Nexuspolicygroup, inc.
Shaping public opinion. Moving public policy.

FINAL 2018 LEGISLATIVE REPORT

GENERAL

The 2018 legislative session began under a cloud because of some highly publicized charges of sexual harassment made against several members of the General Assembly by colleagues, lobbyists and staffers. The press lavished attention on the allegedly louche culture of the Capitol. Coupled with the continuing polarization of American politics the harassment controversy could have paralyzed the General Assembly in 2018. Controversy in the House of Representatives abated after the expulsion in February of a House member for egregious sexual misconduct. Matters smoldered throughout the session in the Senate because of the unwillingness of the Republican majority to expel a Senator from their caucus despite the demands of Democrats. Happily, the members of the legislature from both parties rose above the cloud to make substantial progress on pressing state issues. Buoyed by increased available revenues, the legislature increased funding for education and transportation – long neglected priorities. The General Assembly reached agreement on a plan to restore financial stability to the Public Employees' Retirement Association. Finally, the General Assembly unanimously referred a constitutional amendment to the voters to reform the Congressional redistricting and legislative reapportionment systems, empowering unaffiliated voters and reducing the opportunity for gerrymandering.

GENERAL BUSINESS

There were fewer general business bills passed in 2018 than in most recent years. That is probably attributable to the upcoming 2018 elections. If the Democrats take the Senate back from Republicans, many of business regulation proposals dealing with hiring processes, family leave benefits, and conditions of termination which have failed in the General Assembly over the last four years will have a possibility of being enacted. Similarly, proposals like HB 1261 and 1262 limiting arbitration by businesses in consumer transactions, which were defeated in 2018, will return. So will attempts to increase the minimum wage like HB 1368. That bill, which would have authorized local minimum wages, died in Senate committee after passing the House. Another likely future battleground is the issue of independent contractors for purposes of workers compensation and unemployment insurance. The new economic model pioneered by Uber and similar service businesses is one that organized labor is unhappy with. SB 171 which passed the Senate before dying in the House was intended to expand the model to other types of businesses that connect independent business people and customers. One bill that did pass was HB 1250 which requires regulatory agencies to identify which of their regulations produce the most violations and the most fines and to look for the factors that contribute to noncompliance by regulated entities.

EDUCATION

The 2018 session was a huge victory for those who support increased funding for public education. The legislature passed a budget that increased annual funding through HB 1379, the basic Public School Finance Act, by $150 million, taking a substantial bite out of the financing deficit known as the budget stabilization factor that has plagued public education for a decade. In addition, SB 200 the PERA reform infused an additional $150 million into the pension plan for school teachers and other employees, stabilizing an unsteady pension fund. The Joint Budget Committee for the first time set aside money in the Long Appropriations Bill to mitigate the funding disparities between Charter School Institute schools and other public schools. This addressed a longstanding fundamental unfairness in the treatment of pupils in the public schools. HB 1070 will increase BEST funding for public education capital construction by some $35 million per year. The General Assembly passed HB 1396 to provide $500,000 in subsidies for at risk pupils needing assistance to take Advanced Placement Tests. This replaced federal funding that ended in 2017. Finally, the General Assembly passed SB 269 creating a fund from which money can be disbursed to assist public schools in various ways in enhancing security in the schools.

In addition to funding, key changes were made in education policy. SB 160 passed clarifying that charter schools may conduct their own teacher and principal induction programs. SB 11 allows schools to recognize superior achievement on standardized state assessments while forbidding discrimination against pupils who decline to participate in such test taking.

ECONOMIC DEVELOPMENT ISSUES

HB 1135 was proposed by the state Office of Economic Development and International Trade to continue the state's Advanced Industry Export program that assists small business in exporting their products and services abroad. It passed relatively quietly, continuing the state program. HB 1185 was another proposal of OEDIT - to change the manner of apportionment of corporate income for income taxes. The traditional method, known as the cost of performance method, taxes income in the state where a service was performed; the new rule being rapidly adopted by states throughout the nation is known as market sourcing method and allocates income to the state where the benefit of a service is realized. It is expected to benefit service industries in Colorado.

TRANSPORTATION

Transportation has been grossly underfunded in Colorado for years; CDOT estimates the shortfall at the state level at $9 billion. Politically there has been partisan gridlock over how to deal with it. The Republicans wanted to redistribute existing revenue and build highways. The Democrats wanted new revenue and at least some multimodal and mass transit. This year the existence of new undedicated General Fund money changed the debate and created an opportunity for compromise. SB 1, approved in the waning hours of the session will take a major step forward in transportation funding. The bill has both determinate and contingent provisions to it. The determinate is this: $645 million in new spending in the next two fiscal years, 70% for highways, 15% for local governments and 15% for multimodal transportation. The contingent funding depends upon either the passage of an initiative in 2018 or a referred measure in 2019 but will provide at least $50 million in new money to help finance up to $2.3 billion in new revenue backed construction bonds.

