



© 2003 Pat & Debbi Furrie

CALIFORNIA RETAILERS ASSOCIATION
 980 NINTH STREET, SUITE 2100 · SACRAMENTO, CA 95814
 (916) 443-1975 · FAX (916) 441-4218

January 10, 2005

Golden State Report

Legislative Update

Inside this issue:

Emergency Regulation on Cigarette Tax Stamps Adopted	2
New California Food Code Proposed	2
Governor to establish Goods Movement Task Force	3
To bag or not to bag	3-4
Delicate dance of politics	5-6
Meal and Rest Period Rules for California Workers Clarified by the State	6-7

Dates to Remember:

- Jan 17—Martin Luther King, Jr. Day Observed
- Jan 21—Last Day to Submit Bills to Leg. Counsel
- Feb 14—Lincoln's Birthday (Legislative Holiday)
- Feb 18—Last Day to Introduce New Bills
- Feb 21—President's Day Observed
- Jun 25-28—Western States Retail Conference, Coronado Island, CA

GOVERNOR CALLS SPECIAL SESSION FOR REFORM

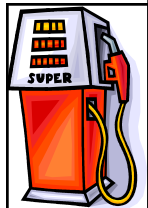
Governor Schwarzenegger, in his State of the State address just days ago, has convened a **Special Session** of the Legislature to deal with structural and budgetary reforms he believes are essential for California to continue its climb out of devastating debt. The benefit of a "Special Session", which will run concurrently with the Regular Session, is that any legislation passed in a Special Session becomes *law immediately upon the Governor's signature*. Normally, bills take effect the January 1 following the signing of a bill by the Governor. The Governor's four primary recommendations were: 1) a constitutional amendment to shift reapportionment from the Legislature's domain to an independent panel of retired judges; 2) establish a spending mechanism that makes automatic across-the-board cuts when expenditures don't match revenues; 3) pay teachers based on merit instead of tenure and eliminate the current guarantee that education has to a certain percentage of all State revenue; and 4) change the public pension system so that new employees are subject to a "defined contribution" program instead of the current "defined benefit" program.



The Governor also called for a prescription drug discount card for approximately 5 million low income Californians. More on this in the next issue of *Golden State Report*.

GAS TAX INCREASE AND INDEXING RECOMMENDED

The Legislative Analyst's Office, a nonpartisan budgetary research arm of the Legislature, has recommended that Proposition 42, passed in 2002, be repealed. The proposition required revenue from the sales tax on gasoline to be dedicated to transportation funding. Because the Legislature has used these funds to reduce the Budget deficits in the past two years, the Analyst argues that transportation funding would be "stabilized" if the proposition were repealed. The State would supposedly stop "wasting time and money due to stopping and restarting projects."



The next recommendation is that the State gas tax should be increased and indexed, to provide just the stable funding source that Prop 42 failed to provide.

From 1998 to 2005, vehicle miles traveled are projected to increase by more than 15%, which gas revenues decline

Legislative Update cont.

by an estimated 8%. No specific increase is recommended, but the gas tax would be indexed to the California CPI.

SALES TAX RATES GO UP IN TWO CITIES

Reminder to retailers that the sales tax rate increased January 1 by a half-cent (\$.50) in **Fort Bragg** and **Sonora**.

CRA-PROPOSED REGULATION ADOPTED ON WORKING WAREHOUSES

The Cal OSHA Board adopted a regulation clarifying the definitions contained in legislation on working warehouses, per a CRA-sponsored petition. The new regulation clarifies what “merchandise stored on shelves higher than 12 feet above the sales floor” means in practicality. The regulation now reads that “The height of 12 feet specified in subsections (a)(2) and (b) is the distance measured from the floor to the top plane of the shelf on which merchandise is stored, not the distance from the floor to the top of the merchandise”. For a copy of the new regulation as adopted by Cal OSHA, please call CRA.



UPDATE ON BERKELEY MINIMUM WAGE INCREASE

At the end of December, The City’s Commission on Labor considered the proposed raise in the minimum wage to \$8.50 per hour. After presentation of opposition from business groups, including CRA, the commissioners delayed the public hearing on the increase, to allow the commission to study the issue further, and asked for information on costs if the City were to contract out for a full economic impact study. The next meeting of the Commission is now scheduled for January 19th.

REGULATIONS ON BEDDING AND BEDCLOTHING UNDER DEVELOPMENT

The Bureau of Home Furnishings is in the process of developing a new standard for flammability of filled bedding and bedclothing products. The most recent draft is available upon request to CRA, but is primarily a technical document spelling out the testing procedures for open flame resistance, flame ignition sources, thickness measurements, washing and laundering procedures. The manu-

facturing community is most involved in the development of the regulations, but because of our working relationship with the Bureau, CRA is a participant on the industry advisory committee as well.

