

Legislative Report

CCI Meeting Reminder

All steering committee meetings are held at CCI.

Friday, March 12

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, March 19

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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Voluntary Agreements Concerning Affordable Housing in the House

The House Local Government Committee is scheduled to hear HB 10-1017 this Tuesday, February 23. This is a bill that commissioners asked to have as part of CCI's legislative agenda and that was also picked up by the Economic Opportunity Poverty Reduction Task Force this summer. HB10-1017 clarifies that individualized negotiated agreements between developers and governmental entities whereby developers provide some affordable housing units in return for variations from ordinarily applicable zoning or planning requirements are lawful and enforceable and not in violation of the rent control statute.

As you may recall from the January 22nd *Legislative Report* article on HB10-1017, the language that currently appears in the bill was drafted by CCI's Tourism, Resorts & Economic Development (TRED) Steering Committee and officially adopted as one of our legislative priorities in October by CCI's Legislative Committee. Representative Kagan, the bill's sponsor, intends to offer a "strike below" amendment when the bill is heard in the House Local Government Committee. Commissioners considered Rep. Kagan's "strike below" amendment during their February 12th TRED meeting. At that time, they asked that language spelling out the terms that can be specified in agreements between willing developers and local governments be reinserted. This language currently appears in the introduced version of HB 1017 and it allows local governments to specify how long a unit may be subject to the agreement's terms, whether or not subsequent property owners will be subject to the agreement, and remedies for early termination.

Additionally, commissioners wanted language that would better reflect the types of agreements that local governments currently have with willing developers in order to secure affordable housing. Rep. Kagan accepted both suggestions, which have been incorporated in the strike below amendment that he will offer at the hearing on February 23rd. With these changes, CCI supports Rep. Kagan's "strike below" amendment and continues to support HB10-1017.

A factsheet explaining what HB10-1017 does and does not do is attached at the end of this week's *Legislative Report*. Please let your representatives know how this legislation could help address affordable, workforce housing needs in your community.

General Government (GG)

HB10-1096, Concerning the Designation of Vehicle Identification Number Inspectors by Law Enforcement Officials of Local Governments (Tipton, Morse) CCI Position: Support

There are two kinds of Vehicle Identification Number (VIN) inspections. One inspection that the County Clerk may do which includes the bulk of VIN inspections and another inspection that peace officers do which involves a more detailed inspection on specific vehicles. County Sheriffs perform certified inspections on salvaged vehicles, homemade vehicles and cars from questionable origin.

By statute, only peace officers trained by the Peace Officer's Standards and Training (POST) are able to inspect these cars, however, in smaller rural counties the time commitment and man power needed is limited and the certified VIN inspections may take months to complete. Under this bill, a Sheriff or Police Chief may designate a non-peace officer to participate in the POST's Certified VIN Inspection training. This would allow a civilian field officer, for example, to perform these inspections. In tough economic times this bill will help cities and counties be more efficient while providing the services taxpayers continue to need.

Status: To be heard Tuesday in House Transportation.

HB10-1062, Concerning an Ability to Allow Counties to Purchase Crime Insurance In Lieu of Surety Bonds (S. Schafer) CCI Position: Support

Currently, county elected officials are required to have a surety bond upon entering office. The bond was originally meant to protect taxpayers against wrongdoings by county officials. The surety bond protection, however, is outdated and this bill allows counties to purchase insurance that protects taxpayers the same way the surety bond once did.

An additional benefit to using insurance instead of sureties is that a county official could be personally held liable for court costs resulting from a frivolous lawsuit. Indemnification clauses in the surety bond contracts require the county or the county official to reimburse court costs that the surety bond company takes on, even if the lawsuit is thrown out of court. Insurance riders do not include this personal indemnification clause.

Status: To be heard Tuesday in Senate Local Government.

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

Health & Human Services (HHS)

HB10-1226, Concerning an Alternative Approach for a County Department of Social Services to use in Addressing Certain Intrafamilial Child Abuse or Neglect Cases (Kefalas, Spence)

CCI Position: Support

House Bill 1226 creates authority for the Colorado Department of Human Services to create a pilot program to test the effectiveness of differential response in mild to moderate risk cases of intrafamilial abuse and/or neglect. This is an approach to working with families that permits a less formal and more experimental management of abuse cases. The bill allows five counties to be selected for the pilot program and authorizes the State Board of Human Services to adopt rules for the implementation of the pilot program. Counties are interested in this approach to treatment so it is likely that there will be more than enough volunteers for the pilot. The participation of each individual family is also voluntary. The bill provides for evaluation and reporting to the legislature by January 1, 2015, on the usefulness and value of the program.

