

August Policy Strategies & Attwood Public Affairs

Jennifer Mello

jennifer@augustpolicy.com

720-301-6137

Amy Attwood

amy@amyattwood.com

720-840-4912



Housing Colorado

Voice and action for affordable housing.

2020 End of Session Report

June 22, 2020

Elena Wilken
Executive Director
Housing Colorado

Elena,

It has been a pleasure to represent Housing Colorado before the legislature this year. It certainly will be one to remember. Housing Colorado's full bill chart remains active at <https://coloradocapitolwatch.com/bill-analysis/5586/2020/0/>

Thank you,

Amy Attwood
Attwood Public Affairs

Jennifer Mello
August Public Affairs

The 2020 Colorado Legislative Session is difficult to summarize. It was a session unlike anything we have ever experienced. If Oscar Wilde was correct that “to expect the unexpected shows a thoroughly modern intellect,” we have all been converted to modernity.

Under the Colorado Constitution, the legislature meets for 120 days typically starting early in January and finishing early in May. This year, after convening on **January 8**, the legislature met for 9 ½ weeks. After **March 14**, they stopped meeting for 10 weeks because of COVID-19. The Colorado Supreme Court had opined that the legislature could “stop the clock” when it was not meeting due to the pandemic. For the first time in memory, the General Assembly was thus working with a flexible end-date.

The Joint Budget Committee officially began its herculean work to re-write the state budget on **May 4**. On **May 26**, the full legislature reconvened for what became approximately three additional weeks. After suspending work for two days while protest activity swept the Capitol grounds, Sine Die came officially on **Monday, June 15**. **At 160 days, 2020 was the longest Colorado legislative session in history.**

In its role as a representative democratic body, the General Assembly is always influenced by and responsive to what is happening outside of the Capitol. This year’s events – first a global pandemic, then the impact of the pandemic on the economy and the state budget, followed by days of protests centered on the Capitol grounds – took the legislature by storm and influenced outcomes more than ever.

Remember in early March when everything seemed normal? At that point, the legislature was focused on the daily hustle and bustle of processing through several hundred bills. The Joint Budget Committee was nearing completion of the state budget. Several key initiatives including the **creation of a public insurance option** and a **family and medical leave** program were moving forward. And the General Assembly had voted to **eliminate the death penalty** in Colorado.

Remember when the COVID-19 crisis exploded and everything changed? True to the design of our system, the Executive Branch became prominent with Governor Polis using his emergency authority to address key issues from evictions to travel bans to which businesses could stay open. Legislative leadership grappled with questions about if, when and how the General Assembly could resume the 2020 session.

Remember when the new normal started to emerge? Many of bills that had been introduced before the COVID-19 hiatus, including public option and family medical leave, did not move forward when the legislature reconvened. Instead, in response to COVID-19, within the last three weeks of the 2020 Session, the legislature introduced and passed measures related to **price gouging, debt collection, whistleblower**

protections, unemployment insurance, funding for eviction prevention programs, funding for Colorado's reinsurance program, law enforcement accountability, and sick-leave for all Colorado employees. Lest we think Colorado's citizens only prioritize the Great Outdoors, *restaurants will be able to sell cocktails to-go for at least one more year.* Legislation that would have created a presumption within the worker's compensation system that contraction of COVID-19 by an essential worker was work-related, did not pass. A bill to change Colorado's *immunization standards*, which had been introduced before the COVID-19 hiatus, was also adopted.

To produce a balanced budget for Fiscal Year 2020-2021, the legislature made over \$3 billion in adjustments. In addition to cutting a variety of programs, reducing reimbursement for Medicaid providers, and requiring state agencies to cut personnel costs, budget writers relied on cash fund transfers and the state's existing reserve fund to curtail the pain. One-time federal dollars began to flow into the State, partially offsetting the impact of some of the state budget reductions. To date, the federal money comes with strict restrictions: spending must be tied directly to the COVID-19 crisis and large portions of the funding must be spent by December 31, 2020.

