



Gold Leaf
Strategies
LLC

2022 End of Session Report

Gold Leaf Strategies, LLC

5790 South Olathe Court, Centennial, Colorado 80015

T: 303.807.7465 E: rachel@goldleafstrat.com

Summary

The Second Regular Session of the 73rd General Assembly convened on January 12th and ended Sine Die on May 11th. The Legislature considered 239 Senate Bills and 417 House Bills, for a total of 656 bills. Many of the more controversial bills were introduced late in the session, and that, combined with a slow-moving calendar early in the session, resulted in a very long “sprint” in the waning weeks of session.

Last year was not an election year, but that did not stop a game of musical chairs from happening in both chambers. Representative Dominique Jackson (D-Aurora) was appointed by President Joe Biden to serve as the Region 8 Administrator for the federal Department of Housing and Urban Development in December of 2021. She resigned her seat and Mandy Lindsay was elected by a vacancy committee to fill the seat. Representative Lindsay was a former aide of Representative Jackson and hopes to champion many of the same issues as her predecessor.

In addition, Senate President Leroy Garcia (D-Pueblo) resigned to accept the position of Special Assistant to the Assistant Secretary of the Navy within the Pentagon. His resignation was effective late February and a vacancy committee elected Nick Hinrichsen as his replacement. Hinrichsen is the husband of former Representative Bri Buentello, who lost her reelection bid in the November of 2021 election. Hinrichsen was already running as a candidate in the primary to replace President Garcia, who was term limited.

With the President position now open, plenty of jockeying occurred as members weighed their options on leadership roles. In the end, current Majority Leader Steve Fenberg (D-Boulder) was elected President, Senator Dominick Moreno (D-Commerce City) was elected the new Majority Leader, Senator Rachel Zenzinger (D-Arvida) was chosen to replace Moreno on the Joint Budget Committee, and Senator Jeff Bridges (D-Greenwood Village) was chosen to replace Zenzinger as Chair of the Education Committee.

In addition to the musical chairs, the final days of the session saw one of the more impressive filibusters that the state has seen in a long while. Entering the final three days of session, the General Assembly still had nearly 250 bills to shepherd through the process. Many of the bills left were priorities for the Democratic party. Seeing an opportunity, the House Republicans, and at times the Senate Republicans, filibustered almost every single bill. By Monday night there was no indication of the House Republicans easing their filibuster and they pushed through the night, finally adjourning at 6:00 am the next morning. This situation forced the Democrats to sacrifice some of their bills in whole or in part and gave the Republicans an opening to achieve some of their own priorities, even though they are deep in the minority.

As Colorado heads into an election year, many of the topics covered during the session were highly political. Democrats and Republicans took their stand on what seemed to be mostly the same topics, but with different ways to approach both the problem and the solution.

CONTENTS

Summary	2
General Business and Labor Issues	3
Healthcare and Health Insurance	4
Environment and Energy	5
Public Safety	6
Education	7
State Budget	8
Behavioral Health	9
Affordable Housing	9
Colorado Association of Home Builders Priority Legislation	10
Conclusion	11

General Business and Labor Issues

Unlike last year, general business issues mostly took a back seat this year, as labor issues moved into the driver's seat. The threat of a massive collective bargaining bill sucked much of the oxygen out of the room. House Majority Leader Daneya Esgar (D-Pueblo) attempted to bring collective bargaining for the public sector at the end of the 2021 session. After significant pushback, the bill did not get introduced, but stakeholder conversations began over the interim for a bill in the 2022 session. Currently, public entities are not required to recognize unions or collectively bargain with them. Co-sponsored by Senate President Steve Fenberg, the bill as originally contemplated would have required unions to be recognized by all public entities, including counties, municipalities, higher education institutions, and K-12 education entities. All these sectors came out as opposed to the bill in this form and intensive lobbying ensued. The bill was finally introduced (SB 230) in late April but it only applied to counties. The counties continued to oppose until the bitter end, with the Republican caucuses

backing their efforts. In the Senate a key provision, card check, was removed, taking away much of the teeth of the bill. The House Republicans placed this bill at the top of their list for last week negotiations and it was again narrowed. The bill did finally end up passing both chambers in the wee hours of the session, and the bill was sent to the Governor.

