

2015 FINAL LEGISLATIVE REPORT

GENERAL

The 2015 regular session of the Colorado General Assembly was expected to be most dramatically affected by a single factor: the Republican takeover of the Senate in 2014 counterbalancing the Democrats continued control of the House of Representatives. In many respects that proved true as there was legislative gridlock in addressing the most emotionally charged wedge issues that divide Republicans and Democrats, including firearms and abortion regulation. Yet, the conservative President of the Senate Republican Bill Cadman and the progressive Speaker of the House Dickie Lee Hullinghorst collaborated on numerous bills, especially late in the session, belying the predictions of inevitable gridlock. Remarkably, they were able to agree on several bills that benefited the Colorado Trial Lawyers Association, an interest beloved of Democrats but generally considered outside the circle of Republican friends. Most remarkably, the budget and the school finance act were passed relatively easily without substantial partisan wrangling. At the conclusion, over 680 bills were introduced during the session. As of the last day, the Governor signed 183 bills and 301 bills were killed.

If one major issue dominated the legislative session, it was public school testing of pupils. School testing was made the focus because of a public outcry by teachers and parents and the debates over the issue were long and passionate. School reformers believe that national tests help verify the quality of Colorado public schools and hold teachers accountable. Public school teachers think them unfair as performance measures and a distraction from teaching. Two other issues that drew much debate under the dome included continued attempts to address affordable housing which many believe is impacted by the state's litigious litigation environment. The other heated debate of the session centered about providing voters with more information about the fiscal impact of ballot measurers before registered voters sign ballot petitions.

The last two weeks of the session were dominated by the introduction and truncated debate over a spate of major "late bills" with substantial consequences. Most of them failed ultimately.

The most important late bill to fail was HB 1389 by Speaker Hullinghorst and Representative Court and Senator Steadman. HB 1389 would have created an enterprise for the hospital provider fee. Pursuant to HB09-1239, the state collects a provider fee from

hospitals. Hospital provider fee revenue is matched with federal dollars and used to reimburse hospitals for uncompensated care and to expand Medicaid and Child Health Plan Plus programs. Under current law, hospital provider fee revenue is subject to the TABOR limit. HB 1389 would have freed the new enterprise from TABOR, expanding the spending authority of the state by hundreds of millions of dollars annually. Business groups among others strongly supported putting the hospital fee in an enterprise as a way to free up spending authority for Colorado's grossly underfunded transportation system. Republicans on the Senate State Affairs Committee disagreed and killed the bill.

HEALTH

The full implementation of the federal Affordable Care Act has sharpened disputes between insurance carriers pressured as a matter of law to reduce their costs and providers with whom they contract. That manifested itself in 2015 in a series of bills to regulate the contracts of carriers and providers.

Telehealth has demonstrated its potential to expand access to health care to underserved populations and geographic regions of the state through the employment of communications technology. HB 1029 by Representatives Ginal and Buck and Senators Kefalas and Martinez Humenik, which passed early in the session, is thought to facilitate that expanded access. The bill required the collaboration of a wide range of stakeholders including hospitals, physicians, and health insurers. Physicians want to receive the same reimbursements for telemedicine as for in person consultation, which HB 1029 provides. The bill will obligate all health carriers licensed in Colorado to provide telehealth services beginning in 2017.

In recent years, the importance of biologic drugs in treating the most serious chronic health conditions has grown. The United States is on the verge of the introduction of the first biosimilars, essentially generic versions of biologic drugs. SB 71 by Senators Jahn and Hill and Representatives McCann and Landgraf will enable prescribing of biosimilars subject to several conditions, the most important of which is pharmacists notifying the prescriber of the biosimilar substitution through one of various media including an interactive website of medical records. Insurers and pharmacy benefit managers were divided as to whether the notice requirements would discourage physicians and pharmacists from prescribing or providing biosimilars. There are enormous amounts of money at stake as biosimilars are expected to save patients tens of billions of dollars annually in the United States as they are substituted for brand name biologic drugs.

SB 123 by Senator Crowder and Representative Primavera was an attempt by independent pharmacists to secure the ability to dispense specialty drugs which insurance carriers and

pharmacy benefit managers frequently directly dispense to patients to assure their appropriate treatment and distribution. It is the most recent of an annual series of bills proposed by independent pharmacists who think their business model threatened by pharmacy benefit managers and insurers. The bill died on the floor of the Senate on Second Reading. It is unlikely that this is the last effort the independent pharmacists will mount given the growing importance of specialty drugs in treating patients.