EMERGENCY REGULATION ON CIGARETTE TAX STAMPS ADOPTED

Legislation enacted in 2002 required the Board of Equalization to replace current cigarette tax stamps that use heat-applied decals, with a tax stamp that can be read by a scanning device and has information contained therein encrypted. All of this is in furtherance of the State’s goal of reducing black-market cigarettes. For those retailers who do their own tax-stamping, the Board began selling the new tax stamp as of the first of the year. However, because of a lawsuit challenging the State’s selection of the tax stamp provider, it may be a waste of money to purchase the new equipment if the legal challenger is successful. Thus, the Board adopted emergency regulation 4056.1, which **permits the use of the older heat-applied decals through April 30, 2005**, by which time the legal challenge should have been ruled upon.



NEW CALIFORNIA FOOD CODE PROPOSED

The California Retail Food Safety Coalition, which was founded jointly by CRA, the Restaurant Association and the Hotel and Lodging Association over a dozen years ago, will be sponsoring a comprehensive overhaul of the California Food Code. This will affect all members who sell prepackaged or unpackaged foods, and prepare and/or serve food on the premises---from delis to coffee bars. The Coalition has spent 4 years working on the proposal and it has received the unanimous support of all affected parties—including the California Department of Health and local health officials. The proposal will be introduced in February. For a copy of the “white paper” explaining the composition of the Coalition and a summary of the changes, please call CRA. When the proposal is introduced in the Legislature, we will provide the bill number.



Legislative Update cont.

CITY OF GLENDATE CONSIDERING SHOPPING CART ORDINANCE

The City of Glendale is considering an ordinance that will require shopping cart containment systems for all retailers, an ordinance which has been under consideration for 4 years. The language would require all shopping carts to be contained within the boundaries



of the store's premises, defined as the building, parking lot and adjacent walkways. Approved methods of "containment" would include "bollards, with a finished color and texture that match or are compatible with existing buildings on the site, which restrict shopping carts to the store premises", or "equipping shopping carts with a wheel locking or stopping mechanism that is used in conjunction with an electronic or magnetic barrier along the perimeter of the store premises. The wheel locking or stopping mechanism must activate when the shopping cart crosses the electronic or magnetic barriers", or any other method approved by the City which contains shopping carts on store premises.

GOVERNOR TO ESTABLISH GOODS MOVEMENT TASK FORCE

CRA has learned that the Governor will appoint a group of stakeholders as an advisory committee/task force to work on good-movement issues this year. The intent is to coordinate all aspects of good movement—trucking, road congestion, shipping, port congestion, railroads. The group will be coordinated by the Business, Transportation and Housing Agency.

TRADE COALITION FORMED

A coalition of business interests has formed under the name "The California Trade Coalition". We anticipate that port issues will continue to receive legislative attention as they did last Session. Looking ahead, we anticipate seeing: bills affecting speed of movement thru ports; penalty fees and/or incentives for prompt return of equipment; mitigation fees for railroads; container fees for vessels; and a mandate for shipping vessels to use low-sulphur fuel.



To bag or not to bag

By Herbert A. Sample

Consider the ubiquitous grocery bag: Light in weight yet capable of handling hefty items. Cheap to produce. Given away virtually for free. Shoppers practically consider it a birthright to be queried, "Paper or plastic?"

Yet production of the bags consumes natural resources. The bags frequently end up as litter, which has to be cleaned up. The plastic varieties are difficult for garbage haulers, recyclers and landfill operators to handle. And all of that costs money.

So next month, an obscure San Francisco commission is likely to approve a resolution asking city officials to impose a first-in-the-nation fee on each bag given to shoppers at major grocery stores.

To outsiders, the proposal to levy a 17-cents-per-bag charge may seem unconventional if not downright wacky.

But the resolution being fine-tuned by the city Department on the Environment and its oversight commission resulted from dozens of complaints from residents about bag litter as well as a realization of the cost to the city and its waste handlers.

San Francisco wouldn't be the first place to take up the issue. A handful of countries - Ireland, Denmark and Switzerland among them - already require fees on plastic grocery bags, noted supporters. A few other locales, such as Germany, Sweden and 30 towns in Alaska, have banned them outright, they said.

Still, consumers may not take lightly to paying for something that has long been complimentary.

