TURNOVER

For eight years Fort Worth native Bill Owens had been governor of Colorado, having begun his Colorado political career in the 1970's as Director of the Colorado Oil and Gas Association. He won his first election in 1982 and served three terms in the House, representing suburban Arapahoe County, after which he was to elected to the Senate for six years. He successfully ran for Treasurer in 1988. He was elected governor in 1998. Owens had Republican majorities in both legislative chambers for half of his eight years as governor. His eight year tenure as governor would bracket several firsts: The 2000 election saw the Democrats win the State Senate, the first Democratic-majority chamber since the Watergate tide of 1974. In 2004 voters turned both chambers Democratic. The morning after the November 2006 elections voters would wake up to stronger Democratic majorities in the General Assembly, and a Democratic governor—the first time since 1958 that the Democrats controlled the state government.

The gubernatorial campaign of Bill Ritter's was initially greeted by party regulars with skepticism, even derision. Ritter, a 12 year Denver District Attorney, had no statewide elective experience. The Catholic Ritter's failure to offer the pro-choice profile that organizational Democrats understood or trusted was a cause for alarm to many active Democrats. His position on abortion was often perceived as coy and forbidding. A conscientious and active Denver DA for eight years, Ritter's strong social activist credentials were neither conventional nor apparent to many. An “anyone but Ritter” movement among Democrats, begun in mid 2005, fizzled, however, as popular Denver mayor, John Hickenlooper, announced in early 2006 his intention to serve out his mayoral term, leaving nobody in the field but the 50-ish Colorado-born Ritter. In many respects, however, Ritter was the perfect candidate for the moment. A hunter who learned how to handle a rifle as a farm teenager, Ritter went to a public state university for college, served in Zambia with the Peace Corps and returned there in the 1980's to operate a charitable organization. After having served for several years as a deputy, all agreed that Ritter had acquitted himself well as Denver prosecutor from 1993-2005 (Lindsay 2006).

Ritter approached his campaign for governor partly as an informational one. He toured the state determinedly and methodically, earning the candidate the tag “Energizer Turtle” among his staff. The campaign from 2005 showcasing his centrist constructivist approach across the state was packaged by mid 2006 as “The Colorado Promise." The Ritter campaign had a durable thematic coherence assisted greatly by a weak opponent with a weak campaign organization and a polarized state GOP. Republican gubernatorial candidate, Bob Beauprez, retiring from his terms as congressman from Colorado's newest (7th) District, faced serious opposition from a nothing-to-lose challenger in Mark Holzman. Attempting to outflank Beauprez on the social and economic right, Holzman provoked Beauprez to oppose Referendum C and to lean far right on several issues as Holzman operatives stalked April’s pre-primary caucuses and assembly process.
Beauprez’ 2006 campaign never got beyond a forced and unconvincing rejection of Referendum C (a measure that had passed in November 2005) and a “me-too” response to conservative issue formulas. The question consistently begging to be asked Beauprez was, “What are you going to do with the Governors Office?” Beauprez was unable to define his candidacy. The older party insider, Beauprez provided four years of national legislative positions for Holzman to snipe at. The nickname “Both-Ways-Bob” that fixed itself to Beauprez during the general election campaign was invented by Holzman’s campaign. Holzman had no record in politics and his primary accomplishments were as an investment banker and advisor in Eastern Europe’s halcyon 1990s. Holzman had been pals with Governor Bill Owens, whose post Cold War triumphalism exceeded that of his banker friend. Owens supported—maybe even invented—Holzman’s candidacy for President of Colorado State University, but the friends broke publicly in 2005 over Owens’ endorsement of Referendum C. Holzman had the deep pockets of his and former business associates to power a campaign to rally Republican conservative strength in the state.

But the conservative tide had turned by this time as the state's fiscal crisis found the Republican Party divided and ambivalent, with one faction glued to tax-cutting and social conservative formulas without a convincing response to current events, refusing to yield to moderates. Ritter defeated Beauprez handily, 56-41.

INITIATIVES, STATE FINANCE, AND TURNOUT

The 2006 election ballot was crowded with ballot proposals. Several issues regarding taxing and spending did make the ballot, which would have restricted state and local finances if passed.

First, there was both an initiated (Amendment 39) and referred (Referendum J) item concerning the use of school district expenditures. Referendum J required each Colorado school district to spend at least 65% of its operational expenditures on those items related to student achievement. Referendum J had several means of softening the impact of its passage by permitting the legislature the discretion to impose sanctions (if any) for non-compliance. Referendum J’s appearance makes sense only as an alternative to Amendment 39, a constitutional initiative directed at eliminating non-instructional “education bureaucrats” such as principals, guidance counselors, nurses, bus drivers, food service, and the myriad staff and support services common to school districts. Amendment 39 sought to require districts to expend at least 65% on direct instructional functions. Staff analysis showed that the two measures have distinct differences in defining “operational expenditures” which resulted in dramatic differences in current compliance with the measures’ intent. Under the statutory Referendum J, the districts spend 83% on the mandated operations, while under Amendment 39, the districts come up to only about 60%; 166 districts would have fallen short under Amendment 39, with only 3 falling short under Referendum J (Blue Book 2006).

Soon after the passage of Referendum C in 2005, TABOR diehards objected to the use of “surplus funds” beyond the $3.7 billion estimated back in the summer of 2005. Jon Caldara, President of the Independence Institute in Golden, sponsored an initiated measure to rebate these
funds to the taxpayers under a program called Homeowners Energy Adjustment Tax (H.E.A.T.) Rebate. The measure was filed in February and several June drafts of a Blue Book analysis appeared on the Legislative Council website. No petitions were submitted and it failed to make the ballot.

Weeks before, Caldara was busy promoting a parallel project to try to scotch a proposed severance tax reform [see below] or increase circulating during the session. He proposed, instead, to use the severance tax revenues to rebate the increasing costs of home heating to taxpayers through a program called H.E.A.T. Activity on this item ceased quickly and no petitions were submitted (Bartels, 2006). Caldara also briefly promoted a measure (numbered 74 by the Legislative Council) to limit the duration of tax increases passed after 2006 to ten years. Clearly aiming to limit taxation solutions to the TABOR financial tangles, the issue was ‘titled’ but the record shows no action after January 3, 2006.

It is unlikely that the spectrum of ballot issues tilted the electorate in the Democrat’s direction. To be sure, there were items that would have drawn some Democrats to the ballot, such as a Constitutional Minimum Wage Amendment (Amendment 42), which passed. Other ballot “social” measures were just as likely to induce sectors of the Republican base to turn out as the Democratic one. Liberals were particularly disappointed with the results of a domestic partnership referred statute (Referendum I), which polled only 47%, and a restrictive Colorado Marriage Amendment (Amendment 43), which passed with 56%. A measure to legalize possession of one ounce of marijuana (Amendment 44) failed with only 40%. A tepid referred measure to deny tax benefits to businesses employing illegal aliens (Referendum H) passed after an initiative to deny services to illegals was decided by the Supreme Court to violate the “single subject” provisions for initiatives. A judicial term limit Constitutional measure (#40) failed to pass with only 43%, but a Common Cause sponsored Constitutional measure (“Ethics in Government” #41) to ban “gifts,” to limit post-legislative lobbying, and create an Independent Ethics Commission, passed with nearly 63%. Turnout was healthy due to the prominence of the Iraq War, and although the initiative and referenda may have augmented it slightly, it would not seem to have tilted in the Democrats’ direction.

THE CHANGED POLITICAL ENVIRONMENT

Large in-state forces are at work, with immigrants hailing from liberal states such as California. In addition, Independents are increasingly favoring Democratic candidates. Ritter is said to have received 66% of the Unaffiliated vote (Rubin, 2007). The shrill immigration politics of the high profile Republican Representative Tom Tancredo likely moved Hispanic voters farther into the Democratic fold. The lack of authentic Republican moderates, either as high profile statesmen, spokespersons or as statewide candidates, is a severe problem for the Party and will continue to plague its chances. For the time being the state's Republican Party Chair is hoping to pounce on de-TABOR-izing steps (yet to be) taken by Ritter and the General Assembly's Democrats and to campaign against them in 2008 as “tax increasers.” For now, Ritter has a larger Democratic majority to work with in the General Assembly—emphasizing the breadth of the Red-to-Blue transformation of Colorado; the Senate Democratic majority
increased from 18-17 to 20-15 while the Democratic House Majority would see its margins increase from 35-30 to 39-26.

