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## School Board Advocate: February 12, 2016

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### 'Whistleblower' bill is vague, would interfere with established law

[House Bill 16-1078](#), sponsored by **Rep. Daniel Kagan**, D-Arapahoe County, would dramatically rewrite well-established rules regarding employee protections in regard to their speech at work. While purported to be a bill protecting "whistleblowers," it would in fact hamstring school districts, municipalities and counties from being able to manage their employees.

Currently, all public employees are protected by the U.S. and Colorado Constitutions from being fired for exercising the right to free speech. Employees are protected in their political speech and when speaking on matters of “public concern.” Speech that is false, interferes with the individual’s ability to perform the job or is overly disruptive to the school setting is not protected. State employees have a state “whistleblower” statute that is generally consistent with the constitutional authority and case law. HB 1078’s language for local government employees goes well beyond the scope of the state employees’ statute and would protect “the employee’s statements to any person about the local education provider that the employee reasonably believes to show” waste, mismanagement or an abuse of authority. This language is an open invitation for disgruntled employees to complain about board or supervisor decisions the employee doesn’t like. Worse, it would give rise to expansive new potential liability for school districts.

HB 1078 also includes provisions to award employee damages as determined by an administrative law judge (ALJ). School districts in particular could face a direct fiscal impact of upwards of \$25,000 in legal fees for each administrative hearing as well as the time that other school district employees would be required to spend getting ready for and participating in such litigation. Further, the bill authorizes damages, punitive as well as actual damages, in any amount the ALJ sees fit. School districts would face unknown and open-ended liabilities.

Rep. Kagan’s bill would destroy well-established case law and replace it with a vague set of guidelines that would seriously undermine the ability of school districts, municipalities and counties to operate efficient public workplaces. CASB encourages all of our members to familiarize themselves with HB 1078. You can view the complete bill by [clicking here](#).

In addition, CASB’s legal team has prepared a memo concerning HB 1078. Please contact [Jane Urschel](#) or [Matt Cook](#) for a copy.



Almost the entire senior class of Limon High School attended CASB’s Day at the Capitol on Wednesday. The students saw the House in session and got a personal briefing from their representative, Tim Dore. Details on upcoming Days at the Capitol below.



## Class is now in session with Reps. Hamner and Rankin

**Reps. Millie Hamner and Bob Rankin**, both members of the Joint Budget Committee (JBC), have launched an effort to educate more of their fellow members on the complex subject of school finance. Over the next two months, the budget committee, in concert with the House and Senate Education Committees, will host “school finance study meetings.”

**Jane Urschel and Matt Cook**, CASB’s duo at the capitol, praised Hamner and Rankin for initiating an education effort on K-12 funding. They ask only that the effort be a robust examination of all the challenges Colorado faces in funding its schools.

Urschel said it is important that this effort aims to “educate the 100-member General Assembly on school finance” and not have the effort left to smaller groups, such as the education committees and the JBC. “We appreciate that they are taking these steps,” she said.

At a recent meeting of the JBC and the two education committees – the first of six meetings – Hamner and Rankin passed out a flier titled “The Future of School Finance in Colorado.” They described the goals for the series of meetings:

- To increase everyone’s understanding of Colorado’s current school finance formula, the funding sources for school finance in Colorado and what other states are doing regarding school finances and best practices and best thinking.
- To collectively establish a path forward to address the future direction for school finance in Colorado.

Ultimately, the goal of the education effort is to rewrite the school finance formula and to find the funds to do this. Previous efforts, most recently one led by Sen. Mike Johnston, have failed.

There will be five more meetings, with different topics and speakers for each gathering. At the first meeting, the guest speaker was Marguerite Roza, a school finance expert from Georgetown University and the Center on Reinventing Public Education at the University of Washington.



**2016 CASB  
WINTER LEGISLATIVE  
CONFERENCE**

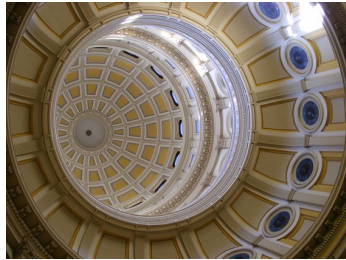
**Coming soon**

Urschel said it is important that future speakers, in addition to school finance formulas, take account of Colorado's unique situation, namely the conflicting tax policies embedded in Colorado's Constitution – the Gallagher Amendment, TABOR and Amendment 23.

"Colorado's constitutional tax code must be addressed as we go forward with proposing a new School Finance Act," said Urschel. "Those who advise us should understand the unique situation in which our policymakers find themselves. They must realize that they are speaking to the only state legislature in the U.S. that cannot make tax policy."

CASB will continue to follow the effort spearheaded by Reps. Hamner and Rankin.

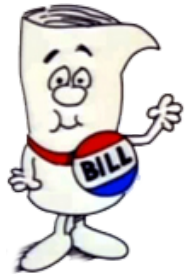
CASB's Winter Legislative Conference will take place Feb. 25-26 at the Brown Palace Hotel and Holiday Inn Express. This is *the* gathering that gets you up to speed and gets you involved in state and federal legislative efforts important to public education in Colorado. [Click here](#) for a complete list of our speakers and panels. To register, [click here](#).



