

67th General Assembly
2009 Session Summary
May 6, 2009

The Facts:

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

Democrat/Republican split in the Senate: 21/14

Number of bills introduced in the 2009 Legislative Session: 666

Sine Die 2009 Legislative Session- May 6, 2009

Last Day for the Governor to act: June 5th

The Session:

The 2009 Colorado Legislative Session began with an historic moment as two African- Americans were voted into top leadership roles: Senator Peter Groff was elected to continue as Senate President and Representative Terrance Carroll was elected Speaker of the House. This was the first time an African-American was elected Speaker of the House in Colorado and the first time in the nation that African-Americans headed both state legislative chambers.

The Democrats continued to control both chambers and the Governor's Office. With many new freshmen, veteran Democrats used this year to run various bills that have failed to pass in prior years. The Republicans spent much of the session on the defense, running multiple amendments to various issues to make sure their voice was heard. With the Governor's race, Congressional races, and legislative races coming up in 2010, it seemed that both sides also used this session as an opportunity to record votes against the opposite party to use during the election season.

There was also noticeable turn over, resignations and vacancies in the Legislature this year. Rep. Mike May, House Minority Leader, resigned at the beginning of the session, only to rescind that resignation when complications arose with the leadership race to replace him. Senate President Peter Groff resigned in mid-April (his resignation is effective immediately after session ends) to take a position in the Obama Administration. As a result, Majority Leader Brandon Shaffer was elected by his Caucus to become the next Senate President and Senator John Morse will fill the position of majority leader. Senator Jennifer Veiga, Representative Gwen Green, and Representative Anne McGihon also announced their resignations during the 2009 session. Rep. McGihon left during the legislative session, and her seat was filled by Representative Daniel Kagan.

Rumors continue on who will fill these now open legislative seats post-session. The seats held by Senators Groff and Veiga and Rep. Green will be filled by vacancy committees in May, and ex-legislators, community leaders, lobbyists, and local party leaders are all vying for the positions.

One of the Governor Bill Ritter's main priorities this year has been the New Energy Economy. His dedication to green facilities, waivers, and financing of renewable projects has been a priority to the administration. Governor Ritter has also worked with the federal government on receiving stimulus funding and has created an Accountability Board to focus on the results that the funding delivers to our state. Tax credits for fuel efficient cars, solar panels for schools, and providing options for homebuilders to add solar panel wiring were heard throughout the 120 day

period. He continues to work on the importance of job creation and economic development to Colorado through the Governor's Energy Office.

The Budget:

Much of the legislative session was focused on the state's budget. With each economic forecast, the JBC was forced to reduce planned spending. JBC members had to reopen the FY 2008-09 budget, making cash transfers and reducing spending for capital construction, Medicaid and other provider rates, K-12 education and several other areas. In March, the Office of State Planning and Budgeting informed the members that a \$1.2 billion shortfall needed to be filled. Originally, the JBC members thought it best to seek the large pots of money. The introduced budget reduced the higher education budget by \$300 million, with the intention to use a transfer of reserve monies from Pinnacle Assurance to fill the budget shortfall and restore higher education funding. As the budget moved from the Senate to the House, however, the dynamics changed, and a bipartisan agreement was reached that would restore funding for higher education without using Pinnacle funds. The total budget reductions for FY 2008-09 totaled \$400 million while the budget cuts totaled \$1 billion for FY 2009-10.

In addition, the Colorado Supreme Court ruled early in the legislative session that the mill levy freeze was not in violation of TABOR. This is now estimated to provide the state \$100 million over the next 10 years. The ruling has led to new, more flexible, interpretations by some lawmakers of Colorado's constitutional budget limitations, and several Democratic members have begun eyeing legislation to allow the state to retain additional dollars of state tax revenue.

The Federal stimulus dollars played an intricate role in deciding which programs could be cut and to what levels. The federal dollars will be used for Medicaid provider rates, K-12 education, capital construction for higher education and renewable energy projects.

Although the budget is currently balanced, JBC members are concerned that the June forecast will require the reopening of FY 2009-10 budget, and that Colorado's budget will continue to need trimming as a result of the economic downturn.

Rep. Marostica and Sen. Morse carried SB 228 which would remove the 6 percent annual growth limit on the state's general fund. The initial approval generated a 10-hour debate in the Senate. Although certain current HUTF/transportation and capital construction transfers were eliminated under the introduced version of the bill, amendments in the House created a new transfer for those purposes in years when personal income growth exceeds 5%. Transportation transfers will be 2% of gross general fund revenues and capital construction transfers will begin at .5% and grow to 1%. SB 228 also establishes a mechanism for depositing funds in a statutory reserve.

