

# Audubon

## Legislative Report

14, May, 2018

Jen Boulton

We survived another year under the dome. We successfully stopped or fixed every harmful bill, and nearly all which had potential consequences. We also worked with allies to pass a few critical steps forward. From now until November, the focus of most legislators will be on re-election campaigns. As always, in a term limited world, we are saying goodbye to some incredible champions!

### PRIORITY BILLS

#### **\*SB143 FUTURE GENERATIONS**

**(Fenberg, Arndt)**

Position: Support

Status: Passed

SB143 is the CPW Financial Sustainability bill. This year, the bill will increase nearly all in-state hunting and angling fees by \$8. It will also reinstate the senior fishing license at \$8. Out-state fishing licenses will increase to \$95 for parity with surrounding states. At the present time, there is no intention to include any language relating to fee-title acquisitions – no one really wants to have that fight. The most important piece of the bill is the inclusion of the CPI indexing authority for future fees to keep pace with inflation. In Senate Finance, the bill was amended to clarify a few issues, and to prohibit use of funds from the waterfowl stamp for political purposes. The amendment also directs CPW to promulgate rules for enforcing entrance fees to State Parks for non-motorized entrants. The bill passed the finance committee 5-0; the approps committee 6-1; and the floor 35-0 in the Senate.

#### **\*HB1008 AQUATIC NUISANCE SPECIES**

**(Esgar, Donovan)**

Position: Support

Status: Passed

HB1008 creates a boat stamp on sailboats and motorboats to fund the aquatic nuisance species program. The stamp is \$25 for registered vessels, and in-state vessels exempt from registration. The fee for exempt vessels from out of state is \$50. The bill also combines the two existing funds (one in Parks, and one in Wildlife) into a single fund. It

also increases penalties for failure to comply. New penalties are \$500 for a first offense and \$1000 for a second offense. Third and subsequent offenses are penalized as a class 2 misdemeanor under existing statute. Finally, the bill allows CPW to recover costs associated with impoundment and decontamination of vessels.

**\*HB1122 CONSERVATION EASEMENT ACCOUNTING (Lewis/Sonnenberg)**

Position: Oppose

Status: Dead

HB1122 required the state auditor to hire a third party to perform an accounting of every conservation easement in the state. The accounting had to include the donors of the easement, the acreage involved, the amount of any credits claimed, the owner or owners of the easement, the conservation objectives of the easement and a determination of whether the conservation goals of the easement are being fulfilled (by the auditor?!?). While a compilation of easements might have been useful, HB1122 was far more than a mere catalogue, and was a danger to the entire program.

**\*HB1123 CONSERVATION EASEMENT MORATORIUM (Lewis/Sonnenberg)**

Position: Oppose

Status: Dead

HB1123 imposed a three year moratorium on tax credits for any conservation easement. Given that it may take several years to put a donated easement together, and tax credits are already limited by the existing annual cap, an additional moratorium would have jeopardized all easements in progress, and the future of the program as a whole.

**\*HB1194 CONSERVATION EASEMENT TRANSPARENCY (Lewis, Sonnenberg)**

Position: Oppose

Status: Dead

HB1194 limited fees that could be charged in association with establishment of easements. The bill also required the department to accept the average of appraisals if the value of the easement was disputed. Additionally, the bill allowed landowners to quash the contract under certain circumstances, and required a public hearing in the county where an easement was proposed. Finally the bill made all future easements term easements rather than perpetual.

**\*HB1290 CONTINUE CONS EASEMENT CERT PROGRAM (Roberts, Sonnenberg)**

Position: Support

Status: Dead

HB1290 continued the current program for certification of conservation easement holders until 2025. The bill also authorized creation of a publicly available registry listing the easements for which tax credits had been claimed. Finally the bill authorized the Real Estate Commission to promulgate rules capping the number of applications for tax credit certificates in any given month.

**\*HB1291 CONTINUE CONS EASEMENT OVERSIGHT (Winter, Sonnenberg)**

Position: Support

Status: Passed

HB1291 continues the current Conservation Easement oversight Commission until 2025. As expected, the bill was significantly amended to make the process clearer. The amendments include creation of a new Division of Conservation within DORA. The new division is tasked with a number of duties including oversight of both easement holders, and application of rules, timelines, notifications, and requirements of the tax credit program.

