# UNDER THE DOME

WITH THE NCLA

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## QUIET, COMPROMISE AND A FEW GAINS PERMEATED 2014 SESSION

For business, the 2014 Legislative Session presented itself as a year of relative quiet, unnecessary compromise, and some economic development gains.

2014 was the second year of a Democrat-controlled Colorado legislature. 2014, however, presented a wholly different political landscape for the Democrat majority. A majority that was bruised by recall elections and a narrowing of the Senate majority margin to one-vote. The result? A more strategic and purposeful majority whose eyes were on the November elections and on maintaining and growing their vote margins.

From flood recovery, energy, and transportation funding to tax policy, labor, and economic development, the Northern Colorado Legislative Alliance, meanwhile, actively engaged on those critical issues upon which the legislature deliberated for 120-days. Below, we've provided a summary of key issues and policies which defined the 2014 Legislative Session for the NCLA.

### FLOOD RECOVERY

Northern Colorado was rocked by a disaster that left the region quickly responding to rebuild. In the process, it became evident that there were gaps in both authority to act, needs, and ability to respond swiftly in some critical areas. With NCLA's strong backing, a joint legislative committee was formed to address the gaps so the right policies are in place if and when the next disaster hits Colorado.

House Bill 14-1001: Tax Credit for Property Destroyed by Natural Cause
NCLA Position: Support
Outcome: To Governor

After considerable work on the mechanics of this proposal to offset the property tax for business and home owners of property destroyed by the 2013 flood, and future disaster, HB 1001, by Representative Jonathan Singer (D-Lyons) and Senator Jeanne Nicholson (D-Black Hawk) established a state reimbursement to county treasurers for property taxes forgone due to proration of assessed value after a property has been destroyed. The bill applies to real property destroyed by a natural cause as well as business personal property.

House Bill 14-1006: Tax Remittance for Local Marketing Districts
NCLA Position: Support
Outcome: To Governor

Significant to recovering from disaster is the ability of local communities to market to the world that their communities are open for business. Prior to passage of HB 1006, local marketing districts were recipients of quarterly allocations of tax proceeds leaving them in a potentially difficult cash flow position in the case of a disaster. HB 1006, sponsored by Singer and Senator Kevin Lundberg (R-Berthoud) and prompted by the Estes Park experience, mandates that proceeds flow monthly to assure good cash flow, especially in the case of a disaster.

Senate Bill 14-007 County General Fund for Road & Bridge Flood Damage
NCLA Position: Support
Outcome: Signed by Governor

Quickly rebuilding infrastructure in the region after the floods became the top priority for the state and local communicates. The emergency, however, brought to light the statutory prohibition of county governments to use their general fund dollars for road and bridge projects. Senate Bill 14-007, by Lundberg and House Minority Leader Brian DelGrosso (R-Loveland) resolves the problem in the case where a disaster emergency is declared in an applicable county.

## Transportation

I-25 north serves as the major north-south spine for the multitude of significant east-west corridors that bind northern Colorado into a strong economic engine. Staying ahead of the congestion curve along this crucial corridor is imperative to maintaining northern Colorado's economic strength.

A third lane from Highway 66 north of Longmont to Highway 14 in Fort Collins is the one of the highest transportation funding priorities for the Northern Colorado Legislative Alliance, the region's business coalition. Under traditional funding scenarios, the $1.2 Billion project is projected to be completed in 75 years. Given this timeline, the NCLA supports, and will lead in collaboration with our elected officials, the pursuit of any and all funding options to expedite funding of this critical corridor

Despite the increasing demands upon the transportation system, it has not been funded by the state general fund in many years, especially with the downturn in the economy.

House Bill 14-1259: General Fund Transfer To State Highway Fund
NCLA Position: Support
Outcome: Killed, House Appropriations Committee

House Minority Leader DelGrosso attacked the significant statewide transportation funding shortfall with a proposal to direct a $100 M cash appropriation for transportation projects throughout the state. Certain caveats in the bill made it particularly beneficial to the northern transportation region, including appropriations of the funds being allocated on a per lane mile basis and restrictions on the use only for road construction. Under the weight of other funding priorities, the House Appropriations Committee defeated the bill. DelGrosso has committed to revisiting the issue in 2015 with NCLA continued support.

## TAX POLICY

Business personal property tax (BPPT) has the notable distinction of being the most onerous tax Colorado imposes upon its taxpayers. Most public policy makers acknowledge the fact. However, repealing the tax outright has been an impossible feat. While NCLA continues to consider a comprehensive solution, this legislative session, the NCLA continued its leadership on providing relief for small and capital intensive businesses.

Addressing the BPPT issue in a comprehensive manner has been difficult with Colorado's complex tax policy, which includes the Gallagher Amendment and TABOR. The goal of doing so, however, remains top of mind for NCLA. During the upcoming interim period, NCLA will review current opportunities to address the issue in a more comprehensive and meaningful manner.

