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## **End of Session Report - 2006**

The Colorado legislature ended the 2006 legislative session two days before the constitutionally mandated 120 days. This year the legislature reviewed 790 bills, resolutions, and memorials, and despite early promises of “no late bills,” the usual significant number was introduced after the established deadlines.

Since this is an election year and majority control of both House and Senate are at stake in November, the session produced some bruising battles over partisan politics, ethics, and policy. Media reports, in particular, highlighted ethics issues. The resignation of a Senate member, the creation of committees to review ethics, and allegations of legislative board memberships leading to special interest voting all raised tension at the capitol to a level higher than many seasoned observers had ever seen.

That said, the session was nonetheless productive, and the legislature did address several complex and important issues as highlighted in this report.

### **Budget and TABOR**

With voters’ passage of Referendum C in November 2005, previous years’ often acrimonious debate over cutting the budget was quieted. Instead of trying to find \$400 to \$600 million in cuts, the legislature could afford to address state needs with retained tax revenues.

As a result, both parties likely would agree that some of the most important legislation of 2006 related to spending those “surplus” dollars. For example:

- Higher education received increases in the amount available for student vouchers and enrollment.
- Public school capital construction was financed after several years of putting lawsuit settlement\* funding on hold due to budget reductions.
- Increased funds were appropriated for public schools, mental health, disabled children, community provider rates, and long-term care services.

Not everyone benefited however. Transportation advocates were disappointed in a lower share of the available dollars than they had hoped for and had to fight hard to keep as many dollars as possible. See the “transportation” section below for more information.

When the dust finally settled, the total state budget came in at over \$16.5 billion, which includes all revenue from federal funds, general funds, and cash funds

\* Filed in 1998 and settled out of court. Requires a uniform system of school capital construction in Colorado.

## Business

The Democrat majority tried to balance the interests both of labor unions and business. Although, the session did produce a marked increase in pro-union legislation in areas such as mandated health care, paid leave, worker's compensation changes, state interference with private business contracts, and other mandates.

In his State of the State address in January, Governor Bill Owens expressed that he would not hesitate to use his veto on anti-business measures. Indeed, he has already vetoed sixteen bills with more to come in his 30-day window following adjournment of the legislature.

Business related issues included Economic Development, Tax Policy, Eminent Domain, Air Quality, and Water Quality.

- **HB06-1201** "Increase Ltd. Gaming Funds for Tourism." This Economic Development package appropriated \$19 million aimed at boosting tourism, Colorado Council on the Arts for arts-related tourism promotion, new job-creation incentives, and film industry incentives. It awaits action by the Governor.
- **HB06-1312**, the "Tax Letter Ruling Bill" which had strong support of business and economic development interests, passed the legislature and is awaiting the Governor's expected approval. This legislation gives businesses the opportunity to request a binding Colorado Department of Revenue ruling on the tax effects of a potential business transaction in advance of the actual transaction. It mirrors IRS rules already in place at the federal level.
- **HB06-1411**, the Eminent Domain bill, passed the legislature and is awaiting action by the Governor. It would prohibit governments from taking property for economic development.
- **HB06-1309** "Protect Air Quality, Health, and Environment." This air quality legislation passed the legislature but was vetoed by the Governor. This bill would have allowed the state to adopt air standards more stringent than federal government requirements. Opponents effectively argued that these changes would bring federal oversight to current state regulations and create uncertainty for compliance.
- **HB06-1352**, the Water Quality bill, passed the House and died 17-18 on third reading in the Senate. This was a divisive and contentious issue, which split the usual water and geographic coalitions. Opponents argued this change would give more power to judges in rulings on water quality thus overriding the present effective system which keeps that authority with the experts in the Water Quality Control Commission. Proponents argued that the bill would in fact put parameters around rulings by judges, which currently are not in place. The issue will likely come up again in future legislative sessions.

## Worker's Compensation

Once again, Rep. Morgan Carroll introduced a workers' compensation bill, **HB06-1097**, which would have allowed employees with workers' compensation claims more flexibility in changing physicians. While this may sound simple, the business community strongly opposed the bill with concerns about increased workers' comp insurance rates and overuse of medical care. After contentious debate and several hearings, this bill finally died in the House Business Affairs & Labor Committee.

Five other bills dealing with workers' compensation were introduced. Three were killed in the legislature, one was vetoed by the Governor, and one became law. Rep. Fran Coleman's **HB06-1055** was supported by business groups as it made a minor change in workers' compensation mental impairment benefits based upon a court ruling.

## Health Care

This session's health care legislation can be summarized with one word - transparency. Frustrated with continued increases in health care costs, and, in an attempt to provide coverage for more Coloradans, legislators introduced bills requiring everyone from hospitals to large chain businesses to disclose their data.

