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FOLLOWING THE LEADERS

An up to date review of Colorado government and politics as they relate to the clients of Axiom Strategies Inc.

“No man likes to have his intelligence or good faith questioned, especially if he has doubts about it himself.” Henry Brooks Adams

100 Days to Sine Die

Budget Battles Rule the Week

In an effort to have seven proposed tax exemptions and credits eliminated and the state collecting by March 1 and six more queued up for repeal on January 1, 2011, House Democrats pushed to get the legislation through the House this week. The bills were introduced Friday the 22nd, and calendared for committee hearings on the following Wednesday. The bills first cleared the House Appropriations committee Wednesday morning; the House Finance Committee took them on at 2:00 p.m. Passionate testimony from businesses that would be affected by the eliminations went well into the night, and the committee finally adjourned at 2:30 a.m. with five of the bills still awaiting action. Finance considered the remaining bills Friday morning, and floor action on the package Friday afternoon went late into the night as well.

Democrats pushed the elimination of exemptions as a necessary move to balance the state budget, noting that as all state programs have shared in the sacrifice, business needed to pony up as well. Republicans countered that the reason the state has experienced such a drop in revenues is that businesses are already feeling the pain of the recession, and these cuts amount to tax increases that will make it that much harder for struggling businesses to stay afloat. Eight of the bills passed Second Reading in the House; a final vote Monday morning will move them to the Senate. Below are the bills that passed, along with the amount the state believes it will collect from their passage:

- Eliminate the sales-tax exemption for materials used for direct mail, generating up to \$1.5 million;
- Remove the sales-tax exemption for candy and soda, \$18 million;

- Repeal a regulation exempting downloaded software from sales tax, up to \$20.4 million;
- Eliminate the sales-tax exemption on out-of-state retail sales made through in-state websites, up to \$5 million.
- Repeal the sales-tax exemption on nonessential food items such as paper bags, napkins and plastic forks, up to \$2.1 million.
- Repeal the sales-tax exemption on agricultural compounds such as pesticides and bull semen, up to \$4.6 million.
- Limit the ability of corporations to carry net operating losses in prior years forward on their tax liability, up to \$16.8 million.
- Limit a tax credit for alternative fuel vehicles, up to \$2.7 million.

One bill in particular took a severe political turn during testimony and debate: the proposal to eliminate the sales-tax exemption on out-of-state online retail sales. HB 1193 – Sales Tax Out-of-State Retailers by Rep. Jack Pommer (D-Boulder) and Sen. Rollie Heath (D-Boulder) would require an out-of-state seller like Amazon.com or Overstock.com to collect sales tax on sales to Colorado consumers if the seller advertises via Colorado residents – through a website link, for example. The U.S. Supreme Court has ruled that a state may require a seller to collect tax only if the seller has a physical presence in that state, but legislators argue that advertising through local affiliate businesses establishes a presence in the state, despite the lack of any employees or offices in Colorado for these companies.

Colorado does not have a good precedent to believe that they will collect funds from the passage of the bill. The constitutionality of New York’s law is currently being challenged in court. North Carolina and Rhode Island passed similar legislation in 2009, and neither state has collected any revenue from it. With the constitutional challenge already underway in NY court, Amazon, Overstock, and dozens of other out-of-state sellers simply stopped advertising in both states in mid-2009. Mississippi, New Mexico and Virginia all considered similar proposals last week and rejected the legislation after constitutional considerations and the reality that no actual revenue would be realized.

The effects of this bill would be felt by Colorado companies and non-profits, which greatly benefit from their advertising with out-of-state sellers. However, in spite of evidence in other states that the same law raised little or no new revenue and had a negative effect on revenue and jobs, a majority of House members voted in favor of the bill, calling what they believe is a bluff in spite of evidence to the contrary and portraying opposition as an example of the business community refusing to do their part.

Redistricting Battles Loom

The stakes are even higher in the 2010 election than usual. The legislature and governor elected in November will draw Colorado’s congressional redistricting map and oversee legislative redistricting. In Colorado, the legislature draws the congressional districts, while a redistricting commission draws the legislative boundaries. Those in control will have greater power to draw district boundaries conducive to protecting legislative and congressional majorities in future elections. While both parties fear the control that their opponents could assert over the process, Colorado Republicans desperately need to turn over at least one chamber of the legislature or the Governor's

office in order to have a true voice in the battle. The 2002 redistricting process was lengthy and contentious, resulting in court cases and animosity.

