



2009 Wyoming Legislature

A Nuts & Bolts Session

CONTENTS

- 2**
Injured Workers
- 3**
Taxes Levied
Kidcare CHIP Failure
- 4**
Clout for the Insured
Keeping Kids Safe
Tort Reform
- 5**
Campaign Contributions
Voter ID
- 6**
Taxes as Investments
Rare & Uncommon Designation
- 7**
Gay Marriage
Low, Low Wages
- 8**
2009 Lobbyist Training

Dear Friends,

How does the Wyoming Legislature affect you?

Its decisions affect how many children are in your child's classroom, the quality of the roads you drive on, the availability of numerous programs and services in your community, and how far the government reaches into your personal life.

In our 2006 report on the Legislature, we noted that surprisingly few legislators were asking about, much less articulating, what our state should be like a generation hence. The same can be said about the 2009 session. In fact, legislative leaders termed it a "nuts and bolts session" aimed at maintaining the state's economic base, rather than defining what the state will be like in 10 or 20 years.

The House did sustain the vision of Wyoming as the Equality State when it rejected a proposal to discriminate against gays and lesbians by prohibiting civil unions involving two people of the same gender.

But care of our future citizens took a dive when a proposed expansion of the state's children's insurance program, one of its most cost-effective programs, was killed on the last day for debating bills in the House.

All in all, we believe the 2009 session of the Wyoming Legislature brought more far-reaching consequences than may initially appear, including positive changes to the Workers' Compensation system, in mineral taxation and with insurance reform.

The Equality State Policy Center and its supporters will have to work over the coming year to educate legislators on these and other issues. We'll be in touch as we reach out across the state, bringing citizens and elected officials together to shape our future.

Thank you for your commitment and support!

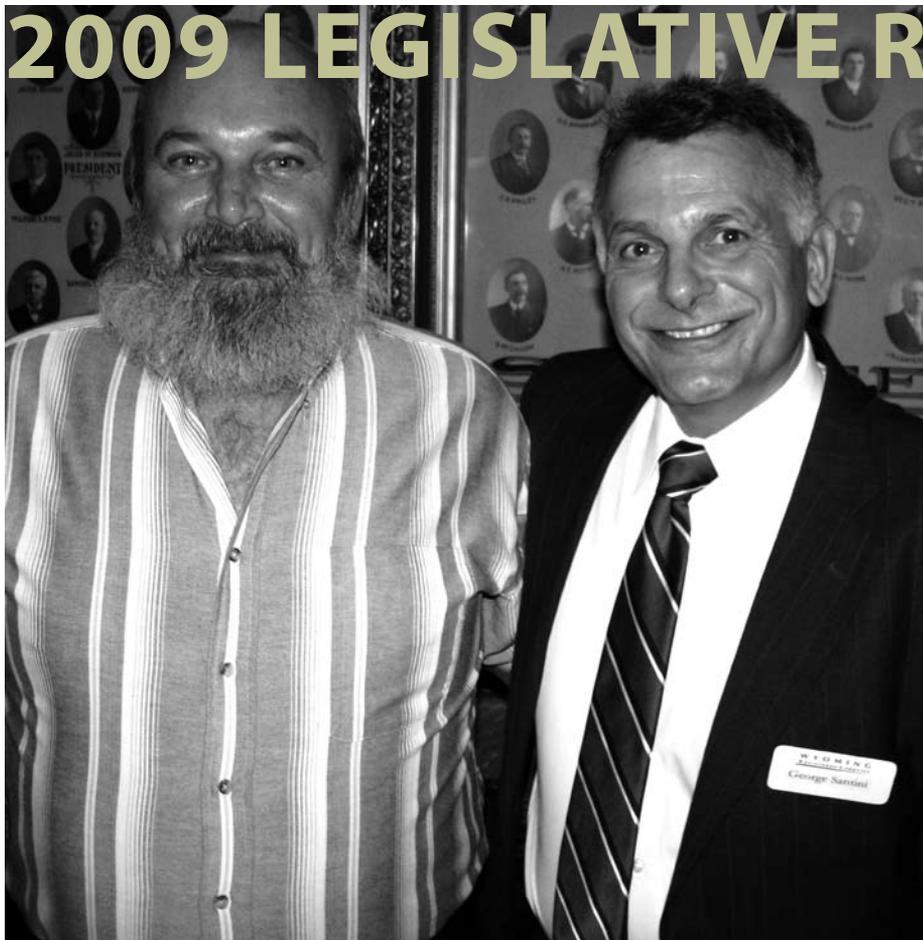

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2009 LEGISLATIVE REPORT



Cheyenne attorney George Santini, right, has represented Richard Johnson for many years. Johnson was injured on the job more than 20 years ago, and suffered a permanent total disability. Both men testified before the Legislature to encourage adoption of a cost-of-living adjustment to permanent disability benefits.