HIGHER EDUCATION

HB 1086 was one of the most contentious higher education bills to pass the legislature this year. It allows a community college to offer a Bachelor of Science degree—meaning a 4-year degree—in nursing. Supporters of the bill say this will help address the shortage in nurses that the state is experiencing. However, the 4-year institutions were concerned the bill might negatively impact their enrollment and wanted the community colleges to focus on offering a high-quality two-year education for students. Some 4-year institutions felt the bill represented mission creep, because a community college does not normally offer a bachelor's degree. The bill received bipartisan support from the General Assembly, with only a few legislators speaking against it. The Governor let the bill become law without his signature.

SB 133 was a bill that created issues for the higher education community. The current funding model bases performance funding on completion of degrees or certificates and student retention. SB 133 would have increased the amount of performance funding allocated to an institution for each certificated awarded by the school within the current model. The total appropriation would not have changed under the bill. The Colorado Community College System would have significantly benefited from SB 133, because the community college model gives out more certificates than the four-year institutions due to the structure of the community college design. The bill only had one committee hearing, where the sponsor asked for Senate Education to kill his bill, due to the lack of support from higher education. In an attempt to placate institutions after the fallout from SB 133, SB 262 was introduced which aimed to change the funding formula for higher education as well as allocating an additional $16.8M on top of the money allocated in the Long Bill. The bill was held up in Senate Appropriations, because Joint Budget Committee members did not like the process taken by stakeholders and legislators to get the bill through. Senator Gardner ended up bringing an amendment in Senate Appropriations to strike the new funding formula and instead allocate the additional $16.8 million through the current higher education funding formula. This brought all legislators on board with the bill, with JBC commitment to work with institutions of higher education on a more equitable funding formula the next legislative session.

YOUTH ISSUES

The General Assembly focused a good deal of attention on youth issues in 2018. As part of the opioid package, HB 1003 included provisions aimed at supporting organizations dealing with vulnerable youth in reducing the incidence and the likelihood of opioid addiction. The Senate struck that portion of the bill but left open the possibility that the 2018 interim would address it. HB 1004 was focused on child care in Colorado. The bill extended the 50% child care tax credit for contributions to nonprofits offering child care services for five more years. HB 1306 will authorize youth under foster care to remain at their current schools, which helps promote stability during the difficult time of displacement from their family. The legislature also focused on youth suicide prevention, because the state of Colorado has one of the highest suicide rates in youth in the country. SB 272 was a bipartisan effort to create a crisis and suicide prevention grant program for schools to access funding to further train their personnel on how to serve our youth in crisis. HB 1177 would have provided statutory guidance for the Office of Suicide Prevention to implement a plan to provide training for people in communities who regularly work with youth that might be contemplating suicide. The bill was killed by Senate Republicans.

HEALTH

The continuing rise in the cost of health insurance has occasioned the introduction of numerous bills every year in the General Assembly. 2018 was no exception, as an array of bills regulating different aspects of health care delivery were before the legislature. Transparency and pharmacy benefit regulation were two themes embracing so many bills that they require their own categorization. Another theme was the cost of health insurance in rural Colorado, especially the west slope. Because the opioid crisis has not abated, more legislation in 2019 may be anticipated. Due to the cost of health insurance everywhere but especially on the west slope continues to skyrocket, we may expect many more transparency proposals as well as bills to socialize more widely the cost of insurance and resolve the underlying problems of insurance provider networks.

PHARMACY REGULATION

In recent years, drug costs have become such an important and costly part of overall healthcare costs that legislative efforts to mitigate cost increases or secure patient access to the drugs they desire have become a feature of every session. HB 1097 was the latest example of a perennial bill proposed by retail pharmacists that would prohibit insurers from excluding any licensed pharmacy from their network of providers and prohibit insurers giving their insureds any incentive to take their drugs by mail delivery. The bill is always opposed by insurers, pharmacy benefit managers and most of the business community. It is supported by pharmacists and consumer groups. Insurers insist the bill will raise the cost of pharmacy benefits; pharmacists claim it will not. HB 1097 failed in the Senate after clearing the House narrowly. HB 1370 was another example of pharmacy regulation. It would have forbidden an insurer from ever taking a drug off of a formulary for any reason once it had been added. It also would have forbidden offering an insured an incentive to switch to a generic equivalent if one became available. The bill was proposed at the request of a patient advocate group and strongly opposed by insurers and business interests. The sponsor ultimately asked that it be killed. Insurers, PBMs and pharmacists were able to agree on HB 1284 which will prohibit insurers from contractually forbidding pharmacists from telling customers that there is a less expensive alternative to using their insurance to purchase a particular drug. Insurers, PBMs and manufacturers were able to agree on HB 1148 which will prohibit PBMs and insurers from requiring step therapy of patients with stage IV cancer who wish access to a particular formulary drug.