**\*HB1150 OIL/GAS TAKINGS (Buck, Marble)**

Position: Oppose

Status: Dead

HB1150 was another multiple year bill, which has become a rite of spring. The bill required any local government that enacted a moratorium on oil/gas facilities to compensate oil/gas operators for any and all claimed loss of revenue as a result of the moratorium.

**\*SB192 OIL/GAS TAKINGS (Marble, Buck)**

Position: Oppose

Status: Dead

To paraphrase Will Rogers, "Nothing is safe while the legislature is in session." SB192 was a carbon copy of HB1150. After killing the bill in the House, it was reintroduced in the Senate.

**\*HB1113 SMALL BUSINESS REGULATORY REFORM**

**(Neville, Neville)**

Position: Oppose

Status: Dead

HB1113 was the first of the annual anti-regulatory bills. It required agencies to forgo fines for the first offense of any rule not directly related to public health and safety by a business of less than 100 employees.

**\*HB1274 REDUCE GREENHOUSE GAS EMISSIONS**

**(Becker K., Kerr)**

Position: Support

Status: Dead

HB1274 required the State to reduce greenhouse gas emissions by at least 80% from baseline 2005 levels by the year 2050. It left open the methods by which reductions were to be achieved. Note that the bill was not only assigned to State Affairs, but also to Agriculture and Transportation in the Senate.

**\*SB128 STATE AGENCY FEES**

**(Gardner, Liston)**

Position: Oppose

Status: Dead

SB128 required every fee increase proposed by an agency to be approved by the legislature in the session prior to the increase. The proposed fee would have to have been submitted for approval by November before the session in which approval is required. The bill was unclear whether inflationary adjustments would also need annual approval. The bill is also unclear as to whether a second approval – using the processes in the bill - would have been required for agencies which already need statutory approval for fee increases. Finally the bill didn't recognize existing internal timelines and notifications required for various agencies prior to adjustment of fees.

**\*SB66 EXTEND LOTTERY**

**(Garcia, Wist)**

Position: Support

Status: Passed

SB66 removes the sunset date for the Lottery Division so that it will exist in perpetuity, without having to repeatedly reauthorize it. The bill has been amended to include a sunset in 2049. We hope that those who come after us will value it as we do!

**\*SB246 REPEAL 13-252**

**(Cooke,)**

Position: Oppose

Status: Dead

SB246 repealed the last increase in the Renewable energy standard. It returned the RES to 10% for electric cooperatives. It also struck syn-gas from trash pyrolysis as an innovative technology, but left coal bed methane. Further, the bill permitted inclusion of all existing and new hydro- regardless of size or impact, under the RES. Lastly, the bill reinstated the multiplier for solar which expired in 2015. This was a truly awful bill!

**WATER**

**SB218 CWCB PROJECTS**

**(Coram, Arndt)**

Position: Support

Status: Passed

Given the lack of severance tax revenue, it is unsurprising that the projects bill is significantly scaled back this year. There are small amounts of funding allocated to continuation of many existing programs. On the positive side, the bill includes \$2M for watershed restoration programs and \$1M for long range conservation and drought planning. The bill also makes the appropriations from the Health Rivers tax checkoff subject to continuous appropriation rather than annual expenditure.

On the less positive side, the bill also includes \$2M for the litigation fund, and \$11M in cumulative loan increases for Centennial, Central, and Castle Pines participation in Chatfield.

**HB1301 MINING**

**(Roberts, Fenberg)**

Position: Support

Status: Dead

HB1301 prohibited mining operators from relying on perpetual water treatment as an option for reclamation in applications for new permits. The prohibition didn't apply to applications for re-mining of contaminated sites, or to updates/amendments to existing permits. The bill also eliminated the option for self bonding in reclamation permits; and required that the operator actually post bonds sufficient for reclamation work.

**HB1215 TENORM**

**(Arndt, Jones)**

Position: Support

Status: Dead

Current law forbids the State from regulating Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) until the Federal government has established a regulatory framework. The Federal government has not enacted such a framework, and as a result radioactive material is being disposed of in landfills and leeching into waterways.

