

# Numerous bills regarding open meetings, open records and legals

## SESSION FROM PAGE 1

Coloradans, both were passed into law.

Both bills passed with very little Republican support and charges that the Governor and majority-Democrats were growing government.

The session featured a number of bills related to open meetings, open records and legal notices. HB 1124 allows state agencies to have attorney-client communication in executive session whether there is imminent litigation or not, but now requires all attorney-client communications to be electronically recorded. Such recording may be reviewed by a judge and made available to the public if the executive session was found to be improper. HB 1082 requires all meetings of school boards at which decisions are made to be electronically recorded and makes such recording public records.

The legislature passed HB 1288, which makes all state expenditures available on an interactive database. The bill was an extension of an executive order on the same topic: A similar bill, SB 57, was introduced concerning an interactive database for school expenses. SB 57 passed the Senate, but was defeated in the House. Bill proponents were seen more as critics of public education than supporters of open government, which may have been a reason the bill was defeated in the House Education Committee.

SB 283 requires the Secretary of State to redact identification from records that can be used to commit identify theft and to make the remainder of the records available to the public.

A number of bills concerning public notice were considered. Two bills introduced at the end of the session, SBs 290 and 295, would have allowed all governments to post notice of construction contracts on their own websites instead of through legal notice advertising. The bills were amended to only apply to higher education and to require each project in excess of \$1,000,000 for construction or \$100,000 for services to be noticed at least one time. SB 290, with this language, passed the legislature. SB 295 was defeated over different issues.

A bill concerning the distinctions between employees and independent contractors was considered and passed by the legislature. HB 1310 establishes an enforcement mechanism for penalizing employers who misclassify their employees as independent contractors. Newspapers that utilize independent contractors would probably be well advised to review the legislation to ensure they have classified employees and independent contractors properly.

Finally, the legislature has adopted a formal policy for access to public records and e-mail. Originally, the policy was to be adopted with no public notice, no opportunity for public comment

and very little public awareness that a proposed policy was even being considered. CPA raised concerns with both the process and some specific provisions of the policy that resulted in an open process and most of CPA concerns about the proposed policy being addressed before it was finally adopted. Copies of the policy can be obtained from the Office of Legislative Legal Services.

The following bills are of interest to members of the Colorado Press Association. These bills are of specific interest to newspapers and do not include issues of general business interest.

**SB 12.** Morse/Frangas. Concerning Peer Review of Health Providers. The bill addresses the issue of peer review for problems facing licensed health professionals. It augments oversight by state regulators and states the records of the peer review organizations are not public records. CPA Position: Monitor. STATUS: Passed Senate, postponed indefinitely by House Health and Human Services Committee.

**SB 22.** Bacon/Solano. Concerning the State Land Board. The bill has various provisions addressing the operation of the state land board. One provision eliminates the requirement for public notice advertising of disposal to governmental entities while maintaining it for disposal to private parties. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 49.** Tochtrop. Concerning Records of State Employee Compensation. The bill makes specific information about state employees' compensation confidential. It maintains cumulative information as public. CPA Position: Oppose. STATUS: Postponed indefinitely in Senate State, Veterans and Military Affairs Committee.

**SB 57.** Harvey, Stephens. Concerning Searchable Database Website for Schools. The bill requires school districts to establish searchable databases of financial information to be available on the internet. CPA Position: Support. STATUS: Passed Senate, postponed indefinitely by House Education Committee.

**SB 87.** Carroll/Peniston. Concerning Special Districts. The bill contains a variety of provisions concerning special districts. One provision increases required notices for special districts to persons living in or owning property within such districts. The mechanisms do not include legal notice advertising. Existing legal notice requirements remain in place. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 108.** Gibbs/Rice. Concerning Transportation Funding. The bill is an omnibus transportation funding measure and creates new entities to study and spend the funds. Each of the new entities is specifically subject to open meeting and records requirements. Bill was amended to allow RTD to ask voters to approve tax increases without specific authorization of General Assembly. Public notice of election will be required. CPA Position: Monitor. STATUS: Signed into law by Governor.

**SB 138.** Boyd/Gagliardi. Concerning Continuation of Regulation of Nurse Aides. The bill concerns regulation of nurse aides. It has language concerning confidentiality of disciplinary actions during the investigation process. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 141.** Tapia/Looper. Concerning Establishing the Fountain Creek Watershed District. The bill establishes a special district for the Fountain Creek Watershed. It specifically states the district is subject to the open records and meetings laws and requires it to designate an official newspaper to print legal notices. CPA Position: Seek amendment to state that there should be a designated legal newspaper in both counties in which the district would operate. STATUS: Amended as requested by CPA and signed into law by Governor.

**SB 149.** Boyd/J. Kerr. Concerning Home Rule County Charters. The bill addresses processes for counties to adopt home rule charters. It includes a requirement to publish notice of proposed changes. CPA Position: Monitor. STATUS: Passed Senate, postponed indefinitely by House Local Government Committee.

