



2009 Legislative Session Report

The 2009 legislative session introduced a number of important bills for nonprofits. This report details the most important issues for the Colorado Nonprofit Association, actions taken, and other bills of interest for nonprofits.

Thanks to Aponté & Busam for lobbying work on key bills, political consultation, and providing information to assist the Association's public policy efforts and communications. If you have questions about any of the bills described here or other public policy issues, email Mark Turner at mturner@coloradononprofits.org

Key Bills for the Colorado Nonprofit Association

HB 09-1088 Certify Nonprofits as Local Public Procurement Units SUPPORT

3/13/2009 Governor signed

Sponsors: Rep. David Balmer (R-Centennial); Sen. Linda Newell (D-Englewood)

Supporters: Colorado Nonprofit Association, Colorado Department of Personnel and Administration, Colorado Behavioral Healthcare Council, Housing Colorado, Colorado Coalition Against Sexual Assault, Durango Adult Education Center, Arc of Denver, Colorado Center for Hospice and Palliative Care, Colorado Social Legislation Committee, Attention Homes, Developmental Pathways.

Association Actions: *Lobbied legislators to support the bill, testified in support of the bill in both houses, collected supporters, and sent email action alerts to members*

On March 13, Governor Ritter signed HB 09-1088 at the Colorado Nonprofit Week Awards Luncheon. The Governor, the bill sponsors, and a number of the key supporters were on stage for the signing. HB 09-1088 allows the Department of Personnel and Administration to certify any 501(c)(3) charitable nonprofit as a local public procurement unit if the nonprofit is receiving funds from federal, state, or local governments. A certified nonprofit can purchase supplies, services, or construction that further its stated nonprofit purpose from state price agreements.

The bill takes effect ninety days following the adjournment of the legislative session (May 6, 2009). Participating nonprofits can save 10-40% on a variety of goods and services through state price agreements. Prior to the bill taking effect, the Department of Personnel and Administration will be establishing processes and guidelines for nonprofits to participate.

The Colorado Department of Personnel and Administration brought this idea to the Colorado Nonprofit Association because allowing nonprofits to be certified as procurement units would expand the state purchasing pool and should result in deeper discounts from vendors.

HB 09-1248 Business Entities Regulation

SUPPORT

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5/14/2009 Governor signed

Sponsors: Rep. Cheri Gerou (R-Evergreen); Sen. Brandon Shaffer (D-Longmont)

Association Actions: *Testified in support of the bill in both houses, signed on as supporter*

HB 09-1248 makes a number of technical changes to Colorado's business statutes. HB 09-1248 also clarifies changes made by HB 08-1089 last year, which the Colorado Nonprofit Association actively supported. With these changes, it will be easier for nonprofit boards to take actions without a meeting via email, fax, or other form of wireless communication. Previously, the law required that all directors respond to a motion to take action without a meeting for the action to be approved, even if only to abstain.

Unless otherwise provided in the bylaws, HB 09-1248 would allow a board to set a reasonable deadline for directors to respond to a motion to act without a meeting. Directors who fail to respond shall be considered to have abstained and the motion would be approved if it receives the same number of votes that would be required for it to pass at an in-person meeting.

HB 09-1064 Economic Opportunity Poverty Reduction Task Force SUPPORT

06/01/2009 Governor signed

Sponsors: Rep. John Kefalas (D-Fort Collins); Sen. Paula Sandoval (D-Denver)

Actions: *Signed on as supporter*

Addressing poverty is central to the missions of many different categories of nonprofits. HB 09-1064 would create a ten person member legislative committee to assess current state policies and practices that promote economic opportunity and poverty reduction, and make legislative recommendations. This includes developing a comprehensive plan to reduce poverty by half by 2019 and studying issues related to poverty, nutrition, employment, and self sufficiency. The task force would appoint subcommittees of key stakeholders to advise and support its work. By participating on subcommittees, nonprofits can work directly with legislators and other key stakeholders to develop policy solutions to poverty and related issues. The task force is repealed in 2014.

