Colorado Water Well Contractors Association

COLORADO LEGISLATIVE UPDATE

March 23, 2025

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We are about to enter a new phase of activity at the Capitol. It is less of a clean break than it is a transition that simply replaces the preceding three months. Monday, March 24, is the 67th day of this 120 calendar day session. There will be no more than 53 calendar days remaining - and at least one of those days is likely to be Good Friday - the General Assembly is not expected to work that day. However, the calendar is a bit misleading. While there are a constitutionally permitted 120 calendar days for a regular session, we must work backward from anticipated adjournment *sine die* by 10 calendar days.

When the legislature is in session, the Governor has 10 days to act on a bill that reaches his desk before adjournment *sine die*. If a bill reaches his desk after adjournment *sine die*, he has 30 days to act. But more importantly, if the legislature adjourns *sine die* before he has acted on a bill, the members have no mechanism to consider a veto. While this may seem arcane and the stuff for Trivial Pursuit, it becomes important with the Governor's authority to veto line items, footnotes and headnotes in the long appropriations bill. If the long appropriations bill, and its satellite family of accompanying bills, experiences any vetoes, any veto must be considered before adjournment *sine die*. That means the legislature must receive those vetoes before adjournment. It also means the legislature must put the bill on his desk at least 11 days before *sine die* in order to avoid the extremely rare circumstance of not having sufficient time under the ten day rule. If, for example, the legislature does not get the budget package to the Governor (until say the 9th day before adjournment), the Governor can sit quietly and say nothing about his vetoes until the legislators have left the Capitol.

No one is predicting that will happen this year, but we are working in a very different budgetary environment. As we have reported in previous updates, we are facing a generally agreed upon $1.2 billion revenue shortfall that is complicated due to the uncertainty about the availability of federal transfer payments under President Trump and the Republican Congress. What we are seeing develop is a pattern of federal payments interruptions with the federal courts issuing numerous injunctions while the legality of the withhold can be argued. It could take months or even years before some disputes are settled. Not all injunctions are permanent and not all injunctions are full based on the contested actions. What is occurring is a steady stream of judicial pauses until things sort themselves out.

Litigation is often, if not always, subject to negotiation and settlement among the contesting parties. It is not clear whether the federal budget actions by the President are a hard line with only fighting before the courts or whether a negotiated settlement could be reached that allows both sides a degree of victory.

What has not been much discussed is the ripple effect that might occur to local governments. There have been some reports of potential effects on K-12 public education, Medicaid and higher education but very few - if any - about the potential impact on utility operations that have long term capital development programs. Many water supply needs are focused on future needs and the financing that would be needed for the project. And many of those involve federal financial support that is now suspect. A good example is whether restricted federal involvement in the acquisition of senior water rights tied to the Shoshone hydro plant on the Colorado River has introduced a potential need for the participants to locate another partner or to raise funding from other sources.

The Joint Budget Committee has its work cut out for it. The real dilemma for the JBC is how much state spending can be eliminated and how much revenue shortfall can be shifted to other parties? It is not just a series of decisions on cuts, it is also a series of decisions on what other revenue might be found to backfill the state share.

On Friday, March 21, it was announced that the budget would be delayed a week and that final adoption of the budget would be extended to April 4. For this session, the presumption has been that the budget would be delivered on March 24 - that is now set back a full week. That, in turn, has moved some committee and floor work into the week of March 24 when it had been thought that such work would pop up following the work on the budget.

Some of the bills we have been working on are now advanced to next week. Those dates and times have been included in the updated status of bills of interest. Status of bills table. The table also has links to the most current version of the bills.

The legislature is also making its own unilateral moves to save money. Leadership has advanced a bill to suspend (and in some cases abolish) several interim committees. None of the interims to be affected are ones that we follow. The Water Resources & Agriculture Review committee will be allowed to meet, but it is not clear whether the committee's travel schedule will be affected. If the Committee cannot travel to the annual Water Congress meeting in August, a meaningful opportunity for dialogue with the water community will have been foregone.

