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# End of Session Report 2019



## Colorado Apartment Association

**“No man's life, liberty or property are safe while the legislature is in session.” -Mark Twain**

The First Regular Session of the Seventy-first General Assembly convened on Jan. 4, 2019 and adjourned on May 3, 2019. Below please find a recap of the 120-day legislative session.

### **Highlights**

Despite adjourning quietly late on Friday afternoon, the 2019 legislative session will be remembered for a number of bitter legislative battles and some big victories for Democrats. When the Colorado General Assembly convened in January, no one would have predicted the number of legislative hearings that would go late into the night throughout the 120 days. Tensions rose quickly as early in-session battles, like National Popular Vote and Sexual Education, caused consternation between caucuses. Senate Republicans scored a victory when a Colorado Court ruled that Democrats could not use a computer to read bills at length illegibly. This verdict allowed Republicans to drag out debate, often for hours, slowing the session to a snail's pace. Numerous committee hearings and committee of the whole debates stretched until midnight, with some going into the wee hours of the morning, 2 a.m., 4 a.m. and a record- breaking 5:30

a.m. The final week saw an unprecedented backlog of bills, which miraculously cleared by the final day.

In this team's experience, there has not been a more challenging session for Colorado businesses as 2019. Numerous bills were introduced mandating how employers must publish new job postings and conduct employment interviews, allowing local governments to raise the minimum wage beyond the state's minimum wage, and specifying what retirement and family-leave benefits employers have to offer their employees. During these very important legislative battles, the policy discussion often turned into a debate on what role or how much of a role government should have in protecting workers.

Three issues passed and signed by the Governor are currently the subjects of citizen-initiated petition or recall drives. The hard-fought oil & gas legislation granting local governments more control over the specifics of drilling operations consumed many days of the limited 120-day schedule. In the end, the bill made it to the Governor's desk, but battle scars remain and efforts to recall legislators who supported the measure are underway. Colorado's passage of a bill on National Popular Vote spurred a petition effort to repeal the legislation and will likely be on the ballot in November of 2020. The Governor also signed the Emergency Protection Order (ERPO) or "red flag" gun bill. The bill gives judges the power to temporarily remove firearms from people believed to be a threat to themselves or others. Passage of restrictions on "gun control" in the past led to the recall of two Colorado legislators, one the sitting Senate President, and the resignation of a third, which cost Democrats the Majority of the Senate at the time.

In the end, when the dust finally settled late afternoon on Friday the 3<sup>rd</sup> of May, most of the legislative business had been completed. Here's a recap of some of the most debated issues:

### **Oil & Gas Local Control**

SB19-181 took up a great deal of time in the middle of the session – as industry combated with leadership and the Polis Administration on how best to allow local governments more authority over oil and gas operations, without shutting down the industry, costing millions in tax revenue and thousands of jobs. The bill was introduced and passed quickly in the Senate, as the drama of the court case regarding reading bills at length loomed underneath. This may be considered the 2019 low. Once the bill passed on a party-line vote, the House Speaker, while moving quickly, was still able to amend the bill in a number of ways that gave some more certainty to the industry. The end result was better than the introduced version, but those in the industry are still nervous about what lies ahead. For now, the ballot wars that voters of Colorado have seen over the last number of years seem to have ceased. Only time will tell if that remains true.

## **TABOR Reform**

Colorado's infamous Taxpayers' Bill of Rights (TABOR) caps the amount of money the state can spend each year to the current budget plus growth and inflation. Any extra revenue is must be returned to taxpayers. One bill passed that will ask voters on the November ballot to let the state keep any surplus. A companion bill passed that would allow the state to keep the excess revenue and split the extra funds equally between transportation, K-12 education and higher education.

## **Paid Family Leave**

This was one of the more hard-fought pieces of legislation during the session. With almost every single business group in the state opposing the bill as introduced, the end-result of the legislation is one of the few issues where the business community's message resonated with enough legislators to effectuate change and the bill was reworked. In the end, the bill was completely rewritten from establishing a billion-dollar-government insurance program and mandating very specifically what that must look like to instead establishing a task force to study the issue of implementing a mandatory state family leave program. The legislation as introduced would have affected every single Colorado worker and employer, mandating they pay into the system, regardless if there were alternative benefit plans that were equal or better. Raising issues of concern including the price tag needed to pay for implementation of the program, the length of time of leave (12-16 weeks), utilization forecasts and how to maintain solvency won in the end. The original concept required the state to collect a premium on each person's paycheck; with employees and employers sharing the cost 60-40 (50-50 as introduced). The task force must do numerous analyses, including actuarial and feasibility studies, and come back next year with recommendations for new legislation that will implement such a program.