**SB 158.** Isgar/Baumgardner. Concerning Department of Natural Resources Analysis of Conservation Programs. The bill establishes a process for the Department of Natural

Resources to analyze conservation programs. It includes confidentiality for property owners who participate in such programs. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 166.** Carroll/Roberts. Concerning Prescription Drug Ethics. The bill contains numerous provisions involving the activities of pharmaceutical companies that sell products for use in governmental programs. One portion requires the companies to disclose their expenditures for advertising and marketing. CPA Position: Monitor. STATUS: Postponed indefinitely by Senate Business, Labor and Technology Committee.

**SB 236.** Lundberg/Murray. Concerning School Construction Transparency. The bill requires public hearings on proposed construction with public notice of such hearings and placement of construction plans for schools on school website. CPA Position: Monitor. STATUS: Postponed indefinitely by Senate Education Committee.

**SB 240.** Shaffer. Concerning RTD Tax Increase Elections. The bill allows RTD to ask voters to approve tax increases without specific authorization of General Assembly. Public notice of election will be required. The provisions of this bill were incorporated into SB 108, which has been signed into law by the Governor. CPA Position: Monitor. STATUS: Postponed indefinitely in Senate Finance Committee.

**SB 241.** Morse/King. Concerning DNA Testing for Adults Arrested for Felonies. The bill requires any adult arrested for a felony to have DNA tested if and when the person is charged with a felony. Such tests are designated as criminal justice records, but the subject of the test may petition for the record to be expunged if exonerated. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 255.** Cadman/A. Kerr. Concerning Establishment of Shared Services Authority. The bill authorizes the establishment of an authority to provide a variety of shared governmental services. It is subject to open meetings and records laws. CPA Position: Monitor. STATUS: Passed Senate, lost on second reading in House.

**SB 283.** Sandoval/Scanlan. Concerning Redaction of Secretary of State Filings. The bill requires tax identification numbers to be redacted from filings at the Secretary of State's office. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 290.** Bacon/Reiesberg. Concerning Contracting Flexibility for Higher Education. The bill reduces oversight for higher education contracting. As introduced, it allows all state agencies to post construction bids on web site instead of by legal notice. CPA Position: Amend to allow some flexibility but to maintain legal notice requirement. STATUS: Amended as requested by CPA and passed General Assembly, awaiting action by Governor.

**SB 292.** Brophy/Labuda. Concerning the Revisor's Bill. The bill makes a number of non-substantive changes to clarify inconsistencies in statute. The bill changes the name of the Open Records Act to the Colorado Open Records Act. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**SB 295.** Boyd/May. Concerning Access to Higher Education. The bill allows institutions of higher education to operate with much less oversight in a number of areas. As introduced, it allows all state agencies to post construction bids on web site instead of by legal notice. CPA Position: Amend to allow some flexibility but to maintain legal notice requirement. STATUS: Amended as requested by CPA and died when Senate adhered to its position on the bill.

**SB 1044.** Roberts/Morse. Concerning Eligibility to Expunge Juvenile's Arrest Record if Original Charge was Direct Filed. The bill allows the record of a juvenile who was originally charged as an adult to be treated as a juvenile record if charges are ultimately pursued against the person as a juvenile. CPA Position: Monitor. STATUS: Signed into law by Governor.

**HB 1079.** Vaad/Renfroe. Concerning Annexation of Adjacent Municipality to Junior College District. The bill allows for an election to allow an adjacent municipality to be annexed into an existing junior college district. The bill makes no mention of the election notification process. CPA Position: Monitor. STATUS: Signed into law by Governor.

**HB 1082.** Peniston/Tochtrop. Concerning Recordation of School Board Meetings. The bill requires all meetings of school boards to be electronically recorded and maintained. CPA Position: Support. STATUS: Signed into law by Governor.

**HB 1085.** Rice/Heath. Concerning Mortgage Loan Originators. The bill addresses mortgage brokers, including changing their statutory reference to mortgage loan originators. It eliminates one report, while retaining the information in the report as public record. It establishes that information that is confidential under state or federal law which is received by the mortgage loan originator remains confidential. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1086.** McGihon/Boyd/ Concerning Professional Competency. The bill addresses several issues concerning competency of licensed professionals. One element says records of assessment or documentation are confidential. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1118.** Murray/Kester. Concerning Record Keeping Requirements. The bill eliminates the requirement that public records be kept bound in a book for several agencies while maintaining the requirements that the records be maintained and made available to the public. CPA Position: Monitor. STATUS: Signed into law by Governor.

**HB 1124.** Liston/Veiga. Concerning Executive Session for State Agencies to Consult Their Attorneys. The bill allows state agencies to go into executive session to consult with their attorneys. The bill was amended at the request of CPA to require such conferences to be recorded under the same terms as other executive session recordings. CPA Position: Monitor after CPA initiated amendment. STATUS: Amended as requested by CPA and signed into law by Governor.

**HB 1145.** Ryden. Concerning Private Investigators. The bill certifies private investigators and provides certified investigators the right to access records otherwise restricted by a records custodian because making such records available would be contrary to the public interest. CPA Position: Oppose. STATUS: Postponed indefinitely in House Judiciary Committee.

