



72nd General Assembly

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## EXECUTIVE SUMMARY

The Colorado General Assembly entered the 2020 session with numerous unfinished legislative priorities. Most of these were the ambitions or desires of the progressive wing of the Democratic party. Given the exceptionally health economy at the start of the legislative session and the anticipated \$800 million increase in revenue, the Joint Budget Committee expected to adequately if not lushly finance the state government before legislators went home to run for reelection. Everything changed on the 14th of March when the legislature abruptly suspended the session to respond to the looming COVID-19 emergency. Within a week the JBC received news from the legislative staff that state revenues would plunge as the economy shut down to prevent mass deaths from the pandemic. The suspension of legislative activity lasted until May 26 by which time the JBC had received worse updated revenue estimates and put together a plan to finance the government with available appropriations and Cares Act support from the federal government.

When the General Assembly reconvened, several Democratic members declined to attend citing their underlying health conditions and the risk of contracting the virus being too great. Republicans in the House and Senate argued passionately that the Constitution provided no exceptions to the requirement for physical attendance. That provoked extended debates over the rules in each House, sharpening the partisan divide for the next three weeks. Then, George Floyd was killed by a police officer in Minneapolis, launching protests, provoking street demonstrations, and several nights of rioting in Denver. The Capitol, already afflicted by the COVID-19, was now tagged with graffiti and boarded up on its ground floor.

The three-week session focused on the passage of the budget and so-called orbital bills making changes to law to implement the new radically lower budget. But majority Democrats introduced other bills inspired by the COVID virus and fiscal crisis. Proposals to create presumptions in workers compensation law and to raise taxes to mitigate the budget cuts were introduced and debated. Compromise was struck where possible with the business community, clearly reeling from the economic collapse. In response to the public outcry following the death of George Floyd in Minneapolis and advocacy from state organizations and leaders of color, the general assembly passed a now nationally lauded bill to [Enhance Law Enforcement Integrity](#) with wide bipartisan support.

K12 education saw the Budget Stabilization factor double, with 5% cuts across the Board, state accountability paused, and major delays or reductions in existing grant programs. In the final days of session, the legislature passed a tax bill and referred a nicotine tax to the November ballot, both intended to bring in additional dollars to a desperate K12 system. Part of the desperation from the K12 system stems from the sure knowledge that as a result of the economic crisis the residential assessment rate will be driven down next summer and property tax revenues for the K12 system will decline by \$500 million independent of any other factor. In response to this and the advocates for the special districts the legislature referred a measure to the November ballot giving the voters the opportunity to freeze the residential assessment rate.

The state's institutions of Higher Education spoke in a unified voice this session, developing a new funding formula and lobbying members to support. The new funding formula bill received unanimous support in both chambers. Unfortunately, the new formula will not be implemented until the 2020-21 fiscal year and will do nothing to address the economic uncertainty facing every institution in the state. Higher Education was cut by a whopping 58% from the previous budget year. Institutions will rely heavily on CARES Act funding to help with their immediate needs and hope for additional dollars from the feds through a future stimulus package. The General Assembly finally adjourned sine die on June 15, ending the longest session in decades.

## STATE BUDGET

The state budget is one of only two bills the General Assembly must pass each session, the other being the School Finance Act which allocates public money from the budget's largest line item. The robust economy had promised the state budget writers an increase of \$880 million to allocate among state budget priorities in early March and a TABOR surplus to be shared among taxpayers. The closing of the economy in March gutted the revenue base of the state and created a budget crisis the state had never seen before. When the JBC returned to rebuild a budget in May, the General Fund revenue estimates were \$2 Billion lower than they had been in March. Adding to budget crisis was the sure knowledge that federal support was one time and would not be available beyond this budget year.

The biggest cuts were in K12 and Higher Education. Both received an offset by federal money from the CARES Act to limit the reductions in the range of 5% for K12 and 58% for Higher Education. With the economy expected to languish in a depression until 2022, the budgetary future looks bleak. In the end, [HB20-1360](#), the Long Bill, represented \$3.3 billion in lost revenue. The cuts were extremely painful for members of the legislature who have spent the last several years developing a base to try to reform, especially school finance allocations, which have not been changed in twenty-five years despite marked changes in demography, the economy and the property tax base. Hopes for reform were dashed by the fiscal collapse which forced retrenchment and simpler solutions.

