

Bowditch & Cassell
PUBLIC AFFAIRS

Colorado General Assembly
2019 Legislative Preview





2019 LEGISLATIVE PREVIEW

The First Regular Session of the 72nd General Assembly of Colorado convened on January 4 and per the Colorado State Constitution, will adjourn no later than May 3.

Much of the 2019 session was determined on election day with Democrats winning the “trifecta” – the Governor’s Office, as well as control of the House (41D-24R) and the Senate (19D-16R). At least 23 members of the House and 13 members of the Senate (8 of whom served in the House) will be new to the legislature in 2019. Some vacancy committees have yet to determine new appointments to vacant seats, potentially increasing the number of new members.

CONSTITUTIONAL CHALLENGES

TABOR To its supporters, TABOR represents a necessary “check” on the growth of government; however, opponents argue that the state’s infrastructure is deteriorating, and Colorado is the only state with a constitutional revenue cap. SB17-267 (establishing the Hospital Provider Fee enterprise) provided more revenue space under the TABOR cap through the creation of the Colorado Health-care Affordability and Sustainability enterprise, but Colorado has already reached its TABOR revenue cap.

GALLAGHER AMENDMENT

The Gallagher Amendment requires an adjustment to the residential assessment rate to maintain a constant ratio between the statewide share of residential taxable value and non-residential taxable value. As the value of residential real estate increases the residential assessment rate has to decrease to maintain the required balance in the formula.

Step 1: Determine Assessed Value:

$$\text{Home Value} \times \text{Residential Assessment Rate} = \text{Assessed Value}$$

Step 2: Determine Local Property Tax Collections:

$$\text{Assessed Value} \times \text{Local Mill Levy} = \text{Local Property Tax}$$

How does the Gallagher Amendment challenge Colorado?

- Another decrease in the residential assessment rate, due to increasing property values, will decrease the amount of local property taxes that are collected to support K-12 education, thus requiring more state aid as a result.
- A decrease also impacts other local government services that are funded by property taxes.
- An interim committee convened in 2018 to consider modifications to the Gallagher Amendment. We expect significant discussion on Gallagher during the session.

KEY LEGISLATIVE ISSUES



Gallagher Amendment



Transportation Funding



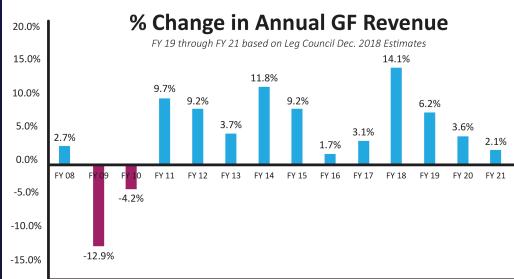
State Budget



Affordable Housing



TABOR



2019 LEGISLATIVE ISSUES:



AGRICULTURE

Colorado remains a top producer of cattle, dairy, wheat, potatoes, millet, and corn. The agriculture industry contributes over \$7 billion annually to the state's economic output.

What to expect in 2019:

- Discussions on expanding the Colorado Proud program and increasing marketing dollars to continue building economic opportunities for our agriculture producers.
- Colorado Department of Agriculture will undergo three important sunset reviews; Seed Potato Act, Pet Animal Care Facilities Act, and Public Livestock Markets Act. All are expected to pass, maintaining the regulation and safety of agricultural products and markets.
- Water quality and quantity, soil health, land use, and workforce development will also be addressed this year.

ECONOMIC DEVELOPMENT

Colorado continues to have one of the best economies in the nation, and tops the rankings for best labor supply and job market. Yet, rural areas of the state continue to struggle with economic development and job creation.

What to expect in 2019:

- Expansion of the Opportunity Zone Investment program and streamline the Job Growth Incentive Tax Credit program to provide aid and relief to struggling communities.
- Address rural workforce shortages, particularly in the health, agriculture, and education sectors.
- Restore \$1.25 million for the Office of Film, Television, and Media, as included in the Governor's budget request.

EDUCATION (K-12)

A significant tax funding proposal brought by K-12 advocates was rejected by the voters in November; Amendment 73 failed with 46 percent support, well below the required 55 percent threshold. Still, this result is a substantial improvement over the prior two ballot measures in 2011 and 2013, which only received 35 percent each.