HB 09-1293 Medicaid Hospital Provider Fee SUPPORT

04/21/2009 Governor Signed

Sponsors: Rep. Jim Riesberg (D-Greeley), Rep. Mark Ferrandino (D-Denver); Sen. Moe Keller (D-Wheat Ridge), Sen. Betty Boyd (D-Lakewood)

Action: *Letter of support to Governor Ritter*

HB 09-1293 allows the Department of Health Care Policy and Financing to set a fee on hospitals providing medical services. The fees would be used to leverage up to \$600 million in federal matching funds to make more than 100,000 Coloradans eligible for coverage under Medicaid and CHP+. The increased revenue would also allow for increased provider reimbursement rates for Medicaid and CHP+. By covering more of the uninsured and increasing provider reimbursements,

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fewer of the costs for uncompensated care will be shifted to employers through higher insurance premiums.

HB 09-1012 Incentives Wellness and Prevention Programs SUPPORT

04/25/2009 Governor signed

Sponsors: Rep. Joe Rice (D-Littleton); Sen. Shawn Mitchell (R-Broomfield)

Action: *Signed on as supporter*

HB 09-1012 allows insurance carriers that provide individual and group health insurance plans in Colorado to offer incentives for participation in wellness and prevention programs. Carriers are given flexibility in determining the types of programs offered as long as program participation is voluntary and is not a condition of coverage. Also, participants cannot be required to achieve a specific outcome to receive the incentive and the incentive may not be used as a marketing device for the insurance plan. Incentives may include, but are not limited to, premium discounts or rebates; modifications to copayment, deductible, or coinsurance amounts; or a combination of these incentives or rewards.

Under HB 09-1012, nonprofit employees can participate in wellness and prevention programs either through individual or small group plans. Their participation can help improve their personal health outcomes, increase their productivity at work, and reduce their insurance costs. This could reduce costs for their small group and their employer in turn. HB 09-1012 is flexible enough to allow carriers to choose to offer these programs and employers can choose to participate.

SJR 09-044 Interim Commission Study Fiscal Stability SUPPORT

05/20/2009 Signed by the Speaker of the House

Sponsors: Sen. Shaffer (D-Longmont); Rep. Paul Weissmann (D-Louisville)

SJR 09-044 creates an interim commission to study matters of fiscal stability. The commission will consist of six legislators (three from each house, two from the majority party, one from the minority party) and ten additional members (five chose by each house—three selections from the President/Speaker and two from each Minority Leader).

Matters of study include higher education and transportation funding, affordable access to health care, K-12 education, state owned assets, and creating and funding a rainy day fund. The commission is charged with creating a strategic plan for fiscal stability and submitting written findings and any legislative recommendations by November 2009. The Association communicated with the sponsors on the importance of nonprofit sector representation on the commission.

SB 09-023 Fair and Legal Employment of Coloradans Act OPPOSE

02/09/2009 Postponed Indefinitely

Sponsors: Sen. Dave Schultheis (R-Colorado Springs); Rep. Kent Lambert (R-Colorado Springs)



SB 09-023 would have required all employers in Colorado to enroll in the federal e-Verify program to verify the work eligibility of new hires. If it passed, SB 09-023 also would have imposed fines on employers for failing to participate and required that an employer terminate any new hires that received a final notice from e-Verify denying work eligibility. Under SB 09-23, a court would have had the authority to order that employers terminate any new hire not confirmed as work eligible and report new hires to it on a regular basis.

Similar to bills proposed in the last three years, SB 09-023 would have mandated participation in a voluntary program that is not completely reliable and would have created substantial penalties and legal liabilities for employers. Employers already face significant penalties under current law if they hire someone who is not lawfully present.

Other Bills of Interest

SB 09-228 Flexibility to Use State Revenues

NEUTRAL

06/02/09 Governor Signed

Sponsors: Senator John Morse (D-Colorado Springs); Rep. Don Marostica (R-Loveland)

In its original draft, SB 09-228 would eliminate the 6% General Fund appropriations growth limit (also known as Arveschoug-Bird) on the state budget. This limit was amended in 1992 in an attempt to pre-empt the Taxpayers' Bill of Rights Amendment (TABOR), which was approved in the 1992 election. TABOR contains a provision prohibiting the weakening of existing spending limits without the approval of the voters of Colorado. Previous legal opinions from the General Assembly's Office of Legislative Legal Services (OLLS) have interpreted Arveschoug-Bird as falling under TABOR's "weakening provision."

