

# AUDUBON

## LEGISLATIVE REPORT

19, March, 2020

We are past the halfway point of the session. We find ourselves in new and uncharted territory. COVID-19 has caused numerous closures – including the legislature. The legislature will restart on March 30, but it is expected that only staff and legislators will be allowed in the building. Press and lobbyists are under discussion, but the building will remain closed to the public indefinitely. The operation of committees is still under discussion as well. Many of our early priorities have resolved, but those left in the process now face a grim future. It is expected that all attention will focus on the budget, and an economic rescue/ stimulus once the session reconvenes. With revenue forecasts taking a nosedive, it is almost certain that any bill with a fiscal note, will not survive the process now. So, here's where we stand at the moment...

### **PRIORITY BILLS**

#### **\*HB1095 WATER PLAN ELEMENTS IN MASTER PLANS (Arndt/Bridges)**

Position: Support

Status: Passed

HB1095 authorizes a local government master plan to include goals specified in the state water plan and to include policies that condition development approvals on implementation of those goals.

#### **\*SB8 INCREASE PENALTIES FOR WATER QUALITY VIOLATIONS (Winter/Jackson)**

Position: Support

Status: H-EE

SB8 doubles the penalties CDPHE can assess for violations of water quality standards. It's been several years since penalties were updated, and in some cases, violators are beginning to view fines as merely a cost of business. Doubling them is intended to return them to being an actual deterrent.

**\*HB1265 IMPROVE AIR QUALITY**

**(Benevidez/Gonzales)**

Position: Support

Status: H-Fin

HB1265 requires additional reporting to the health department (CDPHE) by companies which discharge hydrogen sulfide, hydrogen fluoride, hydrogen cyanide, or benzene. The bill also requires the department to review its regulations at least every five years, and to update them in accordance with the best available science. Finally, the bill requires CDPHE to be more stringent than federal minimums in regulating air pollutants.

**\*SB189 PESTICIDE PREEMPTION**

**(Fenberg/Cutter)**

Position: Support

Status: S-Ag

SB189 removes the preemption against local governments regulating pesticide use. The only place that the preemption will continue to exist is for pesticide use on marijuana – due to the complexity and liability issues involved in it remaining a federally illegal substance.

**WATER**

**HB1344 STUDY AQUIFER RECHARGE**

**(Holtorf)**

Position: Monitor

Status: H-RA

HB1344 directs the CWCB to conduct a feasibility study of aquifer recharge. The bill specifically requires the study to consider legal and regulatory hurdles, suitability of various recharge scenarios, and minimizing the amount of water leaving the state. While the bill isn't inherently bad, most of the information already exists as the result of previous studies. One of the major problems with recharge, is water quality; particularly the quality of water used for recharge, which could contaminate existing aquifers with surface water contaminants, or wastewater compounds for which raw water is not presently tested.

**HB1327 RESTRICT DIVERSIONS FROM DIVISION 3**

**(A Valdez/Coram)**

Position: Tepid Support

Status: Dead

HB1327 is a new way of approaching out of basin transfers. It simply prohibits the state from aiding or abetting any transfers from the Arkansas Basin, unless the State

Engineer specifically finds that the transfer will have no impact on any national wildlife refuge, or federal wildlife habitat area withdrawing water in the basin; on the Great Sand Dunes National Park; any State Park or State Wildlife Area; or increase operating costs within the closed basin.

**HB1072 WATER MGT EMERGING TECHNOLOGIES**

**(Arndt/Sonnenberg)**

Position: Support

Status: S-Ag

HB1072 requires CU to study emerging technologies such as telemetry, advanced aerial observation (drones), and blockchain for their potential value in improving the efficiency of water management.

**HB1097 MUNICIPAL USE WITHOUT CHANGE**

**(Young, Arndt)**

Position: Support

Status: Dead

HB1097 is a highly technical bill, but in a nutshell, it allows cities, in certain circumstances, to use water decreed for municipal use in different locations without going through a change case.