The Attorney General's Office championed HB 1119, the False Claims Act. Sponsored by Representatives Matt Gray (D-Broomfield) and Mike Weissman (D-Aurora) and Senator Faith Winter (D-Westminster), the intent of the bill was to mitigate unemployment insurance fraud and utilize federal stimulus dollars for that purpose. Various industry groups provided feedback on the bill with the goal of ensuring that the bill didn't create a cottage industry for frivolous litigation. The Attorney General's office was very open to discussions and amendments and worked hard all the way through the process to ensure the bill ended up in a good place. The bill passed and awaits Governor action.

The Unemployment Insurance Trust Fund (UITF) was another focus of the business community this session. The pandemic hit employment hard in Colorado, as was the case for the rest of the nation. This caused a heavy draw of the UITF, sending the fund into insolvency. In order to provide relief to employers who are responsible for paying into the fund and relieve for those who are unemployed, the legislature introduced SB 234 (Hansen/Rankin and Ortiz/Snyder). This bill made a variety of changes to help the unemployed and also invested \$600 million of the federal American Rescue Plan Act of 2021 (ARPA) to repay the federal advances, including interest. The bill passed and is expected to be signed by the Governor.

Finally, HB 1029 (Bird/Sandridge and Kolker/Priola) was a bill that kept a promise to the state's PERA fund. PERA receives a direct distribution of \$225 million, but that distribution did not occur in 2021. This bill restored that payment and added an additional \$380 million by July 1, 2022. The bill passed in the final days of session.

Healthcare and Health Insurance

Healthcare and health insurance is usually always a hot topic, but this session only saw mild action compared to prior years. The most controversial bill was HB 1370, a bill dealing with utilization management tools used to control the cost of prescription drugs. Sponsored by Representatives Emily Sirota (D-Denver) and Iman Jodeh (D-Aurora) and supported by a variety of patient groups, the bill limited a number of tools PBMs and carriers use to control the cost of prescription drugs such as formulary management, step therapy, and utilizing drug rebates to lower premium costs. This bill was a surprise to most stakeholders and was aggressively opposed out of the gate by business groups, PBMs, and health plans. The sponsors eventually sat down to compromise and changes were made to mitigate the negative impacts. The bill passed and since it was a priority bill for the Governor's Office, is expected to be signed into law.

HB 1401 was another bill that garnered a lot of attention. Sponsored by Representative Kyle Mullica (D-Northglenn) and Senator Dominick Moreno (D-Commerce City), the bill requires hospitals to

establish a nurse staffing committee. That committee is then required to receive, track, and resolve complaints from direct-care nurses and other staff. Reporting requirements on both hospitals and the Department of Public Health and Environment were also included in the bill, as well as a direction to the Office of Saving People Money on Healthcare to study the hospital readiness for post-viral illness relative to COVID-19. The bill directed the Office to coordinate, monitor, and support efforts to improve the affordability of healthcare. Most hospitals were in an Amend position on the bill. Some amendments were achieved that put more specific parameters on the study and staff plans and the bill passed in the final week of session.

Finally, SB 040 was another attempt to create an actuarial review process for benefit mandates. Similar to a bill last year, the Colorado Association of Health Plans spearheaded this bill which would allow for an actuarial review of up to six legislative proposals for benefit mandates. Even though the Association brought this bill, it ended up being hijacked by the Division of Insurance and in the end became a Division bill. The bill passed and is expected to be signed by the Governor.

