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Governor Quietly Signs Nine Tax Bills into Law Increasing Taxes on Business \$231.1 Million

On Wednesday in his office, Governor Bill Ritter signed the nine tax bills into law, and some of them take effect Monday. After he signed the bills, the news media was allowed into his office to discuss the new laws with the Governor.

For the 28 months beginning Monday, the new laws have been projected by the legislature's nonpartisan staff to raise \$231.3 million, according to the latest fiscal notes.

CACI and its members lobbied hard against several of the bills identified as most harmful to Colorado's business climate, warning that increasing taxes on companies--which are struggling to emerge from the worst economic recession since The Great Depression--would hinder efforts to retain and add jobs.

The bills suspend or eliminate the following tax exemptions, credits and exclusions:

HB-1189 Eliminates the sales-and-use tax exemption for direct-mail advertising materials.

HB-1190 Removes the exclusion for energy used by industry and manufacturers from being subject to the state sales tax.

HB-1191 Eliminates the sales-tax exemption on sales of candy and soft drinks.

HB-1192 Expands sales-and-use tax for standardized software.

HB-1193 Requires an Internet retailer that has a “bricks-and-mortar” store in Colorado--but which does not collect sales tax for business conducted through a Web site that is incorporated as a separate entity outside of Colorado--is presumed to have Colorado tax nexus and is required to collect and remit Colorado sales tax. Requires retailers in Colorado that do not collect and remit sales tax—such as Internet retailers that do not have bricks-and-mortar stores in Colorado--to notify their customers that the customer has to pay use tax since the retailer is not collecting and remitting sales tax.

HB-1194 Eliminates the sales-and-use tax exemption on nonessential food containers and related materials.

HB-1195 Suspends exemption from state sales-and-use tax for certain items used in agricultural production.

HB-1196 Disqualifies the purchase of “Type 7” alternative-fuel vehicles for a tax credit.

HB-1199 Places a temporary limit of \$250,000 on the net-operating loss (NOL) carry-forward for the state corporate income tax deduction.

For coverage of the Governor’s signing the bills into law by *The Denver Post*, click on:

http://www.denverpost.com/politics/ci_14466328

Meanwhile, the Governor’s Press Office put out a press release about the signing of the bills by the Governor entitled “Gov. Ritter Signs Bills Suspending Special Tax Breaks”:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=GovRitter%2FGOVRLayout&cid=1251572093274&pagename=GOVRWrapper>

CACI President’s Op-Ed in Monday’s *The Denver Post* Criticizes Some Lawmakers for Ignoring Concerns of Businesses about Bills Increasing Taxes

Last Monday, *The Denver Post* carried an opinion article by CACI President Chuck Berry that argued that some majority-party legislators in the Colorado General Assembly had ignored the likely effects of some of the business tax bills on Colorado companies should the bills become law. To read the column, click on:

http://www.denverpost.com/opinion/ci_14445194?source=pophome

Blasting a New Hole in the State’s Business Climate: Bill would Require Firms to Disclose and Rationalize Economic Development Incentives

HB-1350, introduced by Representative Sal Pace (D-Pueblo), would require a business receiving state economic development assistance—including tax credits—worth \$25,000 or more to file an “annual progress report” with a “filing fee” to the Colorado Economic Development Commission.

The “fee” would equal two percent of the economic incentive received by the company. The bill contains an extremely detailed list of the information that the business would have to submit to the Commission. If the Commission finds that the recipient of the incentive has not

complied with the requirements of the incentive, then the Commission can “recapture” the funds. To read the bill, click on:

http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/7570217C4C7CAB5F872576B3007A7387?Open&file=1350_01.pdf

For a lengthy, front-page article about the bill in today's edition of *The Denver Business Journal* by statehouse reporter Ed Sealover, click on:

<http://denver.bizjournals.com/denver/stories/2010/03/01/story2.html>

HB-1056, “Disposal of Records” Bill, Dies in House Committee on Bipartisan Vote

Yesterday, HB-1056 died on a bipartisan vote in the House Judiciary Committee. CACI strongly opposed the bill and lobbied for its defeat.

The bill would have created a civil penalty of \$500 per page or record for violation and requires enforcement by the Colorado Attorney General or a district attorney. The bill also would have required that the business or organization to have a policy outlining the destruction or proper disposal of paper or electronic documents and records.

The sponsor in the House was Representative Jerry Frangas (D-Denver); the Senate sponsor would have been Senator Morgan Carroll (D-Aurora).

CACI Vice President of Governmental Affairs testified against the bill.

The Committee's first vote was for or against the bill, with seven members voting against it and only two for it.

Two Democrats voted for the bill: Representatives Claire Levy (D-Boulder), Chair of the Committee; and Sal Pace (Pueblo).