HB1215 was a largely temporary measure. It required the CDPHE to promulgate rules for the safe disposal of TENORM, including that from oil and gas exploration. The agency was directed to consult with the Water Quality Control Commission and the COGCC in promulgating the rules. Until the rules were enacted, the bill required that TENORM could only be disposed of in facilities designed and permitted to handle the waste. After enactment of the rules, the bill was largely repealed in favor of the new regulatory framework.

**SB245 NORM**

**(Cooke, Arndt)**

Position: Support

Status: Passed

SB245 merely strikes the existing prohibition on rulemaking by the CDPHE for disposal of Naturally Occurring Radioactive Material (NORM).

**SB33 CONTINUE CAFO FEES**

**(Sonnenberg, Becker J)**

Position: Support

Status: Passed

SB33 extends the Confined Animal Feeding Operation (CAFO) program until 2025. The bill also continues the existing fee structure for CAFOs by repealing the automatic fee reductions that were initially included.

**HB1093 REUSE WATER FOR EDIBLE CROPS**

**(Arndt, Coram)**

Position: Support

Status: Passed

HB1093 adds irrigation of edible crops to the list of approved uses for recycled or reclaimed water. This bill is the only one of the increased applicability of recycled water that may need sidebars. Since some crops can store certain compounds, including some

that may have health consequences, there is additional work needed to identify the list of approved crops, or the compounds in the water. In committee, the bill was amended to require that reuse water used on commercial crops must meet existing standards for category 1 water. Water used for noncommercial crops must meet category 2 quality standards. Additionally, CDPHE has authority to strengthen the standards if there is any threat of waterborne pathogens in the reuse water.

**HB1053 REUSE WATER FOR MARIJUANA**

**(Arndt, Donovan)**

Position: Support

Status: Dead

HB1053 codified existing Water Quality Control Commission (WQCC) rules for water quality categories involving the use of recycled water. The bill also allowed the WQCC to create new categories, and to re-categorize permissible uses into less stringent categories. The bill added cultivation of marijuana to the list of permissible uses for recycled water, and authorized the WQCC to grant variances from water quality standards for specific recycled water projects.

**HB1069 REUSE WATER FOR TOILET FLUSHING**

**(Arndt, Coram)**

Position: Support

Status: Passed

HB1069 adds toilet flushing to the list of permissible uses for recycled water.

**SB38 REUSE WATER FOR INDUSTRIAL HEMP**

**(Coram, Willet)**

Position: Support

Status: Passed

SB38 adds cultivation of industrial hemp to the list of permissible uses for recycled water.

**SB170 RESERVOIR RELEASES**

**(Sonnenberg, Hansen)**

Position: Neutral

Status: Passed

SB170 creates an additional tool for retaining water in streams and rivers downstream of new or enlarged reservoirs. Specifically it permits the owner of a reservoir to maintain control of water released from a reservoir through an identified reach of

stream. The CWCB retains the authority to determine the volume of water necessary to protect the reach. The reservoir owner retains ownership and control of the water right, so long as the released water is re-diverted below the reach and put to the beneficial use attached to the right. Of critical importance is the “savings” language which preserves all other methods of protecting water within a stream reach.

**HB1151 DEFICIT IRRIGATION**

**(Arndt, Crowder)**

Position: Support

Status: Dead

Current law allows CWCB to study up to 15 pilot projects involving agricultural water conservation. Deficit irrigation refers to the process of irrigating crops with less water than they generally require, in an attempt to produce a usable crop, with less available water

HB1151 added deficit irrigation to the types of projects which could be included in the pilot program. The bill restricted deficit irrigation projects in the program to water divisions 2 and 3, within the upper Gunnison water conservancy district boundaries.

**HB1073 WATER DISTRICT CONTRACTS**

**(Gray, Gardner)**

Position: Neutral

Status: Passed

HB1073 allows conservation and conservancy districts to lease space in projects, not just actual water deliveries. The distinction is subtle, and is already common practice, but some districts are concerned with potential objections by bond underwriters.