Environment and Energy

Environmental issues continue to be an issue area that has seen a lot of bills in the past sessions, and this session was no exception. Several bills this year were brought by environmental groups and attempted to tackle both materials and air quality. First on that list is HB 1244. This bill attempts to regulate certain air pollutants called “toxic air contaminants”. Advocates for the bill claim that toxic air contaminants are not fully regulated at the federal level. Most utilities came out opposed to the bill and many amendments were considered. There are currently 187 hazardous air pollutants that have been associated with adverse health effects. The bill does not designate which of those should be regulated, and instead directs the Air Quality Control Division to name the top five priority contaminants. This bill was debated up until the very last day of the session. In the end, the bill was mitigated quite a bit, but still passed and is on the way to the Governor.

Another bill that was heavily opposed and ultimately amended was HB 1355, a bill to create a statewide recycling program. Sponsored by Representative Lisa Cutter (D-Jefferson County) and Senators Kevin Priola (R-Henderson) and Julie Gonzales (D-Denver), the bill charged “producers”, or those entities that either create materials that are subject to the bill or put their brand name on those products, a fee that supports the program. The program is then administered by a non-profit entity whose job it is to collect the fees, provide free recycling to all covered entities (residential, commercial, and local governments), and overall manage the program. Throughout the process the bill continued to be amended to exempt out many producers from the bill. There are also questions around the legality of this bill since it is potentially illegal to direct a private entity to perform a government function. In the end the bill changed significantly and additional oversight by the General Assembly was added. The bill passed on the last day of session.

HB 1345, sponsored by Representatives Cutter and Mary Bradfield (R-Fountain) and Senators Gonzales and Pete Lee (D-Colorado Springs), is a bill that prohibits the sale and distribution in the state of

Colorado of certain products containing perfluoroalkyl and polyfluoroalkyl chemicals (PFAS chemicals). The products that cannot be sold with PFAS chemicals include carpets or rugs, cosmetics, fabric treatments, food packaging, juvenile products, oil and gas products, textiles, and upholstered furniture. The bill also contained provisions around firefighting foam that requires the containment of the foam when it is being used and certain reporting provisions. The bill was amended during the process to remove authority from CDPHE. The bill passed and is expected to be signed by the Governor.

Finally, the Colorado Energy Office (CEO) brought forward HB 1362. Sponsored by Representatives Tracy Bennett (D-Louisville) and Alex Valdez (D-Denver) and Senators Faith Winter (D-Westminster) and Chris Hansen (D-Denver), the bill as originally introduced provided authority to the Colorado Energy Office to create and require adoption of statewide energy and solar building codes, as well as low energy and low carbon codes. The bill also allowed the CEO to develop a model green code for voluntary adoption. The bill faced heavy opposition from municipalities, counties, and the construction industry because of concerns around usurping local control and having a negative impact on housing affordability. The bill almost died in the House which then forced a negotiation. In the Senate the bill was turned into a strike below that instead created a balanced Code Board to develop the energy codes for adoption. The bill also includes funding for grants to provide technical assistance to local governments, state agencies, and private sector construction companies. The bill passed and awaits Governor action.

Public Safety

Public safety concerns were a big topic this session. Polling indicates that many Coloradans are concerned about the rise in crime in the state, so naturally, many legislators and the Governor focused their bills on this issue.

One of the largest and most controversial bills of the session was HB 1326 (Garnett and Pettersen/Cooke), which attempted to address the state's fentanyl crisis. Over 900 people died in Colorado in 2021 from fentanyl, including four children under the age of one. That number is double the amount of people who died from fentanyl in 2020. Speaker Alec Garnett (D-Denver) spent many weeks negotiating the bill, trying to balance the perspectives of law enforcement and families who lost loved ones to fentanyl poisoning with the perspective of advocates who feel that drug possession and drug use has resulted in inequitable criminal justice penalties. The final version of the bill makes possession of 1 to 4 grams of fentanyl for personal use a Level 4 felony. Penalties are even stronger for those engaged in drug distribution, with intent to distribute between 4 and 50 grams a Level 2 felony and over 50 grams a Level 1 felony. The final version of the bill seemed to make no one happy, with law enforcement desiring the possession limit to be zero grams and criminal justice advocates worrying that those hopelessly addicted would see felony convictions on their records. The bill passed in the final days and is expected to be signed into law, though many are calling for a veto of the bill and a special session to be called to try again. That scenario is unlikely.

