



The State Chamber Of Commerce

2010 Colorado Business Agenda

LEGISLATIVE SUMMARY

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The 2010 Legislative Session: Good News, Bad News

By
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With the Colorado General Assembly's 2010 legislative session adjourned, many employers are asking: What's the result for us?

In simple terms, the session's outcome could have been much better for our state's business climate. Against the background of a severe economic downturn, the session's challenging political climate forced CACI to play defense to protect employers and jobs.

Were it not for the efforts of CACI and its members, working in coalition with other business organizations, the result could have been much worse for the business community.

CACI also is disappointed that more wasn't done by the legislature to help employers retain and create jobs, much less lay the foundation for the state's economic recovery.

CACI faced an uphill battle for the great majority of the four-month-long session. We recognized that declining state revenues, due to the economic recession, led to a growing state budget deficit. The state budget understandably dominated the attention of Governor Bill Ritter and legislators this session, and balancing the state budget was no easy task.

CACI's members were very disappointed, however, that raising taxes on business to the tune of \$231.3 million was part of the answer by the legislature and the Governor. Putting an additional cost burden on companies is not the answer to economic recovery and job growth.

In addition, a large number of bills were introduced and debated that ran counter to talk from majority-party legislative leaders at the beginning of the session about job creation and economic growth. For employers, these bills would have raised the cost of doing business, created uncertainty at the worst possible time and likely cost jobs.

CACI's strong advocacy team worked full-time to prevent these bills from passing--at least in their introduced versions. We fought day-in and day-out to either have these bills killed outright or amended so substantially that they were no longer a threat to employers. Our effort was helped with the active involvement of CACI members, local chambers of commerce (who also are CACI members) and other business organizations.

These bills ranged from ones that would weaken the workers' compensation system and the civil justice system to others that mandated a company's vacation policies and the "sunsetting" of business tax provisions (credits and exemptions). Below is a detailed accounting of the major bills that CACI lobbied this session.

In the months ahead, CACI will continue to tell our elected state leaders that the answer to the State's revenue needs lies in making positive, pro-jobs changes that will help struggling companies of all sizes emerge from the recession.

Specifically, CACI will work between now and the January 2011 legislative session to develop proposals for reducing the cost of doing business and to protect and improve our regulatory and legal climates.

If the legislature considers more tax changes in its 2011 session, however, we will strongly oppose those that simply raise the cost-of-doing-business and instead promote those that would help employers become more competitive.

Finally, in the months ahead we also will be working hard to identify and support pro-business candidates running for legislative seats at the November elections, with both public endorsements as well as contributions from our Colorado Business Political Action Committee (CB-PAC) and our small donor committee, The Colorado Prosperity Fund.



Below is a detailed listing of the bills lobbied by CACI under the direction of the Board of the Directors and the Issue Councils with links to each bill . . .