HB 1083 also by Representative Primavera and Senator Crowder revisited a bill vetoed by the Governor last year. Chiropractors and physical therapists are aggrieved at the copays that insureds seeking their care are charged by certain insurers. HB 1083 would have limited those copays. Carriers opposed the bill not merely for its substance as for their concern that it would set an atrocious precedent with every health care provider seeking similar legislation in later years. The bill was amended to be referred to the Cost Containment Commission, created last year through statute for further analysis of the perceived problem.

HB 1297 by Representatives Ginal and Joshi and Senators Aguilar and Lundberg was the optometrists' bill to regulate their contracts with insurers. Among other things, the bill would have forbidden carriers capping optometrist charges for uncovered services, or requiring the use of specific sources of corrective lenses or optical laboratory services by patients or requiring that an optometrist participate in any other plan or network as a condition of participating in one of the carrier's health plans or networks. In the end, health insurers and the business community prevailed by persuading lawmakers that legislatures should avoid micromanaging the terms of contracts.

Senator Irene Aguilar, one of only two physicians serving in the Colorado General Assembly, has long been a critic of health insurers. Indeed, she has introduced numerous pieces of legislation to create a single payer system in Colorado. But this year, she introduced SB 259 in collaboration with some health insurers to limit the charges of out of network physicians to protect patients against physician providers who are outliers in the health care system. Those providers decline to join carrier networks in order to reap a windfall billing carriers for patient care. Providers fought the bill passionately, arguing that carriers who were shrinking their provider networks were hypocritical in criticizing physicians for refusing to join those networks. The bill died in the Senate Business Affairs Labor and Technology Committee. There is expected to be substantial work done on the issue over the legislative interim.

EDUCATION

In 2014, debate suddenly erupted over the amount of national and state testing to which students in public schools were subjected. The debate was sharpened by conservative suspicion of the national Common Core standards and the widespread belief that they would lead to federal control of public education. 2014 House Bill 1202 was passed to create a task force to examine the testing burden and make recommendations for legislation. Several bills were introduced to codify the recommendations of the 1202 Task Force and numerous other more radical reforms failed. Governor Hickenlooper, who strongly supports testing to assure accountability in education, helped to persuade legislators to pass reasonable testing reforms in HB 1323 and SB 257. HB 1323 and SB 257 are nearly identical and it will be up to the Governor to decide which will become law. Both bills would streamline the school readiness and early literacy assessments in elementary school, dramatically decrease high school testing requirements and provide an opportunity for school districts to pilot local assessments as an adequate measure of student growth pending approval from the federal Department of Education. Reform advocates rejoiced as neither bill would do anything to dismantle the state's educator evaluation law while the state's largest teacher's union voiced disappointment with the continued reliance on student growth data as a component of an educator's evaluation.

Charter schools have been remarkably successful in Colorado: if Colorado charter schools were their own district, they would be the largest school district in the state with 100,000 pupils enrolled. Many school districts are receptive to the creation of charter schools under their aegis; some are not. Among the districts which have been least receptive to the establishment of charter schools are a dozen districts which are failing by the measures set by the state: they are priority improvement or turnaround districts. SB 216 by Senator Hill and Representative Fields would have taken the exclusive authority to grant charters away from these failing districts and given the Charter School Institute concurrent jurisdiction to create charters in such districts. The bill was strongly opposed by the Colorado Association of School Boards and the Association of School Executives as well as the Colorado Education Association. As a result, the Speaker assigned the bill to the House State Affairs Committee to be killed which it was in the closing days of the session.

SB 213 by Senator Cadman and Representative Hullinghorst was a legislative response to the shooting at Arapahoe High School in December 2013. It substantially changes the standard of care required of k-12 institutions in protecting pupils and others from violence on school grounds. Before passage of SB 213, the public schools could only be held liable if their conduct was willful or wanton. Now, ordinary negligence by an institution will trigger potential liability if there is a homicide, first degree assault or a felony sexual assault on school property or while engaged in school activities. The new liability standard won't take effect for two years during which time a study of school violence will be conducted pursuant to SB 214 a companion bill to SB 213.