Motivated, at least in part, by the new fiscal realities, the General Assembly adopted legislation that *decouples federal tax relief from state taxes.* Additionally, they referred two measures to voters in November: *1) an increase in the nicotine tax and an extension of that tax to vaping products; and 2) a measure to repeal the Gallagher Amendment, which defines the distribution of property taxes between commercial and residential property.* Finally, as passed, the School Finance Act contains a provision that *impacts school district mill levies* in a manner that could lead to more local property tax revenue for school districts in the future.

As human beings, crisis has a way of focusing our attention on our priorities. Democrats, who gained significant majorities in both Chambers in the 2018 election, finished the session focused on pushing through legislation important to their progressive voter base. Yes, bills were amended along the way and in some cases gained bi-partisan support. But the pace, range and scope of the major policy changes adopted in the last three weeks is extraordinary. Colorado is the first state in the nation to adopt such extensive law enforcement changes and to require sick leave for every Colorado employee. Colorado progressives achieved years of aspirational work in just three short weeks.

Housing Funding & Financing

Particularly because of the last week, 2020 turned out to be a decent year for housing funding. The bad news was that the Joint Budget Committee (JBC) delayed the \$30 million transfer from the Unclaimed Property Trust Fund to the Housing Development Grant Fund for FY 20/21. We were successful in keeping them from eliminating the possibility of the transfer in the future. It was encouraging that the JBC rejected the idea of taking future dollars from last

year's vendor fee legislation. The good news, described in more detail below, is that depending on voter approval there may be a permanent source of funding in the future.

HB20-1035 Programs to Developing Housing Support Services would have established and expanded programs within the Department of Local Affairs (DOLA) to build the capacity of Colorado communities to provide supportive housing services to certain individuals who are homeless or are at risk of homelessness. Died in the House Appropriations Committee.

HB20-1049 Reauthorize Habitat For Humanity Tax Check-off would have reauthorized the voluntary contribution designation benefitting the Habitat for Humanity of Colorado Fund for tax years 2020 through 2025. Postponed Indefinitely.

HB20-1161 Private Activity Bond Allocation eliminates the Bond Allocation Committee and removes current restrictions on fee revenue in the Department of Local Affairs. Passed.

HB20-1335 Colorado Homeless Project Contribution Tax Credit would have replaced and expanded a state income tax credit for contributions to enterprise zone projects meant to address homelessness. Postponed Indefinitely.

HB20-1405 Funding Legal Defense Fund would have created a \$30 fee on persons who commence eviction proceedings to fund the Eviction Legal Defense Fund. Revenue from the fee would have been deposited in the existing Eviction Legal Defense Fund. Postponed Indefinitely.

HB20-1410 COVID-19-related Housing Assistance transfers \$20.0 million to the Housing Development Grant Fund in the Division of Housing. The division may use this money to provide rental assistance, residential mortgage assistance, and guidance on how to access additional housing services to those impacted by the COVID-19 pandemic. These federal dollars must be spent by the end of 2021. Passed.

HB20-1427 Cigarette Tobacco and Nicotine Products Tax refers a ballot measure to voters at the November 2020 statewide election to increase cigarette and tobacco taxes and create a new tax on nicotine products. ***If the measure passes on the November ballot and revenue projections are accurate, \$11,166,000 would go to the Housing Development Grant Fund on an annual basis. An additional \$500,000 would go to the Eviction Legal Defense Fund.*** The dollars for housing-related programs were added at the very end of session as a consolation for the failure to come to a successful compromise on an eviction moratorium. Passed.

SB20-002 Rural Economic Development Initiative Grant Program formalizes in statute the Rural Economic Development Initiative Grant program (REDI program) in the Department of Local Affairs, to be administered in collaboration with the Office of Economic Development and International Trade. The REDI program provides grants that create new jobs in rural

communities through a new employer or an expansion of an existing employer, or that create diversity and resiliency in a rural community's local economy. Passed.

SCR20-001 Repeal Property Tax Assessment Rates is a ballot measure that 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. Passed.

Landlord Tenant Relations

The growing power of progressives within the Colorado legislature has led to an uptick in the number of proposals that address the relationship between landlords and tenants.

HB20-1009 Suppressing Court Records Eviction requires a court to suppress records of eviction proceedings and actions for termination, and provide notice of such suppression to the defendant, until an order granting the plaintiff possession of the premises is issued. Passed.