## **Climate Change**

House Speaker KC Becker introduced and passed legislation setting specific targets for reducing

greenhouse gas emission in Colorado. The goal is to reduce output 30 percent by 2030 and 90

greenhouse gas emission in Colorado. The goal is to reduce output 30 percent by 2030 and 90 percent by 2050, compared to 2005 levels. The legislation faced opposition in the State Senate but ultimately went through on a narrow vote. Colorado regulators will begin rule making on establishing goals over the summer/fall.

## **School Immunization Requirements**

Testimony in the House Committee beat all records for lengthy hearings when

the public hearing on this bill went until 4:30 a.m. the following day. Debate on the bipartisan-sponsored measure specifying how parents who chose not to vaccinate their children could receive vaccine exemptions lasted 14 hours. Colorado ranks last in the nation in regards to the number of kindergarteners who are vaccinated for measles, mumps and rubella, according to the Centers for Disease Control and Prevention. The bill, sponsored by Democratic Rep. Kyle Mullica and Republican Sen. Kevin Priola attempted to change that by requiring parents wishing to opt out of immunization, for reasons other than medical, to go through a formal process with the state. Parents would have been required to submit a form in-person the first time they seek a non- medical vaccine exemption. In the final days of the session Governor Polis indicated he was opposed to legislation mandating a stringent process that impeded parental choice. The legislation passed Senate committee in the wee hours of Thursday morning on the last week of session but was not brought up for debate by the midnight deadline, thereby sealing its demise.

## **Consumers & Health Care Costs**

One of the first acts of the Polis Administration was to create a new office, “The Office for Saving People Money on Health Care.” The new Governor wants to make Colorado the first state in the country to offer state-run health insurance. Legislation directing state agencies to study to the idea and report back to the legislature passed with bipartisan support. Any future plans would need approval from federal regulators. The legislature dealt with the issue of “surprise medical bills” by passing restrictive measures that cap the rates out-of-network providers can charge. Lawmakers had difficulty trying to find a solution on reinsurance that could past federal rules. The reinsurance bill, HB19-1168, was intended to lower health care costs, however at final passage not all stakeholders are convinced the goal will be accomplished. The intent is lower premiums for health care. This campaign promise made by Polis, who said it could happen without any more cost to Colorado taxpayers has proven difficult to achieve. Transparency bills targeting the pharmaceutical industry as well as hospitals were introduced, with hospital transparency crossing the finish line as well as a bill mandating out-of-pocket cost caps to consumers on insulin medication.

## **Sports Betting**

Lawmakers negotiated behind the scenes for months before introducing the sports gambling bill. The bipartisan legislation places the question on the ballot in November of 2019 asking voters to legalize in-person sports betting this November by enacting a tax on wagers. If passed, it would allow bets on games in-person at mountain casinos and provide online betting licenses. The state would collect 10 percent of all proceeds, which would go toward water conservation projects.

## **Tobacco Tax Increase**

In the last weeks of session, a priority bill for Gov. Polis was introduced that would have sent a question to voters to raise taxes on tobacco products by 300% to provide funding for health care, behavioral health programs and preschool programs and expanding learning opportunities. The bill was met with criticism for its timing and the significant amount of the tax increase, with opponents calling it a regressive tax that would negatively impact more vulnerable populations. Proponents lauded the money it could raise for much-needed behavioral health and preschool programs. The bill, with threat of lengthy debate and uncertainty it had the votes to pass in the Senate was laid over until the end of session on Thursday.

## **Rent Control**

As the Colorado Sun referred to the 2019 Legislative Session as “The Year of the Renter” earlier this year, there were many bills addressing “tenants’ rights” that passed the General Assembly, including increasing the number of days before a tenant can be evicted, regulating application fees and making it easier for tenants receive damages when habitability is in question. Perhaps the most extreme measure was rent control. Under current law in Colorado, local governments are banned from regulating their rental markets. A bill to allow local governments to set price controls on rental units, as well as requiring developers to set aside a certain number of affordable units when they approve new buildings died on the Senate floor when it was

determined there were not sufficient votes to pass the measure.

