



Legislative



Digest

Legislative Summary

June 2010

The 2010 Legislative Session adjourned for the year on May 12 with a fairly good record of having dealt with several very thorny and contentious issues, as well as wrapping up a number of less notorious, but also important issues. Although there was considerable partisanship surrounding some of the contentious issues, generally legislators approached many of the issues in a workmanlike manner, and dealt professionally with the day-to-day issues.

Much of the time, and most of the public attention was directed toward several broad categories:

- ✓ State budget, including elimination of a number of tax exemptions
- ✓ Medical Marijuana—licensing, dispensaries, and the need for valid medical prescriptions
- ✓ Renewable energy
- ✓ Workers compensation, mostly directed toward Pinnacol, but affecting everyone

While a number of bills affect special districts, there were no “blockbuster” bills that will make massive changes in special district operation and procedures. The two bills proposed by SDA passed handily.

House Bill 10-1243, regarding additional transportation powers for some special districts, allows special districts having transportation powers in their service plan are given the authority to 1) join as participants of Regional Transportation Authorities, along with cities and counties, for regional transportation projects, and 2) to put a ballot issue before the voters to allow the imposition of a sales tax for transportation projects, so long as the territory does not overlap any municipality. Only metropolitan districts are permitted to have transportation powers, so only metropolitan districts would have this power. The bill was sponsored by Representative Buffie McFayden of Pueblo West, and Senator Andy Gibbs, of Breckenridge.

House Bill 10-1362, allows a start-up district to declare an inactive status, and thus be forgiven from complying with certain annual requirements such as audit, filing of annual budget, until the district is ready to start activity again, at which time its board would declare it to be active again, and the suspended activities would once again come into play. This bill is to provide relief for those districts, mostly “developer” districts, that were formed, but due to the economic downturn and problems in the housing market, never begun any operations. It is assumed that when the economy strengthens, these districts will become active again, and terminate their inactive status.

Other bills that passed, and that affect special districts, are described below by category.

Tax Increment Financing:

House Bill 10-1107: Tax increment financing (TIF) is a process whereby an urban renewal authority (URA) can invoke a system that freezes property tax collections by any taxing entities, such as school districts and special districts that are within the urban renewal area, at the level they were at the time of the implementation of the TIF, and any additional taxes that result from future development and appreciation go to the URA to provide incentives to attract businesses. While the process has proven valuable in the past, in recent years URA’s have begun reaching out to include pristine agricultural lands, which are frequently within the bounds of a fire protection district, water district, or other service provider, that is then deprived of significant revenue for up to thirty years in the future, while being expected to meet expanded demands for services as the areas build out and grow.

HB 10-1107 requires the agreement of the taxing entities that will be expected to provide services in the URA area before agricultural land can be included, and also requires that at the initial designation, if agricultural land is to be included, its initial value must be at fair market value at the time, rather than its value if assessed as agricultural land.





Elections and Campaign Finance:

House Bill 10-1116: A bill revising certain administrative provisions of Colorado's election process, and repealing and revising certain obsolete provisions. It concentrates heavily on voter registration procedures, with revised provisions for county clerks and others involved in voter registration. Initially the bill had several provisions affecting special districts, but SDA was able to get them revised or eliminated. In its final form the bill clarifies that the deadline for a special district to notify the Secretary of State of its intent to conduct a mail ballot election is **fifty-five days** prior to the election.

Senate Bill 10-203: In the case of *Citizens United v. Federal Election Commission*, the United States Supreme Court held that corporations are authorized to use their resources to influence candidate elections by means of independent campaign expenditures that employ express advocacy in support of or in opposition to candidates running in such elections; In the case of *In re interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Commission, on Certain Provisions of Article XXVIII of the Constitution of the State of Colorado*, (Colo. Mar. 22, 2010), the Colorado Supreme Court answered interrogatories submitted by

the Governor, clarifying that such rights of political expression, including independent expenditures, apply both to corporations and to labor organizations. Senate Bill 10-203 establishes a set of rules for requiring disclosure of "independent expenditures" in candidate and issue campaigns. Independent expenditures are not generally used in special district elections, this bill will probably not be a factor in special district elections. If independent expenditures are used, district DEO's should be aware of the restrictions.

