



CAI-CLAC Newsletter Article

The Main Event: Colorado's Budget

While there were many issues debated during the 2010 legislative session, the main event was the debate surrounding Colorado's budget shortfall. Although the national economy began to show signs of improvement, tax revenues continued to decline during the first two quarters of FY 09/10. To put the larger economic climate in picture, during the 2009 legislative session the Joint Budget Committee (JBC) and the Legislature cut \$1.54 billion General Fund from the FY 09/10 budget. Much of the savings in FY 09/10 came from cash fund transfers and other one-time money that was utilized to fill the shortfall. The quarterly economic forecast in June of 2009 resulted in the need to address an additional shortfall of \$318 million General Fund. The September forecast indicated the \$318 million General Fund shortfall had grown to \$589.4 million General Fund, leaving the grand total of budget shortfall near \$2 billion General Fund for the two year period.

While the magnitude of the budget shortfall was unprecedented, lawmakers worked diligently to present a balanced FY 10/11 budget. The cuts were not easy to shoulder, as many pots of one time money such as cash fund transfers, were used to fill the previous year's shortfall. A quick recap of the budget cuts enacted for the FY 10/11 budget cycle:

Health Care/Medicaid Programs: \$28 million

K-12 Education: \$260 million

Higher Education: \$56 million (backfilled with American Recovery and Reinvestment Act funds)

Filling the Budget Shortfall: Tax Credits and Exemptions

In addition to the budget cuts referenced above, the Legislature took steps to repeal and suspend 13 of the state's tax credits and exemptions in order to shore up the budget. Outlined in November as part of the Governor's Budget Balancing Plan, the debate surrounding the tax credits and exemptions was heated and partisan. After hours of committee testimony and debate on the floor, the Legislature passed a package of 9 bills which suspended or eliminated the following tax credits and exemptions:

HB 1189, eliminate a sales-tax exemption on direct-mail materials

HB 1190, suspend a sales-tax exemption on energy used in the industrial process

HB 1191, eliminate the sales-tax exemption on candy and soda

HB 1192, repeal a sales-tax regulation that imposed a sales-tax exemption on downloaded software



HB 1193, attempt to collect sales tax on out-of-state online retail sales in the same way online sales made by retailers with physical locations in Colorado are subject to sales tax

HB 1194, eliminate a sales-tax exemption on "nonessential" food items purchased by restaurants, such as paper napkins, plastic forks and cardboard containers

HB 1195, suspend a sales-tax exemption on agricultural compounds such as pesticides and bull semen

HB 1196, limit an income-tax credit for alternative-fuel vehicles

HB 1199, temporarily limit the amount of net operating losses companies can carry forward on their taxes

Estimates show the bills are expected to generate \$15.6 million for the current budget year ending June 30, 2010 and \$102.3 million for FY 10/11.

2010 Election: Candidates and Ballot Initiatives

Now that the session has ended, the push towards the November ballot has begun in earnest. With the Governor's office, State House and Senate seats, Federal Congressional and Senate seats and a handful of initiatives on the ballot, it will be a busy summer. Educating new candidates regarding industry specific issues will be key. On the budget front, there will be three new joint budget committee members : Rep. Cherie Gerou (R-Evergreen), Rep. Dickey Lee Hullinghorst (D-Boulder) and Senator Mary Hodge(D-Brighton).

Governor's Race: With Governor Ritter announcing his retirement in January, the field is open for a new Governor. The Democrats have nominated Denver Mayor John Hickenlooper (D-Denver) as their candidate, while the Republicans have a primary election between Scott McInnis (R-Grand Junction), and Dan Maes (R-Evergreen).

State House of Representatives: All 65 House seats are up for re-election, as they are every two years. There will be significant changes in Leadership in the House, as Speaker of the House Terrance Carroll (D-Denver), Minority Leader Mike May (R-Parker) and several other prominent House members are term limited.