## K-12 EDUCATION

In recent years, as the economy recovered and grew in Colorado, the legislature made a valiant effort to increase state support for K-12 and buy-down the Budget Stabilization Factor. The BS Factor was the mechanism designed by the legislature to cut funding for K-12 during the Great Recession. In 2019 for example, the legislature committed an additional \$100 million toward reducing the BS Factor. Governor Polis's original budget request called for a \$52 million buy-down of the Budget Stabilization Factor which would have represented a 10-year low for the Factor. In the end, the legislature was forced to double the BS Factor to \$1.2 billion, a level not seen since the great recession, via the annual School Finance Act [HB20-1418](#). While Governor Polis prioritized \$510 million of the CARES Act for K12, many school district and charter school CFOs and administrators expressed fears that the CARES dollars were not flexible enough to help address their needs. In the final days of session the legislature passed two tax measures and a repeal of the Gallagher Amendment that they hope will bring in additional revenue to mitigate further cuts to K12. The first measure, [HB20-1420](#), a change to the state's tax code with an estimated revenue infusion of \$156 million over three years for K12. The second measure was a referred statutory tax increase for the November ballot with a proposed nicotine tax increase. The third ballot proposal is a response to the anticipated decline of \$500 million due to impending residential assessment rate decline, K12 interests and advocates for the special districts supported the legislature in referring an additional ballot measure to the November ballot giving the voters the opportunity to freeze the residential assessment rate. [SCR20-001](#), a repeal of the Gallagher Amendment, sponsored by Senators Hansen (D-Denver) and Tate (R-Centennial) and Representatives Esgar (D-Pueblo) and Soper (R-Delta) was referred to the ballot to help the state deal with the economic fiscal crisis and the decline in business property values and attendant reduction in the tax rate on residences.

In a rare act of unity, [HB20-1336](#), sponsored by Representatives Michaelson-Jenet (D-Adams County) and Sirota (D-Denver) and Senators Fenberg (D-Boulder) and Hisey (R-Fountain), a bill that required completion of a course on Holocaust and genocide studies by high school students in order to graduate, received unanimous support in both chambers. Special education advocates triumphed by creating a mandate for additional training to support students with disabilities in order for teachers to renew their licenses through [HB20-1128](#). HB20-1128 was sponsored by Representatives Bri Buentello (D-Pueblo) and Jim Wilson (R-Salida) and Senators Zenzinger (D-Arvada) and Kevin Priola (R-Henderson).

Charter advocates were relieved when the session ended as feared restrictions on charter school autonomy did not materialize due to heavy advocacy from charter schools who responded in droves to drafts that were circulated early in the session. Charter advocates had hoped to join their early childhood and mental health partners in the non-profit world to create a public property index via [HB20-1138](#) sponsored by Representatives Coleman (D-Denver) and Larson (R-Littleton). The centralized list would have been created and maintained by the State Architect's Office and would have provided the information for under-utilized and available facilities for rent or sale for interested parties. Unfortunately, HB20-1138 did not make it through the process due to the lack of available state resources.

## ENERGY AND THE ENVIRONMENT

At the start of the 2020 legislative session, progressives in the Democratic caucuses had an aggressive energy agenda building on the dramatic carbon reduction legislation passed in 2019. The COVID-19 pandemic brought an end to most of their dreams. In the end only two significant bills passed. [SB20-204](#) by Senator Fenberg (D-Boulder) and Representatives Dominique Jackson (D-Aurora) and Yadira Caraveo (D-Adams County) creates a new enterprise in the Department of Public Health and Environment financed by fees on stationary sources. The enterprise, governed by a ten-member board, will conduct research and analysis of air pollution related matters.

[HB20-1265](#) by Representatives Benavidez (D-Commerce City) and A. Valdez (D-Denver) and Senators Gonzales (D-Denver) and Moreno (D-Commerce City) will set state standards for the release of certain air pollutants by stationary sources above and beyond the standards of the federal EPA. The pollutants are hydrogen cyanide, hydrogen sulfide and benzene. Any release above allowable limits will trigger a required notification to the community in which the source is sited.

