

2016 End of Session Report

State Board of Education and Colorado Department of Education

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Brandeberry McKenna (BBMK) is pleased to provide the following report to the State Board of Education (SBE) and the Colorado Department of Education (CDE).

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SECTION 1 SESSION OVERVIEW

As is often the case, much of the substantive work of the General Assembly occurred within the last few weeks of the 120-day session. It was not until May 4 that Governor Hickenlooper’s choice for a replacement for Lt. Governor Joe Garcia was approved. Donna Lynne, a former Kaiser Permanente executive, received widespread support from the legislature and will also serve as the state’s chief operating officer.

Additionally, legislation to avoid a controversial ballot initiative to expand the ability of grocery stores to sell alcohol was introduced and passed in the last week of session. As adopted, the bill would require large retailers wishing to sell liquor to buy up to 20 liquor licenses over a 20-year period of time. In the final three days of the session, lawmakers were forced to deal with a refund of taxes that the State Supreme Court ruled were incorrectly charged to oil and gas companies. In response to the frustration expressed by voters about Colorado’s Presidential primary process, two bills were introduced late in session. Both failed. It is likely that there will be an initiative on the November ballot where citizens will be able to express their preference regarding primary voting laws.

The session was also marked by inaction on two controversial topics that many hoped would finally be resolved. For the second year in a row, the Republican Senate killed legislation to convert the Hospital Provider Fee into an enterprise fund. Doing so would free up room in the budget for spending on other priorities. Also, the two parties were unable to reach consensus around construction defect litigation, which many believe is necessary to spur

construction of affordable housing options for young workers and families. The legislature did adopt a handful of affordable housing related bills including an extension of the Low Income Housing Tax Credit program and the creation of the first time home buyer savings account deduction.

There were some great examples of bipartisan consensus. HB16-1404 created a light regulatory framework to allow the fantasy sports industry to continue operating in Colorado with the passage of the bill. Fan Duel, Draft Kings and smaller companies now have the clarification they need and consumers have the protections they deserve. HB16-1423, concerning measures to maximize trust in the use of student data in the elementary and secondary education system, was adopted unanimously by the legislature. This victory comes on the heels of a data privacy bill in 2015 that was killed late in session and speaks to the power of bi-partisan cooperation.

Obviously the legislature considered many other topics. There was a large numbers of bills related to the treatment of youth in the judicial system. Also, work continues to institutionalize Colorado's new marijuana laws and to work through the numerous questions raised by legalization.

Heading into the legislative session, many predicted a difficult and painful budget. However, once the March revenue forecast came in the Joint Budget Committee reached consensus on a balanced budget relatively quickly. In doing so, they were able to avoid cutting higher education and provide a slight increase which accounts for inflation and enrollment growth for K-12 education. Transportation, which rarely receives money from the general fund, was allocated \$150 million. Overall, total spending will grow by approximately 1.3 percent over last year. The size of the state budget is approximately \$27 billion for the upcoming fiscal year which starts on July 1, 2016.

SECTION 2 STATE BOARD POSITIONS

The State Board of Education took formal positions on seven bills this session. Of the three bills the Board supported, two passed. All four of the bills that the board voted to oppose failed.

HB16-1131 Public Education Standards and Assessment sponsored by Rep. Carver (R) was supported by the Board, but failed in the House Committee on Education. Currently, Colorado participates in the PARCC consortium, though the statutory timeframe for that requirement has already expired. This bill would have repealed the requirement that the state participate in the consortium. Additionally, if requested by the State Board of Education, CDE would have been required to recommend a plan for the board to approve testing options for local education providers to administer for each subject and grade in which state tests are required. Finally, the bill would have repealed the requirement for a recurring bid process for an eleventh grade test, and instead would have required that the state board select a new test no later than July 1, 2021.

HB16-1222 by Rep. Rankin (R) and Senators Todd (D) and Hill (R) passed and was supported by the State Board. The bill creates the Supplemental Online and Blended Learning Program and requires that CDE continue to designate a BOCES to design and articulate a statewide plan for supplemental online and blended learning, and to lead, manage, and administer that statewide program. The bill identifies some minimum goals for the program, and authorizes funding of \$480,000. The administering BOCES is required to ensure that all schools in the state have access to supplemental online and blended learning resources, professional development for teachers, and consulting assistance. The BOCES is also required to actively market the program.

HB16-1423 is the student data privacy bill which was also supported by the board. Please see Section 3 for a full description of this successful effort.