Transportation:

A priority for the Governor was transportation funding bill SB 09-108, dubbed *FASTER*, which moved quickly through the legislative process. Colorado has 125 structurally-deficient bridges and many more bridges designated as functionally-obsolete. Proponents argued that passage of this legislation will improve Colorado's roads and bridges and create or preserve a substantial number of contractor jobs in a tough economy. SB 108 establishes a dedicated and stable funding source for transportation - \$174 million in FY 2009-10; \$230 million in FY 2010-11; and \$255 million in FY 2011-12 and thereafter. The bill also allows tolling of existing capacity. The bill was controversial while moving through the process and the final vote fell almost exclusively along party lines.

Education:

Discussions concerning Colorado's proposal and positioning for US Secretary of Education Arne Duncan's *Race to the Top funds* dominated much of the K-12 education discussions. Colorado will be in competition with other states to receive a total of \$4 billion in federal stimulus dollars for the 8-10 states leading the charge in education reform. This session, Colorado passed legislation on alternative teacher licensure, concurrent enrollment, establishing Centers of Excellence, career and technical education, establishing a teacher identifier program, and dropout prevention legislation. Many of these bills are seen as helping Colorado be well-positioned for the Race to the Top funds, the proposal for which is due October 1st.

With the leadership of Senate President Peter Groff and Speaker Terrance Carroll behind it, the Democrats were successful this year in passing parental leave legislation, which allows employees to be more involved with their child's education by receiving time off for parent-teacher conferences. This was a contentious bill that pitted businesses against parents.

Higher Education:

This year's higher education institutions had a rollercoaster ride of a session, with budget cuts, debates about tuition rates and institutions' flexibility, and a controversial bill on in-state tuition equity. Throughout the year, various bills worked towards granting in-state tuition to military veterans and undocumented Colorado students. After hours of debate, much media attention, and emotions running high, Senate Bill 170 to allow all students who graduate from a Colorado high school to be eligible for Colorado's in-state tuition rate failed. The military veteran's tuition bill was permissive only – leaving many legislators feeling that Colorado law does not go far enough in providing higher education opportunities for our veterans.

Funding for higher education changed rapidly and created a whirlwind of activity. The JBC had to find \$300 million to balance their budget and decided to cut higher education by that amount. The institutions had already received \$150 million in cuts and the additional cut meant the state couldn't receive stimulus funding dollars. The Senate passed a plan to use Pinnacle Assurance reserves to pay back higher education but the House took a different approach, making additional cuts from other areas of the budget to fund higher education. The budget also contained a footnote which gave a 9% tuition cap to all institutions and allowed for a little more flexibility for each institution to collect additional dollars. However, the Governor vetoed this footnote so now there is no statutory limit on tuition increases though the Governor did express his preference for a maximum tuition increase of 9% in his veto message.

Attempts were also made by the President of the Senate, Capital Development Committee, and Joint Budget Committee to provide full tuition flexibility and capital flexibility to all institutions. After much discussion throughout the session, two bills were introduced to allow flexibility: SB 290 was a Capital Development Committee bill which just focused on streamlining the capital portion, and SB 295 included the capital piece, tuition flexibility, waivers of state fiscal rules, and other efficiencies. The bill creating a more streamlined process for capital approval was amended to apply only to schools not using the Higher Ed Intercept Program and was approved by the legislature; SB 295 died on the last night of the session after ongoing negotiations with the Governor's office and amendments from the House became contentious in the Senate and time ran out.

The Boards also saw attempts to change the composition and to direct them on their search process. The students at Colorado State University ran HB 1177 which attempted to give them voting rights on the board of governors. Faculty also ran legislation that would have given a faculty member a voting position on each Board. Both bills were defeated by close votes in the Education Committee. As the last bill of the session, both Majority leaders sponsored a bill which changed the way institutions created search committees for new Presidents or Chancellors. The

bill was pushed through the House by leadership but ultimately killed by Senator Brandon Shaffer (the bill sponsor) in the Senate education committee for lack of support.

Other notable changes within Colorado's higher education landscape include Metropolitan State College gaining the ability to offer master degree programs and legislation on concurrent enrollment programs. Discussions around higher education promise to be active over the interim, as stakeholders groups and/or legislators have specifically planned discussions around credit transferability, tuition flexibility for institutions and funding for ongoing maintenance of higher education academic buildings.

Business Affairs:

Businesses worked hard to protect their interests as many bills were introduced that generated great concern. Property tax, capital gains tax, elimination of the vendor fee cap, and various fee increases were imposed on small and large businesses. The discussion teetered between the value of the services to be paid by proposed fee increases and avoiding undue burden on business. One of the pro-business bills was HB 1001, the first bill of the legislative session, which provided a tax credit for those companies that created 20 jobs or more. The bill came out of the Jobs Creation Committee and had the necessary momentum to move through the process.

