2020 Client Legislative Digest

Second Regular Session of the 72nd Colorado General Assembly

2020 Overview
The 2020 legislative session began on Wednesday, January 8th with speeches from Senate President Leroy Garcia and House Speaker KC Becker. Against the backdrop of fierce partisanship last session both President Garcia and Speaker Becker were quick to praise the work that they got done on issues like healthcare, the environment, housing, transportation and education and vowed to continue this work for the next 120 days with the goal of making life better for all Coloradans. For his part Governor Polis was interested in continuing to pursue his agenda on education by greatly expanding preschool. He also wanted to build on last year’s action on climate policy and healthcare by introducing the Colorado Option.

However, many of these goals were put on hold because of COVID. Ultimately the legislature adjourned on Saturday March 14, 2020 until Tuesday May 26, 2020. The Colorado Supreme Court decided in a 4-3 opinion that during the exceptional circumstance of a public health disaster emergency, only “working calendar days” count toward the 120-day limit. With this decision the second regular session of the 72nd General Assembly lasted 160 days. In total 711 pieces of legislation were introduced and roughly half of them were postponed indefinitely.

State Budget
The COVID crisis dramatically changed the budget forecast for the State of Colorado. On May 12 Legislative Council Staff and the Office of State Planning and Budgeting gave updated revenue forecasts. The impacts of the COVID-19 pandemic and related economic contraction that began in March were reflected in this forecast. For FY 2020-21 they predicted the General Assembly would have a $3.3 billion (25.3%) shortfall in revenue. In preparation of this forecast JBC staff had prepared targeted budget cuts as well as recommendations for 10% and 20% reductions in general fund appropriations for each department. During their first week of meetings, the JBC took action on the 10% reductions cutting about $700 million out of the 2020-21 budget. In subsequent weeks, the JBC took action on the 20% reductions which resulted in another $800 million in cuts. Some of the highlights of the budget cuts include:

- $724 million to the Department of Education. The cuts to education include $147 million in grant programs and a $577 million reduction in base school funding.
- $493 million Department of Higher Education
- $260 million for pending legislation that will reduce General Fund Expenditures
- $225 million 1-year elimination of the direct distribution to PERA for K12 and Higher Ed
- $201.6 million by eliminating spending for capital construction projects
- ~$130 million in cash fund transfers to the General Fund
  - $45.5 million from Severance Tax Perpetual base
  - $43 million Unclaimed Property Trust Fund
  - $10 million from the Multimodal Transportation Fund
  - $32.1 million from other cash funds that received majority support of the JBC
• Significant savings were also achieved by lowering the Statutory reserve from 7.25% to 2.86%.

Looking forward to FY 2021-2022, state economists are forecasting revenue rebounds from the recession and the General Assembly is projected to have $1.34 billion more to spend or save in the General Fund than what is budgeted in FY 2020-21. This amount holds FY 2019-20 appropriations constant. It is important to note that this amount does not incorporate caseload growth or inflationary pressures. Additionally, nearly 70% of the cuts made by the general assembly this year should be considered one time in nature. While this number may seem positive on the surface it is likely that the General Assembly will need an additional $1 billion for the FY 2021-2022 budget. To that end the Office of State Planning and Budgeting has asked that all departments submit FY 2021-2022 budgets that reflect a 10% reduction in general fund expenditures.

CARES Act Funding
In May Governor Jared Polis announced his plan for allocating $1.674 billion in federal funds from the CARES Act through executive Order D 2020 070. The distributions were outlined in a letter to the legislature as follows:
• $48,000,000 for FY 2019-20 and $157,000,000 for FY 2020-21 to the Disaster Emergency Fund to respond directly to the COVID-19 emergency, including medical or public health needs.
• $510,000,000 for FY 2019-20 to the Department of Education for distribution to local education agencies for expenditures associated with actions to facilitate compliance with COVID-19-related public health measures. This includes facilitating distance learning and social distancing for in-person contact hours, mitigating lost learning, and the provision of economic support in connection with the COVID-19 emergency to stimulate the economy by supporting Colorado’s workforce through increasing free instructional hours for our kindergarten through 12th grade education system. All funds were required to be distributed on a per pupil basis to local school districts and charter schools.
  o $37,000,000 for FY 2020-21 to be transferred from the CARES Act Fund to the Colorado Department of Education for expenditures incurred to respond to second-order effects of the COVID-19 emergency, in particular the increased number of at-risk pupils due to the COVID-19 driven recession.
• $450,000,000 for FY 2019-20 to the Colorado Department of Higher Education to facilitate compliance with COVID-19-related public health measures and with the provision of economic support in connection with the COVID-19 emergency to stimulate the economy by supporting Colorado’s workforce through increasing student retention and completions at state institutions of public higher education. Institutions receiving such funds commit to raise by no more than 3% their FY 2020-21 resident undergraduate tuition rate or to seek a waiver of this requirement from the Governor’s Office.
• $275,000,000 for FY 2019-20 and FY 2020-21 shall be available for units of local government that did not receive a direct distribution of funds in the CARES Act for expenses to facilitate compliance with COVID-19-related public health measures.
• $70,000,000 from the CARES Act Fund to the State General Fund.
• $28,920,000 for FY 2019-20 and $55,920,000 for FY 2020-21 for payroll expenses and other necessary expenditures for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 emergency.
• $1,000,000 for FY 2019-20 and $7,000,000 for FY 2020-21 to the Colorado Department of Corrections for expenditures to comply with public health measures pertaining to maintaining State prisons. DOC is currently using CSP-II to quarantine inmates before they enter the system.
• $1,000,000 for FY 2019-20 and $1,000,000 for FY 2020-21 to the Colorado Department of Human Services for expenditures to comply with public health measures pertaining to maintaining veterans living facilities and other State facilities with congregate care.
  o $2,000,000 for FY 2019-20 and $20,000,000 for FY 2020-21 to CDHS for expenditures incurred to respond to second-order effects of the COVID-19 emergency