Senate Bill 14-183: Business Incentive Agreement Maximum Term
NCLA Position: Strong Support
Outcome: To Governor

Senate Bill 183, by Senators Mark Scheffel (R-Douglas County) and Senate Majority Leader Rollie Heath (D-Boulder), and House Assistant Minority Leader Dan Pabon (D-Denver) and Representative Chris Holbert (R-Douglas County) Rebuilds upon NCLA's success on BPPT relief for two years running and is the final piece of a three phase effort to provide local governments great latitude in providing relief of business personal property tax (BPPT) for attracting and retaining capital intensive businesses. Business Incentive Agreements (BIAs) are an economic development tool created in response to the onerous BPPT and its deterrence for new capital investment. BIAs are agreements between a local government and a business organization in trade for a commitment to capital investment in their Colorado business.

During 2013, NCLA secured passage of legislation, House Bill 13-1206 to bolster the retention of capital-intensive businesses who might otherwise consider leaving Colorado to find a better tax climate in light of Colorado's onerous business personal property tax. HB 1206 gave full discretion to local governments to negotiate BIAs with qualified

businesses to offset the business personal property tax. Under SB 14-183, the measure is taken one step further to allow the local government to negotiate all terms of the agreement including the contract time period that is currently capped at 10 years. The cap was moved to 35 years. It is anticipated this will promote strong interest in Colorado, and northern Colorado in particular, by the capital-intensive technology and manufacturing sector.

House Bill 14-1279: Income Tax Credit For Business Personal Property
NCLA Position: Support
Outcome: To Governor

With passage of HB 1279, by Representative Dave Young (D-Greeley) and Scheffel, businesses will be eligible for a business a refund on the amount of BPPT paid up to a $15,000 valuation. Under current law, businesses are exempt from the tax up to $7000 in valuation. For the first time, the state is a participant in the BPPT relief game by providing the necessary general fund funds to cover the refund obligation.

## Economic Development

With state revenues projecting upwards during 2014, policy makers opted to pursue a multitude of economic development incentive proposals, many of which included tax credits and exemptions. While many were unsuccessful, a focus upon advanced industries, including high tech, bioscience, renewable energy, among others, saw success in 2014.

House Bill 14-1012: Advanced Industry Investment Income Tax Credit
NCLA Position: Support
Outcome: To Governor

Three years ago, the NCLA, working with then-Representative John Kefalas (R-Fort Collins and now Senator) proactively sought and passed legislation to create the oft-named Angel Investor Tax Credit. The $750,000 program found important success at a time when the economy was in a significant slump and finding capital for startups was difficult. For those startups who took advantage of the program to encourage angel investment, the program made the difference between success and failure.

The program was reframed in a 2014 proposal, House Bill 14-1012 by Senator Kefalas to align with the Office of Economic Development's Advanced Industry targets and this time around will provide $750,000 in allowable tax credit funds for 2015, 2016 and 2017 with $375,000 available in 2014. The credit is equal to 25% of the qualified investment with a maximum credit of $50,000 for each investment.

House Bill 1014: Modify Job Growth Incentive Tax Credit
NCLA Position: Support

Outcome: To Governor

HB 1014 by Minority Leader DelGrosso built upon the success of the job growth incentive tax credit passed in 2010 and renewed in subsequent years. The tax credit is extended to firms that create 20 or more jobs in urban areas, and 5 jobs in rural Colorado, pay wages of at least 110% of local wage and is equal to one-half of the amount the employer is required to pay in federal social security and Medicare taxes on the created jobs.

## Oil and Gas

During the session, anti-fracking advocates read the legislative tea leaves and concluded they would have a difficult time overcoming the one-vote margin in the Senate to impose substantial regulations on fracking. Covering their political bases, they have opted to pursue two non-legislative solutions. They have lauded the actions of the Air Quality Control Commissions to approve more stringent rules against methane emissions from oil rigs. In February, they submitted proposed constitutional amendment to give local governments more control over drilling.

In the shadow of looming ballot initiatives dictating local control, several in the oil and gas industry engaged in last minute negotiations in the waning days of the 2014 Legislative Session between with the Governor's office and anti-fracking advocates to define a more moderate solution. The negotiations, however, left more questions than answers and the possibility of a special session in their wake.

That is not to say some some legislative approaches weren't pursued.

House Bill 14-1297: Analyze Health Data Regarding Front Range Oil/Gas
NCLA Position: Oppose
Outcome: Killed, Senate Appropriations

Rep. Joann Ginal (D-Fort Collins) introduced legislation which directed the Department of Public Health and Environment to conduct an analysis of the human health and quality of life within the Larimer, Weld, Boulder and Adams Counties with the intent of understanding any possible effects of oil and gas operations on communities within the select counties. Although appreciative of the intent behind the proposal, NCLA opposed the legislation on the grounds that data presently exists making HB 1297 unnecessary and concern of an unintended consequence of unnecessarily hindering continued growth in the oil and gas sector.

