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## STATE BUDGET:

### Waiting for Godot? Budget Vote Said to Be Coming Soon

Whether taxpayers should pay taxes they have not voted to approve – and may even vote down – appeared to be one sticking point to a budget agreement as the Legislature began budget drills late this week.

Originally, Senate President Pro Tempore Darrell Steinberg had planned a budget drill on June 8, even though no agreement on the tax issue is in place. This morphed into a plan, dubbed grim fairy tales by critics, to ask other senators to obtain written tales of woe from sheriffs and county superintendents of schools, describing why they believe taxes must be increased.

The Senate began meeting this morning, and the Assembly is on call. All legislators have been asked to clear their schedules for the weekend for possible budget votes.

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Democrats can adopt a budget with a majority vote, pursuant to Proposition 25, but are refusing to do so, by conditioning the vote on approval of a two-thirds vote measure to increase taxes.

Governor Jerry Brown, who pledged during last year's campaign that he would not raise taxes without a vote of the people, on June 7 took the unusual step of calling reporters to complain that Republicans were refusing to impose taxes before voters authorize them. The governor indicated that he will call a special election for taxes in September if tax increases are imposed for the "bridge period" of July, August and September.

Democratic leaders in the Legislature, meanwhile, are pushing for a longer "bridge." They have introduced legislation ([ABX1 18](#), Blumenfield) that would keep higher tax rates in place for a full year, without voter approval. If voters got a chance to weigh in after that and rejected further tax extensions, the year's worth of higher taxes would not be refunded.

While the budget talks were going on, the public was being kept in the dark about the provisions that will be included in the budget or the budget trailer bills. As we went to press, there was no language for the public to review for the main budget bill ([ABX1 16](#), Blumenfield).

Substantive language was amended into several placeholder budget trailer bills on Wednesday and Thursday, and therefore was not available to the public until Thursday and Friday, giving Californians little chance to analyze these bills and contact their legislative representatives prior to a vote.

Further, in another historic departure from past practice, there was no budget conference committee to hash out the differences between the Assembly and Senate versions of the budget. This kept the public even more in the dark about what was going on.

Democrats are using the state revenue surge to increase spending, as some of the budget trailer bills increase spending or roll back earlier cuts. Governor Brown has stated that he might use his line-item veto authority on such provisions.

According to press reports, some Republicans and the governor were near some kind of agreement on pension reform, a spending limit proposal and regulatory reforms – although some observers said the changes likely would be "fig leaves," and not true reforms. However, as the Legislature prepares to debate the budget, there are no budget trailer bills for pension reform or regulatory reform, nor any spending limit for the public to review.

In arguing for the non-voter-approved "bridge taxes," Governor Brown said, "You can't lay off a teacher and bring them back in September." However, according to the legislative analyst, the \$3 billion increase in Proposition 98 funding in the May revision is proposed to be used to pay-down existing K-14 deferrals and pay for the shift of student health services to schools. As noted in the *May 27 CalTaxletter*, there is little change from January in the dollars for additional program spending. According to the legislative analyst, due to the state's \$6.3 revenue surge, even if the tax increases do not pass, the Proposition 98 guarantee will be \$1.3 billion higher than in the January budget, which was predicated on a tax increase.

Critics also argued that it would be irresponsible to hire a teacher for a full year when the taxes imposed for the bridge period may be rejected by voters, as polls suggest they will be.

In other budget developments:

**Union May Not Fund Tax-Hike Ballot Measure.** Governor Jerry Brown may have another problem in his quest for an \$11 billion tax hike. David Kieffer, head of the state's largest public employee union, said his union may not fund the campaign to approve the tax increases, should they make it to the ballot.

The leader of the Service Employees International Union told *The Sacramento Bee* that the Legislature should adopt the tax proposals without putting them on the ballot. With regard to funding a fall tax increase campaign, he said: "It's my members' money. And if I went to my members and my board and said we can either play heavily (in legislative races) and do good politics in 2012 or we can lose an election with this money, I think I don't even have to pose the question to get the answer." He added, "I think it's highly likely (the taxes) would lose."

Mr. Kieffer also argued against an all-cuts budget. He said if the tax package is not passed, the Legislature should find non-tax revenues to cover the remaining deficit. "There's a bottomless pit of gimmicks," he said.

**Senator Criticizes Car Registration Deferrals.** Senator Joel Anderson, in a column in *The Sacramento Bee*, criticized the action of the Legislature and governor in approving [SB 94](#) (Committee on Budget and Fiscal Review), which delays car registration pending a decision on whether the car tax is to be extended. Motorists who normally would be getting their new registration packet in the mail this month have not received any information.

The delay, which he characterized as a budget "gimmick," will "cause confusion and inconveniences for millions of motorists and thousands of small smog-check businesses," he said. The businesses currently face an unexpected lull when they normally would be doing smog checks. When the renewal notices finally come out, there will be less time to get a smog check and an extraordinarily heavy demand for them, Mr. Anderson said. He said the demand will far exceed capacity, forcing taxpayers to face longer waits. (Source: *The Sacramento Bee*, June 9.)

**Drama in Dutton's Office.** Protesters created a ruckus in Senate Republican Leader Bob Dutton's office Thursday, demanding a tax increase, and were escorted out and cited by law enforcement after refusing to leave. The protesters, all of whom had some form of physical disability, showed up at the senator's office unannounced to demand that he promise to deliver two Republican votes for the governor's tax extensions.