This year, Rep. Paul Weissman (D-Boulder) and Sen. John Morse (D-Colorado Springs) have introduced HB 1210 - Redistricting Process. The bill updates the permanent statutes relating to redistricting by requiring the Colorado Reapportionment Commission appointed in 2011 to designate in its plan which senatorial districts will be up for election in 2012, and which in 2014. If a senator elected in 2010 were to vacate their seat prior to the start of the 2013 legislative session, the vacancy would be filled from the district from which the senator was elected. However, any vacancy filled after the start of the 2013 session would be filled from the newly drawn district. Finally, the bill's declaration would urge the Commission and the Colorado Supreme Court to approve a final redistricting plan by December 14, 2011.

Gifts, Grants and Donations Questioned

Ever since Colorado's budget crisis took hold and any bill requiring state spending was rendered dead on arrival, a clause has been showing up more and more in legislation and fiscal notes: gifts, grants and donations. Lately, the only way to get a bill funded is if you find your own funding source, and many folks have done just that. A variety of research institutes, charitable organizations and private businesses are often looked at to provide the gifts, grants and donations.

Rep. Amy Stephens (R-Colorado Springs) and Sen. Mark Scheffel (R-Parker) have introduced legislation to reflect the shift toward the use of gifts, grants and donations. The bill would require that each state agency that receives grant moneys submit a report to the Joint Budget Committee specifying information about the grant, such as the source, amount, duration, and specific program for which the money is intended. Additionally, the bill would require each new bill that creates a program funded entirely or in part by gifts, grants and donations to include a repeal clause specifying that the provisions of the bill that rely on those moneys will be repealed upon receipt of notice by the revisor of statutes that the program has not received sufficient grant funding.

Back to NCSL

Prior to the passage of Amendment 41, Colorado legislators routinely accepted sponsorships to attend national conferences such as the National Conference of State Legislators (NCSL), the American Legislative Exchange Council (ALEC), and the Council of State Governments. These conferences provide opportunities to discuss legislative issues of nationwide concern, learn from the legislative experiences of other states, and consider model legislation on issues affecting Colorado. SB 099 – Legislator Acceptance of Reimbursement by Sen. Bill Cadman (R-Colorado Springs) would allow members of the General Assembly to accept reimbursement from a joint governmental agency for certain expenses related to their attendance or participation at the agency's meeting or convention.

Colorado law currently recognizes NCSL, ALEC and other groups as joint governmental agencies, and under certain conditions, permits the use of state funds to pay for a member's travel expenses to those conferences. However, it has been several years since the state had funding available to finance member attendance at these conferences.

Amendment 41 allows for a legislator to accept reasonable expenses paid by certain nonprofit organizations or state or local government for participation at their meetings, it does not address payment of expenses to attend meetings of joint governmental agencies. If passed, the bill provides greater opportunity for Colorado legislators to participate in national discussions.

Medical Marijuana Advances

SB 109 – Medical Marijuana Patient Doctor Relations made its way through two major votes this week, first the Senate Health and Human Services Committee, followed by a Senate floor vote. The bill would allow the Department of Public Health and Environment to promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the bill. Additionally, the measure would ban doctors who prescribe medical marijuana from receiving any compensation from a caregiver, distributor, or any other provider.

Medical marijuana advocates voiced objections to the bill, but law enforcement agencies, the Colorado Medical Society and Colorado's chief medical officer Nate Colange all lent their support to the bill. The legislation will have a final vote in the Senate before moving to the House.

In the Races

The Colorado Treasurer's race is heating up, and is sure to get more media attention with the addition of Ali Hasan to the mix. The Beaver Creek Republican tried unsuccessfully to unseat Rep. Christine Scanlan (D-Dillon) in 2008, but Hasan's ability to self-finance his campaign gave the incumbent a run for her money. Hasan joins JJ Ament and Walker Stapleton in a three-way republican primary to challenge State Treasurer Cary Kennedy. While the State Treasurer is not typically a high-profile race, in Colorado the position has served as a springboard for a number of political careers.