**HB1164 NO TAP FEES FOR HOUSING AUTHORITY**

**(Rich/Zenzinger)**

Position: Monitor

Status: H-Floor

HB1164 exempts housing authorities from tap fees imposed by a conservancy district. Housing authorities are generally associated with affordable housing, and the bill is very specific that only tap fees imposed by a conservancy district are included in the exemption.

**OPEN SPACE/WILDLIFE**

**SB130 SEARCH AND RESCUE**

**(Donovan/McCluskie)**

Position: Support

Status: H-RA

SB130 defines backcountry search and rescue, and directs the department of natural resources to conduct a study and develop recommendations on the issues related to backcountry search and rescue. The study must include coordination among the local, state, and nonprofit organizations involved in backcountry search and rescue; funding for volunteers who provide backcountry search and rescue service and for equipment and reimbursement; and volunteer training and public education. The department must also conduct outreach and training related to the physical and psychological support needs of backcountry search and rescue volunteers.

**SB135 CONSERVATION EASEMENTS**

**(Sonnenberg/Roberts)**

Position: Monitor

Status: S-Approps

SB135 is the result of a yearlong working group, it comprises a series of agreements reached between land trusts, and landowners who remain angry with the program over the series of issues that arose in the early 2000s. The bill updates the value of the credit for donated easements to 90% of market value, with a 1.5M/year cap, up to \$5M total on claiming the credit.

Second, the bill requires compensation to landowners whose tax credits were denied by the State but accepted by the Federal government. The amount of compensation is the fair market value of the property as approved by the Federal government. Less any amount received in earlier settlements with the conservation easement program. Additionally, the state will appoint an ombudsman to mediate disputed claims for compensation.

Third, the bill modifies the administration of easements which are claimed to be abandoned for not meeting the stated conservation goals. The bill requires the State to investigate claims of abandonment – and to notify the landowner and the easement holder when an investigation is opened. The State will also notify the parties of the results of the investigation. The State can find the easement abandoned if the easement holder has not monitored the property for three consecutive years; if the easement holder is nonfunctioning, even if not legally dissolved; or the easement holder has submitted a written statement to the division that in cannot fulfill its perpetual stewardship obligations. If the State finds the easement abandoned, it must work with landowners and to find another easement holder. If another holder cannot be found, the landowner may extinguish the easement subject to existing law – including repayment of all credits.

**HB1191 OUTDOOR RECREATION OFFICE**

**(McLachlan/Story)**

Position: Support

Status: S-Ag

HB1191 creates the outdoor recreation industry office in the office of economic development. It authorizes the director of the office of economic development to designate and oversee the director of the outdoor recreation industry. The new office is to serve as a clearinghouse for outdoor recreation industry matters.

**SB3 LOVE OUR PARKS**

**(Garcia/Esgar)**

Position: Support

Status: H-Fin

SB3 provides \$10M for development of infrastructure; primarily for opening the new State Park at Fischer Peak.

**SB121 MANAGE WOLVES**

**(Donovan)**

Position: Monitor

Status: S-Ag

SB121 directs DNR to develop a management plan for gray wolves. The bill further directs the department to develop a schedule for. And begin a reintroduction program before the end of 2025. EXCEPT: reintroduction is delayed until a new source of revenue is developed for payment of wolf damage claims; AND reintroduction is canceled if the population becomes self-sustaining first. Further, the bill makes damage payments only available to commercial livestock operators.

**HB1180 POLLINATOR PROTECTION**

**(Kipp/Fields)**

Position: Support

Status: H-Fin

HB1180 requires the Commissioner of Agriculture to ban the use of neonicotinoids and sulfoximines in outdoor pesticide applications. The bill permits the use of both substances in indoor applications, and for pet or personal pesticide protection. Should future compounds be developed which are equally effective, the bill allows the commissioner to ban the remaining uses at that time.