CACI Policy Council Positions on 2010 Legislation

Energy & Environment Council Bills

[HB-1001](#) by Tyler & Schwartz

HB-1042 by Peniston & Hodge

[HB-1174](#) by Frangas & Romer

[HB-1187](#) by Balmer & Bacon

HB-1329 By Peniston & Boyd

HB-1348 by McFadyen & Kester

[HB-1365](#) by Solano & Roberts

Bill Name/Description

Renewable Energy Standards

Air Quality Permitting

Reduce Severance Tax

Environmental Remediation Costs

Solid Waste User Fees

Uranium Oversight

Clean Air Act

Council Position

Neutral/Signed

Neutral/Signed

Opposed/Dead

Opposed/Dead

Neutral

Opposed

Neutral/Signed

HealthCare Council Bills

[HB-1160](#) by Rice & Newell/ Mitchell

HB-1166 by Kefalas & Newell

[HB-1168](#) by Levy & Steadman

[HB-1234](#) by M.Carroll & Primavera

HB-1330 by Kefalas & Morse

[SB-076](#) by M.Carroll & Primavera

Bill Name/Description

Wellness Incentives

Plain Language

Subrogation

Fair Settlement Insurance Claims

All Payer Database

Unreasonable Ins. Claims Practices

Council Position

Supported

Neutral/Signed

Opposed/Signed

Opposed/Dead

Neutral

Opposed/Amended

Labor & Employment Council Bills

HB-1009 by Miklosi & Hodge

[HB-1012](#) by Pace & M. Carroll

[HB-1056](#) by Frangas

[HB-1152](#) by Frangas

[HB-1269](#) by Levy & M. Carroll

[HB-1397](#) by Peniston

[HB-1417](#) by Peniston

[SB-012](#) by Tochtrop & Pace

SB-028 by Heath & Pace

[SB-033](#) by Schultheis

[SB 191](#) by Johnston & Scanlan

Bill Name/Description

Pinnacol Board

Workers Comp Surveillance

Disposal of Records

Civil Rights Persons w/ Disabilities

Employment Discrimination

Paid Sick Leave

Pay Equity Commission

Violations of Workers' Comp Laws

Workshare Program

E-Verify

Teacher Performance

Council Position

Opposed/Amended

Opposed/Dead

Opposed/Dead

Opposed/Dead

Opposed/Dead

Opposed/Dead

Opposed/Amended

Opposed/Amended

Neutral

Opposed/Dead

Supported/Passed

Tax Council Bills

[HB-1190](#) by Pommer & Heath

[HB-1191](#) by Pommer & Heath

[HB-1192](#) by Pommer & Heath

[HB-1194](#) by Ferrandino & Heath

[HB-1199](#) by Ferrandino & Heath

[HB-1200](#) by Hullinghorst

[HB-1263](#) by Pommer

[HB-1350](#) by Pace

[HB-1396](#) by Judd

[HB-1429](#) by Weissmann

SB-085 & 086 by Scheffel & Priola

[SB-142](#) by Foster & Gerou

Bill Name/Description

Suspends Tax Exclusion on Energy

Tax on Candy & Soft Drinks

Expanded Taxation on Software

Tax on Non-Essential Containers

Limits NOL Carry-Forwards

Limits Enterprise Zone Exemption

Limit Deductions on Compensation

Economic Development Incentives

Elimination of EZ Tax Credits

Review and repeal of Tax Credits

Business Personal Property Tax

Local Appeals

Council Position

Opposed/Signed

Opposed/Signed

Opposed/Signed

Opposed/Signed

Opposed/Signed

Opposed/Dead

Opposed/Dead

Opposed/Dead

Opposed/Dead

Opposed/Dead

Supported/Dead

Supported/Signed

Energy & Environment Council**HB 1001 – Renewable Energy Standards (Sponsors: Rep. Tyler & Sen. Schwartz)**

CACI Position: Neutral
Bill Status: Signed into Law
Effective: 3/22/10

- HB 1001 increases renewable energy portfolio standard percentages to achieve 30% renewable generation by 2020 for PUC-regulated utilities. The law requires a portion of the RPS to be met through distributed generation when the distributed generation does not require additional transmission facilities to connect to the grid. This was a priority bill for the Governor who testified in favor of the bill. CACI was officially neutral on the bill, and testified to the concern of our large industrial customers that the bill will result in significant increased energy costs. Amendments to the bill were proposed and defeated.

HB 1174 - Reduce Severance Tax Credit to Promote Jobs (Sponsors: Rep. Frangas & Sen. Romer)

CACI Position: Oppose
Bill Status: Died on 2/9/10 in House Committee on Business Affairs and Labor

- Current law allows oil and gas producers and interest owners to claim a credit against the state severance tax on oil and gas for property taxes paid. HB 1174 would have reduced the amount of the credit by 50 percent beginning January 1, 2011, and authorized use of the additional revenue to fund a teacher retention cash fund and a small percentage to the small business credit cash fund. CACI testified in opposition to HB 1174.

HB 1187 - Public Utility Environmental Cleanup Costs (Sponsors: Rep. Balmer & Sen. Bacon)

CACI Position: Oppose
Bill Status: Died on 4/20/10 in House Committee on Transportation and Energy

- HB 1187 limits the ability of utilities to settle through contract negotiations the question of when the utility will assume responsibility for cleanup of pre-existing environmental contamination when they are requested to provide new gas or electric service or relocation of existing utility facilities. CACI opposed the bill because of the costs that would be passed along to ratepayers if utilities are not allowed to control costs and resulting litigation if they are unable to negotiate liability to remediate pre-existing environmental contamination.