Another bill worth mentioning under this topic area is SB 145. Sponsored by Senators Janet Buckner (D-Aurora) and John Cooke (R-Greeley) and Representatives Alex Valdez (D-Denver) and Perry Will (R-New Castle), the bill established three grant programs in the Division of Criminal Justice. These grant programs focused on grants to law enforcement for crime prevention and intervention strategies, law enforcement recruitment, retention, and tuition grants for workforce shortages, and grants for P.O.S.T.-certified and non-certified law enforcement officers. The bill is on its way to the Governor for signature.

Education

Both K-12 and higher education saw a flurry of legislation this session. At the top of the list was HB 1295, one of the Governor's top priorities and the bill that established the duties and responsibilities of the newly created Department of Early Childhood and implemented universal preschool. Last election Colorado voters approved Proposition EE, which taxed tobacco products to pay for 10 hours of preschool for children in the year preceding kindergarten, for children with disabilities aged 3 and 4, and for children under age 3 in limited circumstances. The bill also transferred various programs from the Department of Education and the Department of Human Services to the Department of Early Childhood that fall within the scope of early childhood. A main component of the bill was the creation of local coordinating organizations (LCO) to both administer early childhood programs and provide one place where parents can go to get all early childhood services for their children.

Sponsored by Representatives Emily Sirota (D-Denver) and Speaker Garnett and Senators Janet Buckner (D-Aurora) and President Fenberg, the over 400-page bill moved through the legislative process at break-neck pace. The bill attracted a lot of attention from education entities and districts and counties. Some amendments were made to address the concerns of stakeholders, but the fundamental structure of the bill remained as it was in the introduced version. The bill was signed into law by the Governor and the new Department of Early Childhood is already beginning implementation of the requirements.

Several bills were introduced this session to try and address the current and looming teacher shortage. HB 1057 and HB 1101 were similar in that they both allowed retired teachers to return to the classroom without affecting their PERA benefits. HB 1057 was limited to substitute teachers, while HB 1101 continued a current program allowing for teachers, food service workers, and bus drivers for rural areas only. HB 1101 also expanded the eligibility to school nurses and para professionals. Both bills passed and were signed by the Governor.

HB 1220 also attempts to address the educator shortage by creating a stipend program to help students pay for residency programs and their educator test, which is used to assess professional competencies. The bill also created a temporary educator loan forgiveness program and allows CDE to issue an interim authorization to a person seeking an alternative teacher license while they complete the requirements for their alternative licensure program. The bill was sponsored by Representatives Cathy Kipp (D-Fort

Collins) and Barbara McLachlan (D-Durango) and Senators Rachel Zenzinger (D-Arvada) and Don Coram (R-Montrose) and passed in the final days of session.

Finally, education was able to benefit from a vast amount of federal ARPA dollars coming to Colorado. Top of that list was HB 1350 which was sponsored by Representatives Julie McCluskie (D-Dillon) and Janice Rich (R-Grand Junction) and Senators Jeff Bridges (D-Greenwood Village) and Paul Lundeen (R-Monument). This bill established the regional talent development initiative grant program in the Office of Economic Development. The Office is responsible for appointing a broad steering committee made up of business, civic, education, and nonprofit professionals who will assist in developing the grant application process, criteria, review grant applicants, and make grant award recommendations. This program was allotted \$91 million. This bill passed on the last day of session and is expected to be signed into law.

State Budget

The pandemic continues to affect the economy in uneven ways. While some sectors are struggling to recover, others are booming. State income tax revenues are also strong which, combined with federal stimulus dollars, created a situation where the state had plenty of revenues to fund basic government functions, and also priority projects. The 22-23 state budget amounts to \$36.4 billion. The budget contained significant investments in K-12 education by buying down the budget stabilization factor by \$250 million. There were also appropriations to environmental and behavioral health issues. Again, the influx of federal ARPA dollars contributed significantly to appropriations in certain areas, discussed in other sections of this report.