HB10-1274, Concerning Successful Transitions Back to the Public School System for Juveniles in Out-of-Home Placement Who Have Demonstrated Behavior that is Detrimental to the Safety or Welfare of Themselves or Others During the Previous Twelve Months (Schafer, S., Johnston)

CCI Position: Pending

This bill comes as a result of the stabbing attack in a Montrose public school last year, by a juvenile who had recently been returned from out-of-home placement. The sponsor has indicated concern about protecting both the children who are in the placement situation as well as the safety of the public schools that re-enroll such students. Among other issues in the bill are the workload responsibilities for the departments of human services in assessing the child's previous behavior, potential for future violence, the matter of confidentiality with the transfer of mental health assessments to the schools, and finally the definitions of "identified juveniles" that would be the subject of this bill. The bill requires the Colorado Department of Human Services and the Department of Education to enter into a Memorandum of Understanding regarding the various agency responsibilities, tasks and obligations for these children.

After discussions with the sponsor, CCI is optimistic that the issues can be satisfactorily resolved with additional discussions and possible amendments.

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

Land Use & Natural Resources (LUNR)

HB10-1292, Concerning a Clarification of the Conditions on Land-Use Approvals that may be Imposed by Local Governments Under Statutory Provisions Governing the Regulator Impairment of Property Rights (Murray, Harvey)

CCI Position: Support

This legislative proposal is intended to clarify a statute that was very recently interpreted by a Douglas County judge contrary to previous case law and legislative history - potentially creating problems for other counties if not clarified.

In summary, the Regulatory Impairment of Property Rights Act (RIPRA), passed in 1999, was intended to apply only to local government requirements for payment of money or dedication of land as a condition of land-use approval and requires that there is a nexus and proportionality of the payment or dedication.

A subsection of this law states specifically that "no local government shall impose any discretionary standard upon a land-use approval." Case law and legislative history strongly suggest that this subsection is not a stand-alone section, yet a Douglas County judge recently applied this subsection as a stand-alone section, available as a means to challenge any local land-use decision. In effect, the judge allowed for a second cause of action that was never intended to be a separate, stand-alone cause of action. This clarification should resolve any future confusion in the interpretation of RIPRA.

SB10-165, Concerning Implementation of the Incorporation of Oil and Gas Wells into the Prior Appropriation System (Hodge, Hullinghurst)

CCI Position: Pending

Under current law, the removal of non-tributary groundwater for mining operations only requires a permit if the water is used for a beneficial purpose. In *Vance v. Simpson*, the Colorado Supreme Court found that mining of coal bed methane (CBM) is considered a beneficial use of groundwater. As a result of this case and the passage of HB09-1303, the Division of Water Resources (DWR) in the Department of Natural Resources is required to permit water wells used in CBM production.

This bill addresses well permitting for the withdrawal of non-tributary groundwater in non-CBM oil and gas operations. It stipulates that if the water is used in the course of oil and gas operations, no permit is required. The bill also appears to permit limited domestic use of the water, within the oil and/or gas field without the need for a permit. Water used for beneficial purposes outside of oil and gas operations will still require a permit.

The bill extends the deadlines for well permits and substitute water supply plans from March 1, 2010, to August 1, 2010. The bill is effective upon the signature of the Governor or upon becoming law without his signature.

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

Taxation & Finance (TF)

HB 10-1158, Concerning Clarification of the Right to Use Wind Resources (Gardner, C., Hodge)

CCI Position: Oppose

The bill allows wind rights to be "severed" or separated from the land and sold or leased, as mineral rights are. The bill specifies that the wind right belongs to the surface owner unless the right is separated from the surface property. If wind and surface ownership are separated, then the deed or lease must describe the scope of the wind owner's right to use the surface property in order to develop or use the wind.

Under current law, the space above the lands and waters of the state belongs to the surface owner. However, the law does not specify whether wind is part of that space and whether the landowner may sell or transfer wind rights to another while retaining ownership of the surface.

A small number of Colorado landowners are already separating wind rights from their property. These landowners are using voluntary agreements to determine the right of a developer to install wind electric generation devices (wind turbines) on a parcel of land, compensation due to the landowner for allowing the use of the land for electric generation, and other related issues. CCI's Tax & Finance Steering Committee had a spirited debate about the merits of this bill and voted to oppose it based on the problems with severing wind rights from property in some estates. CCI shared with Rep. Gardner our position prior to the hearing on the bill. The bill has been tabled until May 15th.