HB16-1121 Performance Evaluation National Board Certified Teacher sponsored by Rep. Arndt (D) was opposed by the board and failed at the Capitol. This bill would have permitted a school district board of education or a BOCES to exempt National Board Certified teachers from the annual requirements of its evaluation system for up to three years.

HB16-1343 Waivers for Charter Schools sponsored by Rep. Moreno (D) was opposed by the State Board and did not pass. The bill would have repealed the authority of the SBE to automatically waive certain state statutes or board rules for charter schools.

SB16-045 Add to Financial Literacy Standards for Schools sponsored by Senator Todd (D) and Rep. Pettersen (D) failed in the Senate Committee on Education. The Board's opposition to the bill was noted by the Committee. This bill would have required that state standards include the knowledge and skills necessary to understand the financing of higher education or other career-related postsecondary education, and for retirement planning.

SB16-079 Align Secondary and Post Secondary CTE Initiatives sponsored by Senator Todd (D) and Rep. Young (D) failed in the House Committee on Education. This bill would have allowed school districts to align the ICAP process with the career pathways process. Many districts are already doing this.

SECTION 3 DATA PRIVACY

In 2015, the Legislature considered but failed to adopt a bill to protect the privacy of K-12 students. Following last year's session, the State Board of Education elevated its role in ensuring that data collected on Colorado's students was both limited and protected. In addition to working with the Department to enhance existing CDE practices, the Board also proactively pursued data privacy legislation this session. Brandeberry McKenna was pleased and honored to play a role on the Board's behalf in passing HB16-1423, which is being hailed as the strongest data privacy bill to be adopted in the country. Representatives Paul Lundeen (R) and Alec Garnett and Senator Owen Hill (R) were fabulous partners in this effort.

Highlights of the data privacy legislation include the following:

- The bill distinguishes between "school service contract providers" which enter into a formal, negotiated contract with a public education entity and "school service on-demand providers" which are primarily providers of learning apps. In doing so, it is the first bill in the country to impose some limited requirements on app providers and allows for stronger requirements on contractors.
- "Student Personally Identifiable Information" (student PII) means information that alone, or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated or inferred by a public education entity, either directly or through a school service, or by a school service contract provider or a school service on-demand provider.
- Research agreements that involve student PII must now comply with the same restrictions as vendors.

- Data collected for purposes of a contract must now be destroyed when no longer needed for the purpose specified in the contract.
- School districts may only contract with vendors who meet privacy requirements. If a vendor fails to meet the privacy standards the contract must be reviewed and may be terminated.
- School districts must post on their website a list of all data collected above-and-beyond state and federal requirements and they must also provide a list of learning apps being used by teachers. Additionally, they must adopt privacy policies.
- Vendors are required to provide information about the types of student PII collected.
- Vendors can only collect, use or share student PII for the purposes authorized in the contract or with the consent of the student or student's parent.
- Vendors may not sell student PII, use or share PII for the purposes of targeted advertising to students, or use student PII to create a personal profile of a student for purposes not authorized by a contract.

SECTION 4 CHARTER SCHOOLS

The statutory treatment of charter schools and funding equity were substantive conversations at the Capitol in 2016. There were four bills specific bills introduced this session related to charter schools including HB16-1343 described above.

SB16-187 by Sen. Hill (R) and Rep. Williams (D) would have impacted the way charters are treated by the state and school districts. The bill failed, however, many of its components were incorporated into HB16-1422, the School Finance Act. Specifically, streamlining of charter audit requirements, notification to charters about vacant district buildings, more detailed accounting of district services to charters and rules for allocation of some special state and federal funding to charters were all passed within HB16-1422.

SB16-188 by Sen. Hill (R) and Reps. Williams (D) and Sias (R) addressed mill levy override revenue and would have required sharing of such revenue with district charter schools. This bill failed as well, but we anticipate that this conversation will continue next year.

SB16-208 Funding for Charter Schools the Convert sponsored by Senator Hill (R), Rep. Williams (D) and Rep. Sias (R) passed both houses of the Legislature. This bill clarifies that if a district charter school converts to an institute charter school, or an institute charter school converts to a district charter school, the converted school's funding is still calculated using the formula that applied to the school before the conversion.

SECTION 5 STANDARDS AND ASSESSMENTS

Relative to 2015, this legislative session was much quieter on the issue of statewide assessments and standards. There were a few bills, however, that addressed these topics.

HB16-1234 State Assessment Selection & Local Flexibility has passed both Houses of the Legislature and is on its way to the Governor where approval is expected. This bill directs CDE to investigate methods for local school districts to choose an assessment method for mathematics, English language arts, science and social studies and use the data

from these assessments for the state accountability system. The bill also requires CDE to apply to the federal department of education for innovative assessment and accountability demonstration authority.

