



Colorado Counties, Inc.

March 17, 2008

Legislative Report

CCI Meeting Reminder

All Steering Committee meetings are held at CCI.

Friday, April 4

- 9:00 – 10:30 a.m.
Tourism, Resorts &
Economic Development
- 10:30 – 12:00 p.m.
General Government
- 12:30 – 2:00 p.m.
Taxation & Finance
- 2:00 – 3:30 p.m.
Transportation &
Telecommunications

Friday, April 11

- 9:00 – 10:30 a.m.
Public Lands
- 10:30 – 12:00 p.m.
Agriculture, Wildlife & Rural
Affairs
- 12:30 – 2:00 p.m.
Land Use & Natural
Resources
- 2:00 – 3:30 p.m.
Health & Human Services

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2008 HALFTIME UPDATE ON CCI INITIATED BILLS

As the legislative session marches past the halfway mark, it is a fitting opportunity to revisit the legislative priorities that CCI had set for the year. The CCI initiated bills totaled 11 this session. Some have met their fates in committees, while others have made their ways to the governor's desk. Below are brief descriptions and status of the CCI bills that are still being considered by the legislature or awaiting action by the governor.

HB08-1053, Electronic Submission of Plats (McNulty, Harvey) – Sent to the Governor

Section 38-50-101, C.R.S., requires that survey plats be submitted, recorded and filed on polyester sheets that meet specific requirements. This bill gives county surveyors and other local government officials the permissive ability to receive plats for recording and filing by an electronic means of choice. Under legislation adopted in 2002, local governments were authorized to accept and transmit a wide variety of documents in electronic format. The directions for plat filings were never conformed to this new authority. HB 1053 conforms the plat filing provisions to the general rule, creating uniformity throughout county and municipal systems when it is locally desirable.

HB08-1065, County Ordinance Enforcement (M. May, Tochtrop) – Sent to Governor

Currently, counties are unable to provide a sliding scale for the enforcement of specific violations. Counties must enforce an ordinance in the same way throughout the county, whether it makes sense to do so or not. This bill allows counties to adopt a graduated fine schedule and designate areas in the county where an ordinance is effective. This bill also allows counties to bring a civil action against habitual noise ordinance offenders.

HB08-1264, Electronic Read-Only Access to Court Records (Roberts)

This bill restores to certain attorneys and agency representatives access to the electronic read-only name index and register of actions in the Judicial Branch's data system. Such agencies include county social services departments and their attorneys, any state or local criminal justice agency, office of state public defenders, office of the child's representative and guardians ad litem (GAL), office of alternate defense counsel, and respondent parent counsel appointed by the court.

For many years, counties and their attorneys, regardless of employment status, have had access to these files. When the Judicial Branch changed their data service provider over the past two years, counties' attorneys, the GALs, alternate defense counsel, and others were simply left out of this important access. In 2007 legislation, the county departments of social services and district attorneys were re-instated to access, but the other parties remained excluded and unable to efficiently meet their obligations to protect the best interests of children affected by placements decisions and other court actions. It is important to CCI that all the key legal parties involved in child welfare and protection have access to these electronic records.

HB08-1349, Collection of Property Taxes & Tax Increment Financing (Gagliardi, Windels)

This bill allows counties to offset any overpayment of property taxes to any local jurisdiction that receives such payments. This gives county treasurers the flexibility to offset future property tax overpayments to urban renewal authorities and downtown development authorities which receive payments of property tax but do not levy it themselves. The authorities are required to make arrangements to ensure these payments are repaid by either setting aside reserves or entering into in IGA with the municipality that created them. CCI is working closely with Colorado Municipal League to address county needs, as well as, municipal interests.

SB08-032, Bond Commissioner Bond Breach Hearings (Harvey, McNulty)

There are four judicial districts that use bond commissioners to facilitate pre-trial work. This bill allows the bond commissioner to apply for a bond revocation hearing when a defendant violates the terms of his or her bond. If a defendant accused of domestic abuse or drug use violates their bond conditions, a hearing may not be scheduled for up to a month because of full dockets and heavy caseloads. This bill allows the bond commissioner to appear before the judge to request and schedule a hearing, thereby reducing the time spent getting the defendant into court.

SB08-034, Transportation Plan Zoning for Special Needs Facility (Johnson, Fischer) – Sent to Governor

This bill allows counties to request plans for transportation in an application for development of a facility to serve those with special needs. While it does not allow the county to use an inadequate transportation plan as grounds for denial, it does give counties the authority to require such a plan to be part of the application.