In many respects the results of the elections in Colorado are consistent with many interpretations of the national trend. Independents have become the new prize for the Democratic party in Colorado, a strategy enhanced by the perception that the Republican Party has overreached with anti-immigration paranoia, cruel social policies, and unsustainable fiscal policies. National scandals associating personal corruption and craven partisanship with the national Republicans have sullied the prestige of Colorado’s GOP. Perceived fumbling and confusion of a national executive unable to grasp national crises, such as the Katrina response and recovery, was also bad for the Party, as were the year’s avalanche of revelations concerning mismanagement of the Iraq War. These imposed burdens on Republicans running for office would credit their Democratic opponents with a couple of points from the outset.

Emblematic of the tepid Republican performance in 2006 was the failure of Republican Rick O’Donnell to compete effectively for the U.S. House seat vacated by Bob Beauprez. O’Donnell, a moderate, successful businessman before Owens appointed him Executive Director of the Commission on Higher Education, ran a well-funded but indecisive campaign. O’Donnell had no primary opposition, while his opponent had several such opponents. Notwithstanding some ideological liabilities in the current climate, the O’Donnell campaign was dissected by a seasoned opponent, local attorney and former State Senator Ed Perlmutter. Perlmutter brought strong family and business ties in the district, a deep citizen organization, national funding from the DNCC, and aggressive, experienced campaign managers (Osher, 2006). The result was a 55-43 victory over O’Donnell and a net gain in Colorado’s delegation to the U.S. Congress. The punch line of this story is that in 2006, after eight years as governor and 24 years of elective office, Bill Owens was not in a position to successfully invest his accomplishment in allies or protégés.

The state government inherited by Bill Owens from Roy Romer in 1998 was not the same as Ritter would find. In retrospect, the job of making or building a political agenda for his governorship fell lightly on Owens in 1998. The Taxpayers Bill of Rights framed the term-limited Owens’ tenure to a degree that Owens had little agenda of his own. Owens would periodically rehearse the tax cutting line of TABORites, rail (if sometimes mildly) against social outrages and crime, and point pridefully to the results of the tech boom in Colorado which “caused revenues to rise.” By 2000, TABORite enthusiasm was amplified by sales and income tax cuts, with surpluses soon to be distributed through state income tax credits. It is hard to point to a crisis in the Owens’ administration, but it is also true that Owens and his people matched their low expectations for government with low expectations of themselves. Chronic problems with corrections contractors and failures of a runaway state benefits data management contract were notable failures in a prosperous “tech” state whose leadership so emphatically invested hope in private innovation. The final crisis for the Owens’ administration was not that it had muffed its privatization initiatives, but the betrayal of TABOR with Owens' support of Referendum C. Even though road spending—a favorite of Owens and his supporters—did very well in the final analysis, the mere “timeout” from invoking TABOR spending limits
(Referendum C) brought spirited charges of betrayal from the Republican right. Owens was compelled to defend himself in several televised interviews. Owens' political career appears complete at this point, and having lost the chance to run for Hank Brown's U.S. Senate in 2000, having supported the lifeless candidacy of Peter Coors for Senate over the far rights favored candidate. The absence of a law degree will bar him from state or federal judicial appointments and he is likely to go back to representing transportation and mineral interests after a dignified period of lecturing and reflection.

In 2007, Colorado’s political parties seemed to be moving in opposite directions. One was conflicted about whether to adapt and reorganize and the other was struggling to adapt further to reap greater benefits of centrist political trends. The Democrats' success in electing Democrat Ken Salazar to the Senate in 2004 has leveraged the careers of party activists. For instance, Salazar's northern Colorado district office manager and Larimer Party Chair, Betsy Markey, has been elevated to front runner status in the Democratic jockeying for the Democratic nomination for the 4th District US Congressional race. More manifestations of Democratic patronage are likely to appear as 7th District Ed Perlmutter's district office organizes itself for what is likely to be a long career in Congress. And the likely candidacy of Boulder congressman Mark Udall for U.S. Senate has the environmental/socially progressive elements of the Democratic Party lusting after a liberal “share” of the Party’s federal electoral success.

Ritter’s high ambitions at the beginning of the 2007 session stood in marked contract to Bill Owens, whose staff and whose interest seemed to migrate away. Governor Ritter has a much more daunting series of political tasks to make the politics of his governorship. Ritter finds himself with very thorny problems—problems that will require A LOT of coalition breadth. Colorado is a state whose finances for its current low service levels are effectively limited by the term of Referendum C (2005-2010). The state needs to lift revenue limits, exempt some functions from TABOR, find significantly more revenues (all of which require a Constitutional change) and/or refinance its main functions, divest itself of important functions, or allow TABOR's restrictive annual growth ceilings (inflation plus population growth) to go back into effect—or some combination of all these.

RITTER’S COLORADO PROMISE

An interesting, if developing, anchor for Ritter’s conception of his governorship is a short volume produced by his campaign, “The Colorado Promise.” The product of lots of touring across the state and attempts by Ritter to define himself to Democrats ranging across the “Bill who?” to the “Anyone but Ritter” spectrum, the “Promise” is a thoughtful sketch of what he intends for his governorship. Ritter found himself in a very interesting position of defining his governorship which right-wing politics denied to his general electoral opponent. Colorado’s national ranking across a range of performance indexes fell in the 1990s, from childhood vaccination to higher education spending (Bradley and Lyons, 2005). He had the electoral field to himself in this regard and he crafted a specific set of thoughtful proposals organized by a calm managerial sensibility without reference to the state’s unsettled political scores. The unity of
Colorado Promise Ritter and candidate Ritter was more than a candidate and his position papers. It was the narrative frame for a candidacy of one who was a political unknown.

Although the Colorado governor is constitutionally weak, in the present climate of unified state government, it will be Ritter who provides the narrative to organize the legislative accomplishments of the Democrats and the necessary statewide public campaigns to make successful constitutional amendments to TABOR. The rhetorical features of his governorship may well be decisive, but not because it is brilliant as a manifesto or genius as a strategic signpost. Instead, it has claimed ownership of medium scale, doable, problem-solving projects which, if successful, will stabilize the claims of health care and corrections on the general fund; involve (successfully or not) rarely consulted stakeholders in education, mental health, transportation, and other domains; bring Colorado to renewable energy production standards; address preventive health and service pricing challenges; and more. In all, the Promise is a blueprint for efficiency writ large and reminds one of the optimistic and detailed Progressive reform platforms of the past century (for example Schiesl, 1999). At the same time, it projects an optimism concerning the manageability of the state’s deepest problems, which are many. Other Democrats, notably legislative Democrats with bad memories of partisan mistreatment (and for whom a moderate Republican agenda for moderate change would actually be welcome), can buy into and mimic the problem-solving tone of the Promise. Finally, the anchoring effects of the Promise seem to be enhanced by the fact that nothing else like it exists or has existed for the past century. Still, the Progressive’s optimism about government per se and the Progressive faith in the ability to organize human existence is not to be found here. The modest pragmatism that runs through the tone of each section of the forty-plus paged Colorado Promise represents governmental action within the conception of limited government that runs through the political culture of the state and, frankly, most of the West. The conception of government running through The Colorado Promise is a “necessitarian” one, not an optimistic one. Its contingent, even apologetic view of government resonates well here.