HB16-1365 High School Diploma Endorsement in Biliteracy sponsored by Rep. Moreno (D), Rep. Wilson (R) and Senator Woods (R) failed in the Senate Committee on State, Veterans, & Military Affairs. The bill would have authorized a school district, Board of Cooperative Educational Services (BOCES), or institute charter high school to grant a diploma endorsement in biliteracy to a student who demonstrates proficiency in English and at least one foreign language.

HB16-1446 K-3 English Learner Reading Assessment Language passed third reading in the house but failed in the Senate State, Veterans and Military Affairs Committee. This would have given school districts the option of administering READ Act Assessments entirely in Spanish or English. The bill was introduced in response to the State Board's action in March which required districts to conduct at least one READ assessment in English each year.

SB16-005 by Sen. Vicki Marble (R) would have prohibited a statewide assessment of students in ninth grade. This bill was lost on the Senate floor in a close, but unrecorded, vote.

SECTION 6 CAREER PATHWAYS

The legislature continued to express an interest in the connection between K-12, higher education and career pathways for students.

HB16-1144 Transparency College Courses High School Students was signed into law by the Governor on March 31 and went into effect immediately. This bill is specific to the concurrent enrollment program and requires that local education providers notify students and parents if the postsecondary course in which the student enrolls does not meet the requirements for concurrent enrollment.

HB16-1198, sponsored by Rep. Pabon (D), Rep. Wilson (R), Senator Tate (R) and Senator Kerr (D) was signed in to law by the Governor on April 21. This bill requires that when the State Board of Education revises and readopts mathematics or science academic content standards for preschool through elementary and secondary education, the board include standards for knowledge and skills related to computer science.

HB16-1289 creates a pilot program for providing financial incentives to schools for providing career training. With a tiered system based on career fields, each school will receive a thousand dollars for every student who completes specified in-demand career training. The bill passed both Chambers and is on its way to the Governor's desk.

SECTION 7 RURAL SCHOOLS

Much of the discussion about rural schools and the specific challenges they face occurred during the budget process. As introduced by the Joint Budget Committee, the Long Bill would have phased out the existing practice of funding all districts as if they have at least 50 students, even if the student count is below 50. There was a significant backlash, however, and the final budget bill did not include this provision. During the debate on the School Finance Act, funding for a small number of rural districts that have been negatively impacted by a decline in oil and gas activity

was also an issue. The final compromise was to provide approximately \$1 million in grant funding to districts who are now feeling the negative factor for the first time. The State Board will implement this process.

SB16-104, introduced by Senator Todd (D), Senator Sonnenberg (R) and Rep. J. Becker (R) creates several methods to address the problem of recruitment and retention of teachers in rural school districts of Colorado. In collaboration with CDE and other interested stakeholders, the Department of Higher Education is to develop and issue an RFP to fund a rural education coordinator. Additionally, they will provide up to forty financial stipends annually, not to exceed \$2,800 per student, to offset tuition costs for students in approved educator preparation programs who agree to student teach in rural school districts. The program also will provide up to twenty financial stipends, not to exceed \$6,000 each, to any teacher in a rural school or district who is seeking certification as either a National Board Certified Teacher or as a concurrent enrollment teacher.

HB16-1440, sponsored by Rep. Wilson (R), Rep. Pettersen (D), Senator Johnston (D) and Senator Holbert (R) has passed the House and Senate and will be sent to the Governor for his signature. This bill would extend the provision of submitting a performance plan every two years instead of annually if the district is accredited with distinction or operating under a performance plan to all school districts. Additionally, the bill requires the state board to ensure that policies, guidelines and rules to not impose an undue burden to local education providers.

SECTION 8 OTHER BILLS OF INTEREST

HB16-1373 introduced by Rep. Singer (D) was adopted by the legislature. This bill requires that every school district adopt a policy that authorizes a student's parent or medical professional to assist students holding a valid recommendation for medical marijuana to possess the medicine on school property.

HB16-1463 introduced by Rep. Moreno (D) was lost in second reading in the Senate. This bill would have given schools that option of charging students who do not qualify for free or reduced lunch for breakfast after the bell.

SB16-077 sponsored by Senator Kefalas (D), Rep. Ginal (D) and Rep. Primavera (D) was also adopted. This bill directs HCPF, CDE, CDHE and CDLE to incorporate the concept of employment first for persons with disabilities within the course of their existing work. It also sets up a task force to coordinate the work of the different agencies, which includes a representative of CDE.