HB20-1048 Race Trait Hairstyle Anti-Discrimination Protect clarifies that state law prohibiting discrimination on the basis of race includes hair texture, type, or styles commonly or historically associated with race. Passed.

HB20-1141 Fees Charged To Tenants By Landlords would have established rules regarding late fees charged to tenants or mobile home owners by landlords. It would have limited the amount a landlord may charge, established a 14 day grace period for late rent payments, prohibited a landlord from initiating eviction procedures on the sole basis of failure to pay late fees, and exempted the portion of rent paid by a rent subsidy provider from late fees. Postponed Indefinitely.

HB20-1196 Mobile Home Park Updates amends statutes regarding mobile parks adjusting the conditions under which a tenancy may be terminated, adjusting management's duties concerning park maintenance and repair, requiring management to provide documentation to tenants regarding water usage and billing, prohibiting management from retaliatory actions, establishing constraints for how management may add or amend park rules, establishing tenants' right to privacy. Passed.

HB20-1201 Mobile Home Park Opportunity to Purchase gives homeowners in a mobile home park the opportunity to make an offer to purchase the park if the landlord anticipates selling it. Passed.

HB20-1332 Prohibit Housing Discrimination Source of Income makes discrimination in housing based on a person's source of income an unfair housing practice. Passed.

SB20-108 Landlord Prohibitions Tenant Citizenship Status would have prohibited a landlord from using or disclosing information regarding a tenant's citizenship or immigration status, and would have permitted a tenant to bring civil action against a landlord for engaging in prohibited conduct. We were able to amend the bill to ensure that housing providers could follow federal laws or rules and not be held in violation. Postponed Indefinitely.

SB20-224 Landlord Prohibitions Tenant Citizenship Status prohibits a landlord from using or disclosing information regarding a tenant's citizenship or immigration status and permits a tenant to bring civil action against a landlord for engaging in prohibited conduct. Sound familiar? It should. SB20-224 was identical to the re-engrossed version of SB20-108, which died in the House. If a housing provider must follow federal law or rules regarding citizenship status, they are exempted. The sponsor Sen. Julie Gonzales revived the proposal in the waning days of the session. Passed.

Helping Vulnerable Populations

“Big picture” legislation to address the treatment of persons experiencing homelessness failed this year, as it has in the past. However, there were a handful of narrower bills adopted with the goal of helping people experiencing homelessness or other vulnerable populations.

HB20-1122 Homeless Youth Services Act and Grant Program would have made updates to the Office of Homeless Youth Services in DOLA and created a new grant program. Postponed Indefinitely.

HB20-1262 Housing Assistance Justice System Transition Money ends the annual transfer of unspent community corrections funding to housing programs in the Department of Local Affairs for persons with mental and behavioral health disorders who are transitioning from the criminal justice system. Passed.

HB20-1233 Basic Life Functions in Public Spaces would have prohibited state and local governments from restricting a person from conducting basic life functions in a public space (setting up shelter) or from occupying a legally parked motor vehicle. Postponed Indefinitely.

SB20-029 Cost of Living Adjustment for Colorado Works Program requires that each household in the Colorado Works program will receive a one-time supplemental payment of \$500. Passed.

SB20-106 Consent to Shelter and Services by Homeless Youth allows youth who are 15 years of age or older to consent to receiving shelter services from a licensed homeless youth shelter in accordance with rules promulgated by the Department of Human Services. Passed.

Development & Construction

The limited supply of affordable housing continues to be a challenge throughout the State of Colorado. At the same time, legislators are interested in incentivizing certain types of construction and in the legal processes that can impact the cost of housing.

HB20-1155 Higher Efficiency New Construction Residence requires a home builder to offer a buyer of a new home one of the following: an electric vehicle charging system or prewiring for the future installation of such a system; or a plug-in receptacle in a place accessible to a vehicle parking area. Passed.

SB20-093 Consumer and Employee Dispute Resolution Fairness would have created the Consumer and Employee Arbitration Fairness Act, which would have established ethical standards for arbitrators, disclosure and protection of information requirements, and clarified when damages are awarded. Postponed Indefinitely.