HB 1365 - Incentivize Utilities to Convert from Coal to Natural Gas (Solano/Whitehead)

CACI Position: Neutral
Bill Status: Signed into Law
Effective: Signed by Governor on 4/19/10

- The bill requires investor-owned utilities to produce a fast-tracked plan to the PUC (December 15, 2010) to reduce emissions from plants along the front range by 900 megawatts or 50 percent of the utility's coal-fired electric generating capacity in Colorado. The plan is required to give primary consideration to replacing or repowering coal-fired electric generation with natural gas and to consider low-emitting resources. Plans are to be implemented by December 31, 2017.
- Based on the differing positions among the CACI membership, CACI was neutral on the bill. The regulated utility and members of the oil and gas community supported the bill, while coal interests and large industrial users and downstream oil and gas refineries opposed the bill and were not party to the negotiations on the bill. This was a priority bill for the Governor who testified in favor of the bill.

Labor & Employment Council

HB 1012 – Workers Comp Surveillance (Sponsors: Rep. Pace; Sen. Carroll)

CACI Position: Oppose
Bill Status: Died on 5/5/10 in Senate Judiciary Committee

- HB 1012 would have limited the ability to use public surveillance to detect fraud in workers' compensation claims. The measure would have also required the destruction of all materials collected during surveillance no later than 5 years after resolution of the claim. CACI testified against this bill and the bill was defeated in the first committee of reference.

HB 1056 – Disposal of Records (Sponsor: Rep. Frangas)

CACI Position: Oppose
Bill Status: Died on 2/25/10 in House Committee on Judiciary

- HB 1056 would have prohibited a public or private entity from disposing a document or electronic record containing personal identifying information unless it is shredded if on paper, or erased or rendered indecipherable and irretrievable if the record is electronic. The bill would have required a civil penalty of \$500 per page or record for violation and requires enforcement by the Attorney General or District Attorney. CACI testified against this bill which was defeated in the first committee of reference.

HB 1152 – Civil Rights of Persons with Disabilities (Sponsor: Rep. Frangas)**CACI Position: Oppose****Bill Status: Died on 5/3/10 in House Committee on Appropriations**

- HB 1152 would have increased the fines for violating accessibility requirements and other anti-discrimination laws from the current \$50-\$500 per violation to a minimum of \$4,000 per person. The bill allowed a fine to be imposed “per person” versus the current “per violation,” and required the defendant to pay the attorney fees of the plaintiff. A violation would have constituted a misdemeanor, thereby causing a business to be charged for unknowingly violating access for persons with disabilities.

HB 1269 – Employment Discrimination (Sponsors: Rep. Levy & Sen. M. Carroll)**CACI Position: Oppose****Bill Status: Died on 4/15/10 in House Second Reading**

- HB1269 would have allowed employees to sue employers for pain and suffering damages, punitive damages and attorney’s fees in state employment lawsuits. The bill also exempted state and local employees in order to eliminate the high cost to the State of having to defend itself against more lawsuits. This bill would have increased job-related litigation risk to every private-sector employer. CACI joined CCJL and other business groups in opposition of this bill which was killed on the House floor during Second Reading.

HB 1397 – Paid Sick Leave (Sponsor: Rep. Peniston)**CACI Position: Oppose****Bill Status: Died on 4/07/10 in House Committee on Business Affairs and Labor**

- This bill would have required companies to provide specific amounts of sick leave based on the size of the business. Under this measure, all employers would have been required to provide each worker at least 1 hour of paid sick leave for every 30 hours worked. For companies with over 10 employees the maximum is 72 hours per year. For companies with 10 or less employees, the maximum is 40 hrs per year. The bill also required an employer to allow a roll-over of paid sick leave to subsequent years.
- This bill died in the first committee of reference, and has been proposed for the third Session in a row. The sponsor told the committee that she would propose the bill again during the 2011 Session.