SB08-128, Eliminate Sales Tax Cap (Isgar, Hodge)

This bill removes the 6.9% cap set in current statute for sales and use taxes levied collectively by the state, a county, and a municipality. Over the past several years, the counties have had to go to the legislature to ask permission to go to the local voters to raise sales and use taxes for specific purposes. With the passage of the TABOR amendment, the requirement to go to the legislature for special purpose exemptions from the cap is not necessary and only further complicates the current law on sales and use tax. This legislation does not raise taxes. Any increase would still require voter approval. This bill has passed the House and is on the way to the Senate.

SB08-158, Inclusion of County Land in Urban Renewal Areas (Tochtrop, Hodge) – Passed Both Houses

SB 158 allows unincorporated portions of a county to be included in a contiguous urban renewal area in a municipality. Such an inclusion requires actions on the part of the county commissioners and the consent of all real property owners involved. This will be helpful to counties in redeveloping “brownfield” properties that are not incorporated into municipalities.

While CCI has been successful in advancing the bills discussed above, not all CCI legislative priorities are still alive in the legislative process. **HB08-1090, Requisites of Legal Newspapers (M. May, Tochtrop)**, was postponed indefinitely by the House State Affairs committee after strong opposition was voiced by some of the state’s smaller newspaper publishers. **HB08-1206, Notice Indian Child Welfare Act (Gagliardi, Tochtrop)**, was approved by the House but PI’d by the Senate Local Government committee after attorneys of some the tribes indicated that the current form of notification, as required by federal statutes but not by the federal regulations, is the only permissible form. And **SB08-124, Landscape Maintenance Excavation (Williams, Gagliardi)**, a long time issue for CCI and the product of 2 years of negotiation and compromise with excavators, locators, and facility owners, passed the Senate, but was PI’d by the House Local Government committee after late-breaking opposition came from oil and gas interests.

A couple of other bills that were not initiated by CCI, but nevertheless contain vital county interests are **HB08-1250, County Social Services Funds Relief (Pommer, Johnson)** and **SB08-177, Colorado Works Program Omnibus (Boyd, McGihon & Massey)**. CCI will follow these bills closely. CCI would like to thank legislators and others who have collaborated in efforts to forward county interests.

Agriculture, Wildlife & Rural Affairs (AWRA)

SB08-201, Livestock Confinement Standards (Isgar, Curry)

CCI Position: Support

This bill addresses issues raised by the United States Humane Society (USHS). The USHS has expressed an interest in adding an amendment to the constitution to address confinement standards in the agricultural industry. This bill would statutorily address the confinement practices for calves raised for veal and gestating cows, requiring the phasing in of new handling practices over the next four and ten years respectively.

The bill will provide these industries access to a process that addresses changing dynamics and technologies of the marketplace, rather than having livestock handling practices governed rigidly through a constitutional amendment.

Questions or Comments? Contact Andy Karsian at 303.883.9381 or akarsian@ccionline.org.

General Government (GG)

HB08-1306, Construction Contract Prompt Payment (Riesberg)

CCI Position: Oppose

This bill will require local governments in the state to conform their public works contracts to the requirements of the proposed law. The law requires counties to alter the way they have been enforcing contracts and reduces the amount of retainage the counties may secure. Instead of simply settling concerns of the contractors and sub-contractors, it tilts the playing field unfairly towards them.

This bill would allow contractors and sub-contractors to walk off the job with written notice. It also reduces from 10% to 5% the retainage amount counties may hold to ensure projects are satisfactorily completed. Various counties throughout Colorado expressed concern that this decrease in retainage will impair their ability to ensure that public projects are completed properly.

SB08-134, Minimum Bail for Drug Distribution (Kopp, McNulty)

CCI Position: Monitor

This bill seeks to establish minimum bail amounts for methamphetamine traffickers in Colorado. It also would take forfeited bond moneys to be distributed 50% to prison construction and 50% to a county jail assistance fund. The bill was amended in committee to remove references to Immigration and Customs Enforcement after legislators heard testimony that the bill unfairly targeted the immigrant populations in Colorado.

Methamphetamine trafficking is a large problem in the counties, especially on the western slope. Jail overcrowding and insufficient resources for county jails are related consequences from the same problem. Although locking up drug traffickers is important, an increase in incarceration rates puts additional strains on county jails already facing maximum capacities.

Questions or Comments? Contact Andy Karsian at 303.883.9381 or akarsian@ccionline.org.

