

Colorado Water Well Contractors Association

COLORADO LEGISLATIVE UPDATE

May 4, 2025

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Well, here we are. Monday, May 5, marks the 118th day of this 120 calendar day session. The legislature must adjourn *sine die* no later than midnight on Wednesday, May 7. Water Congress has cancelled its May 5 State Affairs Committee meeting.

The House worked on Saturday May 3 but the Senate did not. The next Senate work will occur on Monday, May 5. However, the calendar while technically accurate may mislead the unwary into thinking that committees are done. Senate Business, Labor & Technology has a simple statement in the calendar that reads with respect to Monday, May 5: "Any bills assigned to Senate Business, Labor, and Technology may be heard at this time." The individual bills are not listed but they can be identified by scrolling through the daily status sheet. One bill in particular stands out and that is SB25-318 which is a late bill concerning artificial intelligence. It was introduced on April 28. SB25-318 is a follow-on bill to modify the provisions of SB24-205 which was also a late bill.

SB25-318 primarily focuses on various consumer protections but it is complex and largely reflects the sage advice given to us newly minted 2nd lieutenants by our brigade commander: "Do something lieutenants, even if it's wrong, but do something." Artificial intelligence is the new shiny thing for elected officials and career regulators. Never mind that the regulation is based on technology that becomes rapidly obsolete and like drought, floods and wildfires is particularly insensitive to political geography. It is a technology that is global and largely beyond the regulatory control of states and perhaps even nations.

SB25-318 departs from the path adopted by its progenitor SB24-205. SB25-318 attempts to focus predominantly on illusive consumer protections and uses a newly crafted, or at least newly modified, definition of "algorithmic discrimination." It does this by an extensive set of amendments and references to federal, state and even local anti-discrimination statutes. It also relies heavily on a concept of using artificial intelligence to make "consequential decisions" in the realms of education, health care, insurance, law and governmental services. Then it takes a run at creating a list of exemptions from liability. Although it appears that these exemptions may be somewhat porous. On a related note, there was another late bill introduced (SB25-322) that was also assigned to Senate Business, Labor and Technology that would exempt certain information technology equipment from the new Colorado law concerning the establishment of a right-to-repair law. SB25-322 falls under the blanket notice published in the Senate calendar for the committee.

SB25-318 also mandates a significant expansion of the disclosures that must be made to consumers. However, it is far from clear that a technology as expansive, ubiquitous and rapidly evolving as artificial intelligence can be successfully regulated in the last three calendar days of this session. The bill must be out of the Senate on Tuesday in order to pass the House on Wednesday - the last day of the session. That is particularly relevant to both SB25-318 and SB25-322.

The most current count of pending bills is 111 that need to be addressed before adjournment *sine die* on Wednesday. It is estimated - a hard count is a bit elusive - that there are 72 House bills and 39 Senate bills in the pipeline that must be finally acted on by Tuesday or they run the risk of being declared lost due to the calendar. That is not as formidable a task as it might appear. Several of these bills are JBC bills that are highly technical and are tied to the final version of the budget. They will take very little time on floor debate. They are also essential for the budget and will get a high priority for consideration.

It is also true that many of these bills are far enough along in the process so that the closing window of consideration is not a formidable problem. However, there are seven Senate bills that haven't crossed to the House. And there are an additional seventeen House bills that haven't passed over to the Senate.

Not all bills are created equal with respect to controversy. The ticking time bomb for the entire session has been the proposed changes to the long-standing Labor Peace Act. In simplistic terms, this bill is the linchpin for the future of Colorado unions and anathema to Colorado employers. The Governor has steadfastly said that he is unlikely to sign changes that are opposed by the employers. Both sides seem to have hit an impasse but the unions have the muscle to push the bill through to the Governor.

