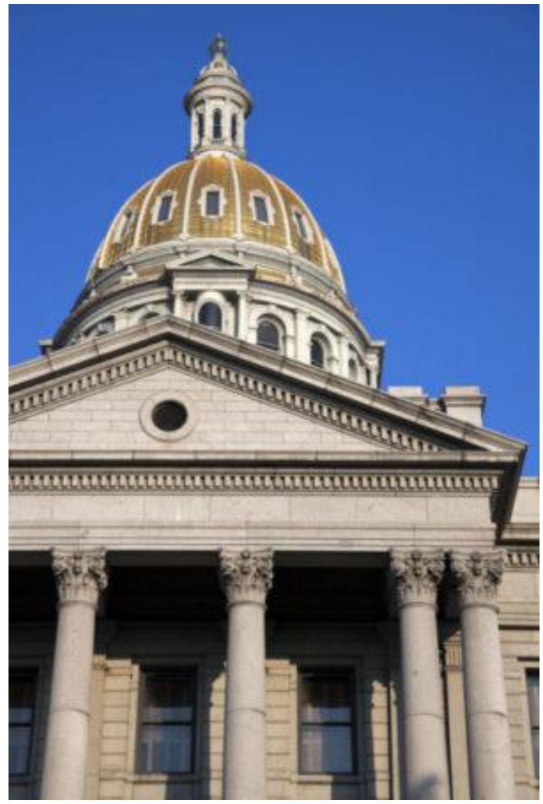
The 2017 Session: A Victory for Public Investments

SB 17-267 – Sustainability of Rural Colorado (Sens. Guzman & Sonnenberg, Reps. Becker K. & Becker J.)



The most significant act by the 2017 General Assembly was the passage of SB 267, a bipartisan fiscal compromise designed to protect access to hospital care for rural Coloradans and provide an infusion of capital for transportation and capital construction. This measure came together late in the session and was on and off the respirator many times during its journey to the governor's desk. SB 267 is an example of the kinds of deals we haven't seen lately, the horse-trading of priorities. SB 267 is remarkable, as it embodies compromise across parties and among priorities.

CFI played the role of trusted adviser throughout SB 267's journey. We were consulted for our technical expertise on the fiscal policy details of the bill and worked with other stakeholders to understand, explain and refine the bill. Though there were tough compromises made on all sides, we are ultimately very glad the bill passed.

The following outlines the most significant components of SB 267:

Hospital Provider Fee Enterprise

The centerpiece of the bill reconstitutes the Hospital Provider Fee as an enterprise and will have the effect of reducing TABOR revenue by $865 million and reducing the revenue cap by $200 million. This change will take TABOR revenue below the cap, eliminating TABOR rebates of $264 million in FY 2017-18. In addition to eliminating rebates, it means the state will earn $264 million in federal matching funds. This provision is estimated to provide $264 million more general fund dollars for public investments in FY 2017-18 and $288.6 million in 2018-19.

Marijuana Tax Provisions

SB 267 creates a state sales tax exemption for the sale of recreational marijuana products. In place of the state sales tax, the special, voter-approved sales tax on marijuana will be increased by 2.9 percentage points. The legislature can make this change because Prop AA allows the legislature to raise the rate as high as 15 percent and any revenue raised will NOT count as TABOR-defined spending. This provision will reduce TABOR revenue by approximately $30 million dollars, meaning the state will have more room to keep collected revenue before it must be returned to voters.

SB 267 contains other language that affects marijuana taxes. It makes a couple of changes in the current special sales tax rate, which is set to fall from 10 percent to 8 percent on July 1. SB 267 would keep the rate from falling to 8 percent and would set the new rate at 15 percent.

Recreational marijuana purchasers will experience an increase in the total state sales tax rate from 12.9 percent to 15 percent. The net new revenue generated from recreational marijuana taxes is approximately $40 million in FY 17-18. This revenue will provide the funding for the bill's increases in school funding and for the increased exemption for business personal property taxes.

Senior Homestead Property Tax Exemption

SB 267 makes the Senior Homestead Exemption a TABOR rebate mechanism in any year when TABOR revenue exceeds the cap. If TABOR revenue is below the cap, the Senior Homestead Exemption will be paid from general fund revenue, as it is now. When we have TABOR rebates, the provision will free up approximately $150 million in general fund revenue and reduce taxpayer refunds by an equivalent amount.

Certificates of Participation

SB 267 authorizes the use of Certificates of Participation (COPs) valued at up to $2 billion for transportation and capital construction. The COPs require debt payments for 20 years. SB 267 identifies $100 million in general fund revenue and $50 million in highway funds for debt repayment. The general fund obligation will ramp up from $9 million in FY 2018-19 to $100 million by FY 2021-22.

Business Personal Property Tax

SB 267 reduces business personal property tax liability for businesses with business personal property valued at less than $18,000. The state will reimburse local governments for the loss of property tax collections. The cost to the state will be approximately $21 million annually. This new state obligation will be funded by the changes in the voter-approved marijuana sales taxes.