It is important to recall that the Promise is made possible by the successes of the Libertarian Right and Social Conservatives in seducing the Republican Party to coast politically on TABOR’s successful, if steady, fiscal strangulation of the state. Across the range of energy efficiency, governmental efficiency, environmental conservation, higher education funding promises included in both the Colorado and the Governor’s first State of the State address in January, the previous administration had barely registered a ripple of activity. In term of the educational accountability and transportation funding items named in both Ritter’s documents, the Owens administration had done important things. Ritter’s approach, however, was to clarify the purpose and rationalize the operation of “accountability” and to broaden the conversation about transportation funding. Ritter’s early executive order to join multi-state Medicaid drug purchasing pools defied Owens’ two vetoes of legislation to accomplish the same and his 2008 Health Commission charge to solve the uninsured problem promised by taking on the 800 lb gorilla that Owens had ignored. Ritter seeks to be an activist governor, not by choice, but by necessity. Posing the necessity of broad coalition building since the beginning of his campaign, Ritter set his sights higher than any governor since Stephen McNichols.
FORECASTS AND REVENUES

State government enjoyed healthier fiscal conditions than prior years due to the passage of Referendum C in 2005. Referendum C permits a cessation of the limits on expenditure growth installed by the Taxpayer Bill of Rights passed in 1992. Under Referendum C, the state may retain all revenues in excess of the “inflation+population” annual growth limit until FY2010-2011 when such “excess revenues” will again be returned to taxpayers through rebates. When passed in 2005, it was forecast that the sum of retained revenues would be $3.7 million over 5 years. Yet, as the economic conditions have improved, the forecast totals to the “time-out” period increased to $5.37 million (Forecast, March 2007).

The specific economic forecast for 2007-2008 greeted the new governor with modestly good news. Individual income revenue growth was predicted to be 5.7% according to the December 2006 forecast, down from the 7.7% rate during the current (2006-2007) year. The “outyears” were forecast at between 6.3% and 6.7%. Sales tax revenues were expected to “trough” gently in 2007-2008, but maintain a 4.9%-5.2% range of growth following 2007-2008's predicted 4.5% growth. Although declines were forecast in the tobacco tax revenues over the 5 year forecast period, the General Fund, 65% of which are constituted by sales and income taxes, was in good enough shape give the new governor some latitude in crafting a distinctly Ritter budget with which to act on the “Colorado Promise.” Personal income growth had rebounded to its pre-2002 levels and was forecast at 6+% over the forecast period (Forecast, Dec 2007).

Cash funds also grew during 2006-2007 and were forecast to grow in the new fiscal year, except for severance tax revenues slumping from its historical peak of $234 million in 2005-2006 to nearly half that amount in the current 2006-2007 year ($124 million) to $180 million in the upcoming year. Natural gas price drops in combination with historical levels of storage contributed to this (forecast) result. The forecast highlighted a potential impact of these revenue losses on energy, water and general natural resource conservation legislation passed in the 2006 session. This excludes its impact on the local governments to which the severance revenues had been pledged since the 1970s. (More on the severance tax below.)

The other major cash funded area of the budget is the Highway Users Trust Fund (HUTF) supplied by the motor fuels tax. Colorado’s flat 22 cent per gallon tax gives it the low elasticity of all such taxes. Mirroring the flat performance of gasoline tax across the nation, Colorado’s gas revenues will have grown at a compound average annual rate of .08% over the forecast period. However, the last decades’ predilection for robotic tax policy happily provided gains to transportation funding through the triggering formula of SB97-1. Under this statute, when General Fund obligations exceed the state’s 6% constitutional limit, and after the 4% General Fund Reserve has been filled, General Fund revenues spill into the HUTF up to a limit of 10.335% of sales and excise revenues. In 2005-2006, $220 million was transferred to HUTF by this means for the first time, followed by a forecast $231 million for 2006-2007, and another $241 million forecast for the upcoming 2007-2008 year. The “spillover” of the GF to the HUTF has been the only significant boost HUTF financing has seen. To be precise, total SB97-1 transfers to HUTF are forecast at $1.48 billion over the six years, 2005-2006 through 2010-2011.
This is a nearly 28% addition to the HUTF revenues of $5.36 billion over the same forecast period (Forecast, Dec 2006).

The story of the housing sector is similar to some other parts of the country, with a decline in sale prices, a dramatic decline in new home permits and construction, with a couple of geographic exceptions. The state led the nation in home foreclosures over most of 2006 and its leadership is forecast to continue into the next year. Paradoxically, residential market values have increased and, with a steady residential assessment rate of 7.92%, leave the state with an increase in assessed residential property values. “All real estate is local” and the patterns vary regionally, but nowhere are assessed values declining. The forecast did caution that some regions could see a decline in assessed property value in the several out years (Forecast Dec 2006).

The governor and his small budget staff, led by former Joint Budget Committee member Todd Saliman and populated by youngish staffers lured away from the Legislative Council economics staff, made inroads during the transition. Adjustments to Governor Owens’ final budget request were made and these provided a small glimpse of the Ritter “brand.” A Medicaid caseload reforecast freed $58 million in General Fund revenues which provided the bulk of the $99 million increase in enrollment-driven K-12 funding. A license fee increase of $4.50 annually and a doubling of vanity plate prices to $50 would finance a reopening of state DMV branches closed in prior years. A distinctive Recidivism Reduction and Offender Diversion Package of $8 million was requested to achieve long term savings in the Department of Corrections via mental health and substance abuse treatment and expanded supervision programs (Feb 9 letter to JBC from Saliman).

In terms of the budget, there were no dramatic turns to reflect the dramatic political events of November. The Referendum C funds—those funds exceeding the “inflation plus population growth” annual growth limits which TABOR provisions would have refunded to taxpayers—continued to go toward maintaining effort, except for transportation funding. The combinations of TABOR provisions, SB97-1 and HB02-1310 have caused many of these excess revenues to flow into transportation and capital construction (see graphic in Appendix). Attempts to challenge this allocation have been subtle and mostly confined to new members of the state’s fiscal cognoscenti, such as those associated with the Bell Center and COFPI, emphasizing the need for the state to keep its explicit promise made that Referendum C would address chronic shortages in higher education, health care, police and fire pensions. No change has been apparent in SB97-1 and HB02-1310. These are not constitutional provisions; however, though possible to alter the distribution of Referendum C funds, it is a subject that is not raised often in public. Altering the gas tax, designating a new funding stream for highways and bridges might reduce the power of the transportation funding vortex (more on that below) but for now, these allocations are in a transportation and capital funding headlock.

It would be a mistake to say that the approach to the non-capital sectors of the budget have maintained their same trajectory as in previous years. It IS true that the budget, since the return of revenues in 2004 and the surplus-returning Referendum C (2005), has been characterized by the restoration of funds cut during the recessionary years. But a deeper and
more focused management approach to the long term has been made possible by unified government. Progress has been made to reduce costs via multistate purchasing of Medicaid prescription drugs, recidivism reductions, and other areas, in an effort to reduce the displacement of GF dependent agencies (higher education, K-12, and the other general government, service and regulatory functions of the state) caused by Medicaid, K-12, and other growth areas built into the state’s budgets. These advances are significant. For example, the forecast growth of Corrections expenditures in the 2007 Long Bill, for the first time in many years, did not exceed 6%—the constitutional limit for General Fund expenditure growth. There is optimism that Governor Ritter’s drug purchasing executive order will create more funding room in 2007. A Government Efficiency and Management performance review is expected to yield long-term savings for a state ripe for a thorough-going review.

All these, even if they fail to yield the hoped scale of cost efficiencies, will have been significant accomplishments. But the “real action” is in the area of revenues. From where will they be found? How sizeable will the revenues be? Will they require constitutional change? How can they be justified to the voters? The remainder of this paper will address these efforts.
2007 BUDGET HIGHLIGHTS

Table 1 below highlights the main features of the budget changes since last year.