SECTION 9 LOOKING AHEAD

In addition to the Presidential election this Fall, voters will consider candidates for all 65 seats in the Colorado House and half of the seats in the Colorado Senate. There are nine members of the Colorado House who are term-limited. The House is currently controlled by Democrats who have 34 seats compared to 31 for the Republicans. Key House races to watch include the following:

- House District 3, Centennial and Cherry Hills Village. This seat is being vacated by Rep. Dan Kagan (D) who is term-limited and running for the State Senate. Always on the competitive list, the Democratic candidate will be determined by a primary between Meg Froelich and Jeff Bridges. The Republican candidate will be determined by a primary between Katy Brown and Rick Gillit.

- House District 17, Colorado Springs will feature a re-match between current Rep. Kit Roupe (R) and Tony Exum (D) who held the seat until 2014.
- House District 30, Adams County. Rep. Joann Windholz (R) won a surprise victory in 2014 against Jenise May (D) who is now running for the Senate. She will compete against the winner of a three-way Democratic primary.
- House District 40, Aurora. Rep. Janet Buckner (D) who was appointed to her seat last summer after the death of her husband Rep. John Buckner will compete against Republican Spencer Wellman.

In the Senate, there are eight term-limited members including the Senate President Bill Cadman and the Majority Leader Mark Scheffel. The Senate is currently controlled by Republicans who have an 18-17 majority. All eyes will be on the following races, the outcome of which will determine who runs the State Senate for the next two years.

- Senate District 19 is another re-match. In this one, current Sen. Laura Woods (R) is running against her 2014 opponent Rachel Zenzinger (D).
- Senate District 25, Adams County features a race between current Republican Rep. Kevin Priola (R) and Democrat Jenise May (D).
- Senate District 26, Centennial. Current Democratic Rep. Dan Kagan (D) is running against Republican Nancy Doty (R).

It has been an active primary season for both parties. The primary election will conclude on June 28. Ever since the primary was moved from August to June, it has hindered the ability of incumbent legislators to campaign. It will be interesting to see if the calendar proves to be an asset to challengers. Brandeberry McKenna will keep a close eye on the primary elections and provide information on the outcomes at the end of June.

Colorado voters will also have a few ballot initiatives to consider. At this point, the only measure that has qualified for the ballot is Amendment 69 which would create a single payer health care system. Pending proposals include restrictions on oil and gas development, minimum wage increase, redistricting and liquor licenses. We will monitor the ballot approval process and provide updates as they become available. To qualify for the November ballot, sufficient petition signatures must be submitted by August 8.

Finally, the legislature has given the green light to a few Interim Committees including: 1) Cost-benefit Analysis of Legalized Marijuana in Colorado; 2) Communication between the Department of Health Care Policy and Financing and Medicaid Clients; and 3) Education Policies. Legislators responsible for the Education Policies committee have indicated they want to focus on understanding the new federal education law. They also anticipate hosting most meetings after the elections. The legislature has also recreated a Statutory Revision Committee which will examine current statutes and judicial decisions for defects. This Committee is charged with reporting any recommended changes to the legislature by November 15 or each year.

Additionally, the Transportation Legislative Review Committee and the Water Resources Review Committee will meet as usual. In addition to monitoring Interim Committees, BBMK will continue to attend meetings of the Colorado Cost Commission on Affordable Health Care and the Connect for Health Board of Directors.

As always, the BBMK team will spend a great deal of time over the Summer and Fall meeting with legislators and engaging in policy discussions with our clients and members of the General Assembly. We look forward to providing additional information.