The other seven Committee members present voted against the bill: Representatives Lois Court (D-Denver); Beth McCann (D-Denver), the Committee vice-chair; Daniel Kagan (D-Denver); Su Ryden (D-Aurora); Bob Gardner (R-Colorado Springs); B.J. Nikkel (R-Loveland); and Mark Waller (R-Colorado Springs).

Representatives Joe Miklosi (D-Denver) and Steve King (R-Grand Junction) were excused and thus did not vote.

On the second Committee vote on a motion to “postpone indefinitely” the bill—three Democrats voted against the motion: Democratic Representatives Claire Levy (D-Boulder), Chair of the Committee; Lois Court (Denver); and Sal Pace (Pueblo).

Three Democrats—Representatives Beth McCann (Denver), the Committee vice-chair; Daniel Kagan (Denver); and Su Ryden (Aurora)—joined three minority Republicans to kill the bill. The Republicans Representatives were Bob Gardner (Colorado Springs), B.J. Nikkel (Loveland) and Mark Waller (Colorado Springs).

Again, Representatives Joe Miklosi (D-Denver) and Steve King (R-Grand Junction) were excused and thus did not vote.

The bill thus finally died on a six-to-three vote.

Bill Targeting “Excessive Executive Compensation” Pulled from House Finance Committee Agenda

If this bill passes, there won't be another economic development deal in Colorado—ever. No company of any size will want to do business in this state.”

Neil Westergaard, Editor
The Denver Business Journal

HB-1263 was scheduled to be heard by the House Finance Committee next Wednesday, but the House leadership has pulled it from the Committee's agenda. CACI strongly opposes HB-1263, which would "de-couple" state business income-tax deductions from Federal deductions.

The bill still lacks a fiscal note. Its sponsor, Representative Jack Pommer (D-Boulder), who chairs the Joint Budget Committee and the House Appropriations Committee, was quoted by *The Denver Business Journal* as saying that the bill would raise \$19 million annually. The Colorado Fiscal Policy Institute is the conceptual launch-pad for the bill.

Representative Pommer's own local chamber of commerce--the Boulder Chamber of Commerce, which is a CACI member--has joined CACI and a host of other local chambers, business associations and companies (see below) to oppose HB-1263.

It's politically noteworthy to point out that this bill was not part of Governor Bill Ritter's original 2010-2011 budget unveiled last November that included the suspension or termination of the 13 tax provisions. Nor did the Governor include HB-1263 in his recent proposal to balance the 2010-2011 budget.

HB-1263 limits 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.

Under Federal income-tax law, salary or other compensation for personal services generally are deductible in computing taxable income of the payer of services. This avoids double taxation since the amounts paid to the provider of the services are generally included in their income. Additionally, Federal tax law imposes limits (up to \$1 million) on the amount of compensation that may be deducted, but that limit only applies to publicly-traded corporations and corporations receiving Federal "bail-out" funds.

HB-1263 includes "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 complicates Colorado income-tax law by creating a significant difference between Federal income-tax law and Colorado income-tax law and imposes an unusual and unnecessary cost on Colorado businesses.

HB-1263 discourages companies and corporate headquarters (including high-technology, "green" jobs) from locating to Colorado. This will require Colorado to create more incentives to attract companies to the state.

Neither the payer nor the recipient needs to be a resident of--or even be present in--Colorado for HB-1263 to apply. For example, a corporation headquartered in London with business activity in Colorado would be subject to the limit if the corporation files a Colorado state income-tax return. Because the cost of living in London is higher, salaries will be higher there than for an equivalent position in Colorado. HB-1263 imposes value systems on businesses in different cultures half a world away.

HB-1263 also affects corporations and sole proprietors paying for personal services. For example, an attorney working on her own hires a private investigator who charges above \$250,000 based on national market pay rates. The attorney loses the deduction above \$250,000, which burdens her with a cost disadvantage when compared to her competitors outside of Colorado.

In addition to the Boulder Chamber of Commerce, the following businesses and business associations have joined CACI in opposition to HB-1263:

Amgen, Economic Developers' Council of Colorado, Boulder Chamber of Commerce, Colorado BioScience Association, Jefferson Economic Development Council, West Chamber Serving Jefferson County, Denver Metro Chamber of Commerce, Northern Colorado Legislative Alliance, Golden Chamber of Commerce, Colorado Concern, National Federation of Independent Businesses, Metro North Chamber of Commerce, Colorado Auto Dealers Association, Early Childhood Education Assoc. of Colorado, Ft. Collins Chamber of Commerce, Colorado Competitiveness Council, Verizon & Verizon Wireless, Colorado Springs Chamber of Commerce, Council On State Taxation, Int'l Council of Shopping Centers, Grand Junction Chamber of Commerce, Xcel, Qwest, Rocky Mountain Natural Meats, Woodland Park Chamber of Commerce, Hewlett-Packard, Colorado Petroleum Association, Aurora Chamber of Commerce, CIBER, Colorado Chamber of Commerce Executives, Rifle Area Chamber of Commerce, NAIOP, Aurora Economic Development Council, Broomfield Chamber of Commerce, TW Telecom, Montrose Economic Development Council, Arvada Chamber of Commerce, Colorado Bankers Association, Douglas County Business

Alliance and Janus Capital Group.