## EMPLOYMENT

[SB20-205](#) by Senators Fenberg (D-Boulder) and Bridges (D-Greenwood Village) and Representatives Becker (D-Boulder) and Caraveo (D-Adams County) will require Colorado employers to provide sick leave for employees that will accumulate at the rate of one hour for every 30 hours of work. The bill will allow employees to accumulate up to 48 hours per year and use the leave for their own or their family's illnesses among other things. Like much of the legislation passed by the General Assembly recently it will marginally increase the overall cost of employing people, discouraging job creation.

[HB20-1415](#) by Representatives Herod (D-Denver) and Sullivan (D-Centennial) and Senators Pettersen (D-Lakewood) and Rodriguez (D-Denver) will provide whistleblower protection to employees who call attention to dangerous conditions during a public health crisis. Originally opposed by the business community, it was compromised to secure the neutrality of business.



## HEALTHCARE

Healthcare remained a priority and a battleground in 2020 as the legislature struggled with the mutually exclusive goals of decreasing the cost of health insurance while expanding coverage to the uninsured and increasing the independence of providers. The budget crisis brought an end to some legislative debates about healthcare, notably those with a direct budget impact. But where someone else would bear the burden. They felt free to legislate.

The most contentious bill was [HB20-1349](#) by Representatives Kennedy (D-Lakewood) and McCluskie (D-Summit County) and Senator Donovan (D-Vail). The bill was proposed to finance the Reinsurance Program created by the state last year as well as patching a variety of other holes in the fabric of health insurance. The insurance industry and business community opposed the bill because it financed individual insurance by increasing the cost of group insurance, essentially burdening one class of unaffordable insurance to subsidize unaffordable insurance for another group of Coloradans. In addition, the bill imposed disparate tax burdens on different competitors in the health insurance marketplace, distorting competition. It passed over the objections of opponents. Another bill that was a product of the suspended session was [SB20-212](#), the Telehealth bill. During the COVID-19 crisis, telehealth was specifically authorized by executive order. To take advantage of the experience of the suspension, advocates for telehealth had the bill introduced by Senators Winter (D-Westminster) and Tate (R-Centennial) and Representatives Lontine (D-Denver) and Soper (R-Delta) to codify and make permanent the executive order. Regulation of pharmacy was a victim of the crisis. [HB20-1160](#) by Representatives Roberts (D-Edwards) and Jackson (D-Aurora) and Senators Ginal (D-Ft. Collins) and Donovan (D-Vail) would have required pharmacy benefit managers to disclose rebates from manufacturers, compromising their ability to negotiate for price reductions. It died due to its cost. [HB20-1198](#) by Representative Buckner (D-Aurora) and Senators Fields (D-Aurora) and Ginal (D-Ft. Collins) would have added regulation of pharmacy benefit managers contracts with pharmacies to protect independent pharmacists' business model. It too died due to the COVID-19 crisis. [SB20-005](#) a proposal from the Colorado Hospital Association, sponsored by Senator Faith Winter (D-Adams County), Senator Kevin Priola (R-Henderson), and Representative Julie McCluskie (D-Summit County), was sold as a way to simplify billing for Coloradans. In all actuality the proposal would have shifted responsibility from hospitals and physicians who have face to face contact with patients to insurance companies who argued that they were not in a position to secure payment of copays for services they did not render. This bill was another casualty of the virus. [HB20-1078](#) a bill sponsored by Representative Sonya Jaquez-Lewis (D-Boulder), Representative Kyle Mullica (D-Adams County), and Senator Faith Winter (D-Adams County) on the topic of Pharmacy Benefit Managers Claims Payments. The proposal forbids a PBM from retrospective reduction of payments to pharmacies for failing to meet performance metrics. The final bill was amended significantly and represents a compromise made by the PBMs and the bill advocates.

## HIGHER EDUCATION

After what represented a strong investment in higher education by the legislature in 2019 with Colorado institutions of higher education successfully lobbying the legislature to increase the state's investment by 13%, 2020 was expected to be a tougher financial hurdle for higher education. Early on, Presidents of the state's colleges and universities banded together in a coordinated effort to build support amongst members of the legislature and in particular leadership and the JBC, for increasing state support for higher education. UNC President Andy Feinstein brought Presidents together before session began to agree on an organized strategy focused on higher education as an economic driver across the state's geographically diverse communities and critical to the state continuing to innovate, advance, and tackle the state's needs in nursing and education shortages for example. During March figure setting the JBC, in defiance of the Governor's request for a 2.5% increase for higher education, voted unanimously to support a 7% increase for higher education.