Health & Human Services (HHS)

HB08-1108, Increase Funds for Older Coloradans Cash Fund (Riesberg, Morse)

CCI Position: Support

This bill increases the funds for the Older Coloradans Cash Fund from \$5 million to \$8 million. The funds come from receipts collected from state sales and use tax. The funds are administered by local area agencies on aging. The services that are affected by the increase in funding will be personal care, assisted transportation, congregate meals, home-delivered meals, homemaker services, adult day care, transportation, and legal assistance. In discussions with county commissioners and human services directors, CCI believes that this program is in need

of the additional funds that would be generated by the increases proposed in HB 1108. The costs for transportation and home care services continue to grow, driving the need for increased funding.

At this point, the bill remains unamended after consideration by the appropriations committee and second reading in the House. There was a lively discussion of the bill and the original intent of state sales taxes intended to assist Colorado's elderly with pension funds. The bill will now go to the Senate, with Sen. Morse sponsoring. CCI agrees with the proponents and supports this bill's continued adoption by the General Assembly.

SB08-183, Paternity DNA Testing Child Support (S. Mitchell)

CCI Position: Oppose

Currently, there is no recourse for challenging a judge's decision on child support matters once it has been determined by DNA testing. This bill requires the judge to change or stop an order for child support if an involved party requests it and DNA testing indeed proves the party is not the biological father. At the same time, the bill sets up conditions for exceptions to this requirement:

- if someone required to pay child support in the order has assumed the responsibility of the child knowing he was not the biological father;
- if someone required to pay child support legally adopted the child; or
- if the child was the result of assisted reproduction.

This bill gives parties to right to challenge if there is doubt about the parentage of the child and therefore calls into question the obligation of child support. This is of concern to counties because counties share the financial responsibility of the DNA tests and court appearances with the federal government. Counties bear 34% of the costs, which amounts to \$41.21 per DNA test and \$9.88 per court hearing.

More important to counties and child welfare advocates is the potential damage to children who lose a parental figure over DNA tests long after the child was born. CCI has generally opposed the use of DNA paternity tests, when a child has had an identified father for years, in that the emotional impacts are severe and out of all proportion to the impact of child support payments.

SB08-194, Public Health Reorganization (Hagedorn, McGihon)

CCI Position: Monitor with Amendments

This bill attempts to modernize statutes concerning county and district health departments and agencies. In addition to creating a public health fund, it requires the department of public health and environment to form a plan that is ultimately approved by the state board of health. It requires the county to either form a county public health agency or jointly form a district public health agency with another county. Each county or district must have a board of health and prepare a local public health plan. The health practitioners employed by these public health agencies are covered under governmental immunity because they are considered government employees.

The CCI Taxation and Finance Steering Committee discussed the bill and took a "monitor" position. While it is of importance to provide adequate public health services, it is also

imperative that counties have sufficient resources to carry out such services. CCI is working with stakeholders to shape the bill to be feasible for counties.

Questions or Comments? Contact Pat Ratliff at 303.668.0264 or plr45@aol.com.

Land Use & Natural Resources (LUNR)

HB08-1340, Colorado Housing Investment Fund (Kefalas, Boyd)

CCI Position: Monitor with Amendments

This bill creates the Colorado housing investment fund to be administered by the State Division of Housing. The funds are to be distributed through grants and loans for affordable housing needs. Fifty percent of the fund is available to local governments. Of that amount, counties with 26,000 people or more receive portions based on their populations. The rest of the local government share is distributed to counties with less than 26,000 people through competitive grants. It requires the Secretary of State to submit a documentary fee increase associated with a conveyance of real property to the voting public. The bill specifies how this fee increase revenue would be split between the fund and counties.

Affordable housing is a significant concern for many counties, particularly those in tourism and resort areas. This bill may provide a reliable funding source to expand the availability of affordable housing throughout impacted areas of the state, but if a statewide fee is to be imposed, counties would like to see the revenue retained in the areas where it is generated. Moreover, commissioners would prefer to see this implemented as a local option.

SB08-168, Species Conservation Trust Fund (Isgar, Curry)

CCI Position: Support

This bill allows transfers from the Operational Account of the Severance Tax Fund to the Species Conservation Trust Fund. It is an effort to alleviate the demands of the reserve requirements on the operational account.

Colorado is a party to a three state agreement on the South Platte, for the protection of endangered species both in the Colorado reach of the river and in Nebraska and Wyoming. The state has an ongoing obligation to provide funds for this program, although the annual amount can change with budget pressures. As long as Colorado makes the requisite payments, the timing and amounts can be modified from year to year, as is being done in SB 168. This legislation is important to keep Colorado's compact agreement intact, and aids all those water rights owners who use South Platte water.