SB 09-228 is based on a legal opinion arguing that, contrary to OLLS opinion, Arveschoug-Bird can be changed by legislation without a vote of the people. While most Democrats in both houses supported SB 09-228, most Republicans opposed it, expressing concerns that it would end guaranteed funding for transportation in years where state spending grows more than 6%. Concerns about transportation funding also led some business associations and chambers of commerce to oppose SB 09-228. A coalition of nonprofits, education associations, health care advocates, and other business associations supported SB 09-228.

The House made significant amendments to the bill to ensure enough votes for it to pass and to attempt to generate more support from Republicans and business groups. The compromise amendment substitutes a growth limit of 5% of personal income for the 6% limit. This change will take effect in the first year after 2009 where personal income grows by more than 5%. For five years thereafter, transportation will receive 2% of General Fund revenues, capital construction will receive .5% for the first two years and 1% for the next three years, and .5% of General Fund appropriations will be transferred to the General Fund reserve. Following this five year period, these transfers will



be repealed along with the existing transfers to transportation and capital construction of General Fund revenues above the 6% limit. The Governor expressed his support for the bill with these changes.

HB 09-1265 Property Tax Interest Abatement

NEUTRAL

03/20/2009 Governor Signed

Sponsors: Rep. Larry Liston (R-Colorado Springs); Sen. Keith King (R-Colorado Springs)

Currently, a county, a court, the Board of Assessment Appeals, or the Division of Property Taxation in the Department of Local Affairs may refund taxes paid plus interest if a property tax exempt nonprofit is erroneously taxed. Interest awarded may be up to 12% of taxes paid. HB 09-1265 limits the amount of interest paid to two years' worth, regardless of how many years of refunds are owed to the nonprofit, if there is "competent evidence" that the property was taxed as the result of an error or omission by the nonprofit. Such errors could include failing to complete or file the annual report needed to maintain property tax exempt status. If a nonprofit pays taxes for three years or more as a result of such an error or omission, the taxing entity is no longer responsible for paying back more than two years of interest.

HCR 09-1003 Amend Constitution Games of Chance

No Position

05/05/2009 Senate Third Reading Passed

Sponsors: Rep Kent Lambert (R-Colorado Springs); Sen. Keith King (R-Colorado Springs)

Refers a measure to the voters to amend sections of the state constitution on games of chance. If adopted by the voters, the General Assembly would be allowed to decide which executive department oversees enforcement of charitable bingo and raffles law. HCR 09-1003 would move enforcement authority for the time being to the Department of Revenue from the Secretary of State. Also, a nonprofit currently must exist for five years and a bingo or raffle license lasts for one year. HCR 09-1003 would allow the General Assembly to change the minimum number of years a nonprofit must exist before getting a license and the duration of a license by statute rather than having to set it in the constitution.

SB 09-275 Eliminate State Sales Tax Vendor Fee

No Position

05/18/2009 Governor signed

Sponsors: Sen. Abel Tapia (D-Pueblo); Rep. Mark Ferrandino (D-Denver)

Businesses that sell items and collect state sales tax are typically allowed to keep 3 1/3% of sales tax revenues to cover their administrative expenses. SB 09-275 suspends the vendor fee until June 30, 2011 and businesses would not be allowed to keep any percentage of the state sales taxes they collect. SB 09-212 previously lowered the percentage of the vendor fee to 1.35% until 2012, so businesses would still collect the lower percentage for 2011. However, if the September 2010 revenue estimate indicates that the General Assembly is able to increase General Fund



appropriations by 6% for fiscal year 2010-2011, the vendor fee would be restored to 3 1/3% for 2011.

SB 09-234 Enterprise Zone Recommendations to General Assembly **No Position**
6/01/2009 Governor signed

Sponsors: Sen. Shawn Mitchell (R-Broomfield); Rep. Joe Rice (D-Littleton)

This bill requires the Economic Development Commission, with the help of the Governor's Office of Economic Development, to develop recommended criteria for the creation of a statewide enterprise zone, the expansion of the boundaries of existing enterprise zones, or the modification of existing enterprise zone credits by March 31, 2010.