SB20-138 Consumer Protection Construction Defect Time Period would have increased the statutory limitation period for actions based on construction defects from six years to ten years. It also would have allowed a pause of the limitation period on any statutory or equitable basis and require a pause until the claimant discovers not only the construction defect, but also its cause. Postponed Indefinitely.

HB20-1351 Local Authority Promote Affordable Housing would have clarified that the state prohibition on local rent control laws is not applicable to local laws that restrict rents on newly constructed or redeveloped housing so long as the local regulation provides options to the property owner or land developer, and creates alternatives to the construction of new affordable housing on the building site. Postponed Indefinitely.

Looking Ahead

All eyes are now firmly fixed on the June 30 primary election and the November 3rd general election. Questions abound.

- ≠ Will Democrats hold their majorities in the Colorado House and Senate?
- ≠ Will Republicans pick up seats or even manage to seize control of the Senate?
- ≠ How will COVID-19 impact the functioning of elections?
- ≠ Will Colorado become more solidly “blue” or revert to “purple” status?

Conventional wisdom is that Colorado has been and will continue to trend more progressive, helping Democrats at the ballot box. However, we wonder about the degree to which the 2018 “blue wave” was about ***voting for Democratic legislative candidates versus voting against President Trump*** by voting against Republican candidates. We also wonder if COVID-19 will cause independent voters, who typically control election outcomes in Colorado, to support

candidates who propose a stronger safety net or candidates who focus on supporting businesses and reviving the economy. If Democrats have a strong showing in November, then we are likely to agree that Colorado has become a blue state. For now, we are going to ***wait and see how the election turns out*** before reaching that conclusion.

All 65 House seats are on the ballot and half of the 35 Senate seats are as well. Currently, Democrats hold a 19-16 margin in the State Senate and a 41-24 margin in the House.

At a statewide level, we have a competitive U.S. Senate race and Colorado may be in play in the race for President.

In less than two weeks, we will complete the primary elections. Key races to watch include the following.

- ≠ Senate District 8 in Northwest Colorado features a Republican primary race between incumbent Sen. Bob Rankin and Debra Irvine. In this seat, the outcome of the primary could influence the outcome of the general election. Sen. Rankin would be difficult to beat in the general but having a newcomer as the Republican candidate could open the door for Democrats to pick up this seat.
- ≠ Senate District 23 which extends across parts of Broomfield, Larimer and Weld counties has a Republican primary between Rupert Parchment and Barbara Kirkmeyer. There is no doubt the winner will succeed term-limited Republican Senator Vicki Marble.
- ≠ Senate District 31 in Southeast Denver features Democrat Chris Hansen vs. Maria Orms. Hansen is the incumbent, elected to the seat via a vacancy committee earlier this year. In this safe Democratic seat, the primary winner will definitely go on to succeed in the general election.
- ≠ House District 6 in central Denver has a three-way Democratic primary with incumbent Rob Woodrow, Steven Paletz and Dan Himelspan. Woodrow is the incumbent. He took over the seat in a vacancy committee when Chris Hansen moved to the Senate earlier this year. There is no doubt that the winner of the primary will win the general election.
- ≠ House District 22 in Jefferson County showcases incumbent Republican Rep. Colin Larson vs. Justin Everett. Everett previously held the seat but left to run an unsuccessful campaign for State Treasurer. The winner likely will go on to win this lean Republican seat in the general election.
- ≠ House District 38 in Littleton presents Candice Ferguson vs. David Ortiz to determine which Democrat will take on incumbent Republican Richard Champion.

- ≠ House District 40, which is in Aurora, is facing a Democratic primary between Naquetta Ricks and John Ronquillo. The winner is highly likely to join the legislature for the 2021 General Assembly session.
- ≠ House District 48 in Weld County, a safe Republican seat, features Republican Grady Nouis against Republican Tonya Van Beber to replace term-limited Rep. Humphrey.
- ≠ House District 49 in Larimer and Weld counties has Republican Vicki Marble running against Republican Mike Lynch to replace Rep. Perry Buck. The winner will hold the seat in the general election.
- ≠ House District 63 has been represented by Rep. Lori Saine who is term-limited. In a three-way Republican primary with Patricia Miller vs. Corey Seulean vs. Dan Woog, the winner is highly likely to be successful in November.