That is a risky strategy because if the Governor is pushed to veto the bill, the unions get zero this session. Time is of the essence. If the bill moves forward to floor debate, the Senate Republicans have vowed a multi-day filibuster to run out the calendar. Moreover, if the Governor vetoes an unsatisfactory bill, there may not be time to attempt an override. Overriding a veto is a wholly different political calculus than getting a bill passed. Legislators who may have voted for the offending bill often vote to sustain a veto - it's a bit of having your cake and eating it as well.

If the unions roll the dice and push to get the bill to the Governor, the leadership may lay consideration over until the other pending bills clear the system. That would take some of the pressure off and might avoid the Governor getting the bill at all. The unions might prefer that outcome on the grounds that 2026 is the last year of the term of Governor Polis and they may feel that they will be in a more favorable climate with a new governor in 2027.

The big issue that has been addressed (but not fully resolved) is the budget and its estimated revenue shortfall of \$1.2 billion. Despite much angst and hand wringing, it appears the budget is largely a status quo budget. The Joint Budget Committee worked very hard to balance the budget within expected resources but did not really grapple with the cause of the revenue shortfall. Unless there is a surprising economic boom in the back half of 2025, it is very likely that the JBC will be facing a similar, or worse, budgetary dilemma for next year.

There are two very troubling fiscal clouds just over the horizon. The majority of revenues generated for the state come from sales taxes and income taxes. If the economy weakens due to tariffs and other supply shocks, revenues may not rebound as hoped. Not only are market conditions vulnerable to a slowdown, voter initiatives that are being prepared for the November 2025 election include slashing income tax rates, the repeal of various fees and similar measures which, if enacted, would further constrain the ability of the state revenues to recover.

The JBC may have inadvertently breathed some life into proposals to reduce or eliminate regulatory fees. A number of the late bills introduced by the JBC sweep income and interest earnings from almost all cash (e.g., fee) funds in order to offset some of the revenue shortfall. Under TABOR, a fee must be related to the purpose for which it is created. The JBC could not sweep the license fees for doctors for example. That would make the fee a tax and subject the entire fee to voter approval. However, it does not appear that interest and income earnings suffer that same exposure. Proponents of the ballot issues might seize on this anomaly and argue that the fees are just taxes waiting to be recognized under TABOR and voters should get to weigh in on them.

The second troubling cloud is what might happen under the priorities of President Trump and the Republican Congress. The first 100 days of this new administration has been dedicated in large part to slashing - with little analysis or discrimination - the budgets, employees and the very existence of longstanding federal agencies and financial support to the states and local governments. It is true that much of the media coverage has likely been more sensationalized than necessary, but the actions have occurred. They cannot be denied even though their ripple effects on states may yet to be wholly known. While many of the cuts have been mitigated and some financing restored, it is very clear that the valve on the federal money pipeline has been turned down. And with a mercurial President and an almost militantly fiscally conservative Congress, it is far from clear what might be restored or even to what extent a restoration may occur.

Once this session has concluded, we can turn to discussing what might occur in the coming months. The lack of a true budget reconciliation has left the new budget in a very fragile state - there is very little room for exogenous shocks. There are two potential shocks that could trigger significant ripple effects throughout the state.

The first is what the Trump administration and the Republican Congress may do with respect to Medicaid. If there is a substantive change in federal administrative definitions for Medicaid, it is highly questionable whether the state has the fiscal capacity to backfill any loss of federal financial support - or increases in federally imposed benefit restrictions. A significant impact on the Medicaid program might tilt the Governor and legislative leadership to calling a special election in the fall to address Medicaid needs.

The second is the targeting of Colorado and Denver by the Department of Justice. The DOJ has filed a lawsuit against both for alleged interference with federal immigration control officers to perform their duties. This is the so-called "sanctuary" policy that seems to favor and protect those alleged to be in this

country illegally. It appears that the DOJ has filed legal actions to recover or suspend some \$34 million in federal support from Denver granted for the support of those considered to be in this country illegally.

Some reports suggest that the DOJ might go as far as to file criminal charges against several state and local government officials. As with Washington, DC actions concerning Medicaid, this new overture could result in a special session later this summer or into the fall.