

# Memorandum

**To:** CCA Board and Members  
**FROM:** CCA Lobby Team  
**DATE:** June 11, 2010  
**RE:** Overview of 2010 Legislative Session

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The following is a brief memorandum outlining CCA's challenges and successes during the 2010 legislative session.

## **The Political Landscape**

After 120 days and the introduction of 649 bills, the Second Regular Session of the 67<sup>th</sup> Colorado General Assembly came to an end on Wednesday, May 12<sup>th</sup> at about 9 pm. Similar to last year, the state budget overshadowed all other issues.

The session began on a very partisan note with the introduction of a package of bills to eliminate or suspend certain tax exemptions and credits. The package of bills was part of Governor Ritter's plan to address a \$1.3 billion shortfall in the FY 2010-11 budget that begins July 1<sup>st</sup>. The Governor proposed imposing the state sales and use tax on direct mail materials, energy used in the industrial process, candy, soda, downloaded software, Internet sales, nonessential food items, and agricultural compounds. In addition, he proposed limiting the income tax credit available for the purchase of alternative fuel vehicles and the amount of net operating losses that can be carried forward. The bills, which passed primarily along party lines, are anticipated to generate approximately \$130 million next year. Republicans labeled the bills tax hikes and argued that they will create additional jobs losses. Democrats argued that the bills eliminated special-interest tax loopholes and businesses should pitch in to help balance the budget.

In response to the Governor's plan, Republicans proposed a 0.24 percent reduction in state payroll spending for the current fiscal year (which ends June 30<sup>th</sup>) and a 4.4 percent reduction next year. Republicans argued that the savings could be found through the elimination of non-essential or unfilled government jobs and through salary reductions for state employees making more than \$100,000 per year. The Democratic majority quickly dismissed the Republican proposal.

Even though the session started off in a very partisan light, there were some major bipartisan bills passed this year. These included the Colorado Clean Air-Clean Jobs Act and bills to address medical marijuana, flexibility for Colorado's higher education institutions and teacher and principal effectiveness.

Rather than risk having the Environmental Protection Agency produce a plan for Colorado to reduce its emissions, the General Assembly passed House Bill 1365, sponsored by Representatives Judy Solano (D-Brighton) and Ellen Roberts (R-Durango) and Senators Bruce Whitehead (D-Hesperus) and Josh Penry (R-Grand Junction). House Bill 1365, the Colorado Clean Air-Clean Jobs Act, requires Xcel to reduce its nitrogen oxide emissions by up to 80 percent from several Front Range coal plants by the end of 2017. Xcel will retire or retrofit 900 megawatts of coal-fired capacity, giving primary consideration to replacing or repowering those plants with natural gas. House Bill 1365 represented an unusual partnership between Xcel, the natural gas industry and the environmental community.

The General Assembly also made news as they worked to regulate the distribution and use of medical marijuana. Senator Chris Romer (D-Denver) and Nancy Spence (R-Centennial) teamed up with Representatives Tom Massey (R-Poncha Springs) and Beth McCann (D-Denver) to sponsor Senate Bill 109 regulating the patient-physician relationship. Senators Romer and Spence and Representative Massey also teamed up with Representative Ken Summers (R-Lakewood) to sponsor House Bill 1284 concerning the licensing of dispensaries.

As regards Higher Education, the discussion this session focused on non-monetary ways to assist Colorado's higher education institutions. Senate Bill 003, sponsored by Senators John Morse (D-Colorado Springs) and Josh Penry (R-Grand Junction) and Representatives Karen Middleton (D-Aurora) and Mike May (R-Parker), was designed to give Colorado's higher education institutions increased flexibility in several areas – setting tuition, planning budgets, managing admissions ratios and the distribution of financial aid. □ While higher education advocates consider options for a long-term and sustainable funding solution for Colorado's higher education system, SB 003 is seen as a lifeline to help Colorado's schools survive the next few years that are likely to include additional reductions in state support. In response to student concerns about allowing institutions to increase tuition outside of the control of the legislature, the General Assembly added a four-year sunset on the tuition flexibility component of the bill.

One of the most contentious bills of the session was Senate Bill 191 concerning teacher and principal effectiveness. Senate Bill 191, sponsored by Senators Michael Johnston (D-Denver) and Nancy Spence (R-Centennial) and Representatives Christine Scanlan (D-Dillon) and Mike May (R-Parker) linked teacher and principal evaluations to student achievement and tied a teacher's ability to maintain tenure to performance in the classroom. The bill pitted the Colorado Education Association, Colorado's largest teachers' union that opposed the bill, against the business community, the current and three former governors, community leaders and several other education advocacy groups, including the American Federation of Teachers. The bill was heavily negotiated with more than 200 amendments offered. However, the bill passed on the final day of the session after lengthy and emotional debate.