"Nothing is ever easy when it comes to a behavioral change," said Heidi Melander, president of the Northern California Recycling Association, a nonprofit trade group supporting the fee.

"But our stance is that these kinds of changes need to occur if we are going to make people aware of their impact on the environment and ways they can minimize their impact," she added.

The proposal arose from hearings the city Commission on the Environment held this year, including one in Chinatown in which residents and activists complained that the flimsy plastic bags given out by shopkeepers had created a significant litter problem there.

To bag or not to bag cont.

Consumers "just discharge it wherever and however they want," said Ivy Wan, who oversees a city environmental grant at Chinatown's Charity Cultural Services Center. "By encouraging (people) not to have plastic bags in Chinatown, it would eliminate thousands and thousands of plastic bags a day."

Commission staff estimated the city spends as much as \$2.6 million a year to clear streets and other public property of bag litter. The city's garbage hauler, NorCal Waste Systems Inc., figured it spends tens of thousands of dollars a year clearing its machinery of the bags.

The nearly weightless plastic grocery bags theoretically can be recycled, and some stores collect used ones. But garbage haulers find them difficult to handle and often contaminated with dog poop or food waste, rendering them useless, said NorCal spokesman Robert Reed.

The petroleum-based bags end up dancing in the wind or in landfills, degrading over thousands of years, if then.

"There are too many plastics in the waste stream," said Reed, whose firm has taken no position on the fee proposal. "Far too many. And there are far too many types of plastic in the waste stream. ... A lot is unnecessary. A lot is difficult to recycle."



Paper bags have issues as well, said Robert Haley at the Department of the Environment. Millions of trees and a slew of chemicals are used to make them, even with recycled paper, he said.

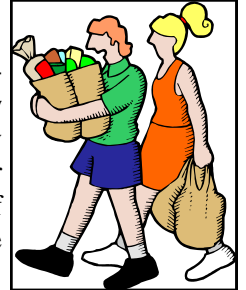
Bags often cost more to transport and recycle than they fetch on the market once recycled.

Enter the bag fee, which initially would be required at the city's 50 largest grocery stores but eventually could be extended to other retailers.

The idea is that at least some consumers will provide their own bags. Those who don't would pay the fee at checkout. The stores would retain half of the proceeds, estimated as high as \$8.5 million annually, to subsidize the sale of canvas and other reusable bags.

The city would get the remainder to help cover the cost of litter abatement and of resolving NorCal's bag-related problems.

"We're trying to prod consumers, trying to make people think about how they are going to get what they buy home," said Johanna Wald, a member of the environment commission. "If you think about it before you go to the store, you will bring a bag."



At a South of Mission Whole Foods market, Daniel Schambach found no fault with that.

"I think it's fine," he said. "It seems like people should have the responsibility to maybe carry their own stuff."

But Barbara Belloli cringed at the thought. "We pay enough for our groceries. That should be included in the price," she said of bags. "We're legislating everything, my goodness."

Grocers aren't giddy about the idea either.

"I don't know what else to say it except it's stupid," said Gil Desaulniers, general manager of Harvest Urban Market. "It would create bad interactions with our customers."

The American Plastics Council and the American Forest and Paper Association, dubbing the proposal the "bag tax," also have voiced opposition. Tim Shestek of the council said plastic bags are not so much waste as a "valuable commodity" that is recycled into such products as composite lumber. If consumers use fewer bags, that source of material will shrink, he predicted.

Nonetheless, the commission is expected to pass the resolution on Jan. 25. At least one member of the Board of Supervisors has voiced support for the concept.

"We think this solution ... will work," said Wald. "In a sense, it is like ending free parking so people don't drive too much."



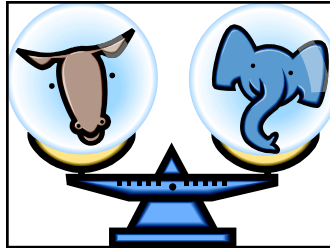
Delicate dance of politics in state Schwarzenegger to outline plans

By Andrew LaMar

SACRAMENTO - Lawmakers return to Sacramento today to confront a chronic budget deficit and an impatient Republican governor threatening to go directly to the ballot if Democrats don't give him what he wants.

With a new year agenda still taking form, California's 120 legislators await their cue from Gov. Arnold Schwarzenegger, the former actor now in his second year in office. Schwarzenegger is scheduled to spell out his priorities in a televised address Wednesday and deliver his plan for eliminating an estimated \$8.1 billion shortfall by the following Monday.