Senator Dutton agreed to meet with them for 20 minutes, as long as they could have a productive, civil meeting. After the meeting, the group refused to leave, and instead started chanting. Legislative sergeants, California Highway Patrol officers and paramedics were called in, and the protesters were told that if they did not leave within 10 minutes, they would be arrested. Ten of them chose to stay, and they were escorted out by law enforcement, and were cited.

In response to Wednesday's Senate Budget Committee hearing, Senator Dutton stated: "Democrats in the Senate can't seem to kick their tax-and-spend addiction. Senate Democrats voted to increase government spending by more than \$1 billion and took a major step toward a one-year tax increase without an election, thumbing their noses at taxpayers and Governor Brown's pledge to let the people vote on taxes."

## **COURTS:**

### **Taxpayer Doesn't Have Right to a Jury Trial in Refund Case, State Supreme Court Rules**

A taxpayer doesn't have the right to a jury trial in an action for refund of state income taxes, the California Supreme Court said in a June 6 decision that overturned a lower court's ruling in favor of the taxpayer. The Court of Appeal had ruled that the "gist" of such an action is legal, and therefore a jury trial is guaranteed by the state constitution.

The Supreme Court disagreed. In its decision in [\*Franchise Tax Board v. the Superior Court of the City and County of San Francisco\*](#), the high court wrote: "The statutes governing suits for income tax refunds from the state are silent on the right to a jury trial. ... A tax refund action is legal rather than equitable in character. And in England and early America, common law actions for refunds were brought against officers who collected taxes and duties, though in some cases recovery was limited to amounts assessed without jurisdiction and did not extend to overcharges. However, it is a general proposition, not an absolute rule, that the right to a jury trial attaches when the 'gist' of the action is legal."

In its unanimous opinion authored by Justice Carol Corrigan, the court stated, "We long ago recognized the distinct character of tax proceedings in the context of tax collection: 'The state through its legislature can avail itself of the judicial power as the means by which it will collect the tax, and in such proceedings it may prescribe such procedure as may best avail for that purpose, irrespective of the mode of procedure provided for the determination of controversies between individuals.' ... The same general principles apply to the tax refund statutes."

The case involves Tom Gonzales, personal representative of his son's estate, who is seeking a refund of more than \$12 million in state personal income taxes paid in 2000 and 2001. Mr. Gonzales paid the taxes as part of the tax amnesty program, reserving the right to seek a refund.

According to the description of the case in the Franchise Tax Board's litigation summary, the three issues are whether a \$142 million capital loss from an "abusive tax shelter" is allowable; whether a taxpayer self-reporting under the Voluntary Compliance Initiative amnesty program is eligible for interest suspension pursuant to Revenue and Taxation Code Section 19116; and whether a taxpayer is entitled to deduct legal expenses paid in connection with an investment.

In other court action:

**Inadvertent Error, Corrected Immediately, Still Costs Taxpayer Half a Million Dollars.** The Fourth District Court of Appeal [ruled June 6](#) that a company's clerical error that caused a large property tax payment to be submitted one day late was not due to

"circumstances beyond the taxpayer's control," and that the taxpayer thus is liable for a penalty totaling \$594,942.

The case, *First American Commercial Real Estate Services Inc. v. County of San Diego*, involves a payment made by First American on behalf of Bank of America. First American makes bulk payments of property taxes on behalf of real property owners under San Diego County's "County Reciprocal Tax Accounting" program, which makes it easier for lenders to transmit money held in impound accounts.

In early April of 2008, First American sent 13 separate wire transfers to the county treasurer/tax collector for 13 clients. However, because an internal error caused an intended payment to be hidden in a spreadsheet, a 14th payment that was to be made on behalf of Bank of America was not sent. At the end of the business day on April 10, the deadline for property tax payments, the county e-mailed First American to say it had not received the money. The next morning, First American wired \$6.3 million to the county for the full payment.

Despite the taxpayer's immediate correction of the error, the county decided to impose a 10 percent penalty. (**CalTax:** The court's description of the case describes the penalty as a 10 percent penalty, but the figure cited by the court is not 10 percent of the late payment. The court's ruling does not explain the discrepancy.)

First American paid the penalty under protest and sued for a refund. The trial court found in favor of the taxpayer, declaring that the error was inadvertent, occurred due to circumstances outside the taxpayer's control, and occurred notwithstanding First American's exercise of ordinary business care. The county, apparently feeling no sympathy for the taxpayer, appealed the trial court's decision.

The Court of Appeal agreed with the county that the taxpayer did not specifically meet the criteria of Revenue and Taxation Code Section 4985.2, which allows auditors and tax collectors to cancel penalties if taxpayers make specified types of inadvertent errors.

A penalty can be canceled, for example, if "There was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of the tax due is made within 10 days after the notice of shortage is mailed by the tax collector." The court ruled that First American's next-day payment did not qualify, because "there was not an inadvertent error in the *amount* of payment ... On the contrary, *no payment whatsoever* was made. ..."

The court wrote: "(W)e conclude that an inadvertent but avoidable clerical error by an employee of a tax services company that causes a tax payment to be made beyond the statutory deadline is not a circumstance beyond the taxpayer's control, regardless of the exercise of ordinary care."

In a footnote, the court added: "We acknowledge that First American presents a sympathetic case for cancellation of the penalty, as it missed the payment deadline due to an inadvertent error and corrected the problem by making payment as soon as possible after the error was discovered. Nevertheless, because the statutory requirements for cancellation were not met, no grounds exist for an order requiring the County to cancel and refund the penalty."