## **Bad Bills That We Were Able to Kill**

Working with other business interests we were able to kill a number of bad bills.

**House Bill 1162 Retainage Construction Contracts**, sponsored by Rep. John Soper (D-Thornton) and Sen. Bob Bacon (D-Fort Collins), would have reduced the amount of retainage, required retainage to be deposited in interest-bearing escrow accounts, required payment of subs within seven days of receipt of payment and established a penalty of 15 percent interest for noncompliance. While CCA is very supportive of reforming Colorado's retainage system, HB 1162 was too restrictive (e.g., escrow accounts) and did not have the support of the necessary coalition partners. CCA will work during the interim with our Building Jobs4Colorado Coalition partners (e.g., AGC, ABC, ACEC, BOMA, NAIOP) to develop a bill for next session that specifically addresses the proper use of retainage in Colorado.

**House Bill 1263 Limit Income Tax Benefit for Comp Paid**, sponsored by Rep. Jack Pommer (D-Boulder) and Sen. Betty Boyd (D-Lakewood), would have limited to \$250,000 per year the amount of salary or other compensation paid to an individual that could be deducted for state tax purposes. Currently, most taxpayers can deduct at least \$1 million per individual per year. After learning the March Revenue Forecasts anticipated that state revenues would increase, Rep. Pommer told the Denver Business Journal that he did not think HB 1263 was needed to address the revenue shortfall. However, many business interests closely watched until Rep. Pommer finally asked the House Finance Committee to kill the HB 1263 on April 30<sup>th</sup>.

**House Bill 1357 False Claims Act**, sponsored by Rep. Buffie McFadyen (D-Pueblo West) and Sen. Chris Romer (D-Denver), would have created the Colorado False Claims Act. The Colorado Act was modeled after the federal statute that encourages whistleblowers to report government-contracting fraud. While the proponents claimed HB 1357 followed the federal False Claims Act, the bill actually would have dramatically tilted the litigation playing field in favor of the whistleblower. CCA opposed the bill based on concerns that CCA members would have had to spend thousands of dollars defending themselves against frivolous lawsuits. The House passed HB 1357 on a vote of 40 to 24. Fortunately, we were successful in killing HB 1357 on Second Reading in the Senate when seven Democrats joined the Republicans in voting against the bill. The Democrats voting "no" included: Sen. Joyce Foster (D-Denver); Sen. Dan Gibbs (D-Breckenridge); Sen. Mary Hodge (D-Brighton); Sen. Linda Newell (D-Littleton); Sen. Lois Tochtrop (D-Thornton); Sen. Bruce Whitehead (D-Hesperus); and Sen. Suzanne Williams (D-Aurora).

**Senate Bill 097 County Home Rule Charter Commissions**, sponsored by Sen. Betty Boyd (D-Lakewood) and Rep. Sara Gagliardi (D-Arvida), would have eliminated one of the two public votes currently required for a county to become a home rule county. CCA opposed the bill based on concerns that the State

should not streamline the process through which a county may become a home rule county because of the far-reaching powers granted to home rule counties. Fortunately, we were successful in convincing a majority of the members on the House Local Government Committee to kill SB 097.

## **Bad Bills That We Were Able to Amend**

One of our biggest victories of the session was successfully amending **House Bill 1387 Finance Driver's Licenses DOR** to significantly reduce its impact on future transportation funding. As introduced, HB 1387, sponsored by Rep. Jack Pommer (D-Boulder) and Sen. Al White (R-Hayden), would have permanently diverted approximately \$20 million a year in driver's license and permit fees from the HUTF to fund the Division of Motor Vehicle in the Department of Revenue. Recognizing the budget situation, CCA argued that diverting the monies for two to four years seemed reasonable. However, diverting the monies permanently made no sense particularly since a majority of members and the Governor last year argued that the transportation-funding situation was so dire that they needed to raise registration fees in order to address the shortfall. Unfortunately, both the Governor's Office and CDOT opposed any sunset and argued for the permanent diversion of monies away from transportation. On Second Reading in the House we came up one vote short of amending the bill to include a four-year sunset. Fortunately, in the Senate we were much more successful and were able to amend the bill to include a two-year sunset saving hundreds of millions of dollars for transportation in the future. Given that both the Governor's Office and CDOT opposed any sunset, this was a huge victory for CCA.