Education

HB20-1418 Public School Finance
The bill makes changes to state law regarding the funding of public schools and associated programs within the Colorado Department of Education (CDE).

• Base per pupil funding: The bill increases base per pupil funding for FY 2020-21 by $132.08 to $7,083.61, which reflects a 1.9 percent inflation rate.
• Budget stabilization factor: The bill increases the budget stabilization factor by $612.1 million, from $572.4 million in FY 2019-20 to a total of $1.18 billion in FY 2020-21. For FY 2021-22, the budget stabilization factor cannot exceed the FY 2020-21 level.
• Building Excellent Schools Today (BEST): For FY 2020-21 only, the bill transfers $65.0 million from the Public School Capital Construction Assistance Fund to the State Public School Fund, and diverts revenue above the first $40 million received in retail marijuana excise tax from the assistance fund to the State Public School Fund.
• Total program mill levies: For tax year 2020, the bill resets the total program mill levy for each school district at:
  o for districts that have obtained voter approval to keep revenue above the constitutional limit, the lesser of 27 mills, the number of mills necessary to fully fund the district’s total program, or the number of mills the district would have levied but for reductions in the mill levy after receiving voter approval to retain excess revenue; and
  o for districts that have not obtained voter approval to keep revenue above the constitutional limit, the lesser of 27 mills, the number of mills levied in the preceding property tax year, or the number of mills that generates an amount that does not exceed the constitutional limit.
• Beginning in tax year 2021, school districts must levy the lesser of:
  o 27 mills;
  o the number of mills levied in the preceding year; the number of mills necessary to fully fund the district's total program; or
  o if the district has not obtained voter approval to keep revenue above the constitutional limit, the number of mills that generates an amount of revenue that does not exceed the constitutional limit.
• Categoricals
  o Amendment 23 requires the General Assembly to increase total state funding for all categorical programs in aggregate by at least the rate of inflation in FY 2020-21, which is 1.6%.
  o Career and Technical Education programs will receive a $431K increase or 1.6% increase.
• The bill also contained statutory changes needed to cut $147 million in grant programs within CDE.

HB20-1032 Timing K-12 Education Standards
Under current law, the State Board of Education (SBE) is required to review, revise, and adopt the preschool through elementary and secondary education academic standards every six years. The last full revision was completed in July 2018. The next scheduled review and revision for all academic standards is July 2024. This bill creates a different schedule for this six-year standards review.

**HB 20-1053 Support for Early Childhood Educator Workforce**
This bill originally was aimed and preparing more educators to work in early childhood education and had implications for the Teacher Cadet Program. The original bill was struck completely and replaced with legislation that makes changes to state law related to early childcare educator workforce, mental health consultants, and quality improvement programs.

**HB20-1135 Replace High School Social Studies Assessment**
The bill eliminates the statewide social studies assessment in high school. Earlier versions included provisions that students take the United States citizenship test in the year of graduation.

**HB20-1407 College Admission Use of National Test Score**
The bill temporarily allows institutions of higher education to forego a national assessment test score as an eligibility criterion of admission standards for first-time resident freshman students.

**SB 20-158 Concerning Measures Related to Providing Professional Training for Educators**
The bill requires the department of higher education, by October 1, 2020, to post information on the department’s website describing the various programs and pathways in Colorado that lead to teacher licensure including Teacher Cadet and concurrent enrollment.

**SB20-175 Assessment Score on A Student Transcript**
The bill prohibits a student’s score from a nationally administered college readiness assessment from being indicated on the student's high school transcript.