**LEGISLATIVE UPDATE:****New Bill Would Allow State to Revoke Driver's License for Unpaid Taxes**

Legislation introduced this week (via the gut-and-amend process) would allow the state to revoke the driver's license of anyone on the Franchise Tax Board's list of the top 250 tax delinquents. The legislation ([AB 1424](#), Perea) also would allow the state to suspend occupational licenses held by people on the list, would prohibit the state from contracting with anyone on the list, and would give the FTB authority to enter agreements with other states and the IRS to pursue the out-of-state assets of tax delinquents.

At a Capitol press conference on June 8, Assemblyman Henry Perea, who chairs the Assembly Revenue and Taxation Committee, said his legislation "will give the state the tools it needs to go after these people."

Mr. Perea's legislation also calls for a more detailed list of the top 250 tax delinquents, and would require the list to be produced twice a year rather than annually.

Board of Equalization Chair Jerome Horton, who carried the legislation that requires the FTB to produce the list, issued a statement June 8 saying he supports **AB 1424**, and that he would like to see it expanded to cover the BOE and to increase the list from the top 250 largest delinquencies to the top 500.

Chairman Horton said state governmental licensing entities should have the ability to suspend, revoke or refuse to issue a license if the licensee's name is included on the list, and added that this authority should be used as a last resort. "We should not kill the goose that lays the golden egg unless rotten," he said.

Under Mr. Perea's bill, the targeted debtors could protect their licenses by entering payment plans, which would take them off the 250 list.

At the press conference, Mr. Perea said **AB 1424** can be viewed as a "pilot project," and said that if it is successful in improving tax collections, the state may look into broadening the scope of the bill to cover all tax debtors, not just the top 250. "The state needs enough tools in the tool box," he said.

**(CalTax:** We have had concerns with past efforts to strip licenses from tax debtors, because taking away a person's ability to earn income is likely to make it more difficult for the individual to pay the taxes that are owed. A person who has an income will have a better chance of paying off tax debt, and also will pay income taxes on the continuing paychecks. Revoking a driver's license over tax issues also raises concerns, as driving – whether to work, to school, to a hospital emergency room or to deliver a check to the FTB – is critical to most Californians.)

In other legislative action:

**New "Fee" on Building Permits Advances.** [AB 147](#) (Dickinson), authorizing counties and cities to require "fees" to pay for constructing transportation facilities as a condition of approving final subdivision maps and building permits, cleared the Senate Governance

and Finance Committee on June 8 with a 6-3 vote, split down party lines. The committee's analysis warns that the bill "may not meet constitutional standards," and adds, "The distinctions between taxes, assessments, and fees may need further explanation by the courts."

## **LOCAL TAX ELECTION RESULTS:**

### **Voters Reject Four of Six Local Tax Measures in June 7 Elections**

Voters in local tax elections held this week were not in the mood for new taxes, as they rejected four of the six measures on the ballot.

The elections were held June 7 – the same day Governor Jerry Brown originally planned to hold a statewide election on his tax increase/extension proposals.

Parcel taxes were rejected by voters in Canyon Lakes and Wildomar in Riverside County, and by residents of the Hollister School District in tiny San Benito County. (See table below for details.)

The Wildomar tax would have generated revenue for parks, and was intended to replace an illegal tax that was struck down by the courts last year.

Joe Navarro, a trustee of the Hollister School District, wrote a lengthy letter to the editor of the *Hollister Free Lance* blaming newspapers for the defeat of the parcel tax. The June 8 letter said the "local media monopoly actively disseminated misleading information as news articles." He criticized the media for running a guest column by a parcel tax opponent "who argued that the financial woes of HSD are because school employees are hauling home fat paychecks."

In Richmond (Contra Costa County), voters rejected a sales tax increase that had been structured so as to require a simple majority vote despite being intended to raise revenue for a specific purpose. City leaders put two measures on the ballot – Measure D, calling for a 0.5 percent sales tax increase, and Measure C, earmarking any revenue from the tax hike to go to schools and programs for low-income residents. Voters approved the measure to earmark the funds, but made that proposition moot by rejecting the tax itself. Approximately 57 percent of the voters gave a thumbs-down to the tax.

The two taxes that were approved were a parcel tax extension to maintain funding for a hospital in Trinity County, and a 0.25 percent sales tax increase to fund library services in Shasta County.

A \$40 million school bond had been approved for the June 7 ballot in the San Bruno Park Elementary School District (San Mateo County), but was pulled by school officials when the state did not schedule the governor's proposed statewide election for the same day. Under Proposition 39, approved by voters in 2000, school bonds can be approved with a 55 percent vote if the election occurs when another election is held throughout the school district. Otherwise, school bonds require a two-thirds vote for passage.

For CalTax's table of all 2011 local tax elections, with results from past elections and descriptions of measures on upcoming ballots, click [here](#).

TAX	COUNTY	JURISDICTION	BALLOT LABEL	PROPOSAL	RESULT	% YES
Parcel	Riverside	City of Canyon Lakes	Measure E	Impose a parcel tax for property owners in Canyon Lakes ranging from \$96 and \$204 a year. (2/3 vote.)	Fail	38.78
Parcel	Riverside	City of Wildomar	Measure D	Impose a parcel tax up to \$28 a year to fund park maintenance. (2/3 vote.)	Fail	55.29
Parcel	San Benito	Hollister School District	Measure A	Tax of \$96 per parcel. (2/3 vote.)	Fail	51.27
Parcel	Trinity	Trinity Hospital	Measure T	Continue current tax of \$118 per dwelling and \$32 per undeveloped parcel for five years. (2/3 vote.)	Pass	72.46
Sales	Contra Costa	City of Richmond	Measure D	Increase sales tax from 9.75 percent to 10.25 percent. Majority-vote measure that avoids the required two-thirds vote for special taxes by putting the allocation in a companion measure (see next item).	Fail	43.35
Sales/Advisory	Contra Costa	City of Richmond	Measure C	Advisory measure calling for half the revenue from the above sales tax increase to go to school programs, and the other half to services for low-income residents.	Pass (Will not take effect – see above.)	56.57
Sales	Shasta	City of Mt. Shasta	Measure H	Increase the sales tax by .25 percent on services and goods purchased within Mt. Shasta's city limits. The money will go to fund the Mt. Shasta library.	Pass	75.87