Table 1. Operating Budgets for Colorado, 2006-07 and 2007-08

<table>
<thead>
<tr>
<th>Colorado</th>
<th>FY 2006-07</th>
<th>FY2006-07</th>
<th>% change</th>
<th>FY2007-08</th>
<th>% change</th>
</tr>
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<tbody>
<tr>
<td>[HB06-1385]</td>
<td>[SB07-239]</td>
<td></td>
<td></td>
<td></td>
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<td>Agriculture</td>
<td>$35,161,915</td>
<td>$35,221,241</td>
<td>0.17%</td>
<td>$36,574,593</td>
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<td>Corrections</td>
<td>$465,676,152</td>
<td>$650,728,934</td>
<td>39.74%</td>
<td>$704,158,356</td>
<td>8.21%</td>
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<td>Education</td>
<td>$3,847,861,010</td>
<td>$3,852,761,716</td>
<td>0.13%</td>
<td>$4,068,616,142</td>
<td>5.60%</td>
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<tr>
<td>Governor</td>
<td>$62,922,876</td>
<td>$89,209,830</td>
<td>41.78%</td>
<td>$67,428,786</td>
<td>-24.42%</td>
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<td>Health Care Policy &amp; Financing</td>
<td>$3,385,826,300</td>
<td>$3,338,390,93</td>
<td>-1.39%</td>
<td>$3,476,189,586</td>
<td>4.14%</td>
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<tr>
<td>Higher education</td>
<td>$2,343,000,227</td>
<td>$2,349,266,631</td>
<td>0.27%</td>
<td>$2,525,223,681</td>
<td>7.49%</td>
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<td>Human Services</td>
<td>$1,917,389,710</td>
<td>$1,929,937,442</td>
<td>0.65%</td>
<td>$2,011,590,679</td>
<td>4.23%</td>
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<td>Judicial</td>
<td>$337,074,194</td>
<td>$341,391,982</td>
<td>1.28%</td>
<td>$387,840,279</td>
<td>13.61%</td>
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<td>Labor &amp; Employment</td>
<td>$154,680,784</td>
<td>$153,792,419</td>
<td>-0.57%</td>
<td>$158,205,173</td>
<td>2.87%</td>
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<td>Law</td>
<td>$39,475,773</td>
<td>$40,031,464</td>
<td>1.41%</td>
<td>$46,269,779</td>
<td>15.8%</td>
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<td>Legislature</td>
<td>$31,890,254</td>
<td>$31,935,105</td>
<td>0.14%</td>
<td>$33,737,572</td>
<td>5.64%</td>
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<td>Local Affairs</td>
<td>$239,224,658</td>
<td>$239,227,560</td>
<td>0.00%</td>
<td>$228,687,846</td>
<td>-4.41%</td>
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<tr>
<td>Military &amp; Veterans Affairs</td>
<td>$152,527,484</td>
<td>$152,556,920</td>
<td>0.02%</td>
<td>$172,694,697</td>
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<td>Natural Resources</td>
<td>$195,061,772</td>
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<td>-0.16%</td>
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<td>Personnel &amp; Admin</td>
<td>$164,029,117</td>
<td>$172,488,035</td>
<td>5.16%</td>
<td>$176,680,095</td>
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<td>Public Health &amp; Environment</td>
<td>$452,702,711</td>
<td>$451,141,126</td>
<td>-0.34%</td>
<td>$460,092,608</td>
<td>1.98%</td>
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<td>Public Safety</td>
<td>$221,363,443</td>
<td>$222,378,600</td>
<td>0.46%</td>
<td>$224,180,588</td>
<td>0.81%</td>
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<td>Regulatory Agencies</td>
<td>$65,442,672</td>
<td>$65,799,947</td>
<td>0.55%</td>
<td>$72,918,590</td>
<td>10.82%</td>
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<tr>
<td>Revenue</td>
<td>$555,248,609</td>
<td>$583,520,574</td>
<td>5.09%</td>
<td>$563,010,175</td>
<td>-3.51%</td>
</tr>
<tr>
<td>State</td>
<td>$263,755,873</td>
<td>$288,057,873</td>
<td>6.37%</td>
<td>$216,518,858</td>
<td>-22.83%</td>
</tr>
<tr>
<td>Transportation</td>
<td>$1,034,332,386</td>
<td>$1,035,382,953</td>
<td>0.10%</td>
<td>$1,062,135,447</td>
<td>2.58%</td>
</tr>
<tr>
<td>Treasury</td>
<td>$367,951,695</td>
<td>$368,007,955</td>
<td>0.02%</td>
<td>$397,872,507</td>
<td>8.12%</td>
</tr>
<tr>
<td>Total</td>
<td>16,275,219,615</td>
<td>16,326,434,081</td>
<td>0.31%</td>
<td>17,105,414,153</td>
<td>4.77%</td>
</tr>
</tbody>
</table>

Column [B] reflects adjustments via supplemental appropriations, recorded in the 2007-2008 Long Bill
Narrative as 2006-2007 Appropriations

The Department of Corrections is one of the important competitors for General Fund money, drawing 90% of its funding from the General Fund and taking nearly 8% of the General Fund. Probably the most noticeable of the differences between the outgoing and incoming
governors was Governor Ritter’s recidivism reduction package which was also incorporated into the supplementals for 2006-2007.

The package includes greater reliance on parole, parole-related services, community corrections, and alternative treatment for substance abuse. Some of the parole increases were population driven, and, of course, most of the year’s expenditure growth is in the area of salary adjustments, provider rate increases, county jail backlogs and other quasi-automatic threads in the budget; but overall the governor’s approach is in tune with the preventive and alternative sentencing approaches.

Over 75% of expenditures for the Education Department come from the State’s General Fund, and the department’s spending constitutes 42.4% of General Fund expenditures. Education enjoys the protected status of Amendment 23 of 2000 which requires the state to add inflation plus a 1% “kicker” to the state funding base (the kicker until 2010). According to this requirement, the per pupil funding base was increased 4.6% from $4,864 to $5,088. A 1.9% increase in the number of pupils forecast for the year required another $88.5 million. Amendments to the School Finance Act [SB07-199] also showed the markings of unified Democratic government: expansion of pre-school and kindergarten programs.

Another important feature outside the constitutionalized and other funding dynamics of education included portions of a 2000 state settlement of Giardino v. Colorado Board of Education concerning building safety issues in public schools. The settlement commits the state to allocate $190 million over 10 years for school construction and renovation.

Health Care Policy and Financing is probably the most complex state department in terms of its funding dynamics. Health Care receives 41% of its funds from the General Fund, and draws 48% from federal sources under its various matching programs. The department draws nearly 20% of the General Fund. As is the case among all states, this department is cast on the rough seas of caseload forecasting, federal program mandates, and demographic shifts within its numerous caseload categories. Total Medicaid caseload is expected to decline slightly over the next several years, but nursing home, long-term care, and pharmaceutical costs are expected to continue to drive per client costs up. Provider rate increases and per client cost increases accounted for about 70% of expenditure increases for 2007-2008.

Higher Education consumes 10.3% of the new years’ General Fund pie—about half of its share of the General Fund from 20 years prior. General Fund revenues provide 30% of its expenditures, with tuition providing 69% of the support for the Higher Education Department. The institutions received $64.1 million additional tuition spending authority and $48.9 million increase (8.5%) increase in General Fund appropriations for FY2007-08. The latter were intended as part of the general stipend to the governing boards and for “fee for service contracts.” On the expenditure side, the College Opportunity Fund stipends were increased by nearly 3.5%. CoF was invented by the General Assembly in 2004 (SB04-189) to fund the institution through a trust fund. This funding mechanism accommodates the larger universities’ “enterprise” status. (Without making a direct appropriation to the universities, less than 10% of
their funding is from direct legislative appropriation.) The enterprise status permits tuition to be exempt from TABOR limitations. At the same time, the CoF makes state support more transparent to students and parents, inducing a bit of “entitlement” awareness among some. Higher education expenditure is less transparent due to the discretion afforded to the governing boards and by extension, to their presidents, so a more detailed accounting is not available. (more on higher education below.)