That will kick off a legislative year that analysts say will be crucial for the popular governor, who is believed to be setting up for a 2006 re-election bid, and Democrats, who kept control of the Legislature in the Nov. 2 election but remain mostly confounded by the Schwarzenegger phenomenon.



At the core of the Capitol's complex dynamics is the delicate working relationship between Democrats and the governor. The question is: Will Schwarzenegger hold out a hand for Democratic leaders, as he did much of last year, or will he revert to the partisan gamesmanship he vowed to overcome as a candidate but has used when the going got tough?

"It's going to be very unstable this year," predicted Assemblyman Joe Canciamilla, D-Martinez, a moderate who has been caught in the two parties' cross-fire. "The signals are clear: It's going to be much more partisan."

Perata sounds off

Senate President Pro Tem Don Perata, D-Oakland, warned Schwarzenegger against going to voters without the Legislature's consent to pass proposed major reforms, such as restructuring state agencies, imposing a spending limit or redrawing legislators' districts to encourage competition. The governor's aides have said such plans are under discussion.

"What it would say to me is he is not relying on us to be a partner in this process, he is going to bypass the Legislature for major decisions," Perata said. "Calling a special

election ought to be a last resort and a desperation move. It shouldn't be the opening move of a legislative session."

Passing basic reforms, however, is one of the governor's top objectives, said Margita Thompson, Schwarzenegger's press secretary.

"This year is going to be about fundamental reform and legislative leaders are going to have to choose if they are going to support fundamental reform or if they are going to champion special interests," Thompson said.

Going to the ballot in 2005 makes tactical sense because there aren't other elections to obscure the issue and even the threat of such a move could be potent. The governor has little choice but to circumvent the Democratic majority if he wants big change, Canciamilla said. Schwarzenegger "came in as a reformer," Canciamilla said. "He has yet to do reform, and if he's going to do it, this is it."

Against that backdrop, the Legislature will debate a slate of measures recycled from last year -- including everything from making it easier for Californians to fill prescriptions with cheaper Canadian drugs to legalizing gay marriage -- as well as emerging issues, such as whether to build liquefied natural gas terminals in environmentally sensitive coastal areas in Southern California.

Also expected is another bill aimed at increasing the state's \$6.75 minimum wage, a proposal Schwarzenegger vetoed last year. The battle over the measure reflects one of the Legislature's major fault lines, the push and pull between business interests, which are strongly supported by the governor, and labor unions, backed by many Democrats.

Key issues

Democratic leaders such as Perata are touting a moderate agenda built around expanding health care services, improving education and relieving traffic congestion, while liberals are pushing old favorites such as legislation that would grant state driver's licenses to illegal immigrants.



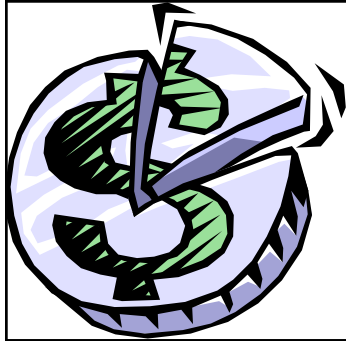
Delicate dance of politics in state cont.

Republicans, on the other hand, are gearing up to fight for the governor and focus on solving the state's fiscal problems, said Kevin McCarthy, the Assembly GOP leader from Bakersfield.

Democrats "will continue to drive the social issues," McCarthy said. "We're interested in structurally reforming the budget."

Clearly, deciding how to balance the state's out-of-whack finances is at the top of lawmakers' to-do list, for the fourth consecutive year. Since the 2001 economic downturn, the state has faced an ongoing gap between expenditures and revenues.

Politicians have shied away from raising taxes or gutting core state programs to cover the shortfall and instead turned to massive borrowing, fund-shifting and other accounting gimmicks. That leaves the governor and legislators with painful decisions that are certain to shape everything else they do, said Barbara O'Connor, a political scientist at California State University-Sacramento.



"You can only raise fees and borrow so much," O'Connor said. "This year is all about money. Who's going to pay for new programs, if there are any, and which programs are going to be cut?"

The questions have spurred partisan gridlock in recent years, with Democrats calling for tax increases and Republicans advocating spending reductions. The governor has pledged not to increase taxes and Democrats are sure to fight cuts, O'Connor said.

"The chickens have come home to roost, as they say, and he has got to figure out a solution," O'Connor said of Schwarzenegger. But the governor's answer may not please Democrats.

Added O'Connor: "We could have open warfare by Feb. 1."