State Senate: Roughly half of the 35 Senate seats will be on the ballot in November, leaving an opportunity for the Republicans to challenge the Democrats for control of the Senate. Senator Paula Sandoval resigned to take her position as a newly elected councilwoman and Lucia Guzman was just appointed to her seat.

Federal Races: Newly appointed Senator Michael Bennett (D-Denver) will face the most difficult race this cycle, as Former Speaker of the House Andrew Romanoff (D-Denver) is challenging him in the August primary. On the Republican ticket, former Lt. Governor Jane Norton (R-Englewood) and Weld County District Attorney Ken Buck are vying for their party's nomination.



Ballot Initiatives: While over 70 initiative petitions have been filed, only four have been certified for the ballot thus far. Three of the four initiatives (Amendments 60 and 61 and Proposition 101) are being championed by the Colorado Union of Taxpayers, and would have a chilling effect on the state's tax and revenue system should they pass.

Proposition 101: Motor Vehicle, Income and Telecommunication Taxes – Would reduce vehicle ownership fees to \$2 for new vehicles and \$1 for used vehicles; would reduce 2011 income tax rate to 4.5% and 0.1% each year thereafter; would end state and local government charges on telecommunications, except 911 services. *Net Impact: \$1.7 Billion loss of state revenue*

Amendment 60: Property Taxes – Would require school districts to cut half of their property tax rates by 2020; would require future property tax increases to expire in ten years. *Net impact: Approx. \$1 Billion loss of local property tax revenue*

Amendment 61: State and Local Debt Limitations – Would prohibit state government from contracting debt in any form; would limit the amount of debt issued by local government and require all local debt be approved by the voter in an election. *Net impact: Varies by county; state would no longer be able to finance capital construction projects for schools, road and bridges.*

In addition to the fiscal initiatives, the fourth measure currently on the ballot is a revision of a 2008 initiative (Amendment 48) regarding the definition of personhood.

Amendment 62: Definition of Personhood – Would amend the Colorado Constitution to apply the term 'person' to every human being from the beginning of biological development.

All this considered, Colorado will have a crowded ballot in November and the airwaves will once again be inundated with political ads for various candidates and issues.

2010 Issues of Importance: Legislative Highlights

HB 1084 (Acree/Williams) Good Samaritan Foreclosed Property Clean Up: The intent of this bill, carried over from the 2009 Session, was to specify that persons who go onto unoccupied property on an unpaid basis to clean-up trash, remove weeds, or water the lawn shall be presumed to have the landowner's implied consent. The bill also amends the civil and criminal trespassing laws to exempt persons who engage in this type of activity. CLAC worked diligently with the sponsor to amend this legislation so that the role of a CIC was clearly articulated and defined in terms of self-help protections and CIC immunity found in the unpaid and voluntary provisions of the legislation. In the first committee hearing, 14 amendments were offered and the legislation failed on 10-1 vote and was postponed indefinitely.

HB 1278 (Ryden/Carroll) Creation of an HOA Information and Resource Office: CLAC supported this legislation and actively lobbied the inclusion of constructive amendments upon negotiation with the bill



sponsors, Homebuilders Association, Land Title and several other stakeholder groups. Because the concepts of a registry and information tracking are viewed as helpful identifiers in providing resources to Colorado citizens residing in homeowner associations, CLAC was able to designate its envoy team to fully engage in the crafting of this legislation. The bill passed the Legislature and is anticipated to be signed by the Governor on June 7th. The legislation creates an HOA Information & Resource Center and a registry within the CO Division of Real Estate. The Center is to be managed by the Information Officer and the purpose is to act as a clearing house for information concerning the basic rights and duties of unit owners, declarants and unit owners associations. The Center will also track inquiries and complaints and report annually to the Director of the Division of Real Estate regarding the number and types of inquiries and complaints received. The bill requires every unit owners association in Colorado to register annually with the Director of the Division of Real Estate. The effective date is January 1, 2011.

