

Legislative Preview 2011

Budget cuts again top worry

2011 may be a session without a big reform bill

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Many in education are hoping 2011 will be the first Colorado legislative session in three years without a “big” education reform bill, but that doesn’t seem to mean that it won’t be a busy session for K-12 schools and the state’s colleges and universities.

The last three legislative sessions have seen a flurry of major bills on testing and standards, school accountability, teacher pensions, higher education finances and educator evaluations.

Many lawmakers and interest groups hope 2011 will provide a legislative break so that state and local education leaders can focus on digesting and implementing the initiatives of the last three years.

The budget, a top issue in past sessions, can’t be avoided this year either. A major topic of debate will be how to minimize inevitable cuts to state support for K-12 schools and to spending on colleges and universities.

And, based on *Education News Colorado* interviews with some 30 lawmakers, lobbyists and executive branch officials, the 2011 session is likely to see legislation to reduce state mandates on school districts, allow



instate tuition for undocumented students, on charter schools and to study school bullying.

Other issues mentioned include legislation on college student remediation programs, student fees, school accountability, district enrollment counts, testing, student physical activity and - perhaps - school vouchers and public employee pensions.

A major Capitol change for 2011 will be the new occupant of the first-floor governor’s office, former Denver Mayor **John Hickenlooper**.

Outgoing Gov. **Bill Ritter** made education a top priority during his four years in office. It’s not clear yet what initiatives Hickenlooper might take up, although many observers expect he’ll make jobs and economic development the top priority at the start of his administration.

Hickenlooper’s campaign platform on education stressed implementation of reforms begun in the last three years, and on the campaign trail he emphasized that he saw no current public appetite for tax increases to strengthen school or other government funding.

A 20-member transition advisory committee on education identified five challenges facing education – achievement gaps, sustainable funding,

implementation of recent reforms, developing and retaining great teachers and P-20 coordination.

Among recommendations made by the transition panel were full implementation of recent reforms, establishing a P-20 “cabinet” or commission in the lieutenant governor’s office and formation of a bipartisan task force on long-term and sustainable P-20 funding.

Two key figures in the Hickenlooper administration have strong education backgrounds. Lt. Gov. **Joe Garcia** is former president of Colorado State University-Pueblo and Pikes Peak Community College and was co-chair of Ritter’s P-20 Education Coordinating Council. Chief lobbyist **Christine Scanlan** is a former legislator and was a prime sponsor of both the Colorado Achievement Plan for Kids and Senate Bill 10-191, the educator effectiveness law.

And, Hickenlooper recently was named chair of the Education Commission of the States.

Another key statehouse change for this year is split party control of the legislature after six years of Democratic majorities. For the next two sessions Republicans will control the House with a 33-32 majority. Democrats lost one Senate seat but still hold a 20-15 majority.

“Everybody’s trying to figure out how to work with the split. ... The coalitions will look very interesting,” said Sen. **Mike Johnston**, D-Denver, a member of the Senate Education Committee and author of SB 10-191.

“I think it’s going to be positive,” predicts Sen. **Keith King**, R-Colorado Springs and a veteran voice on education issues.

Rep. **Tom Massey**, R-Poncha Springs and new chair of the House Education Committee, said, “I think it will create a good balance, quite honestly.” Massey, who worked successfully on key education issues with Democrats over the last three years, is seen as a key figure on education this session. “Rep. Massey is a level-headed person,” said Sen. **Bob Bacon**, D-Fort Collins, who’s returning as chair of Senate Ed.

The 2011 statehouse season kicks off Tuesday with Hickenlooper’s inauguration, followed by the formal opening of the legislative session Wednesday morning and Hickenlooper’s first State of the State speech on Thursday.

Here’s a more detailed look at how the session may be shaping up for education.

MAJOR ISSUES & THEMES

Budget blues

“The budget is the big elephant in the room,” said **Vincent Badolato**, public affairs vice president for the Colorado League of Charter Schools.