INSURANCE

The major non health related insurance related issue before the 2015 General Assembly was the ballyhooed construction defects legislation. SB 177 by Senators Scheffel and Ulibarri and Representatives Singer and Del Grosso was the product of a broad coalition of business groups, builders, metro Denver mayors and affordable housing advocates. Meeting over the 2014 legislative interim, they developed a bill meant to break the logjam that has frustrated condominium construction in Denver over the last half dozen years. Its centerpiece was a de facto requirement of binding arbitration of construction defects disputes. The Colorado Trial Lawyers Association opposed the arbitration concept in principle and their legislative supporters refused any offers of compromise on that point. The bill passed the Senate on a bipartisan vote but died in the House State Affairs Committee as anticipated from the date of its introduction. The insurance industry was neutral on SB 177 because of their skepticism that binding arbitration would in any way reduce construction defects insurance premiums which many blame for the failure of the condominium market. Insurers pointed to legislation passed by the General Assembly in 2010 as the more likely source of insurance problems inhibiting condominium construction. SB 177 was killed with less than two weeks remaining in the session, rendering attempts at offering alternatives essentially pointless.

SB 91 by Senator Scott and Representative Willett would have addressed the construction defects matter in a very different way, by reducing the statute of repose for bringing a lawsuit for construction defects. The Senate sponsor, a small contractor, believed that drawing distinctions between ordinary wear and tear and defective construction was a better way to address the issue. The bill died in the House State Affairs Committee.

HB 1385 by Representative Max Tyler was a third approach to attacking the construction defects problem. HB 1385 would have created a voluntary process for builders of multifamily residential housing to have periodic inspections conducted during construction to verify quality. Representative Tyler argued that poor construction was the source of construction defects litigation. Opponents argued that the bill was unnecessary since builders already had periodic inspections conducted. The bill was laid over to the end of the session, effectively killing it, at the sponsor's request.

Another issue supported by the insurance industry is HB 1129 by Representative Kraft Tharp and Senator Roberts. A bill aimed at addressing the wildfire crisis the state has been under for the last few years by directing the state to develop a fire support system by contracting for a system that predicts the path and direction of wildfires. The state has identified a fire behavior prediction technology that can help to marshal fire suppression resources in the most efficient and appropriate manner to defeat a wildfire. The insurance

industry supported the state investing in the technology. HB 1129 passed the House and Senate and is on the way to the Governor for an anticipated signature.

SB 275 by Senator Lambert was a late bill introduced in the waning days of the session to encourage whistleblowing by public employees who suspected malfeasance in their departments. It was opposed by the insurance industry, every major business organization in the state as well as numerous departments of the executive branch. They feared the disclosure of private or proprietary information by whistleblowers or legislators. The bill died on the floor of the Senate.

HB 1115 by Representative Lawrence and Senators Newell and Lundberg was an attempt to penalize the misuse of the newly emerging and rapidly growing technology of drones. Drones are expected to be widely deployed by a variety of industries over the next few years. Currently, only the Federal Aviation Administration regulates them. Concerns about preservation of privacy motivated introduction of HB 1115. As passed by the House, HB 1115 would have provided criminal penalties for invasions of privacy by drones. The Senate took a different tack. In Senate Local Government Committee, the bill was amended to create a new cause of action for negligent invasions of privacy by drone operators. Insurers and others who use drones argued that lowering standards of tort liability for the careless invasions of privacy would discourage the use of and potential benefits from the use of drones. The bill was killed at the sponsors' request on the second last day of the session.

ECONOMIC DEVELOPMENT AND TAXATION

HB 1346 by Representatives Foote and Pettersen and Senators Jones and Todd would have required corporations with affiliates with residence in tax havens –a term used in both the title and the summary of the bill – to make reports to the department of Revenue about income derived from those affiliates so that the DOR could capture it. New revenue would have gone to public education. Opponents thought the bill an emotional appeal to voters to amend a corporate income tax code they don't understand. They also worried that its passage would make Colorado appear unfriendly to investment by multinational corporations with affiliates. Only two of the fifty states have passed similar legislation. The bill died in the Senate having passed the House.

HB 1157 and HB 1177 were companion pieces of legislation carried by Representative Willett with Senator Donovan and Senator Heath, respectively to address the economic problems of highly distressed areas of the state. HB 1157 called for the appointment of a task force to meet over the next few months to recommend steps needed to encourage investment in highly distressed areas of the state. HB 1177 created a matching grant

program to finance infrastructure and other investments to encourage economic growth in highly distressed areas. Both bills died in Senate Appropriations Committee.