There were several bills dealing with the foreclosure processes. The bills created additional counseling and contracts with homeowners before the foreclosure filing are complete. SB 85, a bill to phase out Personal Property tax, lasted longer than expected. The Senate Appropriations committee turned the proposal in to an interim task force. Sen. Scheffel plans on running a similar bill next year. Budget woes put the vendor fee cap on the chopping block, and business groups negotiated on a number of proposals to manage the impact of those cuts and reduce the period of time that the state would retain those fees usually left in the hands of vendors.

The business lobby was able to defeat several bills they felt would have severely impacted Colorado businesses:

- ? HB 1208 Prevailing Wage: would have required a contractor awarded a contract in excess of \$100,000 (and each subcontractor who worked on the project) to pay workers prevailing wages and fringe benefits on a weekly basis and make payroll records available via the Colorado Open Records Act.
- ? HB 1210 Mandatory Sick Leave (McGihon/Carroll M.): would have required private employers to provide paid sick leave: 15 employees, 1 hour for every 30 hours worked up to 72 hours, 5 = 15 employees, 1 hours for every 60 hours worked up to 40 hours and required accrual of sick leave to start with employment and allowed leave to carry forward to future years.
- ? SB 095 Prompt Pay (Tapia/Riesberg): Request Written Statement of Ability to Pay, Billing Cycle – 25/30 day, Alternate Billing Cycle – up to 75 days with notice, Retainage – Limited to 10% for the first 50% of the project and none thereafter.
- ? SB 246 Construction Defects (Morse/Pommer): would have required moratory interest (interest paid as damages for a delay in performing an obligation) to be awarded to claimants in residential construction defect cases from the time of the creation of the construction defect until the filing of a notice of claim at 6% per year and then at 8% per year thereafter.
- ? SB 273 Pinnacol Assurance (White/Marostica): would have required the board of Pinnacol Assurance to transfer \$500 million from Pinnacol's surplus to the General Fund.
- ? HB 1344 Medical Malpractice Damages (Scanlan/Boyd): would have made adjustments for inflation, annually, to the damages limitation for noneconomic loss or injury in medical malpractice lawsuits

Health Care:

The Health Care Affordability Act (HB 1293) was one of the most central pieces of health care legislation. Hospitals worked with the Ritter administration to place a fee on their facilities in order to draw down more federal dollars to better serve the Medicaid population. HB 1293 will increase reimbursement rates to hospitals and provide coverage to more than 100,000 uninsured Coloradans. The Governor has already signed this into law.

Much of the work done on health care issues was to protect the vulnerable populations during the economic downturn. The JBC and the General Assembly as a whole worked to protect indignant populations and provide sufficient care. In general, mental health and the child welfare safety net funding was preserved. In fact, the Legislature passed SB 09-164 to establish the Child Welfare Training Academy which will increase and improve training for child caseworkers. The Legislature debated the issue of universal/single payer health care, but legislative proposals to set a foundation for implementation were unsuccessful.

Other:

Two other notable bills were HB 1292- Oil and Gas Regulations and SB 286- Sentencing Reform. Over the last year, the Oil and Gas Commission met to update the oil and gas regulations in Colorado. The rules were statutorily required to be approved by the General Assembly and due to the language in the bill, no amendments could change specific rules the members could only vote up or down on the rule. A few members fought for their local districts by speaking out against some of the regulations, but overall the rules were quickly moved through the process and adopted. SB 286 was introduced late in the session by Senator Morse. The bill proposed to significantly change sentencing in Colorado and was quickly met with opposition. The sponsor and other members decided that it was too large of a discussion for that late in the session and Morse killed his own bill. He vowed to look at this issue further during the interim and to come back again next year.

Final Thoughts and What's on the Horizon:

Economic forecasts, budget balancing bills, and the Long Bill dominated the legislative session. Few bills that contained a fiscal note were successful in passing, and rumors continue of a possible special session to address any needed additional budget cuts. Due to the lack of state funding only a select number of interim committees were approved during the initial interim committee approval process. However, this has not reduced the number of interim committees that will meet this summer and fall, as private donors stepped up with funds to provide staffing for specific interim committees.

In addition to the standing interim committees, new interim committees will meet to study:

Hospice Palliative Care
School Finance
Pinnacle Assurance
Early Childhood and School Readiness Committee
Colorado Economic Recovery Accountability Board
Fiscal Stability
Developmental Disability Waiting List
Business Personal Property Tax
Colorado's Race to the Top proposal, due Oct 1st

We look forward to working with you throughout the summer and fall on these, and other important issues. The 2009 Legislative Session is officially over!

For any additional information or questions, please contact The Capstone Group, LLC at info@capstonegroupllc.com or call 303-860-0555. Thank you!