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In addition to this recap your Axiom team would like to provide you with this summary of your legislative issues:

## **Priority Bills**

### **HB 19-1075 (Wilson) Tax Credit Employer-assisted Housing Pilot Program**

This bill attempted to create an income tax credit for taxpayers who provide donations to non-profit sponsors of employer-assisted housing projects in rural areas of the state. The credit would be calculated as 20 percent of the amount donated to a sponsor to be used for costs associated with employer-assisted housing projects for employees with incomes of less than 120 percent of area median household income. The credit was limited to \$400 per taxpayer and is nonrefundable, meaning it is limited to the taxpayer's income tax liability. The bill failed to progress past its first committee of reference.

Position: Support Outcome: Died on Calendar

## **HB 19-1085 (Exum/Zenzinger) Grants for Property Tax Rent & Heat**

Under current law, Colorado residents over the age of 65 are eligible for a property tax and rent assistance rebate grant and a heat and fuel expenses rebate grant, if they meet certain conditions. These are commonly known as the PTC rebates. This bill increases the minimum and maximum rebate amounts and eligible income requirements by five percent and removes the requirement that the payment of rent only qualifies for a rent rebate if the rent is paid to a landlord that pays property taxes.

Position: Monitor Outcome: Passed House & Senate Effective Date: August 2, 2019

**HB 19-1089 (Tipper, Valdez/Pettersen, Moreno) Exemption from Garnishment for Medical Debt** This bill would have exempted medical debt from earnings garnishment for an individual whose family income does not exceed 400 percent of the current federal poverty guidelines. It failed to pass through its first committee of reference.

Position: Monitor Outcome: Postponed Indefinitely

## **HB 19-1106 (Titone, Gonzales-Gutierrez/Pettersen) Rental Application Fee**

This bill prohibits a landlord from charging a rental application fee unless the entire amount of the fee is used to cover the landlord's cost to process a rental application, such as the cost to conduct a personal reference check or to obtain a consumer credit report. Landlords may not charge two or more prospective tenants a different amount for applications to rent the same property. Landlords must provide each prospective tenant with written notice of the tenant selection criteria, and the grounds upon which a rental application may be denied, prior to charging an application fee. Additionally, this bill requires that a landlord provide a prospective tenant with specified notifications if the landlord rejects or places additional requirements in a rental application (adverse action) after reviewing and evaluating the rental application. The sponsors of this bill spent a lot of time working with the Apartment Association to address our concerns. We successfully negotiated a number of amendments to make this bill more palatable.

Position: Amend Outcome: Signed by Governor Effective Date: August 2, 2019

## **HB 19-1118 (Jackson, Galindo/Williams) Time Period to Cure Lease Violation**

Under current law a tenant is given three days to pay unpaid rent or vacate the property before a landlord may begin eviction proceedings. This bill requires that a landlord provide ten days' notice of insufficient rent prior to beginning eviction proceedings or terminating a lease

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agreement for a subsequent violation of terms. The bill creates an exception to this requirement for a nonresidential agreement or an employer-provided housing agreement, in which case, three days' notice is required. As introduced, the bill required 14 days. Numerous attempts to amend this bill further proved futile, and it ultimately passed with the new 10-day notice requirement.

Position: Amend Outcome: Sent to Governor Effective Date: Upon Signature of Governor

### **HB 19-1170 (Jackson, Weissman/Williams, Bridges) Residential Tenants**

**Health & Safety Act** Current law presumes that every rental agreement between a landlord and a tenant carries an implicit guarantee that a residential property is fit for human habitation. This is referred to as a warranty of habitability. This bill:

- modifies the conditions for a breach of the warranty of habitability, the method for notifying a landlord of problems with the premises, and time limits for the landlord to address defective conditions;
- adds specific conditions of a property to the description of an uninhabitable residence to include the presence of mold or the absence of functioning appliances;
- if requested by the tenant, requires that a landlord move the tenant to a reasonably comparable unit, pay for incidental moving costs, or pay for the tenant to reside in a temporary location when a property is hazardous or uninhabitable and conditions are being remedied;
- under specific circumstances, allows a tenant to deduct from subsequent rent payments the cost to repair defective conditions;
- allows a tenant to terminate a rental agreement for recurring defective conditions;
- repeals the current law requirement that a tenant notify a local government prior to seeking a court injunction; and
- modifies the current law prohibition on landlord retaliation when a tenant alleges a breach, to specify damages and remove presumptions.