One bill that did pass was SB 282 by Senators Scott and Johnston and Representatives Duran and Willett. SB 282 provides tax benefits to approved new businesses that locate inside a rural jump-start zone in a highly distressed county and establish a relationship with a state institution of higher education. The Colorado Economic Development Commission will be responsible for developing guidelines for the administration of the rural jump-start zone program and identifying eligible distressed counties. The business must be new to the state, hire at least five employees, and not directly compete with the core function of a business that is already operating in the state. The Commission will be responsible for identifying highly distressed counties by December 1, 2015. Distressed counties and municipalities that choose to join the program must adopt a resolution affirming that it will provide incentive payments or tax benefits to the new businesses that locate in a rural jump-start zone. A new business that establishes a relationship with a state institution in a rural jump start zone will receive the following state tax benefits in addition to county and municipality incentives:

- an income tax credit equal to 100 percent of the income taxes imposed on the income derived from the new business activities in the tax-friendly zone; and
- a sales and use tax refund on the purchase of all tangible personal property acquired by the new business and used exclusively within the tax-friendly zone.

In addition, new employees of the business are entitled to receive an income tax credit equal to 100 percent of their wages. The state credits and refunds are available for four years; beginning with the first income tax year the business has been approved to receive tax benefit.

In recent years a challenge has grown to what has been the conventional wisdom among classical economists from time immemorial: that minimum wage laws are well meaning but foolish attempts to trick labor markets and employers into paying unskilled and inexperienced workers more than their economic value. That challenge resulting from the growing disparity in incomes has led to an increased interest in minimum wage laws and in increasing them. A decade ago Colorado voters set the minimum wage and provided for its periodic adjustment for inflation. That wage is now \$8.23 per hour. Two constitutional amendments, HCR 1001 by Representative Moreno and Melton and SCR 3 by Senator Merrifield, were introduced this year to raise the minimum wage in steps to \$12.50 per hour by 2020. Both died; although HCR 1001 made it to the floor of the House before failing to receive the 2/3 vote necessary on Third Reading. HB 1300 by Representative Moreno and Melton would have permitted local governments to set their own minimum wages. It, too failed in the Senate after passing the House on a party line vote.

UTILITIES

SB 258 by Senator Cooke and Representative Dore would have created a process for participation by the Public Utilities Commission and the General Assembly in creating a state plan to implement required compliance with Rule 111d promulgated by the federal Environmental Protection Agency last year. Rule 111d requires states to develop plans to reduce carbon dioxide emission from existing stationary sources to address the problem of global warming. Under existing Colorado law, the Air Quality Control Commission has complete authority to hold public hearings and submit a plan to the federal government. Their portfolio is environmental quality; they have neither the expertise nor the duty to assure reliability of utility service or address the concerns of consumers. The environmental community strongly opposed the bill which passed the Senate but died in the House State Affairs Committee on the 118th day of the session.

SB 271 by Senator Sonnenberg and Representative J. Becker was a hotly debated bill to continue the Office of Consumer Council which represents the interests of consumers before the Public Utilities Commission. Republicans wanted to subject the office to review by a board and to eliminate its jurisdiction over telecommunications. Ultimately, the Senate prevailed and the Office was continued with reduced portfolio.

OIL AND GAS

The explosive growth of Colorado oil and gas production attending the expanded use of fracking to release hydrocarbons underground has not been without cost or controversy. Environmental activists and homeowners who feel the quiet enjoyment of their homes has been disturbed have joined to oppose development. Last year, their concern inspired the Governor to appoint a task force to travel the state, taking testimony and developing an overall strategy to enable local governments to exert greater control over their jurisdictions while maintaining the ability of producers to develop Colorado's resources. The task force delivered its report late in February and environmentalists and local activists were not pleased leading most observers to conclude there would be many late bills introduced to enact minority recommendations. That did not happen and the session ended with less discussion of oil and gas regulation than for years.

GOOD GOVERNEMNT

One bill that passed on the very last day of the session may have enormous impact on the state's future. HB 1057 by Representatives Court and Del Grosso and Senators Sonnenberg and Hodge will require that future ballot initiative petitions contain a fiscal impact

statement to apprise potential signers of the petitions of the fiscal impact of the measure. It is hoped that the measure will give fiscal impact information about potential ballot measures to voters earlier so they can make more informed decisions as to whether or not to sign a petition. This effort was hotly contested. Opponents included all organized labor groups, environmental advocates, the Independence Institute among other fringe groups. Proponents included the Governor, business community, local governments, agricultural interests and major employment sectors such as oil and gas interests. In the end, 45 out of 49 Republicans supported the measure while only 13 out of 50 Democrats did.