## Dome dealings

Now we have dueling legal opinions on the hospital provider fee (HPF). Before the session started, Republicans released a memo from Legislative Legal Services saying that a plan to exempt HPF revenues from the TABOR cap was unconstitutional. Now comes a legal opinion from the chief legal counselors to former Colorado Govs. Bill Owens and Bill Ritter

(accompanied by a quote from former Attorney General John Suthers) that says moving the fee program to an enterprise, and thus exempt from TABOR, would be constitutional. Interesting, but without a bill, it's just talk. Still, stay tuned.



## Bills to watch

### HOUSE BILLS

#### [HB 1058 – Misuse of Electronic Images by a Juvenile](#)

*Reps. Yeulin Willett (R), Rhonda Fields (D) and Sens. Linda Newell (D), John Cooke (R)*

Prohibits a juvenile from knowingly distributing, displaying or publishing through digital or electronic means, or possessing a sexually explicit image of himself or herself or of another juvenile.

**CASB Position – Support**

#### [HB 1063 – Mental Health Professional Disclosure School Safety](#)

*Rep. Mike Foote (D)*

Except under limited circumstances, current law prohibits a licensed, registered or certified mental health professional from disclosing, without the client's consent, confidential communications made by, or advice given to, the client in the course of the professional relationship. The bill grants an exception to the prohibition when the communication concerns school safety.

**CASB Position – Monitor**

#### [HB 1078 – Local Government Employee Whistleblower Protection](#)

*Rep. Daniel Kagan (D)*

The bill prohibits a county, municipality or local education provider from imposing any disciplinary action against an employee on account of the employee's statements to any person about the local government that the employee reasonably believes to show a violation of a state or federal law, a local ordinance or resolution or a local education provider policy.

**CASB Position – Oppose**

#### [HB 1099 – Repeal of Mutual Consent Teacher Assignment Requirement](#)

*Rep. Joseph Salazar (D)*

Under existing law, if a nonprobationary teacher is removed from a teaching assignment within a school district, the teacher must secure a mutual-consent assignment at another school of the school district within a certain time or be placed on unpaid leave.

The bill repeals this requirement.

**CASB Position – Oppose**

#### [HB 1128 – Extending Concurrent Enrollment Statewide](#)

*Rep. Paul Lundeen (R)*

The bill amends the existing Concurrent Enrollment Programs Act to require all school districts, charter schools and BOCES schools and all public institutions of higher education to provide concurrent-enrollment opportunities for qualified students enrolled in high school.

**CASB Position – Monitor**

#### **HB 1144 – Transparency College Courses High School Students**

*Reps. Jon Becker and Brittany Petterson*

The bill requires a public high school student's education provider to notify the student and his or her parent or legal guardian if the student enrolls in a postsecondary course that does not meet the statutory requirements for concurrent-enrollment programs.

**CASB Position – Monitor**

#### **SENATE BILLS**

#### **SB 005 – Eliminating Statewide Assessments in 9th Grade**

*Rep. Lori Saine (R) and Sen. Vicki Marble (R)*

Under current law, the Department of Education administers state assessments in English language arts and mathematics to students enrolled in grades three through nine. The bill eliminates the ninth-grade assessments in English language arts and mathematics.

**CASB Position – Monitor**

#### **SB 035 – The Public School Fund**

*Sen. Mike Johnston (D)*

The bill creates the Public School Fund Investment Board to direct the state treasurer on the investment of the constitutionally created public school fund. The fund consists of the proceeds of land that was granted to the state by the federal government for educational purposes.

**CASB Position – Support**

#### **SB 072 – Increase Annual BEST Lease-Purchase Payment Cap**

*Sen. Andy Kerr (D)*

Under the Building Excellent Schools Today Act (BEST), the state may enter into lease-purchase agreements for public school facility capital construction projects subject to the limitation that the maximum total annual amount of lease payments payable under the terms of the agreements does not exceed \$80 million.

**CASB Position – Support**

#### **SB 105 – Adjustments to Educator Performance Evaluation System**

*Sen. Mike Merrifield (D) and Sen. Vicki Marble (R)*

Senate Bill 10-191, concerning educator effectiveness, included a requirement that at least 50 percent of a teacher's or principal's performance evaluation be determined by the academic growth of the teacher's students or the students in the principal's school. The bill eliminates that requirement but allows academic growth to be no more than 20 percent of the evaluation.

**CASB Position – Monitor**



## **Join us for CASB's Days at the Capitol**

The next [Day at the Capitol](#) is Wednesday, Feb. 17. Each CASB region is assigned a day, but members are encouraged to attend whenever it is convenient. Board members will gather for a breakfast briefing with CASB's advocacy team and then visit the Colorado Legislature to see the House and Senate in action and attend education committee meetings.

Many issues important to public education will be up for discussion and debate this legislative session, and local school board members must make their voices heard.

No one can speak for local control of public education like board members – and that means you! If you have never attended, this is a good way to get an introduction to what goes on at the capitol.

*School Board Advocate is CASB's semimonthly newsletter on our advocacy efforts and the latest developments at the state capitol that impact K-12 education.*

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