In other June 7 election news:

**Voters in Hercules Recall City Council Members Over Fiscal Issues.** Voters in the city of Hercules (Contra Costa County) recalled City Council Members Joanne Ward and Donald Kuehne by overwhelming margins (87 percent and 80 percent, respectively).

The *Contra Costa Times* reported that voters were "unhappy over the deterioration of the city's finances and six-figure contracts between the city and a firm owned by the former city manager's daughters." The two recalled officials were the only two remaining members of the 2010 City Council that spawned the criticism.

In the race to replace Ms. Ward, the current mayor, William Wilkins, appears to have won with 52 percent of the vote, putting him six percentage points ahead of his nearest rival.

The election to replace Mr. Kuehne could be more interesting, even though there was only one candidate running. Gerard Boulanger, who admitted just before the election that he padded his resume with nonexistent university degrees and membership on a city council in his native France, said he is not sure if he will take office.

The *Times* reported: "He has apologized for his misstatements about his background, attributing them in part to what he said are the difficulties of communicating the intricacies of the French educational and political systems to an American audience. Additionally, Boulanger said he wanted to show he had credentials beyond his current co-ownership of a cleaning company with his wife. Boulanger in fact was an appointed senatorial elector, one of about 150,000 selected locally throughout France. He has said he wishes he had never brought up his studies or his political work in France." (Source: *Contra Costa Times*, June 8 and June 9.)

## LOCAL TAXES:

### Brawley City Council Puts Utility Tax Measure on November Ballot

The Brawley City Council (in Imperial County) voted June 7 to put a utility users' tax extension on the November 8 ballot. The measure calls for a five-year extension of the city's current 4 percent tax (due to expire June 1, 2013) and includes a provision stating that the tax could be lowered during the five-year span, but could not go above 4 percent. The tax is assessed on electricity, gas, water, sewer, telephone (including long distance), sanitation and cable television. (Source: *Imperial Valley Press*, June 8.)

In other local tax and fee news:

**Ventura County Increases Fees to Raise \$5.4 Million.** The Ventura County Board of Supervisors is considering increasing a variety of fees to raise \$5.4 million to balance its budget.

Most of the fee increases would be paid by cities that receive county health care services and policing from the Ventura County Sheriff's Department. Supervisors discussed the fee increases at their June 7 meeting, and are expected to vote on the hikes next week.

County officials said that the fees, combined with cost-saving measures, will close a \$7 million budget gap. Still, the county workforce of approximately 8,100 employees is due to increase. County officials say a slight increase is needed because of a growth in health care programs. (Source: *Ventura County Star*, June 7.)

**Riverside Supervisor Proposes Fee for Visiting Jail Inmates.** The Riverside County Board of Supervisors, led by Supervisor Jeff Stone, voted 4-0 this week to ask staff to look for ways to charge fees to people sentenced to jail, and to those who visit jail inmates. "Look under every nook and cranny," Mr. Stone urged county staff.

The proposal suggests fees for everything from daily jail overhead costs to the costs of medical care, court filing fees and inmates' telephone use. The county's lawyer said she will look into the legality of the various fees. She is scheduled to report back to supervisors in four months. (Source: *Riverside Press-Enterprise*, June 7.)

**Water District Approves 43 Percent Rate Hike.** Directors of the Goleta Water District, in southern Santa Barbara County, voted 4-1 this month to increase water fees 43 percent. The rate hike will be implemented in stages over five years, kicked off by a 16 percent increase effective July 1. At the meeting where the increase was approved, a

large group of residents was on hand to criticize the size of the increase and the way it was implemented.

Under Proposition 218, the district was required to notify all rate payers by mail, to give them an opportunity to protest. If more than half of a district's users file protests in writing, the rate hike would be blocked. Many of the people at the district meeting said the notices should have been sent to parcel owners, not bill-payers, because renters might have less incentive to protest rate increases. An attorney representing agricultural land owners warned of possible legal action unless a new notice is sent out, directed to parcel owners.

"A 16 percent increase in one year is a hard pill for many Goleta customers to swallow, and they aren't sure if they can afford the glass of water to help it down," the *Santa Barbara Independent* wrote. (Source: *Santa Barbara Independent*, June 2.)

## **CALIFORNIA'S BUSINESS CLIMATE:** **Orange County Manufacturer Moving to Texas**

Kairak, which manufactures refrigeration systems for restaurants and other businesses, is closing its Fullerton plant and moving the operations to Fort Worth, Texas. The move means 58 Californians will lose their jobs between August and December, the company said.

Kairak, which has been in business 45 years, is a division of Illinois Tool Works, which said in a press release that the closure "in no way reflects the level of skill or dedication of the Kairak workforce." The press release stated: "However, the challenges of this difficult economic period have required Kairak to re-evaluate the breadth of its products and services and over the next several months the company will concentrate on the assembly of world-class refrigeration systems based on a standard family of products." (Source: *Jan Norman on Small Business* blog, *Orange County Register*, June 7.)