**HB 1153.** May/Harvey. Concerning Issue Committees. The bill concerns requirements of issue committees in elections. It has been amended to add a requirement to the existing public notice requirement that the notice include information about the need for issue committees to register and report before participating in local elections. CPA Position: Monitor. STATUS: Signed into by Governor.

**HB 1158.** Waller. Concerning Removal of an Initiative from the Ballot. The bill requires action to remove an initiative from the ballot to occur before the ballot is printed. Any initiative removed from the ballot would not be published as part of legal notice requirement on ballot issues. CPA Position: Monitor. STATUS: Postponed indefinitely in House State Veterans and Military Affairs Committee.

**HB 1165.** Lambert/Cadman. Concerning Implementation of Amendment 54. The bill implements Amendment 54 from the 2008 election concerning restrictions on campaign contributions by people affiliated with businesses that have received sole source contracts from governments. The list of all such contracts would be public records and must be accessible on the internet. CPA Position: Monitor. STATUS: Postponed indefinitely by House State, Veterans and Military Affairs Committee.

**HB 1202.** Todd/Foster. Concerning Regulation of Funeral Industry. The bill creates regulation of the funeral industry. It specifically mentions that records are open. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1207.** C. Gardner/Veiga. Concerning Foreclosures. The bill concerns foreclosures. It maintains requirements for legal notices. CPA Position: Monitor. STATUS: Signed into law by Governor.

**HB 1214.** Benefield/Bacon. Concerning School Data Reporting Requirements. The bill requires the Educational Data Analysis Committee to analyze reporting requirements on schools and make recommendations about reports. The Committee is made up entirely of school personnel. CPA Position: Monitor. STATUS: Signed into law by Governor.

**HB 1251.** Kafalas. Concerning Disclosure of Criminal Justice Records. The bill presumes that criminal justice records are open and requires written notification when a record is denied. CPA Position: Support and seek amendment requesting written reason why a record is denied. STATUS: Postponed indefinitely by House Judiciary Committee.

**HB 1276.** Ferrandino/Carroll. Concerning Foreclosure. The bill makes a number of changes to foreclosure laws including allowing property owners additional opportunities to

redeem their property owners. There is a provision concerning failure to publish notices properly, but all current notices will be retained except in cases where homeowner redeems property before notices are completed. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1288.** Nikkel/Kopp. Searchable Database of State Expenditures. The bill requires a searchable database of state expenditures. Governor Ritter has already established the database through an executive order. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1307.** Benefield/Shaffer. Concerning Colorado Channel Authority. The bill establishes the Colorado Channel Authority which will have expanded responsibility to televise activities of state government and make records of such activities available to the public. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1310.** Levy/Heath. Concerning Independent Contractor Misclassification. The bill establishes program to address issues concerning misclassification of employees as independent contractors. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1316.** Solano/Shaffer. Concerning Public Dissemination of Personal Information of People in Law Enforcement. The bill establishes for people in law enforcement to make limit public dissemination of their personal information if they affirm that it puts them or their family members at risk. CPA Position: Suggest clarifying amendment and monitor. STATUS: Section needing clarification removed from bill and passed General Assembly, awaiting action by Governor.

**HB 1326.** Carroll/Shaffer. Concerning Integrity of Petition Process. The bill concerns petitions for citizen initiated changes to the state constitution or referred laws. It contains a provision stating that petitions are public records. CPA Position: Monitor. STATUS: Passed General Assembly, awaiting action by Governor.

**HB 1335.** Todd/Williams. Concerning Voting Equipment. The bill has a number of provisions concerning voting equipment. It eliminates the requirement that notification that voting equipment audits have been completed be posted in legal notices. CPA Position: Seek amendment to retain notice requirement. STATUS: Amended as requested by CPA and passed General Assembly, awaiting action by Governor.

**HB 1348.** Weissmann/Carroll. Concerning Performance of Legislative Duties. The bill contains a number of issues concerning responsibilities of legislators. It includes a provision concerning disclosure of constituent communications. CPA Position: Monitor. STATUS: Passed House Local Government Committee, lost on second reading in House.

**HB 1350.** Miklosi/Heath. Concerning Establishment of New Energy Improvement District. The bill establishes a Colorado New Energy Improvement District to facilitate the financing of energy saving programs for homes. The District is explicitly subject to open records and meetings laws. CPA Position: Monitor. STATUS: Passed House Local Government Committee, lost on second reading in House.

**HB 1362.** May/Boyd. Concerning Districts to Support State and Community Colleges. The bill allows special districts to be created to provide additional financial support for state or community colleges. Legal notice will be required for tax questions and election notification. CPA Position: Monitor. STATUS: Passed House, postponed indefinitely in Senate Local Government and Energy Committee.

**HB 1369.** Weissmann/Shaffer. Concerning Higher Education Leadership Searches. The bill concerns the process to higher leaders in higher education. It requires there be between three and five finalists and finalist names be made public. The names of applicants are confidential until finalists are named. CPA Position: Monitor. STATUS: Passed House, postponed indefinitely in Senate Education.

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