Much of the year’s work surrounding state finances has taken the form of addressing, but not necessarily solving, numerous lesser structural issues in the state’s fiscal composition. The question of “what to do” about TABOR, Amendment 23, and the overall problem of sustaining 21st Century services within a cramped and often Byzantine system of public finance remained the Elephants-in-the-Room. Although they do not figure in the expenditures per se, a number of issues of lesser scale would predominate. These will perhaps be the lasting accomplishments of the 2007 session.

**PROSPECTING FOR FUNDS: GOLD FLAKES OR THE MOTHER LODE?**

**The Property Tax Freeze**

Revisions of the School Finance Act by SB07 199 were the single most significant finance bill in the 2007 General Assembly. There is a background to this story that is complex. The School Finance Act is passed relatively late in the session in order that its provisions can be incorporated into the Long Bill. It specifies the specifics of state education funding, an important component of which is the setting of the years per pupil spending base, for which local school districts and the state must share portions based on several elements in a complex formula.

However, as in most matters having to do with school funding, there is a tortuous and long story of political interest, financial capacity, property taxation, and multiple claimants on the public fisc at the local, district, and state levels. Voters passed an omnibus property tax reform in 1982 that has resulted to shifting property tax burdens away from residential to non-residential property. Whether intended to protect homeowners from property tax increases of every kind or to protect against burden shifting from non-residential to residential is, of course, a debatable subject. Over 28 years, however, it has not only had the effect of protecting homeowners from assessment increases, but has actually shifted the assessment burden to non-residential property. This was accomplished by specifying that the non-residential assessments would be set forever at 29%, while residential rates would be permitted to “float” to whatever rate allowed total residential collections to be 45% of total property tax collections. Residential property owners have found that their assessment rates have plunged since 1983 from 22% to less than 8%.

Most of this is due to the fact that non-residential property, specifically commercial and industrial property, values have grown in the interim at more than three times the rate of residential property values statewide. This was not foreseen by the legislative authors of the 1982 constitutional amendment. Non-residential property is now valued at $314 billion, having grown
nine fold since 1986, and residential property value (currently $103 billion) has risen three-fold over the same interval (HJR Study, 2003; Chapter 4). Resentment among some sectors of the business community over the gradual burden shifting has been simmering for some time.

Implications for state finances have been profound, as pressure on the legislature to keep pupil funding at a respectable rate has competed with the state’s desire to reduce pressure on school property taxes, a source of political volatility in the state since the 1950's. The legislature’s solution to this problem has been to assume greater burdens for school funding over time and the shift in shares since 1982 has nearly reversed. In 1982, the state contributed 42% of school funds statewide; currently the state assumes a share exceeding 60%. The trend preceded the adoption of the TABOR amendment in 1992, but it has elevated the rate of the trend. Given the continued commercial and industrial property value outpacing of residential values, there is no foreseeable end to the trend. Senate Bill 199 was an attempt to stop the trend.

The scale of impacts of the two constitutional amendments (“Gallagher” in 1982 and TABOR in 1992) is reflected in an estimate performed by Legislative Council staff in 2003: IF the 14.34% assessment rate of 1992 had been applied to residential property in 2002, residential property owners would have paid $207 million more in residential property tax. At the same time, supporting some but not all the contentions of organized commercial and industrial taxpayers, the burden on these 29% rate-payers would have been $117 million less. If the state had been able to freeze the plunging assessment rate at the 1992 rate, that General Fund would have been relieved of $92 million worth of school finance obligations in 2002-2003 (HJR03-1033 Study, 2003; page 76).

To complicate the picture, there are other claimants on the state’s General Fund who have suffered from the school funding demands originating with the School Finance Act, Gallagher and TABOR: these include prisons, Medicaid, welfare, regulatory agencies, public safety and higher education. Even with the School Finance Act, however, there was concern among school advocates that funding levels and the categorical programs under the school funding program were inadequate regardless of the source of funds. This movement was the basis of support for Amendment 23 of 2000 which provided a constitutional earmark for K-12 funding, combined with an “inflation plus one percent” kicker for the decade ending 2011.

Finally, the 1990s boom in property values in many parts of the state had caused many school districts to reduce their mill levies because of TABOR’s requirement that expenditure levels not exceed a level permitted by school population growth and inflation. Prior to TABOR’s passage the state had imposed a uniform school mill levy. In areas where economic busts caused property values to decline, school districts were unable to adjust their mill levy upward to raise the same funds as previously spent by the districts.

How to solve these big puzzles has concerned the state’s finance, legal and education cognoscenti for years. The boldest effort came in 2003, in an initiated ballot measure to freeze residential assessment rates at 8%. It was defeated by voters. The petitions for the measure had long been in the field before the property tax assessment figures were worked out by the
Department of Local Affairs. These turned out to require a 7.96% residential rate, dooming the measure as a “tax increase.”

Senate Bill 199 changed the legal basis for the local shares of the state education funding program beginning in 2007 to the lowest district levy among any of the following:

1) the 2006 school mill levy,
2) the mill levy sufficient to raise the same revenues as tax year 2006; or,
3) 27 mills.

The sole exception to this school property tax “freeze” was three school districts (of the state’s 178) which had not yet voted to retain excess revenues under TABOR’s provisions. The Legislative Council estimated that SB199 makes $47 million available to legislative discretion in 2007-2008 and 2008-2009, with a ten year cumulative $1.8 billion (Saccone, 2007). How can the General Assembly do this? Not without raising some eyebrows.

The bill's transit through the General Assembly unmasked some of the awkward relationships between the Governor and legislative Democrats and between House and Senate Democratic leadership. SB199 was introduced on the 20th of February, without the mill levy freeze provision. Scheduled for witness testimony only for the 14th of March, the governor and the Chair of the Senate Education Committee, Sue Windells (D-Littleton), hoped to stir public interest in the freeze (dubbed "Colorado Children's Amendment") on the day before. When, over the next 48 hours, a howl went up from Republicans seizing an obvious scoring opportunity with a “Democratic tax increase,” panic ensued among the Democrats. The Education Committee Chair beat a tactical retreat, withdrawing the committee amendment that included the freeze. Both the Senate Education and Appropriation Committees reported the bill without the provision. Senate Democrats failed to close ranks fearing voter retribution for this “too hot” provision, whose history and technical provisions were badly explained and poorly understood by many, including the leadership. A victim of an institutional memory hobbled by term limits, the newness of a Democratic governor, poor anticipation and preparation, and the crossing of ambitions and leadership styles, the measure was fumbled. But the governor and House Democratic leadership resolved to pass it this year.

House leadership, eager to avoid the Senate experience with the Colorado Children's Amendment, adroitly managed the bill's difficult transit resulting in a narrow 32-29 margin. Five Democrats defected and one Republican (JBC member Al White R-Winter Park) broke partisan ranks (Couch, 2007h). The freeze provision was incorporated into the House version of SB199. On the 1st of May the Senate voted to concur with the House version. By this time a great deal of pressure was brought to bear on recalcitrant members of the Senate Democrats and on Senate Republicans as well. A May 1st Denver Post editorial reminded readers that four current Republican Senators had voted FOR the same provision in 2004 when even "tax-hating" John Andrews, a founder and president of Golden’s Independence Institute had supported it when Senate President (Editorial, 2007b).
But the technical question of how the freeze fails to violate the TABOR amendment persisted. How can the General Assembly change tax policy when the language of the Taxpayer's Bill of Rights explicitly prohibits it? Here we must go back to the School Finance Act of 1994, which this “property tax mill levy freeze” amends. Actually SB199 repealed C.R.S. § 22-54-106(2)(a)(III) which specified that school mill levies limited by TABOR would employ the district enrollment methodology (the “district's funded pupil count” and the malleable sums specified by the General Assembly's “per pupil funding”). As if clear from Gerber (2000), complex and detailed constitutional initiatives often depend upon legislative determination on the unspecified details. In this case, though, the Colorado Supreme Court has sympathetically favored the intentions that it reads in the initiated TABOR; the legislature had to specify the specifics of how to implement it.