What to expect in 2019:

- Educator Shortages, Salaries, and Recruitment
 - Expect bills to be introduced aimed at mitigating the educator shortages in rural communities and hard to serve urban districts. Governor Hickenlooper has recommended a \$6 million teacher financial aid program to support such efforts.
 - Governor-elect Polis discussed the importance of free, full-day kindergarten during his campaign. Currently, many districts offer free full-day kindergarten, but the state only reimburses each full-time kindergarten student as 0.58 FTE. The cost to the state for implementing this program is approximately \$225 million.
 - Expanding the free and reduced-price lunch program and the uses for the BEST program.
 - Creating the Early Childhood Educator Tax Credit.
- K-12 Funding
 - The two-year Interim Committee on School Finance will sponsor a bill to extend their authority for one additional year.
 - The Governor's Office re-established the Education Leadership Council to review coordination between K-12 and higher education.
 - The Governor's budget request will fully fund the School Finance Act's inflation plus enrollment, plus "buy down" the Budget Stabilization Factor by an additional \$77 million. The average change in funding for districts is 5 percent, though this will vary widely based on enrollment changes. Most of the large metro districts are projected to receive an increase of greater than 5 percent. Many of the smaller rural districts are well below this percentage level.





ENVIRONMENT & ENERGY

With Governor-elect Polis' campaign emphasis on clean energy and environmental protections, the Colorado Energy Office and the Department of Public Health and Environment may see key policy changes.

What to expect in 2019:

- Additional funding and FTEs may be allocated to increase state inspections for air pollution, water quality, and hazardous and solid waste management.
- The Colorado Energy Office will see much discussion regarding its programs and funding, including re-authorization of previously repealed green energy incentives and modifications to the types of energies the office should promote.
- Governor-elect Polis campaigned on the goal to make Colorado 100 percent renewable by 2040, placing additional pressure on the energy industry to evolve with the incoming administration.
- The debate around fracking and setbacks for oil and gas development is also expected to dominate conversations as housing and energy development on the Front Range continue to collide.



HEALTH & HUMAN SERVICES

Coloradans will continue to see changes to the pricing, transparency, and coverage of healthcare options, as well as new and expanded programs to serve Colorado families and children. Additionally, the high cost of health care in mountain communities and on the Western Slope could lead to the creation of health care districts or a public health care option.

What to expect in 2019:

- Hospital pricing and data disclosures, creation of a reinsurance program, increased consumer safeguards, and pharmaceutical access and pricing controls.
- Expanding Medicaid eligibility for specified health needs, expanding coverage for mental health and substance use disorders, and expanding funding for aging services.
- Proposed paid family and medical leave to guarantee employees a portion of wages for family illness or the birth or adoption of a child.
- Strengthening of the Maternal Mortality Review Committee to ensure its ability to continue its work.
- Modification of the criteria for mandatory reporting of child abuse in instances where a child is born with symptoms of neo-natal abstinence syndrome.
- Expanding access to the Child Care Tax Credit.
- The Opioid and Other Substance Use Disorders Interim Committee will recommend two bills to the full legislature; The first limits the supply of opioid prescriptions while the second addresses opioid issues relating to the criminal justice system.



HIGHER EDUCATION

The most important issues in higher education are financial – the amount of state funding and institutional tuition rates. For the last few years, the Department of Higher Education and the Colorado Commission on Higher Education have submitted budget requests that emphasize the relationship between state support for higher education and tuition rates.

In his budget request for FY 2019-20, Governor Hickenlooper requested a 12.1 percent increase in state General Fund support for the governing boards. With this level of state support, the Governor's Office requests that no governing boards increase tuition for resident students.



HOUSING

Affordable housing remains a constant concern to legislators around the state as it affects rural, urban, and resort communities. A large stakeholder group convened twice during the interim to discuss possible policy options to address the growing issue. While no single solution emerged, there were many takeaways:

- The state should allow local communities to decide what is best for the local community.
- The state should assist local communities in providing resources.
- The state needs a clear assessment plan to identify the needs of communities and costs for the state.
- Additional state funding is required, particularly in the form of a dedicated, sustainable funding source.

We will see multiple bills emerge on this issue to find creative and cost effective ways to fund and develop more attainable housing units.



LOCAL GOVERNMENT

The Sales and Use Tax Simplification Task Force met numerous times over the interim to discuss ways to simplify the collection of sales and use taxes by local governments, as well as the impact of the South Dakota v. Wayfair decision on tax collection practices relating to remote and out of state retailers.