In November, key races to watch are as follows.

- ≠ Senate District 19 in Jefferson County may be the most competitive of all the legislative races. Incumbent Democrat Rachel Zenzinger has shown her independence on a handful of key votes citing the needs and desires of her constituents. Her opponent is Republican Lynn Gerber.
- ≠ Senate District 26 in Arapahoe County features incumbent Democrat Jeff Bridges against Republican Bob Roth.
- ≠ Incumbent Republican Sen. Jack Tate has chosen not to run for re-election in Senate District 27. Democrat Chris Kolker will face Republican Suzanne Staiert in what could be a pick-up seat for the Democrats.
- ≠ House Districts 25 and 27 both in Jefferson County feature incumbent Democrats who won their seats in 2018 by the slimmest of margins. In House District 25, incumbent Lisa Cutter faces former County Commissioner Don Rosier. In House District 27 incumbent Democrat Brianna Titone faces her 2018 opponent Vicki Pyne.
- ≠ Also in 2018, Rep. Bri Buentello from House District 47 eked out a narrow win. She will face the winner of the Republican primary, either Stephanie Luck or Ron Parker.

On May 17, Gov. Polis signed an Executive Order to establish temporary rules allowing for ballot initiatives to be signed through mail and email. Prior to the order, the process for gathering signatures to qualify for the ballot had to be done in person. A legal challenge has been filed. The Denver District Court upheld the Order, but the ruling has been appealed and is set to heard by the Colorado Supreme Court. These are the ballot initiatives that have officially qualified for the November ballot as of June 19, 2020.

- ≠ **22-Week Abortion Ban Initiative.** Prohibits abortion after 22 weeks gestational age.
- ≠ **Citizen Requirement for Voting Initiative.** Amends the Colorado Constitution to state that “only a citizen” of the U.S. can vote in federal, state, and local elections, instead of the existing language that says “every citizen” of the U.S. can vote.
- ≠ **Gray Wolf Reintroduction Initiative.** Reintroduces gray wolves on public lands.
- ≠ **National Popular Vote Interstate Compact Referendum.** Joins Colorado into the National Popular Vote Interstate Compact, awarding Colorado's electoral votes to the winner of the national popular vote.
- ≠ **Charitable Bingo and Raffles Amendment (Referred).** Requires charitable organizations to have existed for three years before obtaining a charitable gaming license instead of five years; allows charitable organizations to hire managers and operators of gaming activities so long as they are not paid more than the minimum wage.
- ≠ **Repeal Property Tax Assessment Rates Amendment (Referred).** Repeals the Gallagher Amendment of 1982, which limited the residential and non-residential property tax assessment rates so that residential property taxes amounted to 45% of the total share of state property taxes and non-residential property taxes amounted to 55% of the total share of state property taxes.
- ≠ **Colorado Tobacco and E-Cigarette Tax Increase for Health and Education Programs Measure (Referred).** Increases taxes on tobacco, creates a new tax on nicotine products such as e-cigarettes; dedicates funds to education, housing and health programs.
- ≠ **Transportation Bond Issue.** Authorizes the state to issue transportation revenue anticipation notes (TRANS)—a specific type of bond debt—in the amount of \$1.837 billion with no increase to taxes.

There are several statewide initiatives that are currently attempting to gather the 124,000 required signatures needed by August 3. Supporters are trying to qualify measures that create a paid family and medical leave program, make Election Day a state holiday, draft a new criminal record expungement process for convicts and reduce the state’s income tax rate. Legislative action does not stop once the legislative session comes to a close.

Typically, this is done via interim committees. However, in response to COVID-19, there will be **no interim committees authorized to meet in 2020.**

Conclusion

The more things change the more they stay the same. 2019 had been called a unique session. That was true. At the time there was no way anyone could have predicted COVID-19 and the impact it would have on the legislature. Suffice it to say, 2020 was unique to beat all previous uniques. We will now officially retire that word.

There is no doubt that Colorado's 2020 legislative session will go down in history. What remains to be seen is how the history books will characterize the remarkable manner in which the Colorado legislature responded to this unprecedented time.

Thank you for giving us the opportunity to represent Housing Colorado's interests at the Capitol this year.