In other business climate news:

### **PPIC Says Move to Consumption Taxes Would Improve State's Business Climate.**

California could reduce its revenue volatility and improve its business climate by moving toward a greater reliance on taxes based on goods or services consumed in the state rather than on income earned here, according to a report released June 8 by the Public Policy Institute of California (PPIC).

Revenue from a broad-based consumption tax would likely be more stable than income taxes because consumption tends to fluctuate less than income, the PPIC report said.

As a tax on the purchases of goods and services, rather than on their production, a consumption tax also could make California a more attractive place for businesses to locate and employ workers, PPIC said.

Alan Auerbach, director of the University of California at Berkeley's Burch Center for Tax Policy and Public Finance, authored the report, "Consumption Tax Options for California."

The report evaluates the advantages, disadvantages and ease of implementation of five options for implementing a consumption tax.

"It would be possible to implement reforms in the retail sales tax and corporate income tax together," Mr. Auerbach said. "That might well be the most straightforward path to reform in light of the difficulties of introducing an entirely new tax system."

## **PROPERTY TAX:**

### **Calaveras County Supervisor Grumpy Over Assessment Decline**

A Calaveras County supervisor is not happy about the decline in property values in the county. Last year's reduction was 12.3 percent, the biggest drop in any California county. The county is bracing for another 10 percent drop this year.

In an attack on Assessor Leslie Davis at a June 8 meeting, Supervisor Tom Tryon, chairman of the board, said, "It is almost like a crusade, a crusade to destroy the county."

Ms. Davis said she is following the law. "I don't think you can point to any policy decisions in my department causing my assessment roll to be lower," she said. Supervisor Darren Spellman defended the assessor as "adjusting the values fairly."

Ms. Davis also said that County Administrative Officer Jeanne Boyce is trying to raid a fund designated specifically for the assessor, and threatened legal action if the raid is carried out. (**CalTax**: See Revenue and Taxation Code Section 75.60, added by **AB 2890**, Hannigan, of 1986.)

Ms. Davis was supported by Al Segalla of the Calaveras County Taxpayers Association, who said the assessor acted with professionalism and integrity. (Source: *Stockton Record*, June 9.)

## **REDISTRICTING UPDATE:**

### **Redistricting Commission Plans to Release New District Maps**

The Citizens Redistricting Commission today [released new maps](#) for the Legislature and Board of Equalization, and plans to hold a press conference on the Capitol steps at 1 p.m. today.

The commission was created by passage of Proposition 11 and Proposition 20, both supported by CalTax and other organizations, to draw boundaries for legislative, congressional, and Board of Equalization districts.

Unlike past redistricting processes, the commission's is required to be deliberated in public forums, and the public can provide input on what should be a "community of interest," without consideration to existing districts or partisan composition. The independent commission is banned from considering where incumbents or potential candidates live.

The commission has been lobbied by a number of community and civil rights organizations to increase the number of political districts that likely would elect ethnic minorities and

others; however, commentators say such efforts have not affected the objectivity of the proposed maps.

Once the new maps are released, the public will have an opportunity to submit additional comments on the new district lines. The commission is expected to finalize the redistricting process by August.

### **INITIATIVE UPDATE:**

## **New Measures Would Impact Car Insurance and Foreclosures**

Two initiatives were filed this week, proposing major changes in two areas that touch most Californians: vehicle insurance and home ownership.

The director of the Alliance of Insurance Agents & Brokers filed a measure ([11-0013](#)) June 6 that would allow auto insurers to consider past coverage history when establishing new rates. In a letter accompanying the initiative, the proponent said, "It is in the best interests of California insurance consumers to be allowed discounted prices if they have continuously followed the state's mandatory insurance laws, regardless of the insurance company providing the insurance."

*The Sacramento Bee* reported June 7: "The measure is similar to the failed June 2010 ballot measure Proposition 17, which was supported by the insurance industry and boosted by \$16 million in funding from Mercury Insurance. Opponents argued that the measure would actually result in rate increases for more consumers, allowing companies to hike premiums for motorists who had a lapse in coverage. Supporters said in a statement that the new version addresses concerns about the impact of the change on members of the military, young drivers and motorists facing financial hardship."

The second initiative ([11-0014](#)), filed June 7 by Sacramento resident David Benson, would amend the state constitution to establish a "fundamental right for every Californian to purchase and own a home and real property," and includes a number of provisions designed to prevent home foreclosures. The measure, which does not appear to have any organized backing, also states that government agencies "shall make every effort possible to assist the home owner in the payment of current or back property taxes or assessments, even to the extent of allowing payments on a weekly or monthly schedule at no additional cost or interest thereof, in order that the citizen may retain their personal home or property."

### **NEW WINE IN OLD BOTTLES:**

## **Recently Amended Bills of Interest**

**Budget Trailer Bill: Developmental Services.** [AB 96](#) (Assembly Budget Committee), a budget trailer bill, was amended June 9, in a gut-and-amend maneuver, to revise statutes relating to developmental disabilities.

**Budget Trailer Bill: Access for Infants and Mothers Program.** [AB 102](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend

maneuver, to delete the six-months residency requirement and to make numerous changes in the Access for Infants and Mothers Program for health care coverage.

**Budget Trailer Bill: Developmental Services.** [AB 104](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to make a large number of changes relating to developmental services.

**Budget Trailer Bill: Human Resources.** [AB 106](#) (Assembly Budget Committee), a budget trailer bill, was amended June 9, in a gut-and-amend maneuver, to revise statutes relating to human services. Among other things, it puts a 48-month limit on welfare (CalWORKS) received from all states, abolishes some commissions and makes many other changes to human resources programs.