The School Finance Act of 1994 provided implementing language for 1992s TABOR, and must implement TABOR where TABOR is silent or “uninstructive.” The Legal Services staff was asked to opine on the matter of legislative latitude for school funding in light of TABOR. In a careful series of memos in 1993, the staff interpreted such provisions as technically distinct enactments. The provisions of the 1994 legislation sought to comply with TABOR but they are not the only means to do so. These views were reaffirmed in 2004 legislative legal staff analyses requested by the House Majority Leader, Keith King (R-El Paso), who seriously considered the same school mill levy "freeze" mechanism in 1994. In the words of a March 20 memorandum Senator Windells from the Governor's Chief Counsel…

"...In short, because the repealing of C.R.S. § 22-54-106(2)(a)(III) simply removes a reference to TABOR (without affecting the applicability of TABOR), such a statutory revision does not constitute a "change" in tax policy." (Rogers memo March 20, 2007)

Emblematic of the partisan atmosphere was when the Attorney General John Suthers requested an opinion on SB199's constitutionality. In an apparently hurried effort, Solicitor General Dan Domenico’s memo reasoned that the measure did not create a tax or increase the rate of a tax, agreeing with the reasoning of the Legislature's Office of Legal Services. However, the bill's property tax mill levy provisions DID constitute "a tax policy change directly causing a net increase in revenue..." which under TABOR's provisions requires an affirmative vote of the state's electors (Domenico memo to Suthers. n.d.). Republican State Party Chair Dick Wadhams celebrated SB199 as a Democratic “stealth tax increase.” Derided by columnist Bob Ewegen (2007a) as hurried and inept, the dueling memos were enough to predict a legal challenge.

“Sustainable Transportation Funding”

In March, Governor Ritter, by executive order, created a Transportation Finance and Implementation Panel to be composed of 32 members from finance and transportation officials at all level of government, industry associations from all transportation sectors, and public interest groups. The mission laid out in the executive order was:
“to set the tone and vision for selecting and financing statewide transportation improvements and investment for the 21st Century; establish an achievable scope and determine priorities; recommend strategies for sustainable transportation funding sources and implementation plans; to be inclusive in bringing stakeholders to the table; and to build partnerships among those stakeholders.” (EO B 001-07)

A steady agenda of meetings, beginning in April, were to be held across the state, defined as the Transportation Summit, “to address the transportation challenges and opportunities that lie ahead.” A reading list for members and stakeholders was posted on the governor’s web site as were agendas, briefing materials, PowerPoint presentations, and the like. More than anything, the agenda and work plan of the panel (Panel Framework, April 2007) seemed to reflect an attempt to systematically locate existing policy in the context of transportation needs. Discussion of needs was not the “rocket science” of complex systems analysis, but simple projection of current transportation demands. This relatively pedestrian (pun intended) approach through the summer of 2007 was expected from a group of newcomers and a governor whose cautious attempt at bringing together the “transportation communities” on a statewide scale was unprecedented in the memories of close observers.

Panel responses to the bewildering scale of the planning and financial problems detailed in the first several meetings concerned the “need to get our arms around this,” “the need to think about this in new ways,” “what are other states doing?” and the need for more information [Panel Response Notes, April 19]. The elephant in the room, sustainable financing system, was not to be addressed until the July meeting. It was unclear, despite the earnest participation of many, many people in spring and summer, whether this panel would go beyond mapping out the scope of the transportation infrastructure crisis.

**Parallelism at the General Assembly**

Among the fixtures of the General Assembly easily overlooked since its precursor was created in 1953 is the Transportation Legislation Review Committee. The General Assembly legislated what would be treated as an interim committee insofar as legislative recommendations are concerned and it has assumed larger oversight roles over its existence. The committee met every year from 2001 through 2007, with no less than five meetings every summer and fall. For an interim committee, it is a large one, with 10 Representative and six Senators. The committee’s co-chairs have been important and capable ones, regardless of the partisan balance of the two Houses, to include in recent years Democrats Takis, MacFadyen, and Pommer, and Republicans Berry and May. The committee has recommended legislation under this tactful leadership on some very hot legislative issues, including the use of eminent domain for private toll ways which has raised a furor after attempted launch of the north-to-south Prairie Falcon Toll way through Weld, Adams, Arapahoe, Douglas and El Paso counties. But the committee has done some lighter lifting in the area of license fraud and agricultural vehicle regulation as well. It has become an important way station in building the legislative agendas and organizing consensus around transportation issues. House Bill 07-1018 broadened the authority of the committee to include guidance to the Department of Revenue in the regulation of motor vehicles and drivers
and “any other any state agency or political subdivision of Colorado that regulates motor vehicles or traffic including, without limitation, penalties imposed for violating traffic statutes and rules.” The output of the TRLC in 2007 dealt with diesel emissions, traffic safety, toll enforcement and transportation commission qualifications—all technically complex, “multiple stakeholder” issues to be sure, but as one of the signs that the Democratic leadership was willing to defer to the governor on sustainable transportation funding, TLRC it did not take up the subject.

Higher Education “Fireworks”

Impatience with the execution of the Colorado Promise began to bubble over with regard to the higher education financing, producing one of the session’s few unscripted delights. While the universities have been involved in reinventing and “branding” their public images, doubtless benefits have flowed to the major research universities in the past two years. For one, Referendum C’s passage was put over the top by a concern with increasing tuition-based financing. Public and elite complacency over the funding of the state’s universities were partially reversed in 2005. The intervention of University President (and former U.S. Representative and Senator) Hank Brown in the campaign for Referendum C is widely regarded as the decisive contribution to C’s passage. Editorial concern among the Denver dailies, having been awakened in the 11th hour, continued in late 2006 and 2007. It helped that since 2005 a number of esteemed panels, studies, reports and new delegations of business and civic leaders had begun to infiltrate editorial board meetings, general business organization presentations, and public affairs programs. And the universities themselves began to assert unabashedly their economic value to the state. Higher education has been in what its leadership sees as the fight for its survival in a state which balanced the General Fund budget with higher education cuts. The “enterprising” of CU and then CSU gave brief limited relief but ultimately would not, in the absence of other changes toward tuition spending authority, permit the enterprises to rebound with tuition-based funding alone. Compared with 1983 when higher education occupied 20% of the General Fund budget, the current year’s 7.5% share spoke volumes about the gradual erosion of state support for higher education, as institutional leadership had quietly negotiated its financial ruin.

It was over tuition—specifically tuition spending authority for Colorado State University—that the drawing-room etiquette of the higher education budget process dissolved for a couple of weeks. Framing this years’ higher education discussions were the findings and recommendations of the National Center for Higher Education Management Systems [NCHEMS]. The study was commissioned by the state’s Commission on Higher Education and released on November 16 (NCHEMS, 2006). Its major findings were that . . .

Colorado’s institutions overall receive 63.3% of the state funding support of their peer institutions. Colorado’s research universities collectively received 41% of their peer’s state funding support per student while the University of Colorado at Boulder (accounted separately from Health Science Center) received 25% and Colorado State University received 39%.
Tuition and fees at these two research universities . . .

University of Colorado collected 130% of their FTE controlled peer average.
Colorado State University collected 86% of their peer average.

The study identified a funding gap for each type of higher education institution (research, 4-year, community college), concluding that a $848,198,442 deficit existed for Colorado relative to their peers on an FTE-controlled basis (NCHEMS, 2006; Att. B):

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research</td>
<td>$524,205,559</td>
</tr>
<tr>
<td>Four-Year</td>
<td>$221,640,627</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>$102,352,256</td>
</tr>
</tbody>
</table>

These findings created quite a stir of optimism given the climate of Democratic control of the Capitol, which made the findings important as peer-based benchmarks as opposed to “yet another self-serving recitation of facts” creating another “pie-in-the-sky laundry list.” Negotiations among the institutions are said to have been cooperative this year. That is, agreements were reached within the confines of the JBC hearing process over the appropriate institutional shares of the state funds and tuition authority. Juxtaposed with the $848 million funding gap, the offerings of the JBC seemed pretty paltry: $49 million of “new money” would be divided up among University of Colorado ($15 million), Colorado State ($10.4 million), and community colleges ($10.3 million). The new Executive Director of Higher Education, former Congressman David Skaggs (D-Boulder), expressed the kind of moderation that diplomatic constraints summon among the disappointed as “... the best we can do with the limited funds available.” The same Post editorial ended its largely positive endorsement of the budget agreement with discussion of the need for funding earmarks from a sales tax. (Editorial, 2007).