**Higher Education**

**HB 20-1002 College Credit for Work Experience**
passed the House this week with the amendment that turns the bill into a study with recommendations.

**HB20-1366 Higher Education Funding Allocation Model**
The bill creates a new higher education funding allocation model beginning in FY 2021-22. The new model retains the current method of allocating state appropriations via fee-for-service contracts with institutions of higher education. It also retains the current funding mechanisms for COF and specialty education programs and aligns those mechanisms with the new allocation model. The bill modifies how state appropriations are allocated among institutions of higher education but does not require any change in total state expenditures for higher education.

**HB20-1400 Temporary Change of Gaming Tax Revenue Allocation**
The bill temporarily modifies the allocation of gaming tax revenue between limited and extended limited gaming recipients, which includes community colleges. The bill modifies state expenditures beginning in FY 2020-21. These changes are temporary and proportionate to what is currently in statute.
Tax Policy

**HB20-1420 Adjust Tax Expenditures for State Education Fund:** This bill requires transfers from the General Fund to the State Education Fund (SEF) of $113 million on March 1, 2021, and $23 million on March 1, 2022.

- The bill makes the following changes to state income tax expenditures.
  - Decoupling of CARES provisions:
    - Section 2303 of the CARES Act
    - Section 2304 of the CARES Act
    - Section 2306 of the CARES Act
  - Qualified business income: For 2021 and 2022, the bill requires pass-through business owners who claim a federal qualified business income deduction, as allowed under the TCJA, to add back the amount of the deduction if their adjusted gross income exceeds $500,000 (for single filers) or $1,000,000 (for married taxpayers filing jointly).
  - Earned income tax credit: Beginning in tax year 2021, the bill extends the state EITC to taxpayers who would otherwise qualify for the federal EITC but who are disqualified from doing so because they, their spouse, or one or their dependents does not have a valid social security number. Beginning in tax year 2022, the bill increases the state EITC to 15 percent of the federal EITC.

**HB20-1427 Cigarette and Tobacco Tax:** Conditional on voter approval, this bill raises taxes on cigarettes and tobacco products and establishes a new tax on nicotine products. Revenue from the taxes is distributed to fund health care, tobacco education, preschool, and other programs. If passed this would raise $82.7 million in FY 2020-2021 and $167.6 million in FY 2021-2022.

- For the first three years of the program this bill diverts $25 million, $30 million, and $35 million to the newly created rural school cash fund.
- Also, during the first three years, the bill directs $35 million to the Affordable Housing Development Grant Program, of which $5 million must be used to expand affordable housing opportunities in rural Colorado, and the Eviction Defense Fund.
- The remaining revenue in the first three years will be transferred to the State Education Fund.
- In subsequent years funding will go to expand and enhance the Colorado Preschool Program or a successor program in order to offer at least 10 hours per week of voluntary preschool, free of tuition, to any child in his or her final year before entry into kindergarten, subject to available funding.

**SCR20-001 Repeal Property Tax Assessment Rates:** The measure submits a question to voters in November 2020 repealing several constitutional provisions regarding property taxes, commonly referred to as the Gallagher Amendment. Specifically, it repeals the 29 percent assessment rate in the constitution for most nonresidential property, the calculation of the target percentage, and the requirement that the General Assembly adjust the residential assessment rate to maintain the target percentage.

**SB20-223 Assessment Rate Moratorium & Conforming Changes:** Beginning with the 2020 property tax year, the bill places a moratorium on altering assessment rates of any class of property and makes conforming statutory amendments.

**HB20-1421 Delinquent Interest Payments Property Tax:** Under certain conditions, this bill allows a board of county commissioners or a city council to reduce or waive delinquent property tax interest
payments and provide assistance to local taxing jurisdictions. This can only occur if the County Treasurer also approves the reduction or waiver.

COVID-19 Related Legislation

HB20-1411 COVID-19 Funds Allocation for Behavioral Health
The bill includes appropriations totaling $15.2 million to multiple state departments in the current FY 2019-20.

- $3.8 million for co-responder programs
- $3.5 million for managed service organizations
- $3.25 million for community mental health centers
- $2 million for services provided to school aged children and parents by community mental health center school-based clinicians
- $500,000 SUD screening, brief intervention services,
- $1.4 million to CDPHE
- $600,000 to the department of higher education
- $120,000 for Safe2Tell

HB20-1414 Price Gouge Amid Disaster Deceptive Trade Practice
This bill creates a deceptive trade practice for price gouging during a disaster period, enforceable by the Attorney General or a district attorney's office with jurisdiction where the act occurred. Specific items and services subject to provisions are outlined in the bill.