While the budget was one of the larger budgets we have seen, it is important to note one of the more significant negative impacts on the budget and that is the high inflation rate. High inflation in the 7 percent range is placing downward pressure on the budget, as there are areas (namely K-12 spending) that must increase in relation to inflation. Rising prices and inflation are a continued risk to state revenues in the near term.

SB 238 was a bill introduced late in the session to keep off of the ballot a measure on property taxes. Sponsored by Senators Chris Hansen (D-Denver) and Bob Rankin (R-Carbondale) and Representatives Mike Weissman (D-Aurora) and Patrick Neville (R-Castle Rock), the bill attempts to provide property tax relief in 2023 by reducing the assessment of non-residential property from 29% to 27.9%; reducing the assessment of residential property to 6.765%; reducing the actual assessed value of commercial property by \$30,000; and reducing the actual assessed value of residential property by \$15,000. The bill also backfills with state dollars losses in revenue to counties and school districts. Colorado Concern, along with Representatives Alex Valdez (D-Denver) and Colin Larson (R-Littleton), were moving forward to place on the ballot a cap on property tax increases to only 3%. This would have resulted in a significant loss in revenue to local jurisdictions. With SB 238, the proponents of the ballot measure agreed to withdraw the measure. The bill is expected to be signed into law.

Finally, the Democrats introduced SB 233 with the goal of accelerating the TABOR refunds that taxpayers were due to receive in the spring of 2023. Sponsored by Senators Nick Hinrichsen (D-Pueblo) and Robert Rodriguez (D-Denver) and Representatives Tony Exum (R-Colorado Springs) and Lindsey Daugherty (D-Arvada) the bill will send out \$400 for individual filers and \$800 for joint filers in August of 2022. Democrats touted this bill as helping Coloradans address the high cost of living immediately. Republicans criticized the bill as a campaign gimmick, to simply send out what was due already to taxpayers before a critical election. The bill is expected to be signed into law.

Behavioral Health

Behavioral Health was a big topic this session in two ways. First was the significant amount of ARPA dollars that came down from the federal government that the state allocated to behavioral health, and the second was the Governor's Administration's desire to create their own office of Behavioral Health. The latter was created in HB 1278 which was sponsored by Representatives Mary Young (D-Greeley) and Rod Pelton (R-Cheyenne Wells) and Senators Pete Lee (D-Colorado Springs) and Cleave Simpson (R-Alamosa). HB 1278 created the Behavioral Health Administration (BHA) within the Department of Human Services and tasked the BHA with creating a coordinated, cohesive, and effective behavioral health system for the state. The head of the BHA will be a cabinet level administrator reporting directly to the Governor. The bill specifically directs the BHA to establish a behavioral health grievance system, a behavioral health performance monitoring system, a behavioral health safety net system, regionally-based behavioral health administrative service organizations, a licensing system for all behavioral health entities, and an advisory council to advise the BHA. The bill awaits action from the Governor.

During the 2021 interim the Legislature convened the Behavioral Health Transformational Task Force to make recommendations for transformational change in the area of behavioral health and for how to spend the federal ARPA dollars. The Task Force created a report detailing their recommendations. Those recommendations included addressing the behavioral health (BH) needs of Native American populations (\$5M to \$10M); youth and family residential care, community services, and school and pediatric BH care integrations (\$110.5M to \$141.5M); adult inpatient and residential care (\$35M to \$37.6M); criminal justice early intervention, diversion, and competency restoration (\$65M to \$70M); BH workforce expansion (\$80.3M to \$82.7M); and care navigation and coordination (\$44.2M to \$50.7M).

The General Assembly then took these recommendations and turned them in to several bills including SB 147 (BH programs for children), SB 148 (BH facility for Native Americans), SB 181 (BH workforce investment), HB 1281 (community-based BH programs), HB 1283 (residential and out-patient treatment for young people and their families), and HB 1303 (expands in-patient and residential treatment options and increases beds at Fort Logan and other locations across the state). All of these bills passed.