CAI is positioned to lend support to the Resource Center to help educate Colorado's HOAs about the rights and responsibilities of homeowners and boards. It is expected that CAI-CLAC will be involved in the upcoming rulemaking procedures which will occur over the next several months.

HB 1290 (Stephens/Brophy) CCIOA Exemption of Small HOAs: This legislation, which was postponed indefinitely, would have exempted small HOA's from CCIOA. CLAC's envoy group held two meetings with sponsor Rep. Stephens and the Homebuilders Association to voice our concerns and opposition to the bill. Of key importance was the bill's designation to carve-out of an entirely new segment of HOAs from CCIOA. This backwards direction would create a host of governance and transparency issues for a large number of Colorado homeowners. CLAC testified and heavily lobbied against this bill which was ultimately defeated on the House floor 31-34.

SB 45 (Morse/A.Kerr) Homeowner Protection Act: Initially designed to be a re-introduced version of last Session's failed legislation, this measure took on a new life as a required-mediation-in-foreclosure bill. After much discussion, anticipation, off-and-on-again committee calendaring and stakeholder meetings, a unexpected strike-below was offered which would require a lender's loss mitigation department to respond to homeowner calls within a 15-minute window so that distressed homeowners aren't left on 'terminal hold' when they call for help. This was met with unacceptable concerns due to the existing nature of the Foreclosure Hotline as well as the reality that many loss mitigation departments are located outside of Colorado jurisdiction thus rendering this proposal ineffective. In the waning hours of the Session, the bill was postponed indefinitely by the Senate State Affairs Committee.

SB 93 (Lundberg/DelGrosso) Lien Rights During Foreclosure: After months of discussion, SB 93 was introduced and amended to address public trustee foreclosure sales and the ability of the purchaser ("certificate of purchase holder") of a property foreclosed upon by a lender to pay off junior lienors (like homeowner



associations) that have a right to redeem the property. Of concern to CLAC was the one-sided nature of the legislation which would not provide any protections to ensure associations will receive full payment of their liens in an appropriate manner. With CLAC-envoy leading the charge and being supported by the public trustees, mortgage brokers and others, we collectively worked to defeat this legislation which was ultimately postponed indefinitely in the House Local Government Committee on a 10-1 vote. However, all parties agreed to work together during the off-Session to craft a reasonable piece of legislation to address a true and concerning business dynamic.

Other issues:

Transfer Fee Bill: Transfer Fee/Proposed Conveyance Fee: After many stakeholder meetings coordinated by the CO Bar Association with CLAC representation, the potential bill to limit transfer fees on the sales of a property was not introduced this session due to the strong opposition of CLAC and others. There was extensive discussion on this potential bill and concerns over fees charged by HOA's and their management companies **not** founded in the Declarations. Over the interim, there may be a fresh opportunity to again revisit this issue with the same stakeholder coalition.

Rep. Dianne Primavera Town Hall Meeting: As has been customary for many years, CLAC leadership, again answered several HOA-related requests from legislators. Of particular note was a request from Rep. Dianne Primavera (D-Broomfield) for CLAC to provide a keynote speaker to address her spring town hall meeting on the subject of fiduciary best practices. Danny Sullivan of ORTEN CAVANAGH RICHMOND & HOLMES, LLC, Molly Foley-Healy of HindmanSanchez and Amy Redfern of Aponte & Busam attended and participated in this presentation which answered many general information related questions regarding board oversight, review of financial policies and capital reserves. Rep. Primavera was appreciative of CLAC engagement and further outreach opportunities may arise in the future.

Looking Ahead: 2010 and Beyond

In light of the budget deficit and the looming economic forecasts, the General Assembly voted to suspend all non-essential Legislative Interim Committees. While this means there may not be a formal forum for the generation of legislative concepts and ideas, there will surely be meetings in informal settings to discuss legislation for 2011.

The 2011 Legislative Session will prove to be one of change. The main issue we foresee is the state's budget deficit, and more importantly addressing a long term solution to Colorado's fiscal issues.