Over the following weeks a separate series of discussions ensued which caused at least one institution to revolt against the prudent statesmanship of the higher education budget. On Wednesday, March 28, after consultations among the Senate leadership and the CSU administration, Fort Collins Senator Bob Bacon (D), introduced an amendment to the Long Bill to alter the definition of “full time student” under the university pricing regimen. The amendment’s redefinition of full time from 9 credit hours to 12 credit hours would permit CSU to collect an additional $31.5 million on top of $11.3 million raised by the direct 7% tuition increase agreed to in February. The episode showed that it does not help to have friends in high places; possibly the loudest cry of indignation came from JBC member and CSU alumnus Steve Johnson (R-Larimer Co.), an 11-year legislative veteran well aware of the financial plight of the state’s universities. Johnson castigated the effort as a “sweetheart deal” attempted at the 11th hour of the budget process to which the institutions had consented. (Couch, 2007d). However, CSU President Larry Penley’s strategy might well have prevailed had a CSU political science major, Luke Ragland, not explained to legislators the actual tuition impact on CSU students; the most frequent-cited example being he and his younger sister, a prospective freshman in the fall: Their combined tuition bills would increase $2500 over the 7% nominal tuition increase (Couch, 2007d). A tone-deaf CSU administration lost the battle of semantics it waged on campus, refusing to acknowledge changes in the pricing model as a tuition increase. It fumbled its public
message that CSU was not being permitted the same tuition latitude as CU-Boulder in tuition pricing for in-state students. Within weeks, Penley was able to sharpen the message, even against the antagonisms of Senator Johnson and the victory dance of student activists in Fort Collins. A compromise was reached such that the CSU governing board was permitted greater latitude for out-state tuition increases (Couch, 2007e).

A case study on budgeting, this little dustup would inadvertently reveal a great deal about the respective political environments and resilience of CU versus CSU: “Why should CSU be equal?” questioned Senator Johnson (Brown, 2007). CSU’s friends acknowledge the importance of the Veterinary School and the CSU Equine Center in a state whose economy no longer features agriculture in the way true in 1950. It has few favors to offer the increasingly urbanized, amenity-craving Front Range, except for its astonishingly low tuition. Compared to Boulder campus of CU which hosts basketball games, a Shakespeare festival, galleries and exhibitions, academic centers, conferences of every shape, not to mention the substantial benefits of affiliation with CU’s health care organizations, CSU’s statewide Agricultural Extension Service has been on the wane for decades. CU has a law school and a large health science center. CU’s friends are people who use the medical services affiliated with the university, who have received law degrees from its School of Law, who consume the amenities placed within driving distance in metropolitan Denver. CU’s “consumers” are many and varied and include those associated with (if not running) the existing bulwarks of the state’s economy and arguably, many of the institutions in the state.

The arrival of CU’s delegation to JBC hearings is a marvel to watch with upwards of fifteen lobbyists, flaks, deputies, assistants, and administrators compared to CSU’s modest contingent of administrators, student government leaders, and one or two contract lobbyists. As recently as ten years ago, road signs along I-25 directed traffic northbound to Cheyenne, ignoring Fort Collins—then a city exceeding the population of Boulder. That CSU has recently been deterred from pursuing institutional ambitions by an “unattuned” Board of Governors, instability and indirection in the University administration, complacent and unorganized alumni, and withering institutional roots is a good study in the application of Long’s (1949) insights into organizational survival. CSU has presented itself ambiguously, at best, to the state at large. CSU’s stepchild position in the state ultimately stems from an absence of institutional adaptation. It is partly in the current context of President Penley’s mission to elevate the institutional ranking of CSU’s research mission that the breaking of budgetary norms must be seen. Another factor must be included in the consideration of Penley’s decision to break ranks in late March: the increasing dissatisfaction with the lion’s share of funding received by highway and capital construction in the General Fund’s overages beyond 6%. Whereas Referendum D would have used these funds to support bond financing, D failed. It was advocacy for “righting” the upside-down funding priorities for higher education that carried the day for Referendum C. Ironically, higher education has not had its budgets restored while highway funding enjoys unprecedented funding—a fact visible along most commuting and recreational arteries in spring and summer of 2007. There is growing recognition that the scale and visibility of highway improvements is satisfying interests which may be indifferent to the plight of higher education funding beyond the life cycle of Referendum C, which ends in 2010.
To amplify the desperation in higher education funding, the governor and legislative leaders met with university officials and advocates for a two-day June Higher Education Summit held in Colorado Springs. The climate of desperation was sharpened perhaps by the recognition that three fiscal years had ended since Referendum C passed in November 2005. Participants agreed that the voters were going to have to agree to new higher education revenue streams, even with a modest proposal, to solve the $848 million funding deficit over 10 years. Severance taxes and lottery system sales have become the casual refrain in many such discussions.

**Severance Taxation**

The authority and composition of the state Oil and Gas Conservation Commission was the focus of considerable discussion in this year's session—discussions that are just beginning but that carry potentially huge consequences for the state's finances. Oil and gas production from the state's 30,000 active wells was valued in 2005 at $8.5 billion of the total mineral production of $9.71 billion. Three counties had oil and gas production of over $1 billion (Garfield, LaPlata and Weld), while seven other counties are producers of between $100 million and $1 billion (Cheyenne, Las Animas, Moffat, Montezuma, Rio Blanco, San Miguel, and Yuma). The accuracy of production reporting affects both state revenues as well as county property tax revenues, since county assessors’ record of production data completes their assessment of non-renewable mineral resources.

Although criticism of severance tax administration has simmered since the tax was created in 1977, the 2006 State Auditors Performance Audit of the Commission may well have provided a new focus for reform. The Auditor found:

- There is no state verification of the production reported by the extracting parties and the state fails to ensure the accuracy of metering equipment used to report well production to royalty owners and revenue officials. In these areas, the Commission and the Revenue Department both have responsibilities.
- The Revenue Department has not established procedures for identifying severance taxpayers or for ensuring reporting of mineral income. (Eight of 27 producers sampled filed no severance tax returns from 2002-2004.)
- The Revenue Department audit coverage is grossly incomplete; one example of which is that only 28 companies [albeit with 90% of the (reported) oil and gas production] have been audited.

Recommendations made by the Auditor for implementation by October 2006 were several, and were accepted (subject to administrative rule making by the Commission) without resistance by the several affected state agencies. Notably the staffing upgrades and training in the Revenue Department's Minerals Division were addressed. The Division's budget in 2005 was slightly less than in 2002, in spite of the state's near-tripling of production (State Auditor 2006 page 34).
In addition, the Auditor researched and highlighted policy and legislative facts pertaining to mineral taxation in the State. In the context of comparisons to other states, the effective tax rates in Colorado were seen to be lower than neighboring states, at about 1% (five year average). Numerous other policy concerns relative to comparisons were addressed in the report, providing numerous subjects for conversation over the 2006 campaign season and beyond. The report set off a flurry of requests for studies during the 2007 session, all of which suggested that the state may have “lost” nearly a billion dollars in revenue due to poor management of the revenue collection process.

