COLORADO WATER WELL CONTRACTORS’ ASSOCIATION

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Monday, May 1, marks the 113th day of this 120 calendar day session. As of the close of business on Monday, there will be no more than 9 calendar days remaining in the session. In accordance with the Colorado Constitution, the session must adjourn *sine die* no later than midnight on Monday, May 8. Two of those 9 remaining days are the weekend of May 6-7. The House has already worked 6 Saturdays this session, so it should not be assumed that the coming weekend has any special significance.

There are an awful lot of bills remaining in both the House and Senate that must be dealt with. For the first time in many years, longtime observers at the Capitol are speculating that there could be a significant number of bills that will simply die on adjournment *sine die*. Under the Colorado Constitution, all unfinished or pending matters that are on the calendar when adjournment *sine die* occurs die under the rules. No further action is required. A bill which is killed by rule does not roll over into the next session. Any such bill would have to be reintroduced de novo for the 2024 session.

There is still time for new bills to be introduced. One such late bill that is anticipated for introduction early this coming week will address a developing crisis in property taxation that will hit in 2024. Assessed valuations are expected to increase over this year’s value somewhere above 35% but just shy of 50%. The variation is due to differing circumstances throughout the state. These early projections from the county assessors are having a ripple effect at the Capitol. The Governor and the Democrat leadership have been scrambling to find a safety valve to thwart the sticker shock. There are very few options available so it will be interesting to see what the package looks like.

Under the Colorado Constitution, a minimum of 3 calendar days are required for a bill to move from initial introduction to the Governor’s desk. Unlike some states that can stop the clock, that is not the case in Colorado. The calendar and the clock are unrelenting. When Monday, May 1, arrives, we will be knocking on the door of the last allowable day that new legislation can be introduced. There is ample time for such bills but there is a very narrow opportunity for citizens or advocacy groups to react to any such bills. They are always fast tracked with leadership backing so that any amendments that have the blessing of leadership are adopted in the first house and are shut out in the second house. That eliminates the need for the extra step of first house consideration of second house amendments and a series of votes to reconcile the differences.

The calendar also affects the time that the Governor has to consider bills that reach his desk and the date upon which newly enacted bills become effective. There are some options for effective dates of new laws. The new law may include a specific date (such as July 1 or January 1) when it becomes effective. The new law may not include an effective date so it becomes effective at the time and on the date when the Governor signs it. If the new law includes a “referendum clause”, it becomes effective 90 calendar days following adjournment *sine die*. The Colorado Constitution provides a limited opportunity for citizens to challenge a new law by petitioning to put it before the voters. However, the window is tight and the standards are challenging. For the 2023 legislative session, that window for referendum closes on August 8. Many new laws will become effective on August 9, 2023.

The Governor’s window shifts at adjournment *sine die*. During a legislative session, the Governor has 10 calendar days to act on a bill that has reached his desk. If a bill reaches his desk after adjournment *sine die*, the Governor has 30 calendar days to act. Consequently, actions by the Governor slowly trickle out but must be completed by June 8. Sometimes a Governor will hold a signing ceremony at which he will sign several bills that address the same subject. Mental health bills and environmental bills are examples of such packages.

The effective date of a new law is important for state agencies as well as citizens. A state agency may not act on the provisions of a new law until it is effective. If a state agency must promulgate rules, the legal announcement for the rule making cannot be made until after the effective date of the law – in turn, that sets the calendar for hearings and related actions. An agency may not be able to announce new positions or advertise for competitive bids for work until after the effective date. That does not mean that an agency could not prepare for such actions or would be precluded from working with stakeholder groups or taking other actions that would facilitate formal actions. It does mean that some agency actions may not commence until several weeks or months following the effective date of a new law.

Following the final action by the Governor, I will assemble the annual Compendium of New Laws of Interest. In order to do that, I need to have not only the signed Act but also the official Session Laws published by Legislative Legal Services. The Session Laws are a very valuable resource because they reproduce the signed Act which displays all deleted language and all new language to a particular statute. The Session Laws are organized so that the new laws are assigned a page and chapter number to facilitate easy access. Generally, the Session Laws are consistent with the organization of the Colorado Revised Statutes which makes reviewing them in context easy.

I organize the Compendium by topic – such as employer-employee relations or administrative procedures – and consolidate all the new laws relative to that topic. “Administrative procedures” may seem a pretty arcane topic unless your legal counsel is involved in a rule making and needs to know deadlines and how to move to an appeal. “Administrative procedures” takes on a new interest this session because we have seen several new laws that allow aggrieved parties to launch private rights of action and bypass administrative remedies. The Colorado courts used to reject such legal actions until the party had exhausted administrative remedies. Some judges, however, have not followed that path. It is a bit of a worrisome trend for defendants who might be subject to civil liability actions. The Compendium should be completed by the end of June if all the needed information is released in a timely fashion.