In contrast, opponents of these bills were convinced that full disclosure would accomplish the exact opposite of the legislature's intent and would result in raising costs even more. Highlights are as follows:

- **SB06-141** "Health Facility Reporting Requirements" was brought by the Service Employees International Union (SEIU) in order to force hospitals to disclose their income and expenditures. Hospitals fought a particularly intense battle against this bill. In favor of the bill, hospital nurses argued the inequity of having underpaid, back breaking schedules while the hospitals they work for build more and more buildings in order to stay "not for profit." The nurses' compelling testimony helped the bill squeak through both House and Senate Health and Human Services Committees. Nevertheless, the bill unexpectedly died on the House floor – a result of hard work by hospital lobbyists.
- **HB06-1316** and **SB06-227**, the so called "Wall-Mart" bills, required businesses to file state reports to show how much money they spend on health insurance and to reveal how many employees they do and do not cover. Several businesses and business organizations came out against these bills. HB06-1316 died in its first House committee, but SB06-227, a slightly pared down version of its brother, is at this writing on its way to the Governor and likely will be vetoed.
- **SB06-198** "Standard Health Care Provider Contracts", garnered much attention from health insurance companies which spent much of the year opposing it. In its initial form, **SB06-198** would have required the state to create a standardized contract between providers and anyone they contract with such as insurance companies and businesses. The bill was amended repeatedly throughout the process and became, while not an actual standard contract, a requirement for standard contract terms. Additionally, the bill would have allowed providers to control the delivery of actual product lines to consumers and could have opened health insurance companies and businesses up to numerous lawsuits.

The Colorado Medical Society, the bill's main proponent, said the bill was a simple "disclosure" bill to allow physicians to understand what they are paid, although most newspapers' editorial boards sided with health insurance companies' claims and came out against the bill. More than 60 legislators co-sponsored the bill, and while some felt they had signed onto the bill prematurely, they were concerned about voting against it because of their promise to the physicians. The bill passed to the Governor on the final day of the session. The Governor voiced his opposition throughout the process, and opponents are hoping for a quick veto.

## Social Issues

This session saw many measures on illegal immigrants. While this is mainly a federal issue, the state legislature considered several measures to address it. They passed legislation which would prohibit "sanctuary" policies by cities (**SB06-90**); impose fines for creating false documents (**SB06-110**); impose fines for transporting illegal immigrants for money (**SB06-206**); establish a new State Patrol unit to target smugglers of illegal immigrants (**SB06-225**); and require contractors doing business with the state to check a federal database to determine whether their new hires are in the country legally (**HB06-1343**). At this writing, some of these bills are still awaiting action by the Governor.

A bill to allow pharmacists to dispense emergency contraception to rape victims without a physician prescription (**HB06-1212**) passed the House and Senate but was vetoed by Governor Owens, citing concerns of opening up prescription authority to pharmacists. This was a different approach to an issue that has returned to the legislature for four years. Former Representative (now Senator) Betty Boyd has stated she will introduce similar legislation in

the 2007 session. Proponents discussed putting this on the November ballot through the initiative process but decided against doing so.

As of July 1, 2006, all Colorado bars and restaurants will be non-smoking. A coalition consisting of the American Heart Association, Restaurant Association, CoPIRG, National Jewish, and others passed **HB06-1175** by a slim margin. This bill was a major success for these groups, who were unable to pass legislation the year before. The bill excludes casinos, and may be contested in court by taverns who feel that this give casinos a competitive advantage over others. But health groups are confident that the new law will withstand any court challenge.

## **Transportation**

Transportation advocates walked into the 2006 legislative session with high hopes. They had been visible supporters of Referendum C and D, and were expecting to reap the benefits of their work, especially as leadership on both sides of the aisle promised more than \$1 billion in transportation funding.

But as the session went on, advocates found themselves having to protect SB97-1\* funding, while not receiving any of the promised general fund dollars. Because SB97-1 is filled when more money comes in to the coffers than can be used under the TABOR limit, any legislation that used more money stripped dollars from SB97-1.

Many bills were introduced that lowered the SB97-1 base, and it looked grim near the middle of the session with transportation getting only \$350 million over 6 years. As the session closed its doors, transportation was not funded its promised \$1 billion, but it ended up with close to \$780 million over 6 years, due to hard work from transportation lobbyists who killed many of the bills that lowered the base, and, subsequently, took transportation dollars.

There were also changes made in the way capitol construction receives money, so it is possible that \$780 million could dwindle down to \$423 million if capitol construction needs the money. Either way, it is far short of the transportation need – and advocates will continue to meet during the interim to try and find new funding for Colorado's roads.

\* Created a funding mechanism for Colorado's highways

## **PERA (Public Employees Retirement Association)**

In the final days of the session **SB06-235**, a compromise package to reform the state's pension system, was passed. This likely avoided a special session, which Governor Bill Owens had threatened to call if the PERA issue was not addressed.

The deal that was struck between the Governor, PERA, and legislators fixed an arguable \$11.3 billion shortfall over 30 years in the state's largest public pension plan.

The chief provisions of the bill are:

- Diverts pay raises equal to 3% of employee pay over six years to shore up the pension plan's funding and to raise the retirement age for new hires.
- Changes the "rule of 80" to the "rule of 85" which refers to the total of employee's age and years worked, in essence increasing by five years (from 50 to 55) the age at which employees could begin drawing pension dollars.
- Reduces the size of the PERA board from 16 to 15, with three of those members to be outside experts appointed by the governor.
- Allows higher-education employees to opt into a defined contribution plan.

## **Post-session**

Being an election year, the period from May to November will be very busy for everyone involved in campaigns. All 65 House seats are up for election, one-half the Senate seats, the Governor, Secretary of State, Treasurer, and Attorney General. On the federal level, Colorado's seven congressional seats face the two-year election cycle as well.

Berry & Kirscht will continue to provide information, strategy, and advice for political contributions and involvement in campaigns.

## **Ballot Measures**

At this writing, several initiative titles to be on the November 2006 ballot have been filed with the Secretary of State. Please consult the [Secretary of State's website](#) for an updated list.

The legislature passed **HB06-1344** as a referred measure for the November ballot to decide whether the state should recognize partnerships between same-sex couples.

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