Affordable Housing

Colorado's housing market has exploded in recent years. It is now ranked one of the most competitive housing markets in the entire nation, outranked only by places like San Francisco and New York City.

Housing affordability is one of the top priorities of both parties and will continue to be so for quite some time.

Similar to the BH Task Force, the Legislature also created the Affordable Housing Transformational Task Force to advise the General Assembly on policy relative to affordable and attainable housing and how to spend the ARPA dollars for these purposes. The Affordable Housing Task Force recommendations focused on a revolving loan fund (\$150M to \$222M); nonprofit and local government grants (\$150M to \$222M); resident-owned communities, mobile home parks, and land-banking (\$35M to \$51M); property conversion (no specific dollar amount recommendation); permanent supportive housing and supportive services (no specific dollar amount recommendation); innovative housing incentive program (\$40M to \$48M); and CHFA middle income access program (\$25M).

The Legislature turned these recommendations into multiple bills including HB 1282 (innovative forms of affordable housing such as modular, prefabricated, and manufactured homes); HB 1377 (grant programs for local governments to address homelessness); HB 1304 (transformational housing grant program); SB 159 (revolving loan fund); SB 231 (supportive housing services for those in the criminal justice system, behavioral health system, and substance use disorders); and SB 146 (CHFA middle income access program expansion). All of these bills passed.

Colorado Association of Home Builders Priority Legislation

The Association was busy this year with a couple of bills that had a direct, and negative, impact on the home building and construction industry. HB 1362, the statewide energy code bill, was already discussed in the Energy and Environment section of the report. CAHB was instrumental in forcing a negotiation along with this bill. CAHB worked closely with CML to raise the alarm with legislators about the impact on housing costs on a statewide energy code that would be developed solely by the Colorado Energy Office. Many legislators agreed with us and told the sponsors that they would be a “no” on the bill. CAHB, CML, and the Energy Office then spent many hours working through the compromise language that eventually passed.

HB 1363 was another bill that CAHB worked extensively on within a coalition. This bill, brought forward by Representative Mike Weissman (D-Aurora), was a bill we had been expecting all session on metro districts. The bill effectively rendered metro districts unusable which would then result in housing becoming more expensive, since the tool of metro districts would be unavailable to spread out the costs of infrastructure over a longer period of time. Our coalition was able to educate many legislators on the need of metro districts and had the support of the Republican caucus to assist in slowing the bill down and mitigating the language in the House chamber. In the end, the bill was killed in a Senate committee in the last week of session.

And finally, CAHB was also successful in “the bill that never was”. CAHB got wind of an effort by Senator Chris Hansen to amend into a disaster preparedness bill an entire statewide fire code process. In

partnership with the Colorado Association of Realtors and CML, we were able to keep the amendment from being adopted in a committee. We then worked to mitigate the language to ensure that any statewide fire code was developed by an evenly balanced code board. However, because CML remained opposed, and because legislators were caught by surprise by such a massive policy idea late in the session, there was not enough support to put the amendment into any bill. CAHB will be working over the interim with interested stakeholders to address this policy idea. It has become a priority for Senator Hansen and the Governor's Office and CAHB committed to being at the table to craft a solution.

Conclusion

The 2022 session indicated a return to normalcy, as this was the first "normal" session since prior to the pandemic. It followed the normal cadence of a 120-day session, with no pauses or additional days. And while the session is now over, that does not mean politics in Colorado will slow down. This is an election year with a potential change in political make-up coming, depending on both national and state dynamics. Primaries in Colorado happen in June and whoever wins those primaries in both parties will be an indication of how far left or right each caucus will move heading into the general election and the 2023 session. There will also be a very large influx of new legislators in the 2023 session, with a high number of term-limited legislators, but also many who have chosen not to seek reelection.

The ballot box will also be a place where policy changes are sought this election. There is a heavy amount of ballot initiatives being filed on a variety of issues. Depending on which issues appear on the ballot will also be an indication of expected turnout for the election, which could potentially tip the scales one way or the other. It is an exciting time to be an observer, or participant in, the political process in Colorado.