As introduced, **Senate Bill 114 Taxpayer Transparency Act of 2010**, sponsored by Sen. Morgan Carroll (D-Aurora) and Rep. Paul Weissmann (D-Louisville), would have extended the Colorado Open Records Act (CORA) to documents kept by private entities that contract with government agencies. Working with a coalition of business groups, we were successful in amending the bill to provide that CORA only applies to documents in the possession of the public entity. In addition, the bill would have given the contractor notice of any CORA request and 21 days to designate and attest that certain documents in the possession of the public entity should not be disclosed. Unfortunately, the bill died on the last day of the session when the House failed to approve a conference committee report resolving differences between the House and Senate versions of the bill.

## **Good Bills That Passed**

We were also successful in getting a number of bills passed to address the late registration fees enacted last year in FASTER and the treatment of special mobile machinery across different jurisdictions in Colorado.

**House Bill 1211 Reduce Late Vehicle Registration Penalty**, sponsored by Rep. Max Tyler (D-Lakewood) and Sen. Suzanne Williams (D-Aurora), reduces the mandatory late registration penalty for non-motorized vehicles that weigh 2,000 pounds or less from \$25 per month up to a maximum of \$100 to \$10. Both the Governor and CCA supported this bill to address some of the unintended consequences from last year's FASTER bill. House Bill 1211 passed the House on a vote of 62 to 2 and passed the Senate on a vote of 34 to 0.

**House Bill 1212 Require Rules for Late Vehicle Registration Fee**

**Exemptions**, sponsored by Rep. Joe Rice (D-Littleton) and Sen. Gail Schwartz (D-Snowmass), requires the Department of Revenue to promulgate rules that establish the circumstances in which a vehicle owner shall be exempted from paying the FASTER late registration fee. Some of the examples listed in the bill include: acts of god; weather-related delays; office closures and furloughs; and medical hardships. Like HB 1211, both the Governor and CCA supported this bill to address some of the unintended consequences of FASTER. House Bill 1212 passed the House on a vote of 59 to 2 and passed the Senate on a vote of 34 to 0.

We were also successful in helping to pass legislation that will clarify the rules for special mobile machinery. **House Bill 1172 Mobile Machinery Specific Ownership Tax**, sponsored by Rep. Laura Bradford (R-Colburn) and Sen. Bill Cadman (R-Colorado Springs), clarifies the definition of and rules for special mobile machinery, creates a demonstration plate to be used by people who sell special mobile machinery, and authorizes a temporary registration similar to the temporary registration for motor vehicles. House Bill 1172 passed the House on a vote of 63 to 2 and passed the Senate on a vote of 35 to 0.

**Senate Bill 144 Mounted Equipment Registration Tax**, sponsored by Sen. Mark Scheffel (R-Parker) and Rep. Joe Rice (D-Littleton), defines "power takeoff equipment" as equipment that is attached to a motor vehicle and is powered by the motor that powers the locomotion of the motor vehicle. It repeals the current interpretation that a motor vehicle with power takeoff equipment is Class F personal property. Senate Bill 144 passed the Senate on a vote of 35 to 0 and passed the House on a vote of 61 to 1.

## **Issues to Continue to Monitor**

The jury is still out on one bill that we will continue to monitor. **House Bill 1394 Professional Construction Insurance**, sponsored by Rep. Joe Rice (D-Littleton) and Sen. Mark Scheffel (R-Parker), defines property damage as an occurrence that would trigger a commercial general liability policy (CGL). House Bill 1394 is a response to the Colorado Court of Appeals 2009 decision in *General Security Indemnity Company of Arizona v. Mountain State Mutual Casualty Company*. That case held that complaints in construction defects cases that only allege poor workmanship do not meet the definition of an occurrence that triggers an insurer's duty to defend in a CGL.

The language of HB 1394 in interpreting CGLs is beneficial to contractors and a number of our construction coalition partners, including AGC, support HB 1394. However, a number of insurance companies threatened to pull out of Colorado if HB 1394 is signed into law. As a result, CCA did not take a position on the bill.

HB 1394 travelled a very rocky road in reaching the Governor's desk. In a very unusual move, proponents recalled the bill from the Governor after Third Reading in the second house in order to amend the bill to address concerns from the Governor's Office. The proponents were told that the Governor would veto the bill as originally passed. While they were given no assurances that the Governor would still not veto it even with the amendments, the Governor did sign HB 1394 on May 21<sup>st</sup>. CCA will continue to monitor this issue to determine if the insurance companies' threats to pull out of Colorado are carried out.