HB 1417- Pay Equity Commission (Sponsors: Rep. Peniston and Sen. Williams)

CACI Position: **Oppose**

Effective: Upon signature of the Governor, or upon becoming law without his signature

- HB 1417 creates a permanent Pay Equity Commission within the Department of Labor and Employment. The goals of the Commission are to educate employers on equal pay best practices and to study other state models. CACI served on the 2007 temporary Pay Equity Commission.
- Based on the concern that CACI was the only business representative on the temporary Pay Equity Commission, CACI worked with the Governor’s Office, CDLE and the House sponsor on amendments to HB 1417 to ensure that more business representation was placed on the permanent Commission, and that the appointments to the Commission were distributed among the House and Senate leadership.

SB 012 – Violations of Workers’ Comp Laws (Sponsors: Rep. Pace; Sen. Tochtrop)

CACI Position: **Neutral**

Effective: 8/11/10

- SB 12 increases the penalty for violating the workers’ compensation laws from up to \$500 to up to \$1,000 per day. The bill allows the Director of the Division of Workers’ Compensation or an ALJ to apportion the proceeds, in whole or in part, to the aggrieved party, a medical services provider and/or the Workers Compensation cash fund. The bill as introduced also changed the mental state from “willfully” to “knowingly” for denying or delaying payment of benefits. However, CACI worked with Pinnacol representatives and the sponsor to amend the bill to ensure that no penalty was due if the insurer or self-insured employer proves that the delay was the result of excusable neglect.

SB 033 – E-Verify (Sponsor: Sen. Schultheis)

CACI Position: **Oppose**

Bill Status: Died on 3/03/10 in Senate Committee on State, Veterans & Military Affairs

- SB 33 would have created the e-verify program cash fund, to consist of moneys collected as fines imposed on employers for failing to participate in the e-verify program. Additionally, the bill would have defined as a discriminatory or unfair employment practice the refusal to hire, or to terminate from employment, a United States citizen or permanent resident alien while hiring or retaining an unauthorized alien in the same type of job when the employer knew or should have known that the person was an unauthorized alien. CACI testified against the bill which died in the first committee of reference.

SB 191 – Teacher Performance (Sponsors: Sens. Johnston; Spence and Rep. Scanlan)

CACI Position: **Support**

Effective: Upon signature of the Governor or upon becoming law without his signature

- SB 191 as amended requires that the State Board of Education adopt guidelines for a system to evaluate the effectiveness of teachers and principals. All school districts and boards of cooperative educational services (BOCES) must adjust their local performance evaluation systems to meet or exceed the adopted guidelines. The CACI Board voted in support of this bill which reached final passage during the last day of Session.

Health Care Council

HB 1160 – Wellness Incentives (Sponsors: Rice and Mitchell)

CACI Position: **Support**

Bill Status: **Awaiting Signature**

Effective: Upon signature of the Governor, or upon becoming law without his signature

- The bill allows small-group and individual insurance plans to offer wellness incentives similar to programs that large businesses with self-insured plans currently offer to their employees by removing the restrictions based on outcomes. This bill was amended to address the opposition concerns that incentives may be discriminatory. CACI testified in support of the bill.
- The bill provides that an employer may create a wellness plan for workers who want to quit smoking, lose weight or improve their health through other similar programs. By creating a wellness program, an employer will receive a discount on its insurance premiums. Employees who join a wellness program also will receive a discount on their insurance premium by participating in the program or satisfying a standard related to a health-risk factor. The bill, as amended, allows for persons who are unable to participate in such a program due to medical inability to file a waiver.

HB 1168 – Subrogation (Sponsors: Levy and Steadman)

CACI Position: **Oppose**

Bill Status: **Signed into Law**

Effective: 8/11/10

- The bill limits the ability of an insurer to obtain a repayment of benefits, through reimbursement or subrogation, if the repayment would cause the injured party to not be fully compensated. Additionally the bill requires the insurer to pay its proportionate share of attorney fees and costs incurred by the injured party in obtaining the settlement or judgment. The bill was amended to require that if the injured party has been fully compensated and the repayment is allowed, the amount of the repayment is limited to the amount actually paid by the insurer or, 80% of the usual and customary charge.

CACI testified against the bill, and amendments were adopted in the House Judiciary Committee causing most of the opponents to be neutral on the bill.