Cutting the budget is not the only option - or combination of options - available to the General Assembly.

The first option, and one that would be rife with political opposition, would be to liberalize or repeal the TABOR amendment. The majority Democrats have been salivating to dismantle TABOR since it was enacted by the voters in 1992. Republicans, on the other hand, have defended TABOR with a religious zeal. However, since TABOR is embedded in the Constitution, it would require a vote of the people to change its status. The 2025 election is dedicated to fiscal matters, so it is possible we might see the legislature refer a TABOR adjustment proposal to the voters.

The big fight over TABOR is whether a program can be determined to be an "enterprise" and thereby avoid capture under the constrained formula imposed by TABOR. A good example might be whether severance taxation can be restructured into a TABOR exempt enterprise and thereby fall on a use of fees rather than taxes. The mineral lease payments from the federal government are analogous to severance tax revenues but they are exempt from TABOR because they are a federal transfer payment. Structuring a severance enterprise is not a difficult drafting task. SB25-040, which we have been monitoring, might serve as the vehicle for moving severance impacts to an enterprise.

An ancillary fight over TABOR is that the majority Democrats have long wanted to avoid refunding the TABOR surplus to taxpayers and have tried all sorts of ways to keep that money. Republicans, on the other hand, have fought to keep as much TABOR surplus available for refunds as possible.

The second option would be for the legislature to submit proposals to the voters to fund specific kinds of programs. For example, the voters approved a law enforcement proposal in 2024 that will cost in the vicinity of $350 million. The measure did not include any financing so the legislature might propose some revenue options for the voters to consider.

A third option might be to decrease state budgetary support for certain programs and by doing so pressure outside groups to increase their financial support. An interesting development this year is that virtually no bill has been accompanied by a fiscal impact statement - almost all bills have been declared to have a zero fiscal impact that would require additional funding. No one believes any of these fiscal notes, but the lack of a fiscal note allows a bill to move forward. Some of these bills may get a new analysis by JBC staff as the budget is brought to closure.

Another option, which has political appeal, is to simply change the budgetary parameters through definitions or accounting gimmicks that allow the shortfall to be papered over but are designed to give the courts enough wiggle room to avoid having to curtail spending.

What we can expect to see in coming weeks is a number of leadership backed bills to create enterprises, to redistribute some funds earmarked for programs to other purposes and to submit proposals to continue popular programs to the voters for their ratification.

Several of the measures we have been involved with are now moving.

HB25-1115 proposes to establish an enhanced responsibility for the CWCB for the collection of data related to the state's water supply. It focuses on surface water and precipitation in the way of snowpack. It does not include groundwater. That bill was slightly amended and then passed by the full House. It is now calendared for Senate Agriculture & Natural Resources on March 27.

HB25-1165 would create a new regulatory scheme in the DWR to administer geothermal resources. Kevin Donegan made a lengthy presentation on this approach at our January conference. Of particular interest, it would increase the BOE by one person to represent the geothermal interests and the BOE would be responsible for rulemaking to govern the development. Persons who have a license as well contractors and pump installers would be granted an expedited process to secure the additional licensing that will be created for geothermal development.

HB25-1165 ran into some opposition from the owners of commercial hot springs. These owners became concerned that the bill had not adequately addressed the potential for harm to the critically important aquifers that support the geothermal resources that are the source of the economic attractiveness of the resorts. Through lengthy, and often difficult, negotiations the DWR and the owners were able to reach an agreement on more clearly expressed reviews and monitoring of operations. With those agreements, the bill moved to the Senate where it will be heard in committee in late March.

As a final note for this update, the 2026 election is beginning to move from the background to the forefront. Several potential candidates for Governor have emerged, and several more are expected to test the waters in coming weeks. For this update, we include an address made by Attorney General Phil Weiser concerning his stance on water. The address is lengthy but it covers several statewide issues of interest. We have included a link here to the actual text of the address.

https://coag.gov/blog-post/prepared-remarks-the-way-forward-on-water-management-march-10-2025/