



THE CAPITOL CONNECTION

IN THIS ISSUE

<i>PCLC Roundtable</i>	1
<i>Legislative Review</i>	1
<i>Legislature Addresses Atkins v. Virginia</i>	6
<i>Update on Unfair Competition Law</i>	6
<i>The Gubernatorial Recall: In their own Words</i>	7
<i>Ripped from the Headlines</i>	8

LEGISLATIVE CALENDAR

September 12
Interim Recess Began
Upon Adjournment

October 12
Last Day Governor May Sign
or Veto Bills

ROUNDTABLE: FORMER POLICY COORDINATION AND LIAISON COMMITTEE MEMBERS

One of the Judicial Council's constitutional mandates is to advise the Legislature and Executive Branch on matters related to the administration of justice in California. The council meets this duty primarily through its Policy Coordination and Liaison Committee (PCLC). Members of the PCLC have the unique opportunity to represent the judicial branch in the legislative process by adopting positions on pending legislation and making recommendations to the council regarding proposals for council sponsorship. For many PCLC members, this is often their first exposure to the workings of the Legislature. The Capitol Connection recently asked a number of former PCLC members to describe their experience on the committee and how it has affected their outlook after

their PCLC service ended. Interviewed were Justice Paul Boland, Second District Court of Appeal; Justice Carol Corrigan, First District Court of Appeal; Judge Richard Couzens, Placer County Superior Court; Judge Leonard Edwards, Santa Clara County Superior Court; Judge William Harrison, Solano County Superior Court; Judge Brad Hill, Presiding Judge of the Fresno County Superior Court; and Judge Donna Hitchens, Presiding Judge of San Francisco County Superior Court.

Capitol Connection: *What did you learn from your experience on PCLC?*

Couzens: I learned that when dealing with legislation, we had to be open to a
(Continued on page 2)

LEGISLATIVE REVIEW

The legislative session came to a close on Friday, September 12, with lawmakers working well past midnight to act on pending bills. Here is an update on selected court-related bills.

COURT ADMINISTRATION

AB 782 (Kehoe), as introduced. Trial court employees: employment relations

Grants authority to the Public Employment Relations Board to process claims involving violations of statutes or rules relating to employment relations between trial courts and recognized employee organizations.

Status: Senate Judiciary Committee

JC Position: Oppose unless amended

AB 1641 (Keene), as amended July 16, 2003. Emergency powers

Gives the Chief Justice additional flexibility to take necessary actions in a state of judicial emergency.

Status: Signed by governor

JC Position: Sponsor

SB 256 (Escutia), as amended September 12, 2003. Trial Court Facilities Act: clean up; courthouse construction funds; trial court employees

Makes clarifying and clean-up changes related to the Trial Court Facilities Act of 2002. Clarifies the responsibility of the Judicial Council with respect to construction and acquisition of court facilities. Requires the Administrative Director of the Courts to approve expenditures from local Courthouse Construction Funds. Amends the methodology for calculating the inflation figures in the County Facilities Payment. Clarifies the applicability of the court facility surcharge on filing fees. Repeals an obsolete provision related to Fresno county employee classifications. Permits the Los Angeles County Superior Court to enter a mutual agreement with its court reporters regarding temporary employment. Establishes a process for the transfer of employment of county employees providing janitorial or maintenance ser-

(Continued on page 4)

PCLC

(Continued from page 1)

variety of points of view. Judges don't have all the answers and should not expect other branches of government to do what we want just because we want it. Most legislators are well-intentioned and want to carry meaningful and effective legislation. Unless there were overriding political considerations, legislators usually were willing to work with us to craft legislation everyone could support.

Hitchens: I gained an appreciation of the delicate balance between our branch's accountability to the public and the need to preserve the integrity and independence of the judiciary. Two scenarios often repeated. First, legislation was introduced as a result of an isolated event without consideration of the effect on larger policy issues involving the fair administration of justice. In these situations, it was important to articulate a position that recognized legitimate concerns but could convince legislators to withdraw or amend provisions that were unworkable for the courts or would have negative repercussions for the public. The second involved bills seeking to tell us how to manage the courts. In this situation, we had to resist our initial resentment at being told what to do and recognize our responsibility to take an active role in designing responsible solutions for the judicial branch.