He and many others identify budget cuts as the overarching education issue of 2011 – as they were in 2009 and 2010. “It’s budget, budget, budget,” said **Moira Cullen** of the lobbying firm Capstone Group.

State K-12 support and higher education funding consume 55 percent of the state's \$7 billion general fund.

Continued budget belt tightening for education is a given because state revenues remain fragile and because the legislature must approve a balanced budget, can't increase taxes without voter approval and also faces spending demands for Medicaid and other human services programs.

Many consider the best-case scenario for K-12 is flat funding. In the current 2010-11 school year, basic operating funding for schools is \$5.4 billion, some \$3.4 billion from the state and \$2 billion from local taxes. Because local property tax revenues are projected to drop in 2011, lawmakers will need to come up with more than \$143 million to cover that local loss and keep funding flat. It's not a foregone conclusion they will do that.

Flat funding, of course, is an effective cut for school districts, because enrollment growth and cost increases wouldn't be covered.

"It's my best guess is ... K-12 education is going to take another hit," predicted Bacon.

"I would definitely expect additional cuts," said **Julie Whitacre**, lobbyist for the Colorado Education Association.

Some lawmakers and lobbyists also are concerned about cuts to specialized education spending programs. Sen. **Evie Hudak**, D-Westminster and vice chair of Senate Ed, said she is "very worried" about cuts to early childhood programs. **Frank Waterous**, lobbyist for the Bell Policy Center, notes that recently started small programs like the Colorado

Counselor Corps could be vulnerable. "I'd hate to diminish those efforts."

"I think these days that maintaining the status quo will be as much of an accomplishment as anything," said Massey.

The state's colleges and universities hope lawmakers can come up with around \$555 million in state support. (That's only a quarter of total higher ed revenue, most of which now comes from students and families in the form of tuition.) The Colorado Commission on Higher Education has proposed a college-by-college funding allocation based on \$555 million and based on the assumption that resident undergraduate tuition will again rise about 9 percent overall in 2011-12.

It's possible there will be some jockeying over the allocation formula – Metro and Mesa state colleges along with the community colleges don't like it. But higher ed leaders see greater danger if lawmakers can't come up with at least \$500 million. In that case, much larger tuition hikes could be in store at many campuses.

The budget situations for both K-12 and higher ed won't get finally sorted out until later in the session, after the quarterly revenue forecasts are made in late March.

Hoping for a quiet session

Education interest groups and many legislators hope 2011 is the year that the legislature does not pass major education legislation – or significantly tinker with laws already in place.

“There is unanimity among education stakeholders” that the legislature leave well enough alone and allow implementation of recent legislation to move forward, said **Bruce Caughey**, deputy executive director of the Colorado Association of School Executives.

The 2008 session saw passage of the Colorado Achievement Plan for Kids, a multi-year reform program that includes new content standards, new state tests and other initiatives, an effort that’s about half implemented. In 2009 lawmakers passed Senate Bill 10-163, creating a new district and school evaluation and accreditation system that has just been rolled out. And, last year lawmakers the controversial educator effectiveness act, which ultimately will tie half of teacher and principal evaluations to student growth and make it possible for teachers to lose non-probationary status.

“These are the right things to work on. They need to be implemented thoughtfully,” Caughey said.

Johnston said, “Let’s hold off on any new big pieces. ... We have a lot of chewing to do.”

“Everybody is pretty focused on the education irons we have in the fire and the budget crisis,” said Sen. **Rollie Heath**, D-Boulder and a member of Senate Ed.

“In previous sessions we have passed some significant legislation regarding education. I believe it is important to monitor the progress on these bills” and not start new initiatives, agreed Rep.

Ken Summers, R-Lakewood and a member of House Ed.

Leaders of many major education interest groups, including CEA, CASE, the Colorado Association of School Boards and Stand for Children, say they aren’t proposing education legislation in 2011. (The Colorado League of Charter Schools and the Colorado Children’s Campaign do have plans – see below.)

Bacon notes that, given split party control of the legislature, any major education legislation “will need general agreement among a great many people.”