Mercury News Sacramento Bureau

Meal and Rest Period Rules for California Workers Clarified by the State Department of Industrial Relations

The California Division of Labor Standards Enforcement (DLSE), a division of the Department of Industrial Relations (DIR) today filed regulations with the Office of Administrative Law that will provide workers more flexibility in taking meal and rest periods and clarify penalty assessments paid to workers by noncompliant employers.

"The penalty issue has been of increasing concern because conflicting interpretations of the statutory language have resulted in costly litigation, including class action suits in the courts over whether the award is a penalty or a wage," said John Rea, acting director of DIR. "The emergency regulations that the DLSE has filed today are intended to alleviate any further confusion."

Until now, the (DLSE) had enforced a staff opinion letter that deemed the "one-hour of pay" (required as an award to the employee for the employer's failure to abide by the law) to be wages, rather than a penalty. However, the history of Labor Code section 226.7 clearly indicates that the payment was meant to be a penalty.

Further the employee wage tax liability has been on the entire amount even if attorneys' fees consumed a considerable portion of the award.

The second area of law clarified by the new regulations relates to the parameters in which meal periods can be taken.

In prior opinion letters, DLSE staff interpreted the Labor Code and the Industrial Welfare Commission (IWC) Orders to require an employer to start the employee 30-minute meal period before the end of the fifth hour after the start of the workday. This interpretation has resulted in the imposition of penalties on employers even in cases where the employee's meal period was scheduled to begin, for example, five minutes after the fifth hour of the workday. As a result, employers often force employees to take meal periods within those constraints, even when the employee has no desire



Meal and Rest Period Rules Clarified cont.

to stop work in order to eat or rest at such specific times.

“DLSE advised that this interpretation was based on a literal application of the language contained in the IWC Orders, without reference to the statutory intent,” Rea said. “Labor Code 512(a) and (b) gave the IWC the specific authority to address meal periods which begin after the sixth hour, but not for meal periods occurring prior to the sixth hour” he added, “and as the State entity charged with enforcing Labor Code provisions, DLSE has the authority to interpret the provisions dealing with meal periods which occur between the beginning and the sixth hour of the workday.”



Under the new regulations an employer will be deemed to have provided a meal period to an employee in accordance with the Labor Code Section 512 if the employer makes the meal period available to the employee and affords the employee the opportunity to take it; posts the applicable order of the Industrial Welfare Commission; and maintains accurate time records for covered employees, as required by the posted Order. A further section of the regulation invites the employer to document that meal periods have been provided in accordance with Section 512, by informing employees of the circumstances under which they are entitled to a meal period and having them acknowledge in writing that they understand those rights.

“Overall, DLSE’s new regulations governing meal periods will allow more flexibility for both employers and employees,” Rea said. “This change will come as a great relief to workers and employers in many industries where the lack of flexibility has had negative consequences on earned income and scheduling abilities.”

The office of Administrative Law has ten days in which to review the regulations filed today. If approved, they are slated to become effective on December 20, 2004. A copy of these emergency regulations can be found on the DIR website at www.dir.ca.gov.

Published on the Department of Industrial Relations website on 12/14/04.

Board of Directors

Mr. Jack H. Brown
Stater Bros. Markets

Mr. Steve Cannon
Circuit City Stores, Inc.

Mr. Bill Coyne
Raley's/Bel Air

Ms. Kate Curran
GE Consumer Finance

Mr. Donald G. Fisher
Gap Inc.

Ms. Beth Foughner
The Home Depot USA

Mr. Nate Garvis
Target Corporation

Mr. R.B. Harrison
Robinsons-May

Mr. Kevin Herglotz
Safeway Inc.

Mr. Keith Jones,
Chairman
Yum! Brands, Inc.

Mr. Edward H. King
Walgreen Company

Mr. James E. Krahulec
Rite Aid Corporation

Mr. Joseph W. Levy
Gottschalks

Mr. Robert Ling, Jr.
Unified Western Grocers

Mr. Steven F. McCann
Longs Drug Stores, Inc.

Mr. Louis Meunier
Macy's West

Mr. Randy Peelle
J. C. Penney Company, Inc.

Mr. Ray Pohlman
AutoZone

Ms. Misty Redman
Sears, Roebuck and Co.

Mr. Kevin C. Richardson
The ServiceMaster
Company

Mr. Pete Van Helden
Albertson's, Inc.

Mr. Ronnie Volkening
7-Eleven, Inc.



Bill Dombrowski
President

Pamela Boyd Williams
Vice President

Heidi Barsuglia
Dir. Of Gov't Affairs

980 9th Street
Suite 2100
Sacramento, Calif.
95814
(916) 443-1975
(916) 441-4218 fax

cra@calretailers.com