – one calling for an all-out ban on red light cameras (HB 1098) and another to put the issue of prohibition before the voters (SB 276). Both bills received approval from the House and Senate but the Governor has threatened to veto the two bills if he feels they would be detrimental to safety.

Water and Energy

Following high tensions last session surrounding energy development and local control, the legislature was relatively quiet on the issue after the Oil and Gas Taskforce presented their recommendations to the Governor and the legislature. The Taskforce appointed by the Governor in August submitted nine majority recommendations on February 27th. Majority recommendations had to receive two-thirds support from the taskforce; the remaining 27 recommendations were sent to the Governor in a minority report. Recommendations included increasing oil and gas inspectors, industry sharing information with local governments about their five year drilling plans, and developing a mediation process to handle disputes between local governments and energy companies. Governor Hickenlooper was incredibly pleased with the work of the Taskforce while Speaker of the House Dickey Lee Hullinghorst, expressed concern that the recommendations do not adequately address the concerns of local communities. The legislature voted to fund majority recommendations from the Task Force in the budget but didn't take any additional legislative action to increase regulation on industry.

During the 2014 interim, the Colorado Department of Public Health and Environment engaged in a 6 month stakeholder process with more than 50 meetings to explore fee structures in the Water Quality Control Division. At the end of the process, the only certainty was the industry demanded fee setting authority remain with the legislature and not be transferred to the Water Quality Control Division. The result was HB 1249 sponsored by Representative KC Becker and Senator Mary Hodge. The bill reorganized water quality permit fees into five sectors: commerce and industry, construction, pesticide application, public and private utilities, and animal agriculture. The bill also authorized new fees for pesticide applications and added fees to keep the construction industry with EPA compliance issues.

Looking Ahead

The 2015 legislative session featured new legislative leadership and freshman members made up a third of the General Assembly. As expected, many issues got off to a bit of a slow start as members settled in to their positions. The balanced budget assembled this year was a truly bipartisan effort, but political tensions remain over the long term fiscal situation caused by a number of conflicting requirements that have been added to Colorado's constitution over the years.

A significant number of very notable proposals were settled in the final days, setting the stage for work over the interim and policy development of agendas for 2016 as Colorado moves in to the nation's bull's-eye for what's expected to be a hotly contested Presidential election.

The Capstone Group LLC
303.860.0555