Position: Amend Outcome: Passed House & Senate Effective Date: August 2, 2019

### **HB 19-1189 (Gray, A. Valdez/Bridges, Fields) Wage Garnishment Reform**

This bill makes changes regarding the garnishment of a debtor's wages for the payment of debt to a creditor. The amount of money that may be garnished from a debtor's weekly earnings is changed from the lesser of 25 percent or 30 times the federal minimum hourly wage to the lesser of 20 percent or 40 times the federal minimum hourly wage. Currently, the cost of court-ordered health

insurance is excluded from the disposable earnings that is subject to garnishment. This bill adds the cost of any health insurance that is provided by an individual's employer and withheld from earnings to the amount excluded from disposable earnings. Under current law, a notice of a continuing garnishment must be provided by the creditor and include the formula used to determine exempt earnings and the amount of nonexempt earnings per pay period. This notice must also notify the debtor of his or her ability to object to the calculations. This bill expands the information that must be provided in this notification to include the amount owed by the debtor and information related to Colorado garnishment requirements and how the garnishment process works. The format in which this notification must be provided is specified in the bill.

This bill also changes the timing for when this notice must be provided from when earnings for the first pay period that is subject to the garnishment are received to 7 days after the court approves the garnishment and provides more time (14 days) before the garnishment takes effect. If this notice is sent to the wrong debtor or does not contain all of the required information, another notice must be sent with information on the pay frequency, first pay date 21 days after the writ of garnishment was served or prior writ expires, and earnings subject to income tax deductions. If the second notice is required, the garnishment begins on the first pay date 21 days after the writ of garnishment was served. Objection hearing. This bill authorizes an individual with a wage garnishment to file a written objection to the amount of wages being garnished on the grounds that a greater amount should be exempt from disposable earnings. A determination on the sufficiency of the garnishment must be made by the court based on proof of living expenses incurred by the debtor or the debtor and their family 60 days prior to the hearing. Living

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Position: Neutral (previously opposed) Outcome: Passed House & Senate  
Effective Date: August 2, 2019

**HB 19-1228 (Bird, Titone/Zenzinger, Tate) Increase Tax Credit Allocation Affordable Housing** For tax years 2020 through 2024, this bill increases the amount of state affordable housing tax credits that the Colorado Housing and Finance Authority (CHFA) may allocate from \$5 million to \$10 million each year. This results in a total of \$150 million in additional tax credits that can be allocated by CHFA over five years.

Position: Support Outcome: Passed House & Senate Effective Date: September 1, 2019

**HB 19-1309 (Hooton, McCluskie/Fenberg, Lee) Mobile Home Park Act Oversight**



This bill gives counties and municipalities greater authority to enact certain ordinances for mobile home parks. This bill gives mobile home owners additional time between the notice of nonpayment of rent and eviction, and additional time to vacate a mobile home park after a court ordered eviction. Lastly, the bill creates the Mobile Home Park Dispute Resolution and Enforcement Program and creates a new cash fund to cover associated costs. Under this program, the division of housing in the Department of Local Affairs is required to:

- register a mobile home park and collect registration fees;
- collect and annually report data on disputes and violations;
- create and maintain a database of mobile home parks; and
- take complaints, conduct investigations, participate in administrative dispute resolutions and impose penalties.

Position: Oppose Outcome: Passed House & Senate Effective Date: Upon Signature of Governor

### **HB 19-1322 (Roberts, Will/Moreno, Coram) Expand Supply Affordable Housing**

This bill requires that up to \$30 million from the Unclaimed Property Trust Fund be transferred to the Housing Development Grant Fund each June for three years starting in FY 2020-21 through FY 2022-23. Transfers are limited to three fiscal years. The amount transferred will be based on the balance in the Unclaimed Property Trust Fund as of June 1 each fiscal year, as well as the Legislative Council Staff June revenue forecast. If the amount of revenue forecast exceeds the Referendum C cap for the current year minus \$30 million dollars, the transfer will be made. In addition to existing statutory mandates, the funds transferred to the Housing Development Grant Fund may be spent for the following purposes:

- grants and loans for housing in non-urban areas for purchasers with up to 120 percent of the area median household income;
- down payment assistance programs for households with up to 100 percent of the area median household income in conjunction with public and private organizations;
- programs for home rehabilitation;
- repair, replacement, and disposal of mobile homes, in conjunction with local organizations;
- grants and loans for land acquisition and infrastructure costs for the provision of utilities for affordable housing developments;
- grants and loans for affordable housing targeted at specific area or income levels; and
- rental assistance programs targeting homeless families, Medicaid clients in nursing homes, family unification, veterans, households below 60 percent of the area's median income, and survivors of domestic violence. The Division of Housing is required to consult with stakeholders from urban and rural communities in order to determine how to meet the needs of local communities, serve populations with the greatest unmet need, and optimize the funds allocated.