**Budget Trailer Bill: Unemployment Insurance.** [AB 112](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to transfer \$48 million from the Federal Trust Fund to the Employment Development Department for the cost of unemployment insurance administration.

**Budget Trailer Bill: School Finance.** [AB 114](#) (Assembly Budget Committee), a budget trailer bill, was amended June 9, in a gut-and-amend maneuver, to make various statutory changes to K-12, higher education and child care programs. Among other things, it expands child care and development services, increases funding for various programs, rescinds a fee increase for state-funded child care services, and reduces the deferral of a portion of school apportionments.

**Budget Trailer Bill: Transportation.** [AB 115](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to make a laundry list of changes in transportation statutes, including:

- Expanding weight fee revenues to redeem transportation bonds.
- Postponing the date for payment of specified loans from transportation funds.

**Budget Trailer Bill: Public Safety.** [AB 116](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to make numerous changes in statutes relating to public safety, including:

- Changing the role of the inspector general to remove the requirement that he or she review department policy and procedure.
- Tightening restrictions on release of information.
- Eliminating the Correction Standards Authority.

**Budget Trailer Bill: State Government.** [AB 119](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to revise various statutes relating to state government. Among other things, the bill extends from September 11, 2011 to April 2, 2012 the time period within which the Employment Development Department is required to implement changes related to the establishment

of unemployment compensation benefit claims under the alternate base period program, and to implement the necessary technical changes.

**Budget Trailer Bill: Resources.** [AB 120](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to revise statutes relating to resources. Among other things, it increases license fees for specified food inspection.

**Budget Trailer Bill.** [AB 122](#) (Assembly Budget Committee), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to augment the 2009-10 budget appropriations by \$25 million and to augment the 2010-11 budget appropriations by \$1.2 billion. (**CalTax:** This is another example why the public should not be deceived by promised "cuts" in the budget when the budget is passed. The state often doesn't save the amount that is scored as a cut at the time the budget is passed. The bureaucracy frequently spends funds above budgeted amounts, and then returns to the Legislature for massive supplemental appropriations. The so-called "balance" between cuts and new tax revenue in the current budget proposal is likely illusory because of this practice, and next spring, a new supplemental appropriations bill will be introduced to fund the "cuts" that did not materialize.)

**Enterprise Zone Requirements.** [AB 231](#) (Manny Pérez), a 145-page bill relating to enterprise zones, was amended June 7 to place additional requirements on enterprise zones' size and hiring credits. The amendments also rename the zones as "Economic and Community Development Zones."

**Waterfront Infrastructure Districts: No Vote on Bonds.** [AB 664](#) (Ammiano) was amended June 6 to exempt the issue of tax increment bonds issued by San Francisco districts for the America's Cup and for Treasure Island from publication and local voter approval requirements.

**University Student Fees.** [AB 970](#) (Fong) was amended June 3 to prohibit any increase in resident student university fees from becoming effective until six months after the vote by the University of California Board of Regents or California State University Board of Trustees. The bill also requires that one-third of all fees be redistributed for student support.

**Suspension of State Licenses if FTB Taxes Are Unpaid.** [AB 1424](#) (Perea) was amended June 6 and June 7, in a gut-and-amend maneuver, to give the Franchise Tax Board additional powers relating to debt collection, including suspending driver's licenses and other state licenses, and publicizing information on the persons in a company liable for payments of tax. The bill prohibits the state from contracting with any of the top 250 tax delinquents, requires the top tax delinquents to be listed twice a year, and allows the state to collect other states' tax debts if the FTB agrees to collect theirs in return. The IRS also could be used to collect FTB debts. (**CalTax:** Suspending a person's ability to earn money is counter-productive, as taxpayers may not be able to earn money to pay off the back taxes.)

**Tax Increases and Extensions Without a Vote.** [ABX1 18](#) (Blumenfield), a budget trailer bill, was amended June 8 and June 9, in a gut-and-amend maneuver, to increase the personal income tax rate and the alternative minimum tax rate by 0.25 percent for the 2012 tax year and decreasing the dependent exemption credit for the 2011 and 2012

tax years. The bill also extends the additional 1 percent sales tax rate (due to expire in a few weeks) until June 30, 2012 and extends the additional 0.5 percent car tax rate (also due to expire June 30) for an additional year. These increases and extensions would not be subject to voter approval, as proposed by the governor.

**Budget Trailer Bill: Long-Term Care.** [ABX1 19](#) (Blumenfield), a budget trailer bill, was amended June 8, in a gut-and-amend maneuver, to make statutory changes in long-term care and Medi-Cal programs. Among other things, it removes the exemption from the quality assurance fee for freestanding pediatric sub-acute care facilities.

**Budget Trailer Bill: Senior Citizens Property Tax Postponement.** [ABX1 34](#) (Blumenfield), which is identified as a budget trailer bill, was amended June 9 to reactivate the state senior citizens property tax postponement program beginning in 2012. (**CalTax:** This does not appear to qualify as a budget trailer bill, as budget trailer bills are to be germane to the budget. This is merely to start up a spending program in the 2012-13 fiscal year.)

**Hospital Quality Assurance "Fee."** [SB 335](#) (Hernandez) was amended June 9 to impose a hospital quality assurance fee of an unspecified amount. (**CalTax:** This may be a tax under Proposition 26.)

**Regulatory Reform.** [SB 353](#) (Blakeslee), a bill with regulatory reform provisions, was amended June 9 to require an economic competitiveness assessment for major regulations.