HB 1234 – Fair Settlement Insurance Claims (Sponsors: Rep. Primavera; Sen. Carroll)

CACI Position: Oppose

Bill Status: Died on 4/20/10 House Second Reading

- HB 1234 would have defined as an improper denial of an insurance claim to deny or delay a claim for a first or third-party claimant if the decision is made by a person who is not a licensed practitioner in good standing, who is in active clinical practice, and in the same field or specialty involved in the claim or requested medical service. This bill was unsuccessfully amended many times in an attempt to remove the opposition from the physicians. The bill died on the House floor during Second Reading.

SB 076 – Unreasonable Insurance Claims Practices (Sponsors: Rep. Primavera; Sen. Carroll)

CACI Position: Oppose

Effective: 8/11/10

- Effective upon signature, this bill as amended will define as an unfair settlement practice and a deceptive practice of insurance to pay incentives to an insurance carrier employee whose work directly or indirectly results in the denial or delay of a claim, or cancellation or rescission of an insurance policy.

Tax Council

HB-1190 – Suspends Tax Exclusion on Energy (Sponsors: Rep. Pommer & Sen. Heath)

CACI Position: Oppose

Bill Status: Signed into Law

Effective: 2/24/10 through 6/30/12

- HB 1190 imposes a temporary two-year sales tax rate of 2.9% on the storage, use or consumption of energy, coal, coke, fuel oil steam, nuclear fuel or gas used in processing, manufacturing, mining, refining, all industrial uses, building construction, and other uses, for a period of two years. The bill was amended on Senate Second Reading to continue to exempt from the state sales and use taxes the sale, purchase, storage, use, or consumption of:
 - Diesel fuel for off-road use;
 - Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel for agricultural purposes or for railroad transportation services; and
 - Coal, gas, fuel oil, steam, coke, or nuclear fuel for use in generating electricity.

HB-1191 – Tax on Candy & Soft Drinks (Sponsors: Rep. Pommer & Sen. Heath)

CACI Position: **Oppose**
Bill Status: **Signed into Law**
Effective: 2/ 24/10

- HB 1191 permanently eliminates the sales-tax exemption on sales of candy and soft drinks. The bill was amended to allow sellers of candy and soft drinks to, if necessary, reasonably estimate the amount of sales taxes due on their sales; exempts a taxpayer who makes an error from liability for interest or other penalties; and prohibits the appropriation of moneys derived from the increase in state revenues resulting from the act to fund additional full-time employees. The CO Retail Council and Chris Harr on behalf of Pepsi testified against HB 1191. Amendments were attempted to sunset the new tax; however, those amendments were defeated.

HB-1192 – Expanded Taxation on Software (Sponsors: Rep. Pommer; Sen. Heath)

CACI Position: **Oppose**
Bill Status: **Signed into Law**
Effective: 2/24/10

- Permanently eliminates Special Regulation 7 exclusion for taxation of software and expands sales-and-use tax for standardized software. The bill specifies that tangible personal property includes standardized software without regard to how such standardized software is acquired by the purchaser or downloaded to the purchaser's computer. The bill defines standardized software to mean computer software, including prewritten upgrades, which are not designed or developed for, or designed by a specific purchaser, but then sold to another purchaser.
- CACI worked with the Governor's Office, Department of Revenue and the sponsor to amend HB 1192 to exclude the taxation of certain standardized software including ASP software and maintenance agreements. CACI members testified in opposition to HB 1192.

HB-1194 Tax on Non-Essential Containers (Sponsors: Rep. Ferrandino & Sen. Heath)

CACI Position: **Oppose**
Bill Status: **Signed into Law**
Effective: 2/24/10

- HB 1194 permanently eliminates the sales-and-use tax exemption for sales to retailers or venders on nonessential food containers and related materials. Amendments were attempted to sunset the new tax; however, those amendments were defeated. CACI members testified in opposition to HB 1194.

HB-1199 – Limits Net Operating Loss Carryover (Sponsors: Rep. Ferrandino & Sen. Heath)

CACI Position: **Oppose**
Bill Status: **Signed into Law**
Effective: 1/ 1/11 through 1/1/14

- HB 1199 puts a temporary, three-year limit of \$250,000 on the net-operating loss (NOL) carry-forward that a corporation can subtract from its Colorado taxable income. The bill allows the NOL to be carried forward for one additional year for each year that the corporation is prohibited from carrying forward a portion of its NOL because of this bill. CACI members testified in opposition to HB 1199.