The no-tinkering attitude seems to apply specifically to the educator effectiveness law.

“Right now nobody’s interested in doing anything,” Whitacre said.

The law calls for the State Council for Education Effectiveness to develop detailed recommendations for teacher and principal evaluation systems and other matters and present those to the State Board of Education. (The council is expected to start finalizing recommendations at a Jan. 13-15 retreat and to give its report to SBE this spring. The board will issue regulations next fall, and the 2012 legislature has the right to review those.)

“Everyone has a lot of faith in the state council and the state board,” said Johnston. “They want to focus on getting these things right.”

But, there are some uncertainties hanging over SB 10-191 that could lead to attempted tinkering with the law at some point. Both CASE and CASB have

recently expressed concerns to the council about the amount of flexibility local districts should have designing evaluation systems.

Caughey of CASE said his group doesn't want tinkering with the bill but notes, "There are some legal conflicts in the bill." And, some members of the early childhood community have expressed concerns about whether testing of young children should be used to evaluate teachers.

Cut down on regulation

If there's going to be one "big" education bill of the 2011 session, it might be a still-evolving proposal by Massey to reduce state mandates and requirements on school districts.

Massey said he wants to target requirements that are "unnecessary, redundant, not cost-effective for districts," especially for small rural districts. (Massey's district covers parts of six counties, including many small districts.)

It's not clear yet what that bill will include – it could focus on something as simple as data-reporting requirements or cover a broader selection of more substantive state requirements. Massey has met with representatives of education interest groups to solicit suggestions and said the bill may not be ready for introduction until mid-February.

There's also talk that the legislation could address shared services and other efficiencies for small districts.

While the general idea of reducing mandates is popular across the education community, rifts between groups may develop once a bill takes shape. "That's going to be something of a battle ... when you get down to the details," said Caughey.

Sen. **Nancy Spence**, R-Centennial, has an administrative idea that likely will make districts nervous. She said in December that she's planning legislation that would require school districts to seek requests for proposals from private companies for outsourcing non-instructional services such as transportation, janitorial, food service and similar functions. Districts then would be required to hold public meetings to inform citizens about the comparative costs of outsourcing a service as opposed to providing it with district employees.

DREAMing again

Freshman Sen. **Angela Giron**, D-Pueblo, is planning to take up one of the most emotional education issues of recent years – resident college tuition rates for undocumented students.

Although final details of the state version of the DREAM Act are still being worked out, Giron said it will be "very similar to what we've tried to do for years." That would include making undocumented students who graduate from Colorado high schools eligible for resident tuition rates at state colleges. Language for additional residency requirements still is being drafted, she said.

"I really see this as an economic issue," said Giron, who has a long background

as an executive at the Boys and Girls Clubs of Pueblo. She's working with a group named the Higher Education Access Alliance, which includes education, union and activists groups, to push the idea.

"This is obviously going to be one of the most controversial issues" of the session. Giron predicts. Any issue related to immigration is touchy, and some Republicans have said they may introduce Arizona-style immigration legislation.

"I feel pretty confident we'll get it through the Senate. The real struggle will be the House. I'm just working to educate people" there about the economic issues, Giron said.

"I'm a little nervous, to be honest," Giron said. "It's going to be a ride."

A similar bill died in the Senate in 2009 with five Democratic senators joining Republicans to muster 18 no votes against the bill. Supporters didn't bring up the idea in 2010.

Charters & choice

The Colorado League of Charter Schools has several items on its legislative wish list, some of which are related to its longstanding goal of improving charter access to building funds. "We're really focused on facilities. We hope to make some progress," said Badolato.

One proposal would give charters the right of first refusal to unused district buildings and land, and the plan also would apply to state property. The second would change the matching

funds and waiver requirements for the Building Excellent Schools Today program, which charters have been unhappy with. (The league has been talking with the Department of Education in an attempt to reach agreement on this issue.) The third proposal would expand a state bonding program that's currently available to charters.