**HB1004 WILDFIRE MITIGATION EDUCATION GRANTS**

**(Cutter/Lee)**

Position: Monitor

Status: H-Approps

HB1004 creates a grant program to provide education to landowners about existing resources available for wildfire mitigation on their properties. It is harmless as introduced, but bears watching for amendments that could be problematic, such as clear cutting or “logging for water”.

### **SB41 FREE PARKS PASS FOR NATIONAL GUARD**

**(Cooke, Beckman)**

Position: Monitor

Status: S-Floor

SB41 allow active members of the National Guard to receive free annual passes for State Parks; as long as the loss of revenue to CPW is backfilled by the legislature. If that piece is removed, we might want to revisit our position.

## **AIR QUALITY**

### **SB168 SEVERANCE TAX POLICIES**

**(Hansen/Valdez A)**

Position: Support

Status: S-Approps

SB168 changes several payouts from severance tax funds. The bill extends the existing tax credit for community solar gardens for 5 years. The bill also expands the credit to solar gardens which are assessed on a statewide basis. During the additional years, the state will backfill lost property tax revenue to local governments. The money for these payments will come first from additional money in the sustainable energy fund, and from the general fund if that revenue is insufficient. The bill also makes these payments a refund mechanism under TABOR – but they are subordinate to the Homestead tax exemption.

In order to increase the funds in the sustainable energy fund, the bill eliminates the existing credit against severance tax for the coal industry for the first 300,000 tons per quarter.

### **SB204 AIR QUALITY ENTERPRISE**

**(Fenberg/Jackson)**

Position: Support

Status: S-TE

SB204 creates a new division within the Health Department. The division will be an enterprise, funded by new fees on air emissions assessed per ton of pollutants discharged. The new enterprise will also collect fees for third party modelling and research.

The enterprise will conduct modelling and research to assist in developing regulations to reduce pollution within Colorado from stationary sources, and improve resultant air quality.

**SB150 RENEWABLE NATURAL GAS STANDARD**

**(Hansen/Arndt)**

Position: Monitor

Status: H-EE

SB150 is the reintroduction of HB1018. It couldn't run as a house bill once Sen. Hansen transferred to the Senate, replacing Sen. Court.

**MISCELLANEOUS**

**HB1163 BAN SINGLE USE PLASTIC**

**(Valdez/Gonzales)**

Position: Monitor

Status: H-Floor

HB1167 creates a statewide ban on single use plastic bags (the ones from the grocery store and similar places), straws, stirrers, and polystyrene (Styrofoam) to go containers. It also imposes a minimum fee of ten cents per bag for paper bags; and requires compliance by 2021.

**HB1162 STYROFOAM BAN**

**(Cutter/Foote)**

Position: Support

Status: H-Floor

HB1162 bans the use of expanded polystyrene (Styrofoam) in to-go containers at retail food establishments.

**DONE**

**\*HB1070 OIL AND GAS TAKINGS**

**(Buck)**

Position: Oppose

Status: Dead

This was the fourth or fifth year for this bill. It required local governments to compensate the oil and gas industry for any claimed loss of value as a result of hydraulic fracturing bans or limitations. We have fought regulatory takings bills for over 30 years. Apparently, we will have to continue fighting them in perpetuity. Fortunately, however, this bill died quickly in its first committee.

**\*HB1157 EXPAND ISF LEASING**

**(Roberts/Donovan)**

Position: Support

Status: PASSED

HB1157 is our instream flow bill that was unexpectedly derailed last year. There are several tweaks from last year. Most notably, a prohibition on using the program for more than three consecutive years; and a requirement that expedited or “emergency” loans can only be used for one year before the applicant must comply with the more exhaustive administrative regulations of the leasing statute.

**\*HB1037 AUGMENTATION WATER FOR INSTREAM FLOW**

**(Arndt/Coram)**

Position: Support

Status: PASSED

HB1037 is a rerun from last year. The bill permits the CWCB to use water for instream flow purposes, if the water has been decreed for augmentation without seeking a further change of use. This would create a new pool of water, with lower administrative costs, which could be available for instream use

**\*SB48 STRENGTHEN ANTISPECULATION**

**(Donovan, Roberts)**

Position: Support

Status: PASSED

Colorado water law prohibits speculation (gambling on future needs in order to profit from water use). Unfortunately, there have been several applications for water rights over the years which are speculative in nature. SB48 requires the Director of DNR to convene a work group to explore ways to strengthen the anti-speculation doctrine. The group is to report recommended changes to the legislature by August, 2021.