INJURED WORKERS Get Fairer Treatment

One of the biggest accomplishments of the session was passage of the workers' compensation reform bill (HB 54), making numerous changes to a system that was rife with injustice for workers injured on the job, particularly those with permanent partial or total disability.

The new law includes these changes:

- Increases death and permanent impairment benefits, including benefits for surviving children;
- Provides a minimum and extends the duration of temporary total disability benefit;
- Provides an annual cost of living adjustment to permanent total disability benefits;
- Extends the maximum duration of vocational rehabilitation benefits;
- Extends the period over which death benefits are paid;
- Limits the time for the Workers' Compensation Division to recover overpayments;
- Revises the criteria for, and distribution of, employer premium credits;
- Enables sole proprietor businesses to obtain coverage under the system;
- Requires the state to pay a fair share of the costs of litigation when covered workers recover damages from third parties;
- Requires the division to reconsider claims if an injured worker's failure to meet a procedural deadline is the fault of the worker's attorney;
- Appropriates \$150,000 to the Office of Administrative Hearings to figure out how to modernize the office and to hire one additional hearing officer.

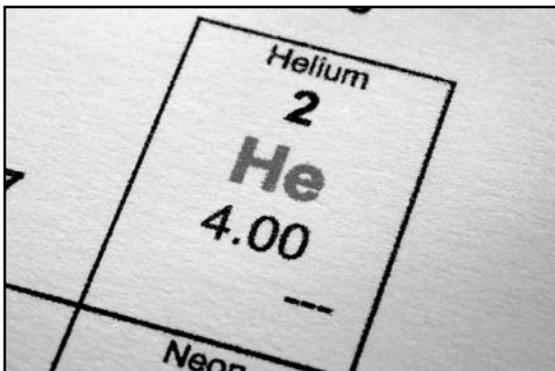
TAXES LEVIED

On All Valuable Minerals

In Wyoming, helium is extracted as part of the natural gas stream at ExxonMobil's Shute Creek gas processing facility. ExxonMobil has aggressively tested Wyoming's mineral tax system since the late 1980s, when it declined to pay taxes on the gas at Shute Creek, saying the gas had no value – even as the company continued to extract and sell it.

ExxonMobil paid both severance and property taxes on helium for about 20 years under a Tax Settlement Agreement. When the agreement was cancelled by the state in 2004 on the grounds it no longer resulted in fair taxes paid, ExxonMobil sued. The Wyoming Supreme Court held that Wyoming's definition of "taxpayer" did not include ExxonMobil's unique contract arrangement with the federal government to extract the helium, making helium the only valuable mineral to escape taxation.

In 2008, the Legislature passed a bill changing the definition for the purpose of imposing a severance tax on helium. This year's bill (HB 287) did the same for property tax. The ESPC advocated for the bill, as did the Wyoming County Commissioner's Association; it passed despite stiff opposition from ExxonMobil lobbyists. A fact sheet on this bill is available on the ESPC's website at equalitystate.org.



KIDCARE CHIP FAILURE

Denies Health Coverage To 3,700 Children

The greatest disappointment of the session was the failure of the bill to expand the State Child Health Insurance Program (SCHIP – Wyoming's program is called KidCare CHIP). KidCare CHIP is a public-private partnership offering health insurance coverage for children in families with too much income for Medicaid but not enough to buy insurance on the private market.

Currently, children in families with incomes up to 200% of the federal poverty level (FPL) are eligible. The bill (SF 39) would have extended eligibility to families with incomes up to 300% of the FPL – about \$66,000 for a family of four – at a minimal cost to the state, about \$95,000 for the biennium.

The bill passed the Senate, but was held up in committee in the House, and wasn't debated on the floor until the last minute – the last bill on the last day for consideration. The Senate already had amended the bill to deny coverage to families with access to employer-based family coverage.

Despite this amendment and data showing that an average family policy in Wyoming costs nearly \$13,000 a year (plus substantial deductibles), several legislators averred that families at 300% of the FPL could afford their own insurance and that expanding KidCare CHIP would injure the private insurance market. Those opponents ignored assurances from Blue Cross that it does not believe it has lost any customers to KidCare and would not lose any under the expansion. The bill went down on an unusually partisan vote, with the opposition spurred by the majority leadership in the House. A fact sheet on KidCare CHIP is available on the ESPC's website.

2009 LEGISLATIVE REPORT



SOME CLOUT For The Insured

Those with health insurance benefited from two little-noticed bills of the session offered by Sen. Tony Ross and backed by the American Heart Association, the American Cancer Society and the ESPC.

The first, called the “discretionary clause prohibition act” (SF 62) reduces the legal advantage that insurance companies have over consumers when the company refuses coverage. It prevents the automatic inclusion of discretionary clauses in insurance contracts – discretionary clauses make insurance payments contingent on the discretion of the insurer.