If you, as a CACI member, wish to join the CACI coalition to fight this bill, please contact Loren Furman, CACI Vice President of Governmental Affairs, at 303.866.8642 or via e-mail at lfurman@COchamber.com

Legislature Begins to Take Action on Health Care Bills

Note: the following section was written by Dan Anglin, CACI Governmental Affairs Representative

House Judiciary Committee Passes Unanimously HB-1168 (Subrogation)

On Monday, the House Judiciary Committee heard testimony on HB-1168 (Limit Insurer Ability to Obtain Repayment), which is the subrogation bill sponsored by Senator Pat Steadman (D-Denver) and Representative Claire Levy (D-Boulder). The CACI HealthCare Council opposes this bill as it will limit an insurer's ability to recover payments from an at-fault third party, which will cause health-insurance premiums to increase around the state.

The Committee heard testimony on Monday, and laid the bill over until Thursday in order for a number of amendments to be drafted. I testified against the bill to ensure that the Committee understood that the Colorado business community is concerned that the bill will increase premiums for businesses to provide health insurance for employees and their families. In her presentation to the committee, Representative Levy acknowledged CACI's lobbying efforts and recommended that the bill be laid over until Thursday to give her time to address some of the opposition to her bill.

Yesterday, the committee adopted two amendments to the bill and passed the bill as adopted unanimously. The amended bill clarifies that property and casualty (auto insurance) policies, non-ERISA self-insured policies and workers' compensation policies are removed from the measures of the bill. The bill now requires arbitration if the injured party notifies the payer of benefits that the recovery is less than the sum of all damages, and the payer of benefits disputes that claim. The bill clarifies specific recovery situations that define an injured worker as being fully compensated, or "made whole." HB-1168 is scheduled for Reading on the House Floor on Monday.

House Committee Passes "All Payer Database" Bill

HB-1330 (All Payer Database), sponsored by Representative John Kefalas (D-Fort Collins) and Representative Daniel Kagan (D-Denver), passed unanimously in the House Health and Human Services Committee as amended. Several legislators stated that they would prefer to see members of the General Assembly included as members of the Advisory Commission, so it is possible that this may be added to the bill on the floor.

CACI's HealthCare Council determined that an All Payer Database is a concept that may produce better health-care value in the future, but there are still many unanswered questions as to how the data will be collected, stored, and used. Although CACI is neutral now on HB-1330, CACI continue to work with Representative Kefalas and the Governor's Office to address these and other concerns.

For information on health-care bills, contact Dan Anglin, CACI Governmental Affairs Representative, at 303.866.9641 or via e-mail at danglin@cCOchamber.com

Upcoming CACI Council Meetings

Council meetings will be held at the CACI Office beginning at 12 Noon. Council members who would like to sponsor lunches for Council meetings should contact Misty Fox, CACI Office Manager, at 303.866-9652 or via e-mail at mfox@COchamber.com

- Tax Council, Friday, March 5th, guest is Senator Keith King (R-Colorado Springs), member of the Senate Finance Committee; lunch sponsored by Bill Schroeder, IREA, whose website is www.intermountain-rea.com
- Governmental Affairs Council, Tuesday, March 9; lunch sponsored by David Rivera, Climax Molybdenum, whose website is www.fcx.com

- Energy and Environment Council, Thursday, March 11; lunch sponsored by Paul Ludwig, Suncor Energy, whose website is www.suncor.com
- HealthCare Council, Wednesday, March 17, guest is Representative Cindy Acree (R-Aurora), member of the House Health and Human Services Committee; lunch sponsored by Bill Bishop, Lockton Companies LLC, whose website is www.lockton.com
- Labor and Employment Council, Wednesday, March 24; lunch sponsored by Mark Moses, Outback Steakhouse, whose website is www.outback.com
- Governmental Affairs Council, Tuesday, March 23; lunch sponsored by Marie Patterson, AngloGold Ashanti N.A., whose website is www.anglogoldashanti.com

For the complete meeting schedule of CACI Councils during the legislative session, visit the CACI Web site:

http://www.cochamber.com/newsandevents_calendar.asp

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