**Additional Local Tax Authorization.** [SB 653](#) (Steinberg), dramatically expanding local taxing authority, was amended again June 6, in another gut-and-amend maneuver, to strike out the existing version of the bill and return to a modified prior version, with the addition of school districts as entities that could impose personal income taxes, car taxes, sales taxes and excise taxes. (**CalTax:** To strike out the entire 34-page bill and add virtually the same provisions with just a few changes masks from the public the proposed changes from the prior version, without a line by line comparison. Senator Steinberg amended **SB 653** just days after announcing that he would not pursue the bill, but rather was going to pursue a new version, [SBX1 23](#), introduced in the special budget session.)

**Property Tax: Transfer of Base Year of Disaster-Damaged Property.** [SB 947](#) (Senate Committee on Governance and Finance), an omnibus bill with non-controversial property tax changes, was amended June 7 to add provisions allowing the transfer of the base-year value of property damaged in a disaster to a comparable property if either the land or the improvements sustain damage over 50 percent of pre-damage value.

**Property Tax: Notice of Tax Sale.** [SB 948](#) (Senate Committee on Governance and Finance), an omnibus bill relating to property tax collection, was amended June 7 to remove from the bill a proposal to allow specified notices of tax default and tax sales to be posted on the tax collector's web site, rather than be published.

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## WASTE, FRAUD & MISMANAGEMENT: Your Tax Dollars at Work

**Oakland Taxpayers Will Pay \$175,000 for Police Officers' Treatment of TV Cameraman.** The Oakland City Council voted June 7 to pay \$175,000 to a former television cameraman to settle a civil rights lawsuit accusing city police officers of attacking him as he tried to film outside a hospital on a day that four officers were killed in 2009.

The cameraman, who was not physically injured in the altercation, alleged that several officers assaulted him and broke his camera equipment as he tried to film the arrival of an ambulance carrying one of the mortally wounded officers. He was able to record video of some of the action, including an officer approaching him and yelling an obscenity.

The City Council approved the settlement in closed session, and indicated that the city admits no wrongdoing as part of the settlement. The city previously paid several thousand dollars to replace the broken camera equipment. (Source: *San Francisco Chronicle*, June 8.)

**Orange County Employees Received Large, Multiple Raises.** The *Orange County Register* used the state's public records laws to obtain county pay documents, and found: "Five politically connected employees of the County of Orange, including a Santa Ana city councilman and a member of the Santa Ana school board, were promoted by the county and several were given multiple raises that added up to as much as 33 percent in less than six months, public documents and interviews show. The county's assistant chief executive officer and three of the four deputy CEOs all benefited from the multiple raises. Santa Ana City Councilman Carlos Bustamante was promoted to executive manager overseeing O.C. facilities even though his own boss admitted he is unable to perform a portion of his job because it conflicts with his position with the city."

Auditors previously reported that the county could save \$149.3 million by changing the way its human resources department operates.

One example described by the *Register*: "Assistant CEO Rob Richardson, a former Santa Ana city councilman and current member of the Santa Ana Unified School District, saw his pay increase 33.13 percent in just six months after he was promoted from assistant to the CEO in January 2006. The promotion came with a 27.4 percent raise – retroactive 6 months. That same day, he also received a 2 percent countywide merit increase. Six months later, was given another 4.5 percent raise. In April 2008, Richardson was given another 8.3 percent raise. None of the pay raise requests, according to auditors, came with the required justification. Richardson earned \$194,489.60 last year." (Source: *Orange County Register*, June 3.)

**More Problems Found at Troubled Sweetwater School District.** The San Diego area's Sweetwater Union High School District, already under fire for a variety of problems including overbilling the state for a meals program, made headlines again this week – this time for a grade-changing scandal.

The district is reviewing transcripts for more than 115 students at Castle Park High School after the media uncovered documentation that grades were improperly adjusted upward.

The *San Diego Union-Tribune* reported: "At least 37 students who failed a class, then got a passing grade in a make-up class this past spring break, were supposed to have both the old and new grades on their transcript. Instead, the school removed the F and put the higher grade in its place. The same happened for 78 D's."

When making the grade changes, the school used a form reserved for teachers who need to correct grading mistakes, instead of using the form for make-up classes.

The *Union-Tribune* noted that "the grade changes could help improve the school's graduation rate, an important measure of success under the federal No Child Left Behind Act."

Because the grade-change forms were signed by the teachers of the spring break classes, not the teachers who gave the original grades, there was an apparent violation of the state law that says a teacher's grade is final "in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency."

Principal Diego Ochoa took full responsibility, saying: "Accountability is a No. 1 priority for me, and in this case, I am accountable for the mistake that I made. It was the wrong form to use." (Source: *San Diego Union-Tribune*, June 7.)

## **POTPOURRI:**

### **Symposia, Sightings, Salutes & Snafus**

**FTB Legislative Director Moves On.** Franchise Tax Board Legislative Director Brian Putler is leaving his years-long job as the agency's chief advocate, and is taking a position in the California Business, Transportation and Housing Agency. On June 20, Anne Maitland, who has worked as revenue director for the FTB's legislative department and as a legislative staffer, will take over Mr. Putler's duties on an interim basis until a permanent director is hired.

**FTB Announces New 15-Day Comment Period for Changes in Single Sales Factor Election Regulation.** After making another change during the first 15-day comment period in the proposed single sales election regulation (25128.5), the Franchise Tax Board announced that there will be another 15-day comment period for interested parties to give input on changes in the regulation. The FTB will accept comments (sent to [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov)) until 5 p.m. on June 23.