SB 10-85, Creates a Pilot Program for Counties that Choose to Temporarily Provide a Business Personal Property Tax Exemption (Scheffel, Priola)
CCI Position: Oppose

The program is restricted to five counties, and only those with a population greater than 20,000 or fewer than 500,000 are eligible to participate. In order for a county to participate, it must enact an ordinance that fully exempts business personal property from property taxes for five years, beginning in property tax year 2011, and it must submit a written request with the Property Tax Administrator. Qualifying counties will be selected in the order received. The bill also specifies that the state will reimburse participating counties for lost property taxes at the following amounts:

- 100 percent in FY 2011-12,
- 75 percent in FY 2012-13,
- 50 percent in FY 2013-14 and
- 25 percent in FY 2014-15

In addition, Legislative Council Staff is required to prepare a study on whether the business property tax exemptions stimulated economic growth in the state as a whole, as well as in participating counties. This report must be prepared by April 1, 2017. CCI participated in the Business Personal Property Tax committee this summer and county commissioners were involved in the discussions concerning the replacement of the revenue that would be lost to counties if this was implemented. Commissioner Nicholson testified on behalf of CCI. After several witnesses, the bill was Postponed Indefinitely by a vote of 4-1. Thank you to Commissioner Nicholson for her insightful testimony on behalf of Colorado Counties.

Questions or Comments? Contact Bill Clayton at 303.884.7618 or bill@lombardclayton.com.

Transportation & Telecommunications (TT)

HB10-1268, Concerning Establishment of a Two-Year Registration for Vehicles (King)
CCI Position: Support

The bill authorizes the owners of motor vehicles, trailers and mobile machinery to elect to register their vehicles for two years. Vehicles registered for two years are exempt from the registration late fee. CCI has voted to support the bill with amendments to remove the late fee

exemption. The bill has been assigned to the House State, Veterans and Military Affairs committee and will be heard on February 23, 2010.

SB10-135, Concerning an Exemption from the 911 Charge for Customers Receiving Subsidies under Federal Programs (Spence, Pace)

CCI Position: Monitor

Currently, federal law creates the lifeline program, which provides subsidies to ensure universal telephone service to low-income customers. The bill exempts customers receiving free wireless telephone service under the lifeline program from paying a 911 charge. CCI is monitoring the progress of this bill. The bill is assigned to the Senate State, Veterans and Military Affairs committee on March 1, 2010.

HB10-1102, Rep. Murray, a post FASTER bill modifying penalties for late registration of vehicles, (CCI-monitor), was postponed indefinitely on 2/12/10.

SB10-069, Senator Brophy, a bill to transfer K-12 education spending dollars to HUTF (CCI-monitor) was postponed indefinitely on 2/2/10.

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

Announcements

Notice of Available CDOT Funding

The Colorado Department of Transportation (CDOT) is accepting applications for Federal Transit Administration (FTA) Section 5304 funds for 2010. Section 5304 funds can be used for a wide variety of transit planning activities, including: transit technical assistance, planning, research, demonstration projects, special studies, training and other similar projects.

For more information on how to apply, please visit the CCI website at www.ccionline.org.



Please Support HB10-1017

HB10-1017 Voluntary Agreement Affecting Rent
Representative Daniel Kagan
Senator Betty Boyd

What does HB10-1017 do?

HB10-1017 clarifies that individualized negotiated agreements between developers and governmental entities whereby developers provide some affordable housing units in return for variations from ordinarily applicable zoning or planning requirements are lawful and enforceable and not in violation of CRS 38 – 12- 301

Can developers enter into voluntary agreements with governmental entities now?

Yes. The risk, however, is that, absent clarification, such agreements could be construed by courts as being in violation of CRS 38 – 12- 301.

What does HB10-1017 NOT do?

- ❖ It does NOT impose rent control, nor does it allow governmental entities to pass ordinances controlling rents.
- ❖ It does NOT impose deed restrictions, nor does it allow governmental entities to pass ordinances which impose deed restrictions on units.

Does HB10-1017 overturn *Telluride v. Lot Thirty-Four Venture LLC*?

No. In the *Telluride* decision, Colorado’s Supreme Court struck down Telluride’s existing ordinance which required developers to satisfy the town’s affordable housing requirement and included price control provisions.

Why is HB10-1017 needed?

- ❖ Local governments need the express authority to enter into individualized negotiated agreements to provide some affordable housing units with willing developers.
- ❖ Past court cases have called into question the enforceability of individualized negotiated affordable housing agreements that are voluntarily entered into by local governments and developers. HB10-1017 lifts this cloud.

Colorado Counties, Inc.
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Housing Colorado
AARP Colorado
All Families Deserve A Chance Coalition
Voices for Justice
Lutheran Advocacy Ministry – Colorado
Colorado Association of Homes and Services for the Aging

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