HB20-1415 Whistleblower Protection Public Health Emergencies
The bill prohibits employers (including those that use independent contractors) from discriminating, retaliating, or taking adverse action against any worker who raises concerns about workplace health and safety practices or those who voluntarily wear personal protective equipment. A worker may seek relief for a violation through CDLE or bringing and action in court.

SB20-205 Sick Leave For Employees

PAID SICK LEAVE DURING A DECLARED PUBLIC HEALTH EMERGENCY
- Employers must provide employees who normally work 40 or more hours a week with at least 80 hours of additional paid sick leave.
- For employees that work less than 40 hours a week, employers must provide additional paid sick leave in the amount of time the employee is scheduled to work in a 14-day period or the amount of time the employee actually works on average in a 14-day period.

PAID SICK LEAVE UNDER TRADITIONAL CIRCUMSTANCES
- Qualifying employees can earn one hour of paid sick leave for every thirty hours worked up to 48 hours.
- Employees begin accruing paid sick leave when employment begins, or may receive all hours up front, and may use that leave as it is accrued.
- Employees are permitted to carry accrued sick leave forward to use in the future, but the employer is not required to allow employees to accrue or take more than 48 hours in a 12-month consecutive time period.
- Employers may request documentation for absences longer than four consecutive days; an employer of a seasonal employee in the outdoor recreation industry may request reasonable documentation after one day if the employer has a reasonable belief that the employee has used the paid sick leave inappropriately.
ELIGIBLE EMPLOYEES INCLUDE:

- Any person, including a migratory laborer, performing labor or services for the benefit of an employer.
- An independent contractor and a federal railroad employee are not eligible.
- The Department of Labor and Employment will determine how fee-for-service employees earn paid sick leave.

PAID SICK LEAVE CAN BE USED FOR:

- An individual or an individual’s family, which includes another person related by blood, marriage, civil union, or adoption; foster or legal guardianship; or any person whom the employee is responsible for providing or arranging health-related care.
- Health or healthcare-related issues including mental or physical illness or injury or condition and medical testing.

TIMELINE OF IMPLEMENTATION:

- Through December 31, 2020, every Colorado employer must provide paid sick leave as required under the federal Families First Coronavirus Response Act. This aligns with the provisions of the bill requiring paid sick leave during a public health emergency and outlined below.
- Starting January 1, 2021, employers with sixteen or more employees will be required to provide paid sick leave.
- January 1, 2022, all employers will be required to provide paid sick leave.

SB20-207 Unemployment Insurance

This bill amends the Colorado Employment Security Act to codify current practices, address public health emergencies, and to increase the amount a person can earn while receiving benefits. It also requires a study of unemployment assistance. An amendment was added to incrementally increase “chargeable wages” with the first $13,600 in 2021 to the first $30,600 by 2026.

2020 Interim Committees

There will not be any interim committees this year due to budget cuts.

2020 Citizen Initiated Ballot Initiatives

Note: To qualify for the November 2020 Ballot, any initiative is required to have 124,632 valid signatures by August 3, 2020.

Ballot Initiative #271 — Fair Tax Colorado

- Repeal the constitutional requirement that all taxable net income be taxed at one rate and adjust individual income tax as follows:
  - Decrease from 4.63% to 4.58% for income up to $250,000;
  - Increase from 4.63% to 7% for income from $250,001 to $500,000;
  - Increase from 4.63% to 7.75% for income from $500,001 to $1,000,000; and
  - Increase from 4.63% to 8.90% for income over $1,000,000.
- 50% of revenue raised is dedicated to preschool-12 education
- Expected to increase state revenue by $1.0 billion in FY 2020-21 and $2.0 billion in FY 2021-22

Ballot Initiative # 306: State Income Tax Reduction

- For tax year 2020 and all subsequent years, the measure reduces the state income tax rate from 4.63% to 4.55%.
• The measure reduces General Fund revenue by an estimated $78.1 million in the current FY 2019-20, $158.4 million in FY 2020-21, and $169.8 million in FY 2021-22.

Ballot Initiative #283: Paid Family and Medical Leave
• Beginning Jan. 1, 2023, employers are required to provide up to 12 weeks of leave and an additional 4 weeks for qualifying pregnancy or childbirth complications.
• Employees are eligible for leave after earning $2500 in wages and jobs are protected after 180 days of employment.
• Employers and employees split 50/50 the contribution of 0.9% of employee wage towards the insurance premium to pay for leave; an employer can choose to pay up to 100%.
• State and local governments, including school districts and higher education, can choose to opt-out

As mentioned above, SCR 20-001 and HB 20-1427 will also be on the ballot automatically because they were passed by the legislature.

2020 Legislative Election
• State Senate
  – 7 members term-limited or not seeking re-election
  – 18 of 35 members up for election
• State House of Representatives
  – All 65 seats are up for election every 2 years
  – 13 members term-limited, not seeking re-election, or running for a different office