At the same time, the Department of Local Affairs emerged in the gubernatorial transition with a focus on the matter of HOW the severance tax was being distributed. Since the severance tax revenues were legislatively diverted from the General Fund to earmarked “mineral extraction impact” funds, DOLA has allocated severance revenues through a couple of funds. Questions have grown over their purpose and distribution. Having approved some legislative fixes to the OGCCC authority and anticipating completion of OGCCC rule changes, late in the session the General Assembly [SJR07-042] formed an Interim Committee on Severance Tax and Federal Mineral Leasing Revenue Allocation. Interestingly, the Committee was heavily staffed by Legislative Council and augmented by a working group of eleven which included county commissioners, sportsmen and environmental representatives, school board member, and Natural Resources Department officials. The committee reported a rigorous hearing and meeting schedule. Less consensual were several measures to incorporate both new members [HB07-1341] and new environmental responsibilities [HB07-1298], in addition to ordering new oil and gas wellhead measurement rules [HB07-1180] from the Commission.

Lottery sale

The first recorded mention of the state lottery was made in connection with funding needs of the state’s two largest universities. The lottery did not emerge again until late March when a proposal to sell the state lottery was championed by Denver’s new Senator, Chris Romer (D), son of retired Governor Roy Romer. The bill found interest among aisle-crossing Republicans almost immediately as an potential alternative source of funds to the governor’s property tax freeze proposal. The issue for Democrats, however, was not only in confounding the freeze plan, but the delicate funding agreements for the current lottery revenues. Under current law, fifty percent of lottery proceeds go to the Great Outdoors Colorado (GOCO), created in 1992 by Constitutional Initiative. Destinations for GOCO funds include municipal open space purchases and state and local park and wild areas acquisition and management. The lottery constitutes all of GOCO’s funds, supporting $570 million for over 2800 projects from its inception to FY2007 (http://www.goco.org/). The funding of a wide band of small and large public facilities distributed across the state has made GOCO the state’s premier distributive entities for conservationist and local governments. Other portions of the lottery revenues are also dedicated: forty percent to the Conservation Trust Fund and ten percent directly to the State Parks.

Romer and his co-sponsors argued that converting the underperforming lottery into an “operating concession contact” (Couch, 2007) could yield between $2.2 and 2.6 billion. Of that,
$1.5 billion would go to the Conservation Trust Fund, $40 million to Veterans groups, while GOCO and college scholarships would split the remainder, estimated at $660 million. For reasons beyond the late-April timing of the proposal, Senate Democratic leadership was as frosty as could be imagined and the legal services staff attorneys (followed by the AG) scotched the possibility of a 2007 referendum: only taxation and debt matters can be referred in odd-numbered years. (Couch 2007). The proposal died but not without inspiring a Republican proposal to use the lottery funds for K-12 in lieu of the governor’s proposed “rush to raise taxes” via property assessment rate freeze (Ashby, 2007b; Harsanyi, 2007). Over 36 hours, a proposal for undoing a constitutionalized conservationist earmark emerged and disappeared. An odd footnote, however—on the 20th of April, four ballot initiative titles were filed by officers of the United Veterans Committee of Colorado to sell the lottery and apportion the funds similarly to the Romer proposal except to dedicate $60 million to the State Veterans Trust Fund. It is not clear how four subtly differing versions of this complex measure materialized so quickly.

Performance Review Project

In the State of the State address, Ritter promised the creation of the Government Efficiency and Management Project and by May, Ritter announced the selection of a contractor and outlines of the operations of the GEM project. Incorporated into the governor’s requests for supplemental in February, he requested $700,000 for the project. Expected to save dollars through improved efficiencies, the governor hired Public Works LLC of Philadelphia to oversee the project. The benefits of these performance-based proposals are to be incorporated into the 2008-2009 budget proposals in November, about the halfway point for the project’s life span.

Colorado Blue Ribbon Commission for Health Care Reform

This “208 Commission” was created by the legislature in 2006 (SB06-208), to convene 24 members including consumers, purchasers, experts, and business leaders. Charged with recommending options for expanding insured health coverage and addressing issues of cost for Colorado residents, the Commission began meeting in November 2006 and is expected to issue a series of recommendations to the General Assembly by the beginning of the 2008 Session. In February, the Commission issued formal requests for reform proposals. Thirty one responses were received from various organizations. Four of these, plus one drafted by the Commission itself, became the focus of subsequent research and discussion beginning with the April 27 meeting (Commission, 2007).

1 It is common for groups to submit several versions of a measure to expedite Legislative Council comments, anticipating technical issues raised by the staff. Office of Legislative Legal Services memos, 5-2-07 regarding proposed initiatives 25, 26, 27, & 28. Review and Comment Hearings were conducted, but none of the amended measures were filed with the Title Board.
Governor Ritter’s P-20 Coordinating Council

While not directed at fiscal matters the P-20 Council has obvious implications for education funding. It was created by Executive Order in late April to recommend changes in the state’s schools regarding:

- pre-school education
- the high school dropout problem
- consistent college preparation among high schools
- teacher compensation and retention
- sustainable funding
- college access
- enhancing accountability
- state workforce needs (Exec Order)

A series of meetings statewide to solicit and organize public opinion warmed up the work of five committees. Filled out with three co-chairs and 27 members, the committee’s initial recommendations are expected in late 2007.

Discussion

Notwithstanding the newness of Democratic control of the Colorado’s government and the occasional flare-ups within and without the state budget and finance vortex, the 2007 session was one of waiting and anticipation. The months following the session would provide a clearer view of the work of the commissions and panels created to provide some guidance and consensus on the future of the state’s finances. The ability of the General Assembly to address their findings will depend partly on the following:

- Whether severance tax administration reform will yield greater revenues and whether such a bigger pie will be wrested away from the mineral-impacted counties to whom the revenues currently flow.

- Whether national and state health care reform proposals, encompassing a meaningful portion of the uninsured, emerge from the predictable political onslaught of organized and well funded opposition.

- Whether Penley’s “impolitic” maneuver will have focused attention enough to compel invention of new funding streams for higher education.

- Whether lottery sale or leasing will even be possible given increasing ripples from the home mortgage financing crisis and, if so, will conservationists permit tampering with its earmarked spending?
• Whether substantial increases in the motor fuels tax, combined with other
dedicated taxes, will be attractive enough or sufficient enough to place roads
funding on a sustainable basis and provide breathing room for General Fund
programs.

• Whether advocates of Amendment 23 Constitutional earmark for schools will be
compelled to allow reconsideration of the scope and method of education funding
they championed in 2000.

• Whether short-term recession funding realities collide with long-term solutions of
ANY shape and size.

The organized Republican Party, both in the legislature and in the party central
committee, has not moved substantially enough to want to cooperate in a solution to the states
fiscal cul de sac which involves promoting new taxes or which takes away from those enjoying
the status quo. At the same time, incorporating Amendment 23 and its K-12 earmark in a
TABOR reform proposal will be a tough, delicate sell. Without a broader statewide leadership to
forge a consensus, any corrective referendum or initiative will carry substantial risks of failure.
Such a failure would charge the political atmosphere to such a degree that there would be strong
inducements to not recognize it as such.

Whether the legislature is even up to the task of a broad scale reinvention of the state’s
finances is a debatable proposition even with a centrist Democratic Governor. An institution that
has resisted the service demands of the post WWII era, its failure to recognize incapacities of the
state’s finances for a couple of decades has been chronic. For decades, state finance has been a
game of musical chairs and TABOR has amplified and automated the tendency. The legislature’s
superiority to the Colorado executive does not recommend it as a deliberative representative
body. Its tense partisanship and term-limited ignorance of the workings of state government
makes the General Assembly a tough place to do statesmanship. Notwithstanding the
considerable gifts of its current leadership, extraordinary for this body, the General Assembly
has been the graveyard for many smaller “urgent necessities” before.
APPENDIX

Figure 1
Distribution of General Fund Revenue
(FY 2006-07)

General Fund Revenue

General Fund Obligations
(Outside 6% Limit, $323.3 million)

General Fund 4% Reserve
($257.0 million)

General Fund 6% Appropriations
($6,075.6 million)

SB 97-1 Diversion to HUTF
($231.3 million)

General Fund Excess Reserve
(1/3 to Capital Construction - $96.7 million, 2/3 Transportation - $113.5 million)
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