

Legislators see split in first bills' progress

Written by Marianne Goodland, Legislative reporter

Legislators in northeastern and eastern Colorado batted about .500 at the state capitol in the past week in getting their first bills out of their first committee hearings.

Rep. Jerry Sonnenberg, R-Sterling, and Rep. Greg Brophy, R-Wray, both saw the first bills they introduced this session approved in committee. But Rep. Jon Becker, R-Fort Morgan, facing strong opposition from just about everyone, asked that his bill on limiting transportation funding be postponed indefinitely, meaning it's dead for the session. Brophy also lost one of his bills in committee, on mountain biking liability.

Sonnenberg's bill, House Bill 11-1005, would overturn a measure passed in 2010 that temporarily repealed tax exemptions for agricultural compounds, pesticides and bull semen. The House Agriculture, Livestock and Natural Resources Committee passed the bill unanimously Jan. 31.

HB 1005 was sent to the Finance Committee because its fiscal analysis says it will cost the state \$3.7 million in lost revenue in fiscal 2011-12 and the same amount in 2012-13.

The 2010 law has increased costs for the agricultural and livestock communities, Sonnenberg told the committee.

For example, a dairy with 4,000 to 5,000 cows that pays as much as \$400,000 for medical supplies for its cows also now has to pay up to \$11,000 per year in taxes. That leaves three options, he said: higher costs for dairy products; layoff employees, which hurts the job market; or the third, which is to shut down the operation.

Agribusiness services also are impacted, he explained. Those who sell herbicides must add sales tax, and Nebraska sellers of those products are crossing the state line to advertise to northeastern Colorado farmers that they can buy the same product without paying the sales tax.

Those who sell the herbicides also often get the application business as well. As a result, Colorado not only loses the tax revenue for the herbicide but the sales for the application. "We become an economic driver for Nebraska and Kansas," Sonnenberg said.

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The lone witness testifying against HB 1005, Ali Mickelson with the Colorado Fiscal Policy Institute, told the committee that overturning the 2010 law will cause the state to cut programs from an already lean budget. "Now is not the time" to repeal a measure that has been successful in offsetting cuts to essential community services, she said. There's "no question the ag industry has been asked to pay more," but market contraction and expansion, weather and the drought in Russia has had more impact on the industry than the tax, she added.

Representatives of Rocky Mountain Agribusiness Association testified in favor of HB 1005, pointing out profit margins are already thin, a 2.9 percent sales tax is costing business to those who sell herbicides, and Colorado farmers are left "in the dark" for information when they buy from suppliers in neighboring states and something goes wrong.

The 2010 law has put farmers and their suppliers at an economic disadvantage, according to the Colorado Farm Bureau's Troy Brandencamp, who said raising taxes at a time of economic downturn is poor public policy.

"It didn't make sense to us" to start taxing inputs at the wholesale level for products sold at the retail level, he said, and that may start the state down the road to taxing groceries.

"Pay-go," a philosophy espoused by House Democrats this session to require any costs to the state from 2011 legislation be "budget neutral," entered into Monday's debate with an amendment from Rep. Randy Fischer, D-Fort Collins. His amendment, however, was replaced by another from Sonnenberg and was never formally voted upon, although Sonnenberg acknowledged there is no money to replace the millions of dollars in state revenue that will be lost if HB 1005 passes.

Brophy's big win in the past week was getting a bill passed that would allow students in public schools to keep their life-saving medication on hand, instead of having it locked up in a nurse's or principal's office.

Senate Bill 11-012 was heard by the Senate Education Committee Jan. 27 and again on Feb. 3. Brophy told the committee the issue was brought to him by a "constituent" whom he asked to write him an e-mail on her concerns that he could submit to the proper authorities. Her reply? "He's your son, why don't you write it yourself?"

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Brophy's son, David, has asthma and needs to have his medication on hand, but under current state law the medication is locked up in the principal's office. That can lead to problems when the person with the key is at lunch, he said. And the procedure for permission to keep the medication at school is elaborate—it requires a doctor's prescription, a form signed by a school nurse, another sign-off by the doctor, and then a contract between the student, parents and school nurse on responsibility for the medication.