When the dust settled post the legislature's recess and the Joint Budget Committee returned to write the budget, higher education was cut by a breathtaking 58%. If not for the CARES Act dollars filling in holes for institutions, the higher education cuts would have been catastrophic, threatening the viability of institutions.

[HB20-1002](#) sponsored by Rep. McLachlan (D-Durango) was one of the few bills to survive COVID passing with wide support in both chambers. The bill, sponsored by education reform and apprenticeship advocates, aimed to award college credit for work experience in an acknowledgement of the state's evolving workforce and adults who may be interested in furthering their education. Major changes were made from the 2019 version of the bill during this year's session due to the advocacy of institutions of higher education.

Unfortunately, one of the most important bills in the higher education space, [SB20-143](#), brought forward by the University of Northern Colorado in partnership with Aims Community College and sponsors, Senator Tammy Story (D-Jefferson County) and Representative Mary Young (D-Greeley) was postponed indefinitely due to the lack of available revenue. SB20-143, Funding Higher Education Transition Programs, would have provided funding for four-year colleges and universities working in partnership with their community colleges to develop and implement innovative transition programs for their students. Higher education must innovate to increase student success and SB20-143 would have provided state resources to invest in transition programs similar to the Aims2UNC program currently operating in Northern Colorado where students receive more supports intended to increase their likelihood of degree attainment.

[HB20-1366](#) represented one of the session's most collaborative initiatives. Led by UNC President Dr. Andy Feinstein, CEOs and CFOs from all of the state's institutions of higher education worked together to develop a funding formula for the future. The Joint Budget Committee enthusiastically embraced the work of the institutions and sponsored HB20-1366 to implement the new formula in the 2020-21 fiscal year.

## PROPERTY AND CASUALTY INSURANCE

Several bills of concern to the insurance industry were killed as a result of the truncated legislative session; several more inspired by it. [HB20-1290](#) by Representative Garnett (D-Denver) and Senator Fenberg (D-Boulder) was the most important bill to pass. It will radically restrict the ability of an insurer to use the defense of failure of an insured to cooperate in their own defense in a lawsuit. This is currently a provision in every insurance contract. The new restriction on failure to cooperate will enable trial lawyers to trap insurers who can only protect themselves by treating every claim like it is going to result in a trial. This will grossly increase claim administration costs which insurers will pass on to policy holders. Efforts to compromise slightly reduced the impact of the bill.

One bill that did not pass because of the suspension was [HB20-1348](#) by Representative Kennedy introduced early in March. HB20-1348 would have made employers responsible for the negligent acts of independent contractors with whom they do business. It also would have denied employers the right to accept liability for the acts of their employees early in a lawsuit to reduce court costs. The bill was killed but will likely be revived in 2021.

[SB20-216](#) by Senator Rodriguez (D-Denver) and Representative Mullica (D-Adams County) would have created a presumption that any worker who contracted COVID-19 had done so at work, subjecting their employer to liability for worker's compensation claims. The business community and local governments alike rallied in opposition to the bill which would have substantially increased workers' compensation premiums going forward. It was killed as a result of the fiscal impacts especially on government.

## YOUTH DEVELOPMENT

Colorado's youth and their needs played a prominent role during the 2019 interim following the STEM High School shooting where a student, Kendrick Castillo, lost his life. The legislature created an Interim Committee made up of a bipartisan group of legislators tasked with making recommendations and policy proposals to improve school safety, mental health preparedness, and better coordination between law enforcement, school personnel, and mental health providers. The Committee proposed several bold proposals focusing first on behavioral health training for teachers via [SB20-001](#), and second on updates to the SAFE2TELL program [HB20-1005](#). Advocates anticipated a major funding proposal that would have tackled both security improvements and mental health supports for K12 and out-of-school time providers later in the session when revenue forecasts would have provided more information on available revenue. Unfortunately, the lack of available revenue due to the economic decline meant that most of the Committee's proposals did not move forward. The Committee was extended though which will provide more opportunities for schools, organizations that serve children before and after school and in the summer, and mental health advocates, to continue to work on the pressing issues impacting youth in the realm of school safety.