CC: *What surprised you?*

Hitchens: Nothing ever surprises me anymore.

Boland: The legislators' interest in learning about the courts and discussing court-related legislation was particularly gratifying. In the mid-1990's, legislators began spending a day in their local courthouses as part of a statewide program to enhance relationships between local legislators and local trial judges. This program enabled legislators to grasp the importance of access to justice at the community level and the practical barriers to access in their own communities due to staff shortages, budget shortfalls and inadequate facilities.

Hill: Several things surprised me. Initially, I didn't fully appreciate the breadth of issues facing the state courts. Also, I did not realize the amount of outreach that is conducted by the Judicial Council and AOC staff to ensure that everyone's opinions are considered. During my term on the council, I saw a willingness by all to accept divergent opinions and to seek out those who could help improve the process. Over and over again, I saw a desire to help all 58 Superior Courts serve their communities in the best way possible given the finite resources available.

CC: *How helpful was input from the council's advisory committees?*

Edwards: I was a member of an advisory committee for a number of years. I was therefore not surprised with the quality of information and recommendations the PCLC received from them (even if we disagreed with them on occasion).

Harrison: Their input and recommendations were instrumental. While we did not follow every recommendation, most were included in our final work. I am still amazed at the talent and stamina of our advisory committee members.

Corrigan: I also feel that the input from the council's advisory committees was quite helpful. It was evident that committee members studied the questions in depth and brought their valuable experience and expertise to bear in evaluating proposals.

Hitchens: Input from advisory committees was helpful because their own level of experience and exposure to the issues naturally limits members of the PCLC. Since the advisory committees are large and diverse groups with special expertise, they provide information and perspectives that contribute to better recommendations to the Judicial Council and, hopefully, better assistance to staff in developing legislative strategies that further the policy goals and needs of the judiciary.

Hill: Their input was invaluable. On these committees, there is a wide cross-section of views and interests. The court system is fortunate that so many judges, administrators and others across the state contribute their time and energy to these committees.

CC: *How did you deal with political considerations?*

Hitchens: Realistically. The Legislature and the governor control our budget, our infrastructure and the legal framework within which justice is administered. As a result, we must negotiate with respect to legislation concerning the judicial branch and understand that ethical compromise is necessary. Damage control is sometimes the goal!

Hill: While the thrust of all of our discussions was always whether any given proposal or idea would strengthen and protect our judicial system, we understood that we couldn't live in a vacuum and ignore political realities. We were therefore always cognizant of whether a particular pro-

(Continued on page 3)

PCLC

(Continued from page 2)

posal would be impossible to achieve, given the political or economic climate. Our primary role was to serve as an "honest broker" in the exchange of ideas, leaving the politics to others.

Corrigan: Our primary objective was to represent the judicial branch's view on a bill's merit and to give input on how a proposal would help or hinder the courts in serving the public. We did, however, take political considerations into account in determining how best to deliver our message in a way that kept lines of communication open and facilitated consensus.

Couzens: I think the key was balance and respect. It was very important to know when to be flexible and when to take a stand. It also was important to be respectful of the work of the Legislature. But we must never lose sight of the fact that legislators are trying to respond to the needs of those who elect them, stay alive politically, and at the same time do the right thing.

CC: *What effect has your PCLC service had on your view of interbranch relations?*

Hitchens: I have more respect for the interdependence between the branches and the need to maintain a positive relationship with the Governor's office and the Legislature. I also developed a keen admiration for the contributions of the Chief Justice and Office of Governmental staff in establishing excellent relationships with the other branches without compromising the integrity of the judicial branch.