**SB19 INCREASE TIME FOR WATER/POWER LOANS**

**(Coram, Arndt)**

Position: Monitor

Status: Passed

Current law requires loans issued by the Water and Power Development Authority to include a maximum repayment window of 20 years. Most of the funding for the Water and Power Authority comes from the Federal safe drinking water and wastewater programs. The Federal statutes permit a repayment window of up to 30 years. SB19 increases the loan horizon to 30 years to better align with Federal standards.

**SB41 WATER USE FOR SAND/GRAVEL OPERATION**

**(Baumgardner, Arndt)**

Position: Monitor

Status: Passed

SB41 allows sand and gravel operators to use water produced from their operation to mitigate the impacts of the operation. Uses are primarily dust suppression, and alleviating injury to neighboring landowners as a result of dewatering. The bill is specifically limited to sand and gravel operations, so water quality concerns are not an issue.

**SB25 FLOOD CONTROL ELECTIONS**

**(Priola, Coleman)**

Position: FYI

Status: Passed

SB25 updates the requirements for elections by Urban Drainage and Flood Control Districts to align with current election laws.

**OPEN SPACE/WILDLIFE**

**HB1216 SNOW GEESE**

**(Rehyer)**

Position: Oppose

Status: Dead

HB1216 required CPW to promulgate rules for the take of “light geese” on private property by members of youth shooting sports organizations. The landowner needed to notify the shooting sports organizations when light geese were on the property.

Encouraging youth to view wildlife as objects for target practice runs counter to hunting ethics. While recruiting new hunters is admirable, shooting wildlife just for the sake of shooting is not.

**SB137 GRAND SLAM RAFFLE**

**(Scott)**

Position: Oppose

Status: Dead

SB137 required CPW to provide one tag for each terrestrial big game species for a new statewide raffle. Tickets would have been sold statewide, and ten winners would have been selected each year, with each winner receiving one of the licenses. Funds raised by the raffle would have been allocated as grants to nonprofit organizations for hunter

recruitment, preservation of the North American model of Wildlife management, and terrestrial wildlife habitat preservation. The bill was withdrawn pending summer discussions.

**HB1027 RELOCATE LOTTERY**

**(Wist, Kagan)**

Position: Monitor

Status: Passed

HB1027 relocates the existing statutes regulating the Lottery Division to a new statutory title.

**SB194 DNR GIFTS**

**(Coram, Roberts)**

Position: Support

Status: Dead

SB194 specifically authorized DNR and each of its divisions to receive and expend gifts, grants, and donations of money or property.

**HB1139 CPW PARKS FEE REPORTING**

**(Hooton, Zenzinger)**

Position: Support

Status: Passed

HB1139 repeals reporting requirements for CPW related to the statutory raising of parks fees. Since the underlying statute was repealed last year as part of the switch to fee adjustment based on the CPI, the referenced reporting requirements are obsolete.

**HJR1002 OUTDOOR RECREATION INDUSTRY**

**(McLachlan, Donovan)**

Position: Support

Status: Dead

HJR1002 was a resolution recognizing the value of public lands, and the economic benefit of outdoor recreation; and welcoming the outdoor retail show to Colorado. It passed the House in January, but the Senate never acted on it.

## MISCELLANEOUS

### **HB1338 BUDGET SUPPLEMENT SEVERANCE TAX**

**(Rankin, Lambert)**

Position: Support

Status: Passed

HB1338 stops severance tax funding of tier 2 programs for the next fiscal year. It returns the automatic distributions to the Severance Tax Operational Account for transfer to the general fund. In return, the bill transfers money from the general fund to finance tier 2 programs for the next year. Of particular note, is \$3M for Species Conservation Trust Fund, \$3.5M for the ANS program (split between Parks and Wildlife until HB1008 takes effect), and \$1.1M for the Healthy Forests/Vibrant Communities Fund.

The bill also provides funding for tier 1 programs for the next year, and uses incoming severance revenue to offset those expenditures until the general fund is made whole. If any additional severance taxes are collected, the excess money reverts to the operational account.