School Funding

Requires $30 million of new marijuana revenue be transferred to the State Public School Fund to be used for rural schools in FY 2018-18. These state obligations will be funded by the increases in recreational marijuana taxes. For subsequent years, the marijuana sales tax revenue transferred to the fund can be used for all school districts as part of the state's share of total program funding for schools.

Medicaid Copays

SB 267 increases cost-sharing provisions for certain Medicaid services, including outpatient services and pharmacy services, consistent with federal law. Beginning in 2018, the bill requires that copays be double relative to their 2016 levels. This would take the average pharmacy copay from $1.25 to $2.50 for Medicaid clients.

HB 17-1187 – Change Excess State Revenue Cap Growth Factor (Rep. Thurlow, Sen. Crowder)

Another very significant bill for CFI during the 2017 session was HB 17-1187. This bill, sponsored by Rep. Dan Thurlow and Sen. Larry Crowder, proposed to modernize the current TABOR formula by tying allowable revenue growth to personal income rather than the Consumer Price Index (CPI). Personal income is a much more accurate indicator of economic growth. The proposed change would have been sent to voters on the November ballot.

In most states, during good times, revenue generated by normal economic growth can be used to restore the size of their rainy day funds (a state's savings account), to restore cuts that had to be made during lean times and to invest in innovations and improvements, in addition to paying normal ongoing costs for teachers, road repairs and health care. But in Colorado, the rules are different. The current TABOR formula says revenue can't grow faster than increases in population and consumer inflation. This perpetual challenge would have been addressed by linking allowed investments to economic activity measured by total state personal income. The change could have made a real difference in the ability of the state to recover from the impact of economic downturns.

CFI worked closely with Rep. Thurlow on the development of the bill. We testified in favor of the bill in House Finance Committee as well as in the Senate State, Military and Veterans Committee, where it died on a party-line vote.

We were disappointed voters were not given the opportunity to have input on the how their money is to be used. We are encouraged, however, with what appears to be a growing bipartisan, geographically diverse consensus that our fiscal rules need to be adapted to better reflective changing economic conditions.

HB 17-1191 – Demographic notes (Reps. Becker & Herod, Sen. Donovan)

One of the bills CFI drafted and worked on from the ground floor was HB 17-1191. What began as "equity impact statements" turned into a bill that would create "demographic notes." Demographic notes are an effective and innovative way to examine the impacts of potential legislation on different demographics, including race, gender, age, income, disability status and geography. By studying disparities in these areas, lawmakers would be better equipped to ensure their policies are truly targeted at the Coloradans they are intended to benefit.

Similar evaluations have been used across the country.

In Minneapolis, the local board of education used an equity assessment in its decision-making process related to reorganizing school enrollment and transportation routes in the public school district. Using this tool, the school board was able to identify how new school initiatives could minimize adverse consequences and racial disparities while saving money for the schools. Iowa and Connecticut have incorporated similar evaluations into the development of all new sentencing laws. And King County in Washington uses an "equity impact review tool" to ensure equity is a key component in the development and implementation of new policies, programs and funding decisions within the county.

This bill passed on a party-line vote in both House Finance and on the House floor. The bill sparked an interesting discussion on the floor when a legislator stated bills like this, which point out disparities, create "class warfare" because we are all simply "Coloradans and Americans" and that is all we need to know. Several members of the House were quick to jump on this argument and point out the disparities that are currently present and the reason this bill is so valuable in illuminating the impacts of legislative policies on different people.

Though the bill was eventually killed in Senate Finance, we hope to work with our sponsors to draft similar legislation in the future.

HB 17-1324 – Education Opportunity Act (Reps. McLachlan & Pettersen, Sen. Todd)

HB 1324, another priority bill for CFI, did two things. First, it would have created a tax incentives for rural Colorado teachers, and second, it helped middle-class families save for college. CFI believes both of these goals are extremely important for Colorado communities, and we were excited to put them together in this bill.

This bill would have created a tax incentive for new teachers to teach in rural Colorado. The incentive began at $1,000 for the first year of teaching and increased every year for five years, ending at $5,000 in year five. When you consider that the average teacher salary at rural schools is $38,000, with some teachers making as little as $28,000, this credit would have made a huge impact on the lives of teachers who want to make a difference in our rural communities.

This bill also provided a one-time $2,500 tax credit to offset the tuition for student teachers in rural Colorado.

And all of this would have been provided with minimal fiscal impact to the state.

The reason for that is because of the second part of this bill, which would have means-tested the Colorado 529 tax deduction and helped middle-class families save for college.

The bill increased the benefits of 529 plans for those earning up to $100,000 per year by doubling their tax benefit from the state. That would have meant that roughly 80 percent of all Colorado earners would be eligible for $2 dollars of tax deduction for every dollar they contribute to a 529 college savings plan. Then the bill would have gradually reduced the deduction as income increases.