Prompt Pay in Construction Contracting:

Every year for the past five years, the contracting and subcontracting representatives have introduced at least one major bill restructuring the rules for construction contracting. This year two bills were introduced, one relating to change orders and the other relating to retainage in contracting.

Senate Bill 116, provides that for any form of order or directive by a public entity requiring additional compensable work to be performed, a clause should be included in the contract that requires the public entity to reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in the contract, for all additional directed work performed until a change order is finalized. In no instance shall the periodic reimbursement be required before the contractor has submitted an estimate of cost to the public entity for the additional compensable work to be performed. This bill passed and has been signed into law.

House Bill 1162: Would have amended existing law relating to allowable retainage in a construction contract. The bill reduced allowable retainage from 10 percent to 5 percent until the contract is fifty percent completed, and then reduced retainage from 5 percent to two and one half percent for the remainder of the contract period. It also required that the retainage be placed in escrow with a bank or escrow account, required fifteen percent penalty interest for any retainage that isn't paid on time. SDA strongly objected to the terms of this bill, and along with representatives of other public entities and private sector owners and contractors, strongly and actively opposed it. **The bill was killed in House floor debate.**

Lottery and Conservation Trust Fund:

Senate Bill 10-098: As introduced, this bill would have allowed local weed control districts and conservation districts would have been able to receive a share of Lottery proceedings from the conservation trust fund amounts dedicated to use for open space and trails. The bill was amended, however, to allow any currently authorized recipient of conservation trust funds, which includes park and recreation districts, to share their funds with weed control and conservation districts, solely at the option of the park and recreation district. In this form, the bill was passed.

Employment Law:

House Bill 10-1023: Gives protection to an employer, including special districts, for hiring someone with a criminal record by prohibiting the use of such criminal record in a case of negligent hiring, if the record was sealed, or otherwise not readily available to the employer through a background check.

Water and Sanitation:

House Bill 1051: Started out requiring water providers to provide an annual report of water conservation measures and effectiveness. Water providers objected, since the sponsor could not articulate the need for such information. A task force of stakeholders met throughout the legislative session, and eventually came up with a compromise, which was amended into the bill. The bill then passed in that form. The compromise calls for the Colorado Water Conservation Board to develop a form for the reporting of such information by 2012, and water providers will begin filing such report by 2014. The CWCB will develop guidelines for the reporting, including instructions, and justification of the need for the information.

House Bill 1125: Gives the Water Quality Control Commission authority to regulate the handling and disposal of grease by the companies that are processing used restaurant grease for alternative fuel purposes. Provides protection to sanitation districts from unauthorized dumping of such grease into gutters and storm drains.

Fire Protection and FPPA Revisions:

House Bill 1095: Clarifies what fees can be charged by fire protection and emergency services districts for ambulance or emergency medical services and extrication, rescue, or safety services provided in furtherance of ambulance or emergency medical services by clarifying that “Extrication, rescue, or safety services” includes but is not limited to any rescue or extrication of trapped or injured parties AT THE SCENE OF A MOTOR VEHICLE ACCIDENT.”

Four bills, SB 10-021, SB 10-022, SB 10-023, and SB 10-024, all clarified minor points within the Fire and Police Pension Administration Act:

- SB 10-021: Volunteer Firefighter Pension Plan
- SB 10-022: FPPA Defined Benefit Member Contribution
- SB 10-023: Return to Work by FPPA Member
- SB 10-024: Eliminate FPPA Affiliated Local Plans

Workers Compensation:

A legislative interim committee met during the summer of 2009 to investigate and evaluate Pinnacol Assurance, the quasi state entity that is the largest provider of workers compensation coverage to private and public employers in Colorado. Out of that committee came a number of bills affecting workers compensation coverage, many of them targeting Pinnacol only, but others affecting all employers and workers compensation carriers in Colorado. Those of general applicability are summarized below:

House Bill 10-1038: Requires an employer or carrier to provide claimant with a brochure, in a form developed by the Director of the Division of Workers Compensation after consultation with all stakeholders, describing the claims process and informing claimants of their rights.