SB08-202, Oil and Gas Operations in Greater Wattenberg (Shaffer, M. May)

CCI Position: Oppose Unless Amended

SB 202 states that only metropolitan districts situated within the greater Wattenberg area have the power to finance the costs for directional drilling. Under this bill, metropolitan districts elsewhere in the state could not help finance directional drilling.

Additionally, the bill includes language that may be construed to limit the authority of counties to regulate surface impacts and require land use review. Since the Colorado Supreme Court's 1992 decision in Bowen/Edwards v. La Plata County, Colorado appellate courts have explicitly

recognized that local governments have the authority to regulate the surface land use impacts associated with oil and gas development and facilities, unless such regulations operationally conflict with COGCC rules and regulations. Subsequent to the Supreme Court's decision in Bowen/Edwards, the Colorado General Assembly amended the COGCC's enabling statutes in 1994 by adding CRS 24-65.5-105 which states, "Nothing in this article shall establish, alter, impair or negate the authority of local governments related to oil and gas operations." Curiously, SB 202 amends this section even though the stated purpose of the bill pertains to the authority of metro districts in the greater Wattenberg area. Similar amendments to CRS 24-65.5-103.5 may also be construed to limit local authority in the arena of oil and gas development.

Questions or Comments? Contact Pat Ratliff at 303.668.0264 or plr45@aol.com.

Taxation & Finance (TF)

HB08-1305, Enterprise Zone Duties from DoLA to OED (Pommer, Johnson) **CCI Position: Monitor**

As recommended by the Joint Budget Committee, the bill moves all duties and employees involved with the Enterprise Zone Program from the Department of Local Affairs (DoLA) to the Office of Economic Development (OED). Any employees transferred from DoLA to OED would remain as classified employees and new hires associated with the program would not be classified. It takes effect as of July 1, 2008. The bill has passed both houses.

HB08-1314, Local Gaming Funds Gambling Addiction (Primavera, Spence) **CCI Position: Support with Amendments**

The bill directs the executive director of Department of Local Affairs to contract with nationally recognized mental health providers for counseling gambling addicts. The funding would be from the Local Government Limited Gaming Impact Fund. This bill would have specific impacts on Teller County, Gilpin County, and Indian lands, since the fund was originally set up to provide financial assistance for gambling impacts in these communities. The bill calls for 2% of the money to be used for this purpose. The money that is transferred to the Gambling Addiction Account of the fund would now be used for gambling addiction counseling programs, instead of being distributed through grants to the local jurisdictions for gambling impacts. CCI asked for an amendment that would take the money from the State, instead of the local fund, but that request was denied.

Questions or Comments? Contact Bill Clayton at 303.884.7618 or claytonwjc@aol.com.

Transportation & Telecommunications (TT)

HB08-1312, Transportation Investment Efficiency (Levy, Gordon) **CCI Position: Monitor**

This bill, as amended, changes the state's transportation planning process. It requires more detailed focus on regional transportation planning. It has requirements for the Transportation Commission and how regional plans are completed. It is up to the Colorado Department of Transportation (CDOT) to combine regional plans into a comprehensive statewide plan. Local governments will have to change their zoning and master plans, therefore increasing

expenditures. CDOT and Department of Local Affairs (DoLA) are required by this bill to create a program to assist local governments with these needs.

This bill has been heard twice in the House Transportation Committee and has had two total re-writes by the sponsor. On March 13, the bill was laid over by the sponsor until May 7 effectively killing the bill for this session. The sponsor has also agreed to meet during the summer with all stakeholders on the bill to discuss the issues and possibly return next year with a new piece of legislation.

SB08-041, Clarify Mineral Ownership under Highways (Cadman, Curry)

CCI Position: Monitor

According to SB 041, no governmental entity is allowed to obtain interests in oil, natural gas, or other mineral resources for the purposes of constructing roads and highways, unless it is providing subsurface support for the project. The bill also prohibits the use of eminent domain for the same purposes. This bill has impacts on the county costs of maintaining and constructing roads. CCI has amended the bill to say that counties are required comply with the provisions of the bill only in cases of eminent domain. If the county acquires land from an owner without exercising its condemnation power, the county may also acquire the mineral rights.

Questions or Comments? Contact Tony Lombard at 303.884.9113 or tony@lombardclayton.com.