Legislative Council (the combined bipartisan leadership of both chambers) met this week to review requests for interim studies. The Legislative Council approved two, neither of which is of interest to water interests. We were watching one requested interim committee that would have been an open ended review and modernization of the Colorado Open Records Act, but it did not make the priority list. The Water Resources & Agriculture Review Committee has not announced subjects for this summer nor has it announced the dates of meetings. The WRR&AC has committed to holding one meeting in conjunction with the summer meeting of Water Congress to be held this August in Steamboat Springs.

This is also the time of year that we begin to monitor proposed ballot issues that have been filed. Generally, odd year elections are reserved for fiscal matters whereas even year elections are pretty much open to any subject. Currently, 48 measures have been filed. That is a bit misleading since it is common for proponents to file multiple versions of the same issue to hedge their bets on what kind of technical issues might arise when the Title Board holds its hearing on the measure. The Title Board has commenced its hearing schedule. Fortunately, none of the proposals that have been filed hold any negative implications for the water community.

***Most Recent Status of Bills of Interest***

**SB23-177**: the annual funding bill for the selected CWCB projects. Passed the Senate, passed House with an amendment so the bill was sent back to the Senate for consideration of the House amendments. The Senate concurred in the House amendment and repassed the bill. The bill is on its way to the Governor.

**SB23-178**: Water-wise landscaping for HOAs. Passed the Senate, passed the House with amendments. The Senate considered the House amendments, concurred and readopted the bill. The bill is on its way to the Governor.

**SB23-213**: Land use. This bill has passed the Senate with extensive amendments. It is pending House Transportation, Housing & Local Government. The amendments to the bill removed most of the many offensive provisions but it is far from clear that the House will accept the Senate version.

**SB23-262**: Study water desalination. This bill would initiate and fund a specific study on the potential use of water desalination as a tool to alleviate pressure on the Colorado River Compact. It passed the Senate Agriculture and is pending House Energy & Environment Committee.

**SB23-270**: Stream restoration. This bill underwent extensive amendments to narrow its focus and reach. The amendments were generally a consensus among the proponents and critics of the bill and were adopted by the Senate. The bill has passed House 2nd reading without amendment and is pending House 3rd reading.

**SB23-295**: This bill seeks to establish a special task force to study or review issues related to the effects of drought on the Colorado River. Following a lengthy hearing in Senate Agriculture & Natural Resources, the bill was amended and sent through Senate Appropriations to the floor. The Senate passed the amended version of the bill on 2nd reading and it is now pending Senate 3rd reading. There were significant changes made to the bill by the Senate including:

* Reconfiguring the composition of the task force by adding the Commissioner of Agriculture;
* Changing the status of the State Engineer to that of an ex officio member;
* Adding a representative of the Southeastern Colorado Water Conservancy District;
* Adding a representative of the Northern Colorado Water Conservancy District;
* Adding a representative of a statewide agricultural organization that is the owner of water rights;
* Adding a representative of a front range municipal water provider that diverts water from the Colorado River.

In addition, the qualifications for the agricultural representatives were changed to require them to own water rights.

The sponsors added an amendment to clarify that the task force is subject to the Colorado open meetings laws.

The sponsors added an amendment to clarify that any program that involves the administration of water through stream reaches within the state or to the state line for interstate purposes must be consistent with any agreement regarding storage at Colorado River Storage Project Act reservoirs under an Upper Basin Demand Management program and Principle Four of Colorado’s conceptual framework of the approved and adopted Colorado Water Plan.

An amendment to authorize the creation of a sub-task force to study tribal matters. The amendment sets forth both the composition of the sub-task force and the scope of the study.

**HB23-1220**: Study economic impact of potential well curtailment under the Republican River agreement. Passed House Agriculture, Water & Natural Resources and House Appropriations. Pending House 2nd Reading.

**HB23-1255**: This bill overrides local government regulations concerning limitations on growth and as introduced might have been interpreted as including water utility plant investments fees and related utility system requirements. The sponsors amended the bill to provide a temporary non-renewable anti-growth requirement in order to provide for the extension or acquisition of a public infrastructure, public services or water resources. The bill passed the House and is pending hearing in Senate Local Government & Housing.

**HB23-1274**: Funding species conservation program. Passed House without amendments. Passed Senate Appropriations (committee of reference) without amendment. Passed Senate 2nd reading without amendment. Pending Senate 3rd reading.

**HB23-1282**: This bill expands the options for consumers to pursue grievances against public utilities by providing them with the ability to bring an action under the consumer code. The bill passed House Energy & Environment without amendment and is pending House 2nd reading.

***Everything is in Flux***

At this point in the session, the calendars are general suggestions more than they are a work plan. Leadership is prone to modifying the calendar in order to expedite work. Constant monitoring is necessary to avoid missing something critical. It should be expected that bills will be laid over for short periods of time, brought back on floor special orders and to have public testimony reduced to a maximum of two minutes. It should also be expected that bills may be unamended in the second house in order to expedite their journey to the Governor.