The second bill, medical necessity review procedures (SF 95), improved transparency in benefits management by health insurance companies by setting up a third-party review when a company and the insured person disagree over the medical necessity of a treatment recommended by the insured person’s doctor.



KEEPING KIDS SAFE While Parents Work

Wyoming currently has minimal requirements to license a daycare facility, nearly all having to do with basic safety. House Bill 313 was proposed to exempt from licensing any onsite daycare facilities provided by an employer.

ESPC lobbyists worked with the Wyoming Children’s Action Alliance and the Wyoming Education Association to oppose this bill, on the grounds that all daycare facilities should be safe. If an employer-provided facility was unsafe, an employee would be in a poor position to protest. The bill died on a tie vote on the House floor.



TORT “REFORM” Redux

Back in 2004, Wyoming voters defeated a constitutional amendment that would have allowed the Wyoming Legislature to limit noneconomic damages in medical malpractice cases. Although proponents of the amendment predicted dire consequences if it failed, e.g., doctors would leave Wyoming “in droves,” this did not happen.

Proponents of the amendment nonetheless have not given up. This year’s version (HJ 6) proposed a constitutional amendment identical to the 2004 ballot measure, with the additional language that the Legislature could not set the limit below \$250,000.

Voters defeated the 2004 amendment because they wanted to let juries continue to make awards appropriate to the circumstances of a particular case, not because they were afraid the Legislature would set the limit below \$250,000.

JEOPARDY FOR CAMPAIGN CONTRIBUTIONS (or, I'll take the "donor" category for \$2400...)

The cost of a winning race for the Wyoming Legislature averages about \$8,000 for a House seat and twice that for a Senate seat. Currently, Wyoming law limits individuals to contributing \$1,000 per candidate per election, and the primary and general elections count as separate elections. The only Wyoming race where a significant number of contributors "limit out" is the governor's race.

Following a similar attempt last year, a bill (SF 12) was proposed to raise the limit for individual contributions to match the federal limit – now \$2,400 per candidate per election. This could mean that only a handful of people potentially could finance an entire campaign for legislative or local office.

The ESPC and the Wyoming League of Women Voters vigorously opposed the higher limit, but did support an amendment attached in the House, which introduced the concept of "tiering" campaign contributions. The compromise allowed the higher limits for statewide races, but held the \$1,000 limits in all other campaigns. Twenty-five other states have tiered contribution levels.

The bill, which passed the Senate, died on a tie vote in the House. Contribution limits remain – for now – at \$1,000 per candidate per election in all state and local campaigns.



LET'S SEE That ID Card, Sister

If ever there were a bill proposing a solution to a non-existent problem, voter identification (HB 153) was it. The ESPC teamed up with the Wyoming League of Women Voters, the American Civil Liberties Union, and the Wyoming County Clerks Association to defeat the bill.

Wyoming law now requires a photo ID to vote only in cases where a voter who has registered by mail is voting for the first time in a federal election. The voter ID bill would have expanded that requirement (and mandated that the ID be government-issued) to any individual voting for the first time in a federal election – but that wasn't all.

The bill also required the prospective voter to bring a utility bill, bank statement, paycheck, government paycheck, or other government-issued ID with the voter's name and address. The requirement was "awfully close to a poll tax," in the words of one legislative opponent.

Although voter fraud almost never occurs in Wyoming, the bill was modeled on an Indiana statute characterized as the nation's most restrictive voter ID law. In the last election, Indiana election officials turned away a group of nuns who wished to vote but did not have driver's licenses! Even the Wyoming Secretary of State's office testified that the bill would dampen turnout and jeopardize Wyoming's same-day voting process. The bill died in committee on a 3-6 vote.

2009 LEGISLATIVE REPORT



THINKING OF TAXES as Investments

Rapidly escalating property taxes in certain areas of the state (due to rising real estate values) led to many efforts to reduce property taxes. In an unprecedented lobbying effort, the ESPC joined with the Wyoming Taxpayers Association (WTA) to support only reductions targeted to the elderly, disabled and low-income, and oppose broad tax reduction measures that could put the state's revenues in jeopardy over the long term.

The ESPC and the WTA also successfully requested an interim study of Wyoming's tax policies. While this was trimmed a bit to look specifically at tax policy in light of declining revenues, we hope the interim study will provide an opportunity to educate legislators and the public about how to structure a fair, sufficient and sustainable tax system that will fund the programs and services Wyoming people need.