According to the FTB: "Several of the modifications are minor adjustments to the facts in examples. Further adjustments are made for clarification, including adding one example."

**Recent FTB Retirements.** Recent FTB retirements not covered in our last update (May 6) are:

Name	Classification	Years of State Service
<b>May</b>		
Steven V. Buffington	Data Processing Manager II	33
Carol E. Carpenter	Tax Technician	5
James T. Hufnagle	System Software Specialist I	16
Nathan R. Jonas	System Software Specialist III	40
Kenneth E. Lindsay	Customer Service Specialist	22
Frank Luna, Jr.	Senior Compliance Representative	13
Charlotte A. Meisel	Tax Counsel IV	33
Eunice M. Puthuff	State Operations Specialist	25
Lynda L. Rush	Senior Operations Specialist	33
Janette K. Strange	Senior Information Systems Analyst	23
Mark M. Vaghefi	Associate Tax Auditor	23
Jessie M. Wagner-Hawkins	Tax Program Technician II	27
<b>April</b>		
Joanne S. Davis	Accountant I	5
Pauly Lou	Program Specialist I	24
Elmer Lum	Program Specialist II	37
Ann M. Powell	Tax Program Technician I	24

**Assemblyman Fletcher Announces Bid for San Diego Mayor.** Republican Assemblyman Nathan Fletcher announced June 6 that he plans to run for mayor of San Diego rather than seek a third and final term in the Assembly next year. Another possible mayoral candidate is Democratic Senator Christine Kehoe, who recently opened an exploratory committee.

**TAX TRIVIA:**

In 1979, Governor Jerry Brown signed legislation repealing the property tax on business inventories. The year before, an inventory tax repeal measure initially was opposed by Republicans because it was written to take effect only if a specified ballot initiative was defeated. What was the initiative? (Answer on the last page of this issue.)

**BLAST FROM THE PAST:**

"The Supreme Court today upheld California's Proposition 13 tax-limitation law. ... California Taxpayers Association President Larry McCarthy called the ruling 'a tremendous victory for California taxpayers.' 'It removes a dark cloud hanging over California's tax system (and) will provide certainty and predictability with respect to the property tax, which is important to the economic future of the state,' McCarthy said."

— "High court upholds Prop. 13 as 'the will of the people,'" *San Diego Union-Tribune*, June 18, 1992

**COMING UP:**

- June 11-15      **ASSEMBLY AND SENATE BUDGET VOTES POSSIBLE**  
 Location:      Assembly and Senate chambers, State Capitol  
 Subject:      Both houses of the Legislature are expected to be on call throughout the weekend for possible budget votes. The Legislature's deadline for sending a budget bill to the governor is June 15, after which lawmakers will not receive their salaries or per diem until a budget is passed.
- June 13      **ASSEMBLY REVENUE AND TAXATION COMMITTEE HEARING**  
 Location:      Room 126, State Capitol, 1:30 p.m.  
 Subject:      Among bills on calendar are: [SB 508](#) (Wolk), requiring a seven-year sunset on any tax incentive; and [SB 805](#) (Senate Veterans Affairs Committee), deleting the sunset on a partial sales tax exemption for specific itinerant vendors who are veterans.
- June 15      **SENATE GOVERNANCE AND FINANCE COMMITTEE HEARING**  
 Location:      Room 112, State Capitol, 9:30 a.m.  
 Subject:      Among bills on calendar are: [SBX1 3](#) (LaMalfa), allowing taxpayers to voluntarily pay more in taxes; [SB 358](#) (Cannella), a gross income exclusion for air quality funds; [SB 640](#) (Runner), a tax credit for hiring the unemployed; [AB 686](#) (Huffman), allowing local sales tax increases in increments of one-eighth percent; [AB 711](#) (Lara), restricting the rebuttable presumption in favor of homeowners in appeals of non-homeowner exemption property; and [AB 902](#) (Alejo), allowing counties to increase fees in connection with property tax sales.
- June 15      **BOE STAKEHOLDERS MEETING ON CROS PROJECT**  
 Location:      250 South 2nd Street, San Jose, 1:30 p.m.  
 Subject:      Give input on the Board of Equalization's Centralized Revenue Opportunity System project, involving new technology and improvement of BOE business processes.
- June 15      **ASSEMBLY LOCAL GOVERNMENT COMMITTEE HEARING**  
 Location:      Room 447, State Capitol, 1:30 p.m.  
 Subject:      Among bills on calendar are: [ACA 4](#) (Blumenfield), reducing the voter approval requirement from two-thirds to 55 percent for local safety facility bonds; [SB 668](#) (Evans), allowing local non-profit organizations to contribute funds to counties for land under Williamson Act restrictions; and [SB 947](#) and [SB 948](#) (Senate Governance and Finance Committee) making minor property tax changes.

**NOTICE: THE NEXT CALTAXLETTER WILL BE PUBLISHED JUNE 17, 2011.**

**Tax Trivia Answer:** Proposition 13. Republicans initially refused to support AB 7X (Lockyer), but later voted with Democrats to send it to the governor (the votes were 77-1 in the Assembly and 30-2 in the Senate), who quickly signed it. The *Lodi News-Sentinel* reported April 21, 1978: "Senate Republicans protested the bill's lash up to defeat of the Prop. 13. They said the provision could be interpreted as 'extortion' or 'blackmail' – an attempt to garner financial support from the business community for defeat of Prop. 13." In 1979, the governor and Legislature approved an inventory tax repeal measure (AB 66, Lockyer) that included revenue increases that went to local governments to make up for their loss in inventory tax revenue.