### **HB1237 CONTINUE RULES COST BENEFIT ANALYSIS**

**(Kraft-Tharp, Neville)**

Position: Monitor -Amend

Status: Passed

HB1237 continues the existing requirement that agencies conduct a cost benefit analysis of proposed rules if requested. The bill requires that agencies post the results of any cost benefit analysis on its website. The bill was amended in the Senate with a bad amendment. The new language requires the Department of Regulatory affairs to determine if a proposed rule is “significant”. Significant is defined as costing industry \$10M over five years, or conflicting with the rules of another agency. If the proposed rule is declared significant, then the Office of State Budgeting and Planning is required to do the cost benefit analysis. The amendment also institutes some very restrictive timelines for notification and completion of analyses, and delays implementation of rules until the analyses are completed. Unfortunately, Rep Kraft Tharpe decided to simply accept the Senate changes rather than go to conference committee. We will revisit the issue if the changes become a problem.

**SB45 PAINT RECYCLING****(Lundberg, Ransom)**

Position: Oppose

Status: Dead

The existing paint recycling program has been very successful in keeping old paint from being illegally dumped in open spaces or waterways and out of landfills. Every county in the State now has at least one drop-off location to properly dispose of and recycle both latex and oil based paint. SB45 would have repealed the entire program.

**HB1250 RULES COMPLIANCE****(Kraft-Tharp, Priola)**

Position: Monitor

Status: Passed

HB1250 requires state agencies to conduct a review on compliance with agency rules. The analysis must identify the rules with the highest levels of noncompliance, and the rules with the highest levels of imposed fines. Additionally, the analysis must identify the numbers of first time offenders who were given an opportunity to cure minor violations. Each agency must report the results of the analysis to the Department of Regulatory Agencies. In turn, DORA must include a compiled report on compliance rates as part of its annual SMART hearings at the State legislature.

**HB1054 PLASTIC BAG FEE****(Rosenthal, Court)**

Position: FYI

Status: Dead

HB1054 created a fee for each plastic bag. The funds raised were dedicated to increasing the availability of affordable housing. The bill was included here solely because a plastic bag fee was one of the methods discussed early in the interim as a possible funding mechanism for water conservation projects.

**ENERGY****HB1085 HEALTH EFFECTS OF WIND TURBINES****(Lundeen)**

Position: Oppose

Status: Dead

HB1085 required CDPHE to compile all existing research on the mental and physiological impacts to humans and the physiological impacts to animals from noise or

stray voltage from industrial wind turbines. The bill specifically did not include effects to species of physical strikes due to navigational confusion, impacts of location on habitat and reproduction, or anything else. Only direct impacts from noise and from stray voltage were included.

**SB230 MODIFY FORCED POOLING ORDERS**

**(Marble, Saine)**

Position: Oppose

Status: Passed

SB230 has three main components. First, it clarifies that forced pooling orders from COGCC allow for more than one well per drilling unit. Second, the bill clarifies that mineral owners who are force pooled are exempt from damages resulting from spills, releases, or other injury associated with oil/gas operations. Finally, the bill increases the required payoff costs for force pooled owners to 300% of proportional drilling costs for wells more than 5000 feet, and for directional wells. The current 200% requirement remains for shallower wells.

**HB1382 CREATE ENERGY INTERIM COMMITTEE**

**(Hansen)**

Position: Support

Status: Dead

HB1382 created a new standing interim committee, similar to the TLRC and the Water Resources Review Committee. The committee was comprised of 10 members, 5 House and 5 Senate. At least 4 members had to be from the western slope. The committee was limited to 3 bills per year, and a 2/3 majority was needed to recommend a bill.

**HB1297 CLIMATE CHANGE RESILIENCY**

**(Winter)**

Position: Support

Status: Dead

HB1297 required Greenhouse Gas emissions to be reduced 26% from 2005 levels by 2025. The bill further specified that CO2 levels had to be cut 25% from 2012 levels by 2025, and 30% by 2030. The bill also required DOLA to take a number of actions to improve climate change response including collecting and analyzing current data on the economic and environmental impacts of failing to address climate change. DOLA was also required to develop modeling to estimate future impacts of climate change, and to analyze current modeling on state and regional climactic conditions.

**HB1400 INCREASE STATIONARY SOURCE FEES**

**(KC Becker, Scott)**

Position: Monitor

Status: Passed

HB1400 increases the existing statutory cap on air quality discharge permits. The increases are modest, but needed for CDPHE to continue its permitting in reasonable time frames.