The legislature voted to increase funds for the Tony Grampsas Youth Services (TGYS) Grant Program through the Long Bill, after a successful amendment was offered in the House by the members of the Black and Latino Caucuses and supported by the Assistant Majority Leader, Chris Kennedy (D-Lakewood). The amendment was supported in the Senate by Senator Julie Gonzales (D-Denver) and effectively increased the TGYS budget by \$750,000 during an incredibly difficult budget debate. The legislature prioritized very few grant programs during the budget debate. Advocates for the Boys and Girls Clubs should be especially pleased that Representative Leslie Herod (D-Denver) fought for increasing money for TGYS during her caucus debate imploring her colleagues to understand the importance of the Clubs opening in communities across the state this summer and their need for additional state resources. Given that TGYS was targeted for cuts by a reluctant JBC during the writing of the budget it was a remarkable turn of events when the \$750,000 was added during the floor debate on the budget.

Youth advocates who care about the Tony Grampsas Youth Services Grant Program should prepare for [HB20-1334](#), sponsored by Representatives Gonzales-Gutierrez (D-Denver) and Larson (D-Littleton) and Senator Moreno (D-Commerce City) to come back in the 2021 session. The bill would have made several changes to the current program provisions including eligibility requirements. The sponsors will likely bring the proposal back due to the Department's interest in making changes to the program.

## TAXATION

The most significant tax bill of the session by a wide margin was [HB20-1420](#) introduced following the suspension to reduce the budget cuts necessitated by the economic collapse. The bill proposed a wide range of investment depressing tax increases on businesses ranging from large manufacturers to small restaurants. Federal Cares Act relief was to be taken, sales taxes imposed on industrial energy and the credit against the gross receipts tax on insurance companies that choose Colorado for a home office taken. The fiscal impact was expected to be more than \$350 million annually. The bill was introduced because the political will to suspend the \$180 million senior homestead property tax exemption during a fiscal crisis evaporated in an election year. The business community united in opposition to the bill, arguing that it would discourage the economic revival necessary to end the state fiscal crisis. Ultimately, a compromise was reached that limited the bill's impacts to federal Cares Act relief and a short term suspension of the Qualified Business Income Deduction for high income earners.

The second most important tax bill to pass during the late stages of the session was Senate Concurrent Resolution 1, proposing the repeal of the Gallagher Amendment, a complicated constitutional mechanism that depresses taxes on residential real estate. The resolution's inspiration was a gloomy assessment of the effect of the current economic crisis on the general reassessment of property scheduled to take place next spring. Because business values will collapse during the current depression, residential tax rates must be lowered to maintain the constitutionally required balance between commercial and residential property taxes. The property tax administrator informed the JBC that property taxes for education would decline by \$500 million in 2022 aggravating the state fiscal problems. That induced Senators Tate (R-Centennial) and Hansen (D-Denver) to join Representative Esgar (D-Pueblo) in a bipartisan effort to submit the repeal of the Gallagher Amendment to the voters in November. Previous efforts have failed to remove the forty-year-old amendment. The measure passed the Senate and House and will appear on the ballot. [HB20-1427](#) by Representatives Caraveo (D-Adams County) and Becker (D-Boulder) and Senators Fields (D-Aurora) and Moreno (D-Commerce City) will if approved by the voters in November, dramatically increase the tax on cigarettes, modestly increase the tax on tobacco products like cigars and chew tobacco and impose a new tax on other nicotine products. In the aggregate it is expected to raise \$160 million per year to help fill the budget gap.

## LOOKING AHEAD

It is difficult to predict the future with any confidence in these uncertain times. But 2021 will undoubtedly shape up as a tough year for the General Assembly. The economy will not recover in time to make writing the budget an easy process. The progressive wing of the Democratic Party is likely to be larger and is intent on expanding employee benefits and the tax burden on businesses out of a genuine belief that business can absorb higher costs without negative consequences for the economy. In addition, the desire to expand health care services to all Coloradans at whatever cost will drive insurance policy. What is unknown is whether COVID-19 will linger making legislating a clumsy scarcely democratic process and driving the pendulum of policy in one clear direction. November's election, likely a second referendum on President Trump, will answer many questions.