SECTION 10 COMPREHENSIVE LIST OF K-12 LEGISLATION

Bill #	Sponsors	Short Title	Final Status
HB16-1131	CARVER	Public Ed Standards & Assessments	Failed. Board voted to support at February Meeting 5-2
HB16-1222	RANKIN / TODD	Supplemental Online Ed & Blended Learning Resources	Passed. Board voted to support via email 7-0
HB16-1423	LUNDEEN / HILL	Student Data Collection Use Security	Passed. Board voted to Support at April meeting 7-0.
HB16-1121	ARNDT / MERRIFIELD	Performance Evaluation Natl Board Certified Teacher	Failed. Board voted to oppose at February Meeting 7-0
HB16-1343	MORENO	Waivers For Charter Schools	Failed. Board voted to oppose via email 6-1.
SB16-045	TODD / PETTERSEN	Add To Financial Literary Standards For Schools	Failed. Board voted to oppose via email 6-1.
SB16-079	TODD / YOUNG	Align Secondary and Postsecondary CTE Initiatives	Failed. Board voted to oppose via email 6-1.
SB16-072	KERR	Increase Annual BEST Lease-purchase Payment Cap	Passed. Board voted to monitor at February Meeting.
HB16-1002	BUCKNER / KERR	Employee Leave Attend Child's Academic Activities	Failed
HB16-1016	YOUNG	Using Multiple Measures Of Student Academic Growth	Failed
HB16-1022	WILSON	Full-day Kindergarten Funding	Failed
HB16-1036	SALAZAR / ULIBARRI	History And Culture In Civil Government	Failed
HB16-1050	PETTERSEN / MERRIFIELD	Low-income Parents Ed Child Care	Failed
HB16-1098	LAWRENCE	School Discipline Reporting Requirements	Passed
HB16-1099	SALAZAR	Repeal Of Mutual Consent Teacher Assignment Reqmt	Failed
HB16-1100	PETTERSEN	Define Tuition Status Unaccompanied Homeless Youth	Passed

Bill #	Sponsors	Short Title	Final Status
HB16-1128	LUNDEEN	Extending Concurrent Enrollment Statewide	Failed
HB16-1130	PRIOLA / JOHNSTON	Changes To CDE Reports	Passed
HB16-1144	BECKER J.	Transparency College Courses High School Students	Passed
HB16-1162	NAVARRO	Low-performing Schools Admin Salary Increases	Failed
HB16-1171	PETTERSEN / WOODS	Sunset CO Special Ed Fiscal Advisory Committee	Passed
HB16-1198	PABON / TATE	Computer Courses Fulfill Graduation Requirements	Passed
HB16-1225	PRIOLA / TATE	School Districts Must Post Director Candidate Info	Passed
HB16-1234	KLINGENSCHMITT / MERRIFIELD	State Assessment Selection & Local Flexibility	Passed
HB16-1282	BECKER K.	Align Regular Biennial School Elections & FCPA	Passed
HB16-1287	ROSENTHAL / COOKE	CDLE Pre-apprenticeship & Apprenticeship Study	Passed
HB16-1288	KRAFT-THARP / TATE	Industry Infrastructure Grant Program	Passed
HB16-1289	DURAN / GARCIA	Incentives To Complete Career Development Courses	Passed
HB16-1291	DURAN / HILL	Modern Technology Education In Public Schools	Failed
HB16-1302	DURAN / NEWELL	Align With Workforce Innovation & Opportunity Act	Passed
HB16-1305	FIELDS / NEWELL	Educator Training To Assist Students In Crisis	Failed
HB16-1354	MITSCH BUSH	Debt-free Schools Act	Passed
HB16-1365	MORENO	High School Diploma Endorsement In Biliteracy	Failed
HB16-1373	SINGER	Student Medical Marijuana Use At School	Passed
HB16-1422	HAMNER / LAMBERT	Financing Public Schools	Passed
HB16-1429	PETTERSEN / KERR	Alternative Ed Campus Criteria & Pilot Program	Passed

Bill #	Sponsors	Short Title	Final Status
HB16-1440	WILSON	Admin Flexibility For School Districts And Schools	Passed
HB16-1446	HAMNER / MARBLE	K-3 English Learner Reading Assessment Language	Failed
HB16-1449	DANIELSON	Safe Contracting For School District Services	Failed
HB16-1463	MORENO / KERR	Breakfast After The Bell Authority To Charge	Failed
SB16-005	MARBLE / SAINÉ	Eliminating Statewide Assessments In 9th Grade	Failed
SB16-035	JOHNSTON	The Public School Fund	Passed
SB16-052	KERR	Certify Authorizers Of Multi-district Online Schools	Failed
SB16-066	STEADMAN / HAMNER	Recreating School Finance Contingency Reserve Fund	Passed
SB16-077	KEFALAS / GINAL	Employment First For Persons With Disabilities	Passed
SB16-104	TODD / BECKER J.	Incentives To Build Number Of Rural Teachers	Passed
SB16-105	MERRIFIELD	Adjustments To Educator Performance Evaluation System	Failed
SB16-148	HILL / MORENO	Require Civics Test Before Graduate High School	Passed
SB16-154	LUNDBERG	Tax Credits For Nonpublic Education	Failed
SB16-187	HILL / WILLIAMS	Measures Affecting Charter Schools	Failed
SB16-188	HILL / WILLIAMS	Access To Resources For Charter Schools	Failed
SB16-208	HILL / WILLIAMS	Funding For Charter Schools That Convert	Passed