Republican gubernatorial candidate Scott McInnis is staffing up. He brought on Nancy Hopper as his new campaign manager, and has pulled top Republican aides from the state capitol as well. The Senate GOP chief of staff, House GOP spokesman, and Senate GOP policy director will all join the campaign in the near future.

Senate candidate Andrew Romanoff is adding to his campaign staff as well. National strategists Joe Trippi, Pat Caddell, Celinda Lake, and Liz Chadderon will all join his primary challenge to U.S. Senator Michael Bennet.

Romanoff faces a major challenge in his fight against Bennet: President Obama. The president has confirmed that he will visit Colorado in February to campaign for the senator.

Pinnacol Privatization Talks Fueled by Legislature

Pinnacol Assurance is entering into conversations regarding the possibility of privatizing. The quasi-governmental agency is seeking the option as a solution for both some of the state's monetary needs and their own self-preservation. Over the past year, the worker's compensation provider has been the subject of an attempted raid on their reserves, an interim study committee, a performance audit, and now faces seven bills related to the company's makeup and operation – essentially anticipating death by a

thousand cuts. While the specifics of negotiations are not yet determined, Pinnacol wants to remain the provider of last resort for Colorado's most dangerous industries, as well as continue to provide dividends to policy-holders.

Two of the bills brought by the interim committee will be heard soon. HB 1009 – Pinnacol Assurance Board of Directors by Rep. Joe Miklosi (D-Glendale) and Sen. Mary Hodge (Brighton), which would add specified members to the Board of Directors and require public meetings, is calendared for Thursday, February 4. HB 1012 – Limit Surveillance in Worker's Comp Claims by Rep. Sal Pace (D-Pueblo) and Sen. Morgan Carroll (D-Aurora) would prohibit an employer or insurer from conducting surveillance on an employee receiving workers' compensation benefits without a reasonable basis to suspect that the employee has committed fraud. Additionally, the bill allows an employee to request an expedited hearing before a prehearing administrative law judge, and directs the judge to issue an injunction against surveillance unless the insurer or employee shows that it has a reasonable basis to suspect fraud. The identity of a witness who provides evidence is allowed to have their identity withheld or limited to an in camera review. HB 1012 is scheduled to be heard Thursday, February 11.

Credit Union Bill Killed in Committee

A bill to allow the investment or deposit of public funds in credit unions that are insured by the National Credit Union Administration, and allow credit unions to make loans to public entities, met an unexpected death in the House Business Affairs Committee this week. HB 1075 by Representatives Daniel Kagan (D-Denver) and Jerry Sonnenberg (R-Sterling) and Senators Suzanne Williams (D-Aurora) and Ted Harvey (R-Highlands Ranch) was heavily lobbied against by banks. Currently, state law allows public moneys to be deposited in or invested with banks and savings and loan associations that are FDIC protected. The bill would have permitted the deposit or investment of public moneys into a credit union so long as the credit union is protected by the national credit union administration.

Landowner Liability for "Good-Samaritan" Injuries

HB 1084, sponsored by Rep. Cindy Acree (R-Aurora) was heard by the House Judiciary committee last Thursday. HB 1084 would essentially authorize neighbors to enter, or trespass on, abandoned properties in order to clean up weeds, mow the lawn, and generally clean up the property so that it does not create an eyesore in the neighborhood. Although the bill authorizes these so-called "good samaritans" to enter a landowner's property, it does not alleviate the liability of the landowner for injuries sustained by the good samaritan while on the property, with the exception of self-inflicted injuries. The bill also includes realtors and lenders in the definition of landowner, creating potential liability for real estate agents, banks and credit unions in addition to the original owner of the property. After hearing testimony, Judiciary committee chair Rep. Claire Levy (D-Boulder) laid over the bill to allow the bill sponsor time to work with opponents on amendments. Rep. Acree has a number of amendments in mind, including eliminating the definition of "landowner" (so the bill would no longer expressly include realtors) and clarifying that it applies only to residential and not commercial properties. Even with such amendments, HB 1084 still authorizes trespass onto certain properties and does not sufficiently limit the landowner's liability for injuries sustained by the trespasser while on

the property. The bill is expected to be back before the Judiciary to hear amendments and vote on Thursday, February 4 .

Introduced Bills

House	212
Senate	119
Total	331