HB 1200 – Limits Enterprise Zone Exemption (Sponsor: Rep. Hullinghorst & Sen. Heath)

CACI Position: **Oppose**
Effective: Upon signature of Governor, or upon becoming law without his signature

- HB 1200 as amended during Senate Third Reading caps the amount of the enterprise zone tax credit to \$500,000 for income tax years beginning Jan. 1, 2011 through Jan. 1, 2014, and requires a taxpayer to defer claiming any amount of the credit allowed that exceeds \$500,000 to the 2014 income tax year.
- The bill allows a taxpayer that deferred claiming any credit in excess of \$500,000 to carry forward the credit for 12 income tax years after the year the credit was originally allowed, plus one additional year for each year that the taxpayer had to defer claiming the credit in excess of \$500,000. CACI opposed this bill and testified against the bill along with other CACI members.

HB 1263 – Limit Deductions on Compensation (Sponsor: Rep. Pommer)

CACI Position: **Oppose**
Bill Status: **Died on 4/30/10 in House Committee on Finance**

- HB 1263 would have limited the amount of state income tax deduction for salary or other compensation paid to an individual for personal services to \$250,000 when computing taxable income. HB 1263 included “other compensation for personal services,” which encompasses all benefits including accident and health insurance benefits, retirement plans, and other income received as “compensation” which are currently excluded from taxable income. The bill received significant opposition from CACI, several local chambers of commerce and other business organizations and companies throughout the state. The sponsor killed his bill in the first committee of reference.

HB 1350 – Economic Development Incentives (Sponsor: Rep. Pace and Sen. Carroll)**CACI Position: Oppose****Bill Status: Died on 5/07/10 in Senate Second Reading**

- HB 1350 required that any entity that receives public moneys for the purpose of economic development to file an annual report, along with a filing fee, to the Colorado Economic Development Commission. The bill also specified the contents of the report and required the commission to include any reports received in its annual presentation to the general assembly. CACI, several economic development organizations and the Office of Economic Development opposed this bill and testified against it.
- On May 12, 2010, the Governor issued an Executive Order implementing the provisions of HB 1350 that was already defeated in the Senate thereby circumventing the Legislature's actions.

HB 1396 – Elimination of Enterprise Zone Tax Credits (Sponsor: Rep. Judd)**CACI Position: Oppose****Bill Status: Died on 4/28/10 in House Committee on Finance**

- HB 1396 as introduced would have completely eliminated the Colorado enterprise zone tax credit program. Based on opposition, the sponsor amended the bill to require any enterprise zone tax credit above \$750,000 to receive public approval or denial by the Economic Development Commission (EDC) and such approval would be based on certain criteria that must be met by a person seeking the credit. After continuing to receive opposition to the bill from CACI, several economic development organizations, local chambers of commerce and other business groups, the sponsor killed his bill in the first committee of reference.

HB 1429 – Review and Repeal of Tax Credits (Sponsor: Rep. Weissman)**CACI Position: Oppose****Bill Status: Died on 5/04/10 in House Second Reading**

- The bill would have required the finance committees of the House of Representatives and the Senate to jointly conduct meetings on an annual basis to review specified state tax benefits and determine whether they should be continued, repealed, or modified. The bill received significant opposition from CACI, several local chambers of commerce and other business organizations and companies throughout the state. The bill was defeated on the House floor during Second Reading.

SB 142 – Local Appeals (Rep. Gerou & Sen. Foster)

CACI Position: **Support**
Bill Status: **Signed into Law**
Effective: 3/29/10

- SB 142 requires that a deficiency notice issued by a local government to a taxpayer for sales or use taxes that are due shall contain a 30-day notification to protest the notice.
- This bill was proposed by the CACI Tax Council who worked with the CO Municipal League based on concerns that filing time for protests varied broadly among municipalities (20 – 30 days). This bill creates a uniform protest period among all municipalities. CACI testified in support of the bill.