GOVERNOR SAVES Rare and Uncommon Designation with Veto

The Wyoming Environmental Quality Act allows the citizen Environmental Quality Council (EQC), following certain criteria, to designate lands as "very rare or uncommon" with "particular historical, archaeological, wildlife, surface geological, botanical or scenic value." The designation may be used as a basis to deny a non-coal mining permit; it does not affect oil and gas extraction. Like all decisions of the EQC, a designation can be appealed to district court.

Only three areas have been designated as very rare or uncommon since the Environmental Quality Act was amended to include the designation about 30 years ago.

One wonders, then, why the designations are such a problem that a bill (HB 262) was offered to take the authority for designations away from the EQC and give that authority to the Legislature.

Proponents argued that a designation is so important it should not be made by citizen appointees, but rather by elected officials. Another important point seemed to be that the designation provides no opportunity for compensation of a mineral owner – but the proposed bill didn't, either.

Responding to arguments that the Legislature as a body is ill-suited to make designations (i.e., will they all go visit an area proposed for designation?), the Senate amended the bill to give the authority for designations to the five statewide elected officials instead of the Legislature. Senators then passed the bill by a narrow margin, 17-13.

Governor Dave Freudenthal, saying the measure would make the process of granting "very rare or uncommon" status "significantly more cumbersome and political," vetoed the bill after the Legislature adjourned. Backers responded with a pledge to bring the bill back in the next general session in 2011.

KEEPING EQUALITY in the Equality State

One of the most time-consuming issues of the session was a proposed constitutional amendment prohibiting recognition of same-sex marriages from other states, along with civil unions created in Wyoming or another state. Focus on the Family, along with other national organizations, poured what must have been at least tens of thousands of dollars into a phone survey and lobbying campaign aimed at putting the proposed amendment on the 2010 ballot in Wyoming.

In addition to advocating equality for the Equality State, the ESPC took the opportunity to publicize the weakness of Wyoming's lobbyist reporting law that does not require Focus on the Family or any other special interest to fully report what they spent on lobbying. We also assisted two groups, one from Casper and the other from UW, with organizing rallies on the steps of the Capitol to oppose the amendment.

The bill barely made it out of committee, but on the floor, leaders in the majority party stepped up to talk against the bill and ultimately kill it. Thirty-five House members voted no, sending a strong message that discrimination will not carry the day in Wyoming.



LOW, LOW WAGES Down at the Cafe

A bill that would have raised the minimum wage for tipped employees from \$2.13 per hour to \$5.00 per hour failed on a 3-6 vote in the House Labor, Health and Social Services Committee on the last day for bills to be heard in committee.

Two servers for Cheyenne establishments testified that employers expect them to perform non-server duties—such as bussing tables, hosting, handing cashier duties, and other clean-up and maintenance—during their shifts. These other duties should be subject to the \$6.55 per hour federal minimum wage, but the servers don't get the money.

An industry lobbyist said raising the minimum wage from \$2.13 per hour would devastate the industry and drive up menu prices. What the lobbyist didn't say is that the taxpayers



are subsidizing the industry, as many servers receive food stamps, Medicaid, and other public assistance.

Employers are legally obligated to make up the difference between the tipped minimum and the federal minimum, but it frequently does not happen. Workers fear losing their jobs if they ask for the "tipped offset"; servers who initially told the ESPC they would testify cancelled for just that reason. One told the ESPC that it has been very difficult to see menu prices go up at the place she has worked for 15 years, but never see an increase in her base pay.

The ESPC will be seeking other avenues, such as improved enforcement, to assist these workers at the bottom of the wage ladder.

PLEASE SUPPORT THE ESPC

The Equality State Policy Center (ESPC) is a broad-based coalition of Wyoming organizations. The ESPC utilizes research, public education and advocacy to maintain accountability in state government and to substantially increase citizen participation in, and influence over, public policy decision-making.

A nonprofit corporation, the ESPC is built upon donations from interested citizens like you. Please consider making a contribution by mail or through our website, www.equalitystate.org.



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POLICY CENTER**

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2009 CITIZEN LOBBYIST TRAINING Draws Big Crowd

More than 70 people attended the ESPC's annual Citizen Lobbyist Training, held Jan. 14 in Cheyenne.

Participants in the trainings learn how a bill becomes law and how they can join in that process. Experienced lobbyists who work for ESPC member organizations outline the attributes of an effective lobbyist and teach attendees how to testify before a legislative committee. Other presentations outline how citizens can get the attention of legislators and affect their policy deliberations from home.

Former state senator Rae Lynn Job (Rock Springs) helped at this year's training, along with five sitting legislators—Sen. John Schiffer (Kaycee), and Reps. Bernadine Craft (Rock Springs), Tom Lubnau (Gillette), Jeb Steward (Encampment), and Mary Throne (Cheyenne)—who talked about lobbying from their perspectives.

Thanks to a grant from the Wyoming Women's Foundation, the ESPC for the first time was able to offer travel and lodging scholarships to participants.

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