**\*HB1126 STATE APPROVE OIL/GAS**

**(Saine/Marble)**

Position: Oppose

Status: Dead

HB1126 turns the recent changes to oil/gas policies upside down. The bill requires that if any local government approves development of oil/gas facilities, the State must immediately follow suit, and permit the facility as well.

**\*SB10 REPEAL BAN ON LOCAL REGULATION OF PLASTICS (Donovan/Froelich)**

Position: Support

Status: Dead

SB10 merely eliminates the existing prohibition against local governments regulating the use of plastics.

**HB1172 NO ABANDONMENT FOR EFFICIENCY**

**(Arndt)**

Position: Support

Status: Dead

HB1172 protects water rights owners from claims of abandonment for 20 years if they reduce their demand due to improved efficiency. The intent is to encourage more efficient delivery practices, such as lining ditches. Often, users are reluctant to invest in such large-scale efficiency measures, as they may not work, and they risk the value of their water right by calling less water. The bill allows a twenty-year period to determine if the efficiency measures are functional and adequate.

**SB24 PUBLIC INPUT ON DEMAND MANAGEMENT**

**(Coram/Arndt)**

Position: Monitor

Status: Dead

SB24 requires CWCB and the interim water committee to host public input sessions similar to the process for developing the Water Plan before adopting any rules or recommendations regarding Demand Management. While Public input is nearly always a positive, the process could delay implementation of demand management strategies for up to a year. Additionally, Demand Management proposals will likely be the result of interstate negotiations, and adding a requirement for public input could have a deleterious effect on the final product- especially if implementation is time sensitive.

**HB1087 CPW PENALTY CLEANUP**

**(Will/Donovan)**

Position: Monitor

Status: Passed

HB1087 is a cleanup of vague or obsolete language in the CPW wildlife violation statutes. It is largely nonsubstantive. The only piece that may be a bit controversial is removal of mandatory enhanced penalties for trophy poaching (Samson law). The enhanced penalties would be optional.

**SB69 PARKS PASSES FOR DISABLED VETS**

**(Garcia)**

Position: Support

Status: PASSED

Current law allows disabled veterans with a disabled vets license plate to have free access to state parks. SB69 allows disabled Veterans to have that access by providing the documentation necessary for a license plate, but without the extra step of having to acquire the plate.

**HB1045 ENERGY EFFICIENCY PROGRAM FUNDING**

**(Kennedy)**

Position: Monitor

Status: Dead

HB1045 creates a formula for disbursement of State funds between two different low-income assistance funds when there is less than \$1M available for the programs from severance tax. Our only concern is the possibility for dangerous amendments. Rep Kennedy asked for the bill to be killed, after some internal discussions with the agencies affected.

**HB1159 SEO CONFIRM WATER USE BEFORE ISF**

**(Roberts/Donovan)**

Position: Monitor

Status: PASSED

Current law specifies that the Colorado water conservation board's appropriation of water for instream flow purposes is subject to existing uses and exchanges of water. HB1159 is a bill that the River District has been working on for most of the last year. It requires the state engineer to confirm existing claims of use or exchange if the claims have not already been confirmed through decree

**HB1018 RENEWABLE NATURAL GAS STANDARD**

**(Kennedy)\***

Position: Monitor

Status: Dead

HB1018 requires the PUC to promulgate rules for utility use on “Renewable Natural Gas”. The bill defines RNG as biogas, biogas blends, hydrogen gas from renewable sources, and captured methane from a variety of non-fossil sources. This bill is tangential at best, but there is some possibility for nefarious language changes that could impact water quality. It would be unlikely, but the bill still warrants our keeping tabs on it.