## Labor

While there is always room for improvement in creating a positive business climate in Colorado, there are some areas of public policy where Colorado has found equilibrium. For Colorado's employers and employees, Colorado's labor laws are national recognized as balanced, fair and working.

The NCLA was disappointed in some of our business brethren who succumbed to the threats of labor and gratuitously negotiated on various labor policies despite NCLA affirming votes to assure the defeat of any measure brought forth by labor. Specifically, modifications to the current worker's compensation system were offered despite labor's failure to demonstrate meaningful problems with the current system and excessive new steps for employers to take to protect an employee's wages.

Fortunately, the ultimate policy provisions will have limited consequence on Colorado business' bottom line. However, a wedge has been created in the coalition of business organizations by labor such that precedence dictates that business will negotiate under pressure and Colorado's balanced business climate will be undermined by efforts by labor to nick away for employee advantage.

House Bill 14-1383 Worker's Compensation Physician Choice
NCLA Position: Oppose
Outcome: To Governor

Under current law, employers provide two options of doctors from which employees may choose should the need for worker's compensation arise. The doctor choice provision, which also includes the option to make a change should the first choice not be an appropriate fit, was finely negotiated years ago between business and labor and is attributed to making Colorado's worker's compensation system fair and balanced between employer and employee.

With the passage of HB 14-1383, sponsored Rep. Angela Williams (D-Denver), Chair of the House Business Affairs and Labor Committee, employees now have the benefit of an increase the number of doctors from which employees may choose from two to four, with a provision for rural areas of the state. While worker's compensation insurers, including Pinnacol, revealed that insurance premiums are not anticipated to increase, it is expected that businesses will incur increased operational costs to administer the increase in the number of doctors with whom employers must newly establish a relationship.

The NCLA Board of Directors took a position to actively oppose HB 1383. NCLA's opposition is premised upon a currently highly ranked and balanced worker's compensation system that is working for both employer and employee and the anticipated increased cost to business. We stood with numerous statewide business organizations and chambers in our opposition, however, the Colorado Association of Commerce and Industry, opted to negotiate and support the measure believing doing so will forestall additional costly reforms in the future. We disagreed.

Senate Bill 14-005: Wage Protection Act
NCLA Position: Oppose
Outcome: Signed by Governor

Labor groups lined up to push legislation again this year to respond to what they say is a vast problem for Colorado's employees: Wage theft or a failure by employers to pay

wages. As introduced, the legislation by Senator Jessie Ulibarri (D-Commerce City) and Rep. Singer created untenable thresholds and requirements upon employers to address a problem the Department of Labor proves is minimal. The business community killed a similar bill during the 2013 legislative session, a politically more tenuous year.

Prior to passage of SB 5, employers faced civil penalties if they failed to compensate employees for work performance. To recover wages and penalties from an employer, an employee had to submit a written demand to the employer with certain financial penalties accruing to the employer.

CACI, alongside the Denver Chamber, negotiated with labor and crafted a compromise which provides for a series of required notices the division must send in writing, response deadlines for those notices and an appeals process. However, a misdemeanor offense, the issuance of a citation creating the rebuttable presumption of willful intent and the increased penalties were left untouched. Additionally, while other obligations upon the employer were untouched, including the obligation to maintain employee wage records for 3 years, an employer may have any action by the employee dismissed if the employer reimburses its employee for the full amount claimed.

Despite attempts at compromise and consideration of the various amendments, NCLA Board opted, by unanimous vote, to maintain its opposition SB 5 as the negotiated bill established an unnecessary and burdensome process for all employers to abide in order to solve a problem that exists in very small percentage of employer-employee circumstances.

Senate Bill 14-196: FAMLI Insurance Program Wage Replacement
NCLA Position: Oppose
Outcome: Killed, Senate Appropriations

Senator Ulibarri introduced a bill creating a new family leave insurance program to be applicable to all businesses in the state and administered by state government. Defeated, Senate Bill 196 would have provided up to 12 weeks of compensation for employees who take leave of employment to care for a new baby, to care for a family member or to care for themselves in the case of an inability to work due to illness or injury. The program would be funded by a new payroll deduction of 0.42 percent of gross pay from all employees of Colorado businesses. Senator Ulibarri is anticipated to revisit the issue a third time in 2015.

House Bill 14-1377: Colorado Retirement Security Task Force
NCLA Position: Oppose
Outcome: Killed, Senate 2nd Reading

Believing barriers exist for Coloradoans to have retirement security, Speaker of the House Mark Ferrandino (D-Denver) and Joint Budget Committee Vice-Chair Pat Steadman (D-Denver) introduced House Bill 14-1377 to promote retirement security for Coloradans. The bill was defeated in the Senate but proposed to establish the Colorado retirement security task force tasked with developing recommendations for establishing a statewide secure retirement plan for private sector employees. The task force was to also analyze any potential state savings in public assistance expenditures that a potential statewide secure retirement plan may provide.   Concerns arose in the business community that such program would be a mechanism to salvage the state's beleaguered Public Employees Retirement Association (PERA) system.  A national trend, we expect this bill to be back in