Position: Support Outcome: Passed House & Senate Effective Date: August 2, 2019

### **HB 19-1328 (Herod/Rodriguez) Landlord & Tenant Duties Regarding Bed Bugs**

### **HB 19-1328 (Herod/Rodriguez) Landlord & Tenant Duties Regarding Bed Bugs**

The bill requires a tenant to promptly notify a landlord when the tenant knows or reasonably suspects that a rented residential unit contains bed bugs. Not more than 96 hours after receiving notice, a landlord must inspect the dwelling unit and any contiguous dwelling units. Except as otherwise provided, a landlord is responsible for all costs associated with mitigating bed bugs. The bill requires that landlords provide tenants reasonable notice of the need to inspect a unit. Tenants must comply with reasonable measures to mitigate bed bugs and must pay any cost associated with preparing the dwelling unit for inspection and treatment. A tenant who knowingly and unreasonably fails to comply with inspection and treatment requirements is liable for the cost of subsequent bed bug treatments.

Position: Neutral Outcome: Passed House & Senate Effective Date: January 1, 2020

### **SB 19-180 (Winter/McCluskie) Eviction Legal Defense**

This bill creates the Eviction Legal Defense Fund in the Judicial Department. Grants will automatically be awarded from this fund twice a year to qualifying nonprofit organizations in each county that will provide legal advice, counseling, and representation to indigent clients facing or at risk of eviction. This bill requires nonprofit organizations that receive a grant from this fund to submit an annual report to the State Court Administrator's Office (SCAO) that includes information on the number of clients served, nature of assistance rendered, amount of rent in dispute, and demographic data. In addition, the SCAO must evaluate the use of grant money from the fund by December 31, 2024 and every five years thereafter. This bill allows the SCAO to accept and spend gifts, grants, and donations for the purpose of awarding grants. Lastly, this bill provides an appropriation of \$750,000 to the eviction legal defense fund.

Position: Monitor Outcome: Passed House & Senate Effective Date: Upon Signature of Governor

**SB 19-225 (Gonzales, Rodriguez/Lontine, Gonzales-Gutierrez) Authorize Local Government to Stabilize Rent** Current law prohibits a local government from enacting laws that control rent on private residential real property, or private residential housing units. This bill attempted to remove that prohibition and permit local governments to enact local laws or regulations that stabilize rent on private

residential property. The sponsors of this bill pitched it as a “rent stabilization” bill but it would have been the first giant step toward rent control in Colorado. The bill was assigned to the only Senate committee it could possibly pass through but was never heard on 2<sup>nd</sup> reading in the Senate. Democratic leadership knew there weren’t enough votes to pass the bill, so rather than eat up hours of time debating rent control, they opted to let it die on the calendar.

Position: Oppose Outcome: Died on the Calendar

### **SB 19-236 (Garcia, Fenberg/Hansen, Becker) Sunset Public Utilities Commission**

This bill continues the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) for seven years. It also implements various recommendations from the sunset review and makes other changes to the operations of the PUC. It incorporates the provisions of House Bill 19-1313 related to the PUC and electric utilities, including adding clean energy planning requirements for carbon dioxide emissions for electricity generation by large utilities, allowing an electric utility to apply to the PUC to issue energy impact bonds, and specifying the rights of retail electric utility customers concerning customer-site generated renewable sources. The PUC is repealed on September 1, 2026, pending a sunset review. The primary reason the Apartment Association tracked this particular bill is because of a specific recommendation in the PUC Sunset Report prepared by DORA last summer. This recommendation was to prohibit agency agreements between property owners and towing companies. Members of the Apartment Association including towing companies and property owners opposed this recommendation. We provided testimony at the hearing and successfully advocated to keep this recommendation out of the bill as introduced and ultimately adopted.

Position: Monitor Outcome: Passed House & Senate Effective Date: Upon Signature of Governor