TRANSPARENCY

Employers who purchase health insurance have demanded greater transparency from providers and insurers in recent years. The trend is growing and 2018 saw numerous bills calling for transparency in health care. Among the most prominent was SB 146 regulating Free Standing Emergency Departments. FSEDs are often confused with urgent care facilities by patients seeking care but are permitted to charge large facility fees that are borne by insurers or directly by patients with high deductible plans. The increased incidence of the charging of large facility fees inspired introduction of SB 146. SB 146 will require FSEDs to disclose to patients orally and in writing a variety of information about the nature and the cost of the services provided by the FSED both at the time of delivery of care and on its website. HB 1009 was an ultimately unsuccessful attempt to identify the reason that the price of insulin has increased tenfold in the last thirty years. The bill would have required manufacturers, insurers, PBMs and patient advocacy groups to disclose certain information to the state government to isolate the cost drivers of insulin prices. The bill was defeated by a combination of the opposition of manufacturers, PBMs and insurers but some version of it may be expected to return given the huge costs of treating diabetes, and large number of Americans who are diabetic or pre-diabetic and the limited number of manufacturers of insulin. HB 1260 would have required drug manufacturers and insurers to provide a wide range of information about the costs and pricing structure of pharmaceuticals. It passed the House before being killed in the Senate. HB 1358 was the last major health care transparency bill introduced in 2018. It would have vastly expanded the obligation to provide consumers and patients with data about service cost and pricing by a wide range of providers as well as by insurers. It died in the first committee of reference, but notably was supported by a number of Republicans as well as the traditional Democratic supporters. This promises more aggressive legislative efforts to demand transparency in health care in the future.

OPIOIDS

The opioid addiction crisis has hit Colorado hard as it has many states over the last few years. Rural Colorado has been especially hit. Legislative concern precipitated an entire interim committee on the matter last summer. That committee recommended a package of bills of which three passed during the 2018 session. SB 22 will limit most first prescriptions of an opioid to a seven-day supply. It will also require prescribing providers, including doctors, dentists, veterinarians and others to check the Prescription Drug Monitoring Program data base before a second fill to discover and discourage patients' doctor shopping for opioids. HB 1007 will impose a range of requirements to cover opioid dependence treatment on both private health insurers and Medicaid. These include treatment, prohibiting prior authorization, and prohibiting using physician scoring for patient satisfaction for pain treatment. Passage of HB 1003 appropriated money for a variety of programs aimed at addiction and insured there will be a second and a third -year of study of the opioid addiction issue the next two summers. If the crisis doesn't abate, more and stricter legislation will likely follow.

PERA

Among the most serious problems facing the General Assembly as the 2018 session began was restoring the actuarial soundness of the Public Employees Retirement Association fund that provides pension benefits to public employees. Entering the session, it was widely acknowledged that the fund was between $30 and $50 billion dollars underfunded and that the underfunding not only put the long-term stability of the plan at risk but was also likely in the short run to compromise the creditworthiness of the state of Colorado. That promised higher interest rates for the state and local government costing money when borrowing for capital facilities investments. SB 200 was the vehicle for debate over how to stabilize the retirement fund. A bipartisan bill, its path was tortuous and didn't end until the conference committee report was passed by both houses of the General Assembly on the last night of the session. The bill will dedicate $225 million a year in perpetuity to subsidize the fund. It will require employer contributions to increase by .25% and employee contributions by 2%. Cost of living adjustments will be frozen for two years and then go up by 1.5% annually. The retirement age will be increased for new employees from the current 58 to 64 years of age. Automatic triggers increasing contributions are built into the bill to avoid the need to return to the legislature for another fix if the economy goes into a serious recession.

REDISTRICTING

Not many voters understand redistricting of Congressional districts or reapportionment of the Colorado General Assembly, but they have a profound effect on how Coloradans are represented in Congress and in the General Assembly. After every decennial census, Congressional district lines are redrawn to make sure that each Congressman represents the same number of people. In 2020 Colorado will get an eighth Congressional seat because of the growth in our population. In the past, redistricting has been done by bill passed by the Colorado General Assembly. Because of inability of the political parties to agree, the decision has been made by the courts after litigation. Senate Concurrent Resolution 5 was passed unanimously by the General Assembly this session to end that process and turn drawing of Congressional maps over to a commission of twelve citizens, Democrats, Republicans and unaffiliated voters. Their charge will be to avoid gerrymandering, preserve communities of interest and local government boundaries and create competitive districts. If approved by the voters in November, it should dramatically change and improve the redistricting process. A companion proposal SCR 4 was referred, again unanimously, to restructure the reapportionment of state legislative seats in the same manner in the hopes of improving the process of drawing legislative districts.

SUMMARY

The 2018 election is likely to be a political watershed in Colorado. The divisive nature of the President has deepened the chasm between Republicans and Democrats in this country. The electorate has moved apart—Republicans becoming relatively more conservative and Democrats more progressive than a decade ago. There is little center left in the political universe, in Colorado as in the rest of the nation. Most observers expect an anti-Trump backlash to assist Democratic candidates in November. If that happens, the Democrats will likely regain the control of the Colorado Senate they lost in 2014. They would also be expected to maintain control of the Governor's office, which they have done for all but eight of the last forty-four years. That control of both arms of the lawmaking process could drive Democrats to overreach in trying to satisfy constituencies that have been frustrated by the defeat of progressive legislation in the Republican Senate over the last four sessions. In recent years, within the caucuses in both parties the threat of primary challenges by activists has served to enforce discipline and orthodoxy to an extent unknown in the past. That threat looms for centrist Democrats serving in 2019.