House Bill 10-1247: This bill terminates the Workers’ Compensation Classification Appeals Board.

Senate Bill 10-011: Reducing Conflicts of Interest in WC Cases. Requires physicians who provide independent medical examinations (IMEs) to disclose any business, financial, employment or advisory relationships with carriers or employers upon request. Prohibits paying claims handlers to delay or deny claims. Prohibits paying claims handlers based on the number of days to MMI, the rate of claims approval or denial, the number of medical procedures approved, or any other criteria designed to encourage a violation of the Act. A treating physician shall not communicate with the employer or insurer unless the injured worker is present or unless the treating doctor makes an accurate written record of the communication, containing all relevant and material information, and provides the injured worker access to the record in the same manner as medical records disclosures required by the Director. Prohibits carriers from receiving reversionary interests in indemnity annuities.



Senate Bill10-012: Workers’ Compensation Penalties. Increases the maximum penalty from \$500 to \$1,000 per day. Penalties shall be apportioned at the discretion of the Administrative Law Judge between the aggrieved party and the WC Cash Fund, except that the aggrieved party shall receive a minimum of 50% of any such penalty. With respect to the penalty for failing to pay benefits within 30 days after they are due, or with respect to late payment of medical benefits, changes the standard from “willfully” to “knowingly.” No such penalty is due if the insurer or self-insured employer proves the delay was the result of excusable neglect. These penalties are to be apportioned between the aggrieved party and the WC Cash Fund

SB10-013: Survey Accountability. Requires all carriers, and presumably all claims handlers, to conduct a satisfaction survey of injured workers at the close of each lost time claim. The bill protects workers against retaliation for what they say in the survey. Carriers will submit survey results to the DWC, to be posted on the agency’s website. The Division will create a procedure for an injured worker to follow to file a complaint. In addition, Pinnacol has to submit an annual report to the Governor regarding various statistics including claims, policies, losses, income and expenses.

SB10-076: Unreasonable Claims Practices. This bill prohibits basing compensation of claims personnel on the number of policies canceled, the number of times coverage is denied, or the use of quotas.

SB10-112: Rate Setting. This bill provides for purposes of calculating experience modifications, medical only claims shall be calculated in the same manner as claims with indemnity payments. With regard to rate filings submitted by rating organizations, the insurance commissioner shall make available to the public the aggregate loss and payroll data by class code that the rating organization submits with the rate filing. Such data shall not be used for any commercial purpose.

SB10-163: Workers’ Compensation Procedural Bill. This bill clarifies that certain portions of 2009 workers’ compensation legislation are procedural and apply to any claims, regardless of the date the claim was filed. That includes the provisions preventing a physician from contacting treating physicians when the defensive independent medical examination (DIME) test results are valid, prohibiting recovery of overpayment in certain situations, placing on the carrier the burden of proof whenever it seeks to withdraw an admission, and requiring the recording of defense independent medical examinations. This means all DIMES must be recorded

SB10-178 : Fair Workers’ Compensation Provider Reviews. This bill requires carriers to include quality and patient data in provider performance initiatives. It mandates that reviews be consistent and objective, and that providers have due process.

SB10-187: Workers’ Compensation Substantive Bill. The bill makes various changes to the Workers’ Compensation Act:

(SDA thanks Fred Ritsema of Ritsema & Lyon, P.C., for the summaries of Workers Compensation legislation that was adopted.)

Many bills that would have affected special districts were defeated. One of the potentially most significant was the bill modifying the Location and Extent Review procedure for siting public facilities. See below:

Location and Extent Review—Overriding County PUD for Facility Siting:

House Bill 10-1368, was an attempt to eliminate the “Location and Extent” review process (30-28-110(1) C.R.S.) as it relates to political subdivisions’ compliance with PUD regulations adopted by any county.