What to expect in 2019:

- The committee will sponsor one bill authorizing the Department of Revenue to issue a request for information to solicit bids for the development of an electronic sales and use tax simplification system. The bill will also create a 5-member evaluation committee to determine the appropriate bidding process. While the state seeks to simplify the tax collection process, local municipalities support policies that urge voluntary compliance by remote sellers in order to avoid an unintended fiscal burden on municipalities to enforce compliance.
- Local control issues around oil and gas development, establishing a minimum wage, prohibiting plastic products, and electronic scooter usage will also be raised.



MARIJUANA

The marijuana market in the state has matured and stabilized as the industry learns best practices, and the federal government poses a limited threat to legalization. With this predictability, the marijuana industry continues to evolve, developing new products and practices while attracting new customers.

What to expect in 2019:

- Colorado will again see the pursuit of legislation to allow marijuana delivery and to create social clubs, among other things.



PERA

Colorado's Public Employee Retirement Association (PERA) provides a defined benefit retirement program for state employees, teachers, and certain local governments and special districts.

What to expect in 2019:

- We expect a quiet year for PERA, as the major PERA legislation passed the last night of the 2018 session. The PERA website has a summary of the components of SB 18-200.



TRANSPORTATION

The voters clearly indicated in November that they do not support bonding without a funding source, or an increase in sales tax to address our transportation needs. This poses a challenge for lawmakers and the Governor on how to address congestion and fix crumbling roads and bridges. Various options have been proposed; increase in the gas tax, specific ownership tax, and FASTER fees.

What to expect in 2019:

- Potential repeal or modifications to SB18-001, which currently sends another bonding question to the voters for the 2019 ballot.
- Discussions to identify the top priorities in the state: expanding our interstates and highways, enhancing multi-modal options, and dedicating monies for local communities.

Governor-elect Polis has indicated that all options are on the table (except those already rejected by the voters), so we can expect robust discussions on transportation this session.

2019 | 2020 ELECTIONS & BALLOT MEASURES

The 2019 elections will be restricted to fiscal measures, but any topic can be on the ballot for 2020. Questions remain – will there be initiatives on transportation bonding and funding, education funding, and oil and gas measures? In 2020, all eyes will be on the U.S. Senate race currently held by Cory Gardner. Democratic candidates are already lining up hoping that the ‘blue wave’ from 2018 will improve their chances of gaining the seat. All 65 House seats and half of the 35 Senate seats in the state legislature will be up for election, with only a handful being competitive.



FUTURE BUDGET CHALLENGES:

MEDICAID

How much can the Medicaid caseload continue to grow? Colorado's Medicaid population has increased by 676,000 in the last seven years. Many of these individuals have been covered by federal funds, but Medicaid continues to consume an ever-greater portion of the state budget. Since FY 2010-11, Medicaid's share of the General Fund budget has increased from 18.7 percent to 25.4 percent.

K-12 BUDGET STABILIZATION FACTOR

The K-12 budget continues to increase. However, the Budget Stabilization Factor (the amount below our funding target required by the provisions of Amendment 23) remains at approximately \$672 million. The state has been "carrying" the K-12 Budget Stabilization Factor since FY 2009-10; however, the legislature set a trend in recent years of dedicating funding each year to reducing the Budget Stabilization Factor.

STATE SUPPORT FOR HIGHER EDUCATION

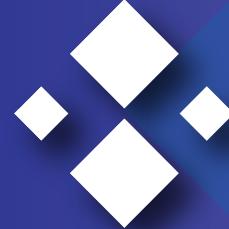
Higher education is the largest discretionary portion of the budget, and the share of state funding for higher education has been declining for over 30 years. Consequently, institutional reliance on tuition has increased along with student debt. Can the state continue this trend? Governor Hickenlooper's budget request for FY 2019-20 includes a substantial General Fund increase to keep resident tuition flat.

TRANSPORTATION

The state's transportation infrastructure continues to deteriorate. Two statewide proposals to fund transportation infrastructure were defeated by large margins in 2018: a sales tax increase with bonding (Proposition 110) and a bonding requirement with no new source of revenue (Proposition 109). Governor-elect Polis has indicated that transportation remains a top priority, and everything is on the table with the exception of those items explicitly rejected by the voters.

DEMOGRAPHIC CHANGES

Colorado will experience a substantial demographic shift in the coming years as a higher percentage of our population becomes 65 years of age and older. According to the initial Strategic Action Plan on Aging for Colorado, the number of Coloradans aged 65 and older is expected to increase by more than 508,000 in the next 12 years. This demographic change will be reflected in the state budget as retired individuals generally pay less in taxes and have different budgetary needs.



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Be sure to check out the full report and supporting documentation
on our website: bcpublicaffairs.com