It's a process that has to be repeated every year, Brophy explained, resulting in lost time for working parents. Let's start over, Brophy told the committee, and assume 99 percent of the kids will use their medication responsibly, and allow the local school boards to deal with those who aren't. SB 12 would eliminate the treatment plan required in state law, and that's where it ran into trouble.

SB 12 was amended substantially by the education committee to keep the language regarding the treatment plan in statute, but to provide an option for a school district policy that allows the student to carry his/her medication. The amendment also requires school districts to determine whether the medication is a risk to other students and ensures the child has a sufficient supply to handle daily needs. Brophy said this week he's very satisfied with those amendments.

Sen. Evie Hudak, D-Arvada, noted a self-carry exception is already contained in the rules of the State Board of Education. (Hudak is a former SBE member.) Hudak also raised concerns that students with medication could be bullied into handing it over to other students. Brophy said the statute he is proposing would address the amount of time, including the annual requirement, needed to achieve permission to carry.

Sen. Jeanne Nicholson, D-Blackhawk, a former school nurse, sided with Hudak, asking why the bill was necessary. "There was a rationale for limiting access to medication," she said, such as pain medication for a broken leg.

But Hudak also said a child with a chronic condition should not have to go through the process every school year. And Sen. Scott Renfroe, R-Greeley, pointed out SBE rules allowed permission to carry only for anti-allergy medication.

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Gerald Keefe, superintendent of the Kit Carson School District, said SB 12 made sense and called it “almost the perfect bill.” Keefe said rural Colorado districts can handle the matter, pointing out “we know our parents, our kids.”

The Colorado Association of School Nurses opposed SB 12. Leah Wyckoff said the state and national associations support self-carry so long as proper protocols are in place. But SB 12 would eliminate the treatment plan currently in statute, and allow students of any age to self-administer any medication, including narcotics and stimulants, she said.

“Our concern is for the safety of all students,” said CASN president Myriam DeLeon.

Dr. Steve Federico of the Colorado Chapter American Academy of Pediatrics said his group and the American Medical Association both opposed the bill, but were open to supporting it if the bill allowed for communication between the physician, parents and schools about when self-carry is most appropriate.

SB 12 also produced a dilemma for the Colorado Association of School Boards; Jane Urschel said CASB could see both sides of the issue, noting the state law had become “overly prescriptive” but CASB had helped write the current law. She suggested the committee find a way to work out the amendments proposed, dealing with local control and protocols, and the education committee delayed its vote on the bill until Feb. 3.

After being amended, SB 12 was approved unanimously and will next be heard by the full Senate.

Brophy’s second bill didn’t fare so well. SB 36 would limit civil liabilities for those who host mountain biking events, and was supported by the state mountain biking organization and the ski industry association, which has similar protections in state law. But it drew opposition from the Colorado Trial Lawyers Association.

George McLaughlin of CTLA, who was involved in bringing the Quiznos Pro Challenge bike race to Colorado, said SB 36 wasn’t good for cyclists and would allow landowners and trail

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builders to be “grossly negligent” without fear of being sued. The bill was killed by the Senate Judiciary Committee on a 5-4 party-line vote.

Becker’s bill, HB 1075, would have eliminated about \$15 million in funding for bike and transit projects from a 2009 law and transfer it to road and bridge projects. The majority of funding from SB 09-108, known as FASTER (Funding Advancement for Surface Transportation and Economic Recovery) goes to road and bridge projects.

HB 1075 drew strong opposition from the Colorado Department of Transportation, the Colorado Municipal League and Colorado Counties Inc.

In a legislative newsletter, CCI reported that county commissioners supported the bike projects, since that construction “is a key element in tourism and economic development efforts.”

The newsletter also pointed out that FASTER was intended to address statewide transportation systems, not just roads and bridges.

In the wake of that opposition, on Feb. 3 Becker asked the House Transportation Committee to kill the bill, which was done by unanimous vote.