It is rare that we have the opportunity to draft a bill that provides a meaningful tax incentive at a minimal fiscal cost. HB 1324 would have made a huge difference in the lives of Colorado families and children, all across the state, and especially in rural Colorado. However, the bill was killed in the Senate finance committee, even after passing through the house with bipartisan support.

The bill was featured in both the Denver Post and on the Colorado News Connection.

We intend to work on this bill over the summer with our partners in the rural education community and hope to bring it back next year with bipartisan support.

HB 17-1242 – Concerning Transportation Funding (Reps. Duran & Mitsch Bush, Sens. Grantham & Baumgartner)

The original “deal” of the legislative session was HB 1242, a bill to send a measure to the ballot to increase sales taxes to fund transportation. This bill, introduced by leadership in both the House and the Senate, would have increased our current sales tax rate by .062 percent to 3.56 percent and would have used the new revenue to bond for transportation funding. The transportation funding was to be split between the state highway fund, local governments and a newly created multi-modal fund.

CFI was supportive of the bill, but was concerned about the regressive nature of the increase in sales taxes. As a result, we testified in favor of a multi-modal fund to partially fund affordable transit for low-income families.

Despite widespread support from bipartisan leadership, business groups, environmental organizations and rural advocates, the bill was met with resistance from a small group of lawmakers who didn't want to rely on new revenue to fund transportation and instead insisted we could raid the general fund for necessary funds. As a result, the bill was killed in the Senate on a party-line vote.

Defense

CFI remained vigilant against bad bills and zombie tax policies that came out this session. We worked to defeat two bills that would strip business personal property tax revenue from rural communities, a bill that would require the General Assembly to prioritize transportation funding above all other priorities, and bills that would move Colorado backwards regarding immigration policy.

SB 17-238 – Notifications Regarding Online Purchases (Sen. Holbert, Reps. Wist & Neville)

In 2010, Colorado passed a notification and reporting law that required online retailers to either collect state sales taxes in Colorado, or give notice to the Department of Revenue and individuals on how much use tax they owe on their online purchases. CFI worked to pass this bill at that time and is excited to see it take effect this year. Unfortunately, not everyone shares our enthusiasm.

SB 238, brought by a large, national group of internet retailers, attempted to eliminate an important compliance standard in the bill, by requiring online retailers to notify only individuals, but not the Department of Revenue about use taxes owed. The bill's modifications would have taken the "teeth" out of the bill and reversed the progress Colorado has made on the collection of internet sales tax.

CFI testified against this bill in Senate Finance and then in House Finance, where it died on a party-line vote.

SB 17-287 – Endowment Tax Credit (Sen. Priola, Rep. Garnett)

SB 287 was introduced again this year and would have allowed taxpayers an income tax credit for contributions to an eligible endowment fund. While we recognize the good intentions behind this bill, research shows that the effect of this type of tax credit is inequitable and largely benefits only the wealthiest Coloradans in the top income brackets. Furthermore, this bill creates winners and losers within the charitable community as the tax credit incentivizes donors to give disproportionally to charities with an endowment. Frequently, these are the largest organizations with the highest number of assets. Recognizing that the Colorado tax system is already regressive in nature, with low- and middle-income families paying a higher effective tax rate than wealthier individuals, CFI opposed this bill. The bill died on the calendar in House Appropriations.

HB 17-1007 – Tax Benefit Employer CollegeInvest Contribution (Rep. Garnett, Sen. Gardner)

HB 1007 would have created a tax break for employers who contributed to an employee's 529 CollegeInvest savings plan. CFI dubbed this bill the "Duck, Duck, Goose" bill because it would have allowed employers to take a double deduction for contributions to employees' college savings plans while simultaneously requiring employees to pay state tax. Employers first duck their tax liability by deducting their contribution as employee compensation. Then, they'd duck their tax liability on an authorized 529 contribution. Meanwhile, employees would then get goosed with the tax on the employer contribution, as it would be considered income to the employee. CFI lobbied against the bill and it was eventually killed by the sponsor in its first committee of reference.

In Coalition

HB17-1307 – Family and Medical Leave Insurance Program Wage Replacement (FAMLI) (Rep. Winter, Sen. Moreno)

HB 1307, a CFI priority again this year, would guarantee every Colorado worker up to 12 weeks of wage replacement while taking time to care for themselves, a sick family member or to welcome and bond with a new child. CFI worked closely with coalition leader, 9to5 Colorado, and bill sponsors to provide an estimate of the cost and legal feasibility of the program, and to help find innovative financing solutions that work given Colorado's unique fiscal constraints. CFI supports paid family and medical leave because mounting research shows that having access to paid leave is good for workers, good for families and good for the economy. Allowing workers to take paid time off to care for themselves or their loved ones saves the state and Colorado employers money in the long run.

The bill passed House Business, House Finance, and House Appropriations after families and businesses told moving stories of the need for paid leave, and others presented extensive research on the benefits. Then, the House passed the bill after a spirited debate. Unfortunately, the FAMLI bill died in Senate State Affairs committee on a party-line vote. With momentum building around the country and in Colorado, we're sure to see this bill in some form next year and CFI will be there to support it.