The league also is working on bills that would expand the dissemination of CSAP results to individual schools and teachers before scores are released publicly (currently only districts and some media outlets get early results), increase the power of charters to apply for some grants without district approval and expand the food service authority of charters.

Beyond the league's agenda there's chatter but few specifics about charter and choice legislation.

Freshman Rep. **Don Beezley**, R-Broomfield, said, "You'll find me pretty focused on charter schools and parent empowerment. I'm looking at a couple of charter-related bills." Specifics remain to be fleshed out; "We're working on it."

Beezley said he's interested in the "parent trigger" idea, referring to a California law that allows organized parents to take over a failing school and have it turned in to a charter, its teachers and principals replaced or closed.

"There are components within that that I like a lot," Beezley said, but he said he hasn't decided what sort of legislation he might propose.

The Douglas County school board's recent move to study vouchers has sparked a lot of speculation about state voucher legislation this year, but there's no firm indication of any bills yet.

"At this point nothing's on my radar," Beezley said, and other lawmakers and education lobbyists use phrases like "only rumor," "no specifics" and "nothing firm" when asked about the issue.

Massey said some of the talk about vouchers "is political rhetoric" from the campaign trail that likely will be tempered when new lawmakers start to understand the fiscal realities facing the state and school districts.

Spence has sponsored voucher-type legislation in the past, including a law that got all the way to the Colorado Supreme Court before being overturned. She said she has nothing planned on the subject for 2011.

DEVELOPING ISSUES

Accountability & turnarounds

Hudak said in late December that she was considering legislation that would expand the range of choices for schools that are on turnaround plans under the new state accreditation system. Hudak said she feels the options under Senate Bill 10-163 "were fairly limited" and that she'd like to "push the whole education reform conversation away from 'let's just close the school and fire the staff.'"

Bullying

Democratic Rep. **Sue Schafer** of Wheat Ridge, Republican Rep. **Kevin Priola** of Adams County and Sen. **Pat Steadman**, D-Denver, are planning legislation that would create a task force to study school bullying and perhaps develop legislative recommendations for 2012. "We need to update our laws," Schafer said, but she feels a study is needed first.

Such a study is being promoted by One Colorado, which advocates for gay rights issues, and several education groups, including CEA, CASB, CASE and the American Federation of Teachers-Colorado. School bullying, including of gay students, has received increasing media attention in recent months.

Enrollment counts

The 2010 legislature approved a study of the average daily membership system of counting district enrollment, which some education reformers think would be a more accurate way of counting students and allocating money that Colorado's current single-day count system.

Because of funding problems, the study didn't get started until late last year, and the quickly produced report was to be finished just before the 2011 session convenes.

"If they can come up with something good, I'd be interested in looking at legislation," said Johnston, whose bill created the study.

Chris Watney, president of the Colorado Children's Campaign, said,

“We are focused on legislation to improve the accuracy and fairness of the state's student count data system.”

Because it's widely assumed that changing the count system would create financial winners and losers among districts, any significant proposal for a change in tight budget times can be expected to face stiff opposition. Aurora Superintendent **John Barry** signaled that in recent remarks to the ADM advisory committee.

Higher education

King is planning to introduce a bill designed to attack the problem of student remediation. (About a third of Colorado high school students need some remedial work once they get to state colleges.)

The bill would require schools to administer skills tests to ensure students are progressing toward the goals in their individual career and academic plans and require those ICAPs to include the results of basic skills tests. King said he pulled back from an earlier version that would have shifted more of the burden of remedial classes to high schools. “I was going to get too much opposition. I think it [the current proposal] is a good first step. . . . I would hope there's a step or two more” later.

The ballooning amounts of student fees at state colleges and universities have raised some legislative questions, and a July 2010 state audit raised concerns about fees.

New House Speaker **Frank McNulty**, R-Highlands Ranch, was on the Legislative Audit Committee last year

and said recently he hopes there will be some sort of proposed legislation on fees. Meanwhile, the Department of Higher Education has a committee of students and college finance officers studying the issue.