Enterprise zones were established to provide tax incentives and credits for businesses and industries to locate and expand in economically distressed areas of the state.

Considerations shall include:

- Modifying geographic, economic, or other criteria for creating an enterprise zone;
- ways of expanding existing credits to provide greater benefit from the credit and more effectively target businesses and industries;
- ways of narrowing credits that are not being used much by businesses and industries;
- benefits and drawbacks of creating a state enterprise zone; industries or sectors that may benefit from a statewide enterprise zone and be encouraged to locate there;
- industries that would benefit if offered incentives to locate to an enterprise zone or a statewide enterprise zone
- minimizing the revenue impact of any changes;
- other factors deemed necessary.

SB 09-067 Colorado Credit Reserve Program **No Position**
05/07/2009 Governor Signed

Sponsors: Senator Rollie Heath (D-Boulder); Rep. Don Marostica (R- Loveland), Rep, Sara Gagliardi (D-Arvada)

SB 09-067 allows the Economic Development Commission to contract with the Colorado Housing and Finance Authority to administer the Colorado Credit Reserve Program. This program invests \$2.5 million in General Fund money to leverage an estimated \$50 million in revenues from financial institutions for loans to small businesses. The \$2.5 million will be used to offer matching funds to banks to encourage them to make loans to small businesses that might not qualify under normal bank standards.

HB 09-1349 Continue Health Care after Employment **No Position**
06/01/2009 Governor signed

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Sponsors: Rep. Randy Fischer (D-Fort Collins); Sen. Rollie Heath (D-Boulder)

The American Recovery and Reinvestment Act (ARRA) of 2009 included a provision allowing individuals who were involuntarily terminated between September 1, 2008 and February 16, 2009 to choose health insurance continuation coverage under COBRA. If they elect to do so within sixty days of notice by the employer, these individuals would be required to pay only 35% of COBRA premiums and the other 65% would be subsidized through a tax credit to the employer. This provision applies to employers with twenty or more employees.

HB 09-1349 applies this premium subsidy to state continuation coverage so that small businesses with fewer than twenty employees would be included. HB 09-1349 provides the tax credit to health insurance providers rather than employers and requires health insurance carriers to give employers the necessary information to notify eligible individuals.

HB 09-1057 Parental Leave Academic Activities

No Position

06/01/2009 Governor signed

Sponsors: Rep. Andy Kerr (D-Lakewood); Sen. Bob Bacon (D-Lakewood)

HB 09-1057 allows employees to attend the academic activities of their children by either taking up to six hours per month of unpaid leave up to a maximum of eighteen hours per year or taking paid leave and making up the hours during the same work week. Part time employees are eligible for this kind of leave based on the percentage of a full time work schedule that they work. Academic leave means parent-teacher conferences and meetings related to special education or disciplinary issues.

An employer may limit this leave in cases of emergency, in situations where a person's health or safety may be in danger, or if the employee's absence would result in halting a service or production. Employers may also require that the employee take leave in no more than three hour increments and provide written verification from the school or school district. Notice of leave shall be provided a week in advance or as soon as possible in the case of an emergency along with written verification from the school immediately afterwards.

Employers do not have to provide additional leave to employees if they make available an amount of paid or unpaid leave equivalent to these standards, available for the same purposes, and with notice requirements that are not more stringent. Employers must meet the standards of HB 09-1057 at a minimum but are not prohibited from having leave policies that provide greater benefits to employees.

HB 09-1052 Donation Bin Signs When Sold For-Profit

No Position

Sponsors: Rep. Mark Waller (R-Colorado Springs), Sen. Rollie Heath (D- Boulder)

03/24/2009 Governor signed

Under HB 09-1052, a for-profit entity that operates a public donation bin and does not direct all of

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the goods or all of the proceeds from selling the goods to a charitable purpose must place a label on the bin indicating that the value of the items is not tax deductible. This does not apply to bins for the collection of waste or recycled goods.

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