**SB226 PROHIBIT COLORADO PARTICIPATION IN CLIMATE**

**(Lundberg)**

Position: Oppose

Status: Dead

SB226 prohibited the Governor from involving Colorado in any alliance or collaboration to reduce CO2 emissions, or to promote any other goals of the Paris Agreement.

**HB1281 PUC ETHICS**

**(Esgar, Garcia)**

Position: Tepid Support

Status: Dead

HB1281 prohibited those with recent ties to any sector of the regulated industry from serving on the PUC. The bill also permitted DORA to request performance audits of PUC staff and operations. Finally the bill required PUC to promulgate rules for dealing with conflicts of interest, ex-parte communications and prohibited activities.

**SB3 COLORADO ENERGY OFFICE**

**(Scott, Hansen)**

Position: Monitor

Status: Passed

SB3 reorganizes the Colorado Energy Office. The bill requires promotion of nuclear and energy storage systems along with the existing promotional requirements. It also repeals several existing programs that, admittedly, are not being used. Among the programs repealed are Wind for Schools, The Clean Energy financing program, the Green Building Incentive fund, and the Renewable Energy and Energy Efficiency for Schools program. Although we worked hard with others to create each of the preceding programs, the Energy Office has engaged with schools and businesses in other ways, rendering the specific programs essentially obsolete. On the brighter side, the bill does remove the energy office from consideration of forestry projects for biomass, leaving just the CDPHE in charge of regulating Air Quality from forest health projects. Lastly the bill directs the

Energy Office to engage in development of energy curriculum for science based education programs.

**HB1270 ENERGY STORAGE**

**(Hansen, Tate)**

Position: Support

Status: Passed

HB1270 requires the PUC to establish mechanisms and criteria for investor owned utilities to procure energy storage systems. The bill leaves all discussion of the types of appropriate storage capability to the PUC.

**SB216 ALT FUEL VEHICLE INFRASTRUCTURE**

**(Priola/Williams,)**

Position: FYI

Status: Dead

SB216 authorized the PUC to regulate charging and fueling stations for alternative fuel vehicles. The bill provided for cost recovery on the part of those who provide the service currently. It also allowed utilities to apply for construction/maintenance of facilities.

**HB1071 REG OIL/GAS TO PROTECT PUBLIC SAFETY**

**(Salazar, Moreno)**

Position: Support

Status: Dead

HB1071 eliminated the requirement that COGCC promote development, and left them responsible solely for regulating that development. Additionally the bill required COGCC to regulate development according to existing statutory language “to prevent and mitigate adverse impacts to air, water, soil, and biological resources in order to protect public health safety and welfare”.

**HB1098 COGCC ENVIRO RESPONSE FUND**

**(Saine, Marble)**

Position: Support

Status: Passed

HB1098 allows the balance at the end of each year to remain in the environmental response fund rather than reverting to the general fund.

**HB1289 FORCED POOLING**

**(Foote, Jones)**

Position: Support

Status: Dead

HB1289 exempted school districts and designated open space from being force pooled for the purposes of oil/gas development.

**HB1352 SCHOOL SETBACKS**

**(Foote, Jones)**

Position: Support

Status: Dead

HB1352 clarified that the current 1000ft setback from schools for oil/gas drilling applied from the property line, not from the school door. The bill also clarified that the limit did not apply if a school was constructed within the 1000ft limit of an existing oil/gas well – as long as the school wasn't planned before the drilling started.

**HB1419 OIL/GAS DISCLOSURE**

**(Foote, Jones)**

Position: Support

Status: Dead

HB1419 was a safety bill for the oil/gas industry. It required the industry to disclose the location of subsurface facilities like gather and flow lines. The bill also required the industry to disclose development plans to affected local governments. Finally, the bill directed the COGCC to promulgate rules to improve wellhead integrity in the wake of recent explosions and safety concerns.

*That's it for the year! Not a lot of great things, but also no bad things, and that's always a good thing! Enjoy everything our beautiful State has to offer this summer, and we will reconvene later in the fall – likely after the November elections – when we will know the prospects for next session!*

*Jen*