Massey and Heath said they are working on a bill to commission some sort of study of performance- or outcome-based funding for colleges and universities. (That concept generally involves tying state aid not just to enrollment but such “performance” factors as graduation rates.)

The recently completed higher education strategic plan endorsed the concept but warned performance funding can't be implemented until state financial support of higher ed increases.

The CCHE hasn't yet developed any legislative recommendations out of the strategic plan, and DHE, awaiting higher ed goals from the Hickenlooper administration and probably a new executive director, doesn't currently have a big agenda for the 2011 session.

It's expected that there again will be legislation to give student members voting rights on the Colorado State University Board of Governors.

Testing & standards

The state board and the CCHE recently added a new wrinkle to the testing debate when they voted to add social studies to the list of subjects tested statewide when a CSAP replacement system rolls out, probably in 2014.

Several legislators have questioned the additional cost (more than \$3 million a

year) when the state hasn't figured out how to pay for changing the current testing system.

"This is the wrong time, and I don't think it's the right thing to do anyway," said Hudak. But Rep. **Nancy Todd**, D-Aurora and a House Ed member, said, "I'm not as concerned." She's a former social studies teacher.

It's unclear if any lawmakers will try to weigh in on the social studies issue with a bill.

Rep. **Judy Solano**, D-Brighton and the legislature's leading critic of CSAPs, isn't saying yet if she'll propose any testing legislation this year, as she has done in several past sessions. But, she said she'll continue to raise questions about high-stakes testing.

A Solano-sponsored bill to cut back the CSAPs received bipartisan 47-16 support in the House last year before dying in the Senate in a flurry of parliamentary maneuvering during the 2010 session's closing hours.

Some legislators also have criticized the state board's adoption last year of the national Common Core Standards in language and math, but some say they're waiting to see if the board – with two new Republican members – revisits the issue this year.

OTHER ISSUES

Concussions and student athletes – Spence said she'll introduce legislation to require youth sports coaches and

volunteers take training in how to recognize the symptoms of concussions.

Disabled services in college – Hudak said she's working on legislation to ensure that disabled students receive the kinds of accommodations and assistance in college that they receive in K-12 schools.

Health – Massey said he'll propose some sort of "physical activity" in schools bill but isn't yet providing any details. A mandatory physical activity bill was watered down and then killed late in the 2009 legislative session.

Pensions – A carefully negotiated bipartisan package of reforms to the Public Employees' Retirement Association was a key accomplishment of the 2010 session. But, Senate Bill 10-001 wasn't popular with some of the Republican rank-and-file, and PERA reform was raised by some GOP legislative candidates (and new state Treasurer Walker Stapleton) on the campaign trail last fall.

It's not clear yet what PERA-related bills might be introduced this year. But, anything seen as unraveling last year's grand compromise might have tough going in the Senate, where the 2010 bill passed 25-10. (The bill passed the House 36-29.)

School trust lands – Hudak said she plans legislation that would increase transparency and reporting requirements on the State Land Board, which manages state lands whose revenues are dedicated to education. She's also interested in giving the joint education committees oversight of the board along with the legislative agriculture committees.

State finances – Some Republicans will attempt to roll back the elimination of some tax exemptions that were approved last year, and some Democrats will continue to work toward easing the financial constraints in the state constitution. Whether either side succeeds in a split legislature is uncertain. One thing to look for is the comprehensive study of state and local taxes that was ordered up by the 2010 session. It's being done by the University of Denver and is due Jan. 31.

Prepare for the unexpected

Legislative observers learn quickly that it's risky business to predict what will happen before the gavels fall on opening day.

While overall themes can seem easy to see ahead of time, the contents of individual bills often change many times before they're read across the clerk's desk in the House or Senate. Bills that seemed like great ideas in November sometimes never get introduced, and ideas that no one knew about in December can pop up in April.

Post-election sessions can be even harder to predict, with new members and new leaders and, this year, a new governor.

As one lobbyist put it, "I'm sure there are going to be lots of lovely surprises."

- ***Review of what happened on education issues in 2010***

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