H. B. 1368 would have eliminated a procedure that is vital to all political subdivisions in Colorado that provide public services, such as water, sewer, and fire protection, in most unincorporated areas of the state.

Since 1939, the County Planning Act has included a procedure referred to as the “location and extent” process, whereby a political subdivision, including municipalities, water districts, sewer districts, fire protection districts, water conservancy districts and water conservation districts, needing to locate a facility such as a water storage tank, fire station, pipeline, or reservoir, can consult with the county on the area zoning, and then if the county planning commission objects to the location, the board of the political subdivision can, after a public hearing on the subject, override the county zoning and locate the facility. **HB 1368** would have eliminated this ability to override a county Planned Unit Development.

As pointed out in a recent Supreme Court decision upholding this procedure, “Section 30-28-110(1) of the Planning Act codifies the longstanding rule that political subdivisions with statutory purposes, including special districts, have a different relationship to county zoning authority than is otherwise applicable to private developments.” [BOCC v. Hygiene Fire Protection District](#). These political subdivisions have legally mandated duties to provide their services in their service areas, which make it mandatory that they be able to locate their facilities where necessary to adequately provide the services.

SDA argued that House Bill 1368 should be defeated for the following reasons:

1. When a local governmental service provider needs to build a facility for the delivery of a vital service, there are compelling reasons for the siting of the facility in a given location:

- Water facilities must look to elevations that facilitate gravity flow; proximity to pipelines, storage facilities, geological and other physical factors; proximity to customer bases, such as neighborhoods and business centers.
- Water providers must occasionally drill large supply wells, that must coincide with underground alluvium availability. Drilling in the wrong spot can cost hundreds of thousands of dollars for a “dry hole.” Similarly, building a reservoir depends on finding an ideal site to safely capture and hold the water.
- Fire stations are sited to be able to provide reasonable response time to developing neighborhoods. Failure to locate in an advantageous spot can affect homeowner insurance rates, as well as protection of property and life safety.

2. The Bill will affect not only special districts, but also municipalities that may need to locate a facility outside the city boundaries. A county could negatively affect the city’s ability to provide the needed services for the city’s population. Notably, the Municipal Planning act, which is parallel to the County Planning Act, has the same provision allowing for the override of zoning for the location of public facilities, is not included in this bill. For many years the existing statutory makeup has provided a workable and equitable system that protects all parties. It should not be disturbed.

3. The fact that HB 1368 only prohibits the override in Planned Unit Developments (PUD) is not relevant, since (1) most development within counties is now done through PUD’s, and (2) as affirmed in [BOCC v Hygiene Fire Protection District](#), the PUD act was enacted as a supplement to the Planning Act, not a substitute for it. The PUD Act functions as a type of zoning regulation.

The Supreme Court has stated that this “location and extent” procedure **“functions as part of a legislative design to coordinate the zoning authority of counties and the authority of other political subdivisions to carry out public projects. The practical effect of section 30-28-110(1) is that a public entity, such as a special district, must apply for location and extent review of a proposed project to accommodate, where feasible, the zoning interests of the county, but the governing body of that entity ultimately has authority to override county disapproval of the project.”** (emphasis added) *In reality, the public entities do not select locations randomly, and will not seek to override county zoning unless absolutely necessary to be able to meet their responsibility to provide vital services.*

As further stated in [Bd. Of County Comm’rs v. Bainbridge](#), 929 P. 2d 691, 708 (Colo. 1996), “Although statutory counties have broad authority to control land use through zoning, subdivision, and PUD approval or denial, they are not superior to other political subdivisions created by the General Assembly for special purposes. (at p. 698) House Bill 1368 would clearly make counties superior to other political subdivisions. The Bill should be defeated.

House Bill 10-1368 was killed at the sponsor’s request, after all stakeholders agreed to meet during the summer to discuss this issue further. It is likely that some form of similar legislation will be reintroduced next year.

SDA thanks the Legislative Committee and the SDA Executive legislative Committee for their time and dedication to this legislative session.