Hill: It served to strengthen my view that while there needs to be cooperation and comity among all branches of our state government, there must be a very real measure of independence, given our divergent roles. I came away from this experience convinced that state funding of our third branch must be more predictable than it is now. In order to ensure that equal justice is delivered to all citizens, we need to continually strive for more financial stability.

Couzens: In most instances, the relationships among the three branches were healthy, constructive and benefited the public we serve. Occasionally, political or other considerations got in the way, and when that happened the trick was not to allow the fight in one area to infect the otherwise good relationships.

Boland: For me, it demonstrated the interdependence of the three branches. However, owing to term limits, it also demonstrated how critical it is that the judicial branch cultivate relationships with the Governor, the administration, and individual legislators and engage in an ongoing process

of informing them about the needs of the court system. The process is time-consuming and labor-intensive, but absolutely essential to the viability of the judicial branch.

CC: *What impact has your PCLC service had on your approach to judging?*

Hill: As judges, at times we're so consumed with the cases before us that we may fail to see the big picture. All of us have a responsibility to try to be the best judges we can possibly be, but also to work to preserve a judicial system that is responsive, fair, and accessible.

Couzens: None, other than to emphasize how important it is to really read and understand the laws we are asked to apply. Words of a statute are both art and substance. I learned to appreciate the importance of the judiciary giving full effect to every word in a statute.

CC: *What impact has your PCLC service had on your view of the Judicial Council's role?*

Hill: The demands of managing a court system the size of California's is a daunting task. We must ensure some measure of uniformity in the administration of justice so that access to our courts does not vary significantly from county to county. Prior to trial court funding, many courts were woefully inadequate in terms of staffing levels and overall funding. The effort led by Chief Justice George, Bill Vickrey, Senator Escutia and many others has helped to ensure that all courts will be able to meet the needs of their citizenry.

Edwards: I have a new respect for the quality of work that emanates from the Judicial Council and the AOC. I don't think that someone who has not participated in the Judicial Council activities can ever appreciate how carefully and deliberately it takes action.

Couzens: Service on PCLC emphasized that there really are three branches of government, each with a job to do and each with a view of what is best for the state. The Judicial Council serves a vital role in this process. No other body brings together all aspects of our judicial system with designated authority to speak on behalf of our system.

Boland: First, the Judicial Council is keenly aware that the judicial branch cannot exist in isolation, and in fact must interact on an ongoing basis with the other branches of state government. Second, the council's policy decisions are not made arbitrarily, but as a result of a refined process, whether it involves setting council priorities or applying criteria for determining whether to sup-

LEGISLATIVE REVIEW

(Continued from page 1)

vices from the county to the court.

Status: To governor's desk

JC Position: Co-Sponsor

SB 818 (Escutia), as amended June 17, 2003. Trial Court Interpreter Employment and Labor Relations Act: Clean Up

Revises a number of the implementation dates and extends the ending date of the regional transition period for the program from January 1, 2005, to July 1, 2005. Makes other revisions to the act, including technical nonsubstantive changes.

Status: Signed by governor

JC Position: Co-Sponsor

SB 940 (Escutia), as amended July 10, 2003. Enhanced Collection of Court-Ordered Penalties

Requires the Judicial Council to adopt guidelines for a comprehensive collection program, establish a collaborative court-county working group on collections, and report on the effectiveness of collection programs. Authorizes the Judicial Council to establish a program providing for the suspension and non-renewal of business and professional licenses and an amnesty program involving the collection of outstanding fees, fines, penalties, and assessments.

Status: Signed by governor

JC position: Sponsor

COURT OPERATIONS

AB 1710 (Assm. Jud. Comm.), as amended July 15, 2003. Court operations

Includes substantive and technical changes pertaining to court operations: makes technical and clarifying amendments in the areas of family and juvenile law; allows Court Appointed Special Advocate programs to seek criminal background information on prospective volunteers directly from the Department of Justice, instead of working through the court; clarifies that the 10 percent surcharge does not apply to fees that were incorrectly listed in the 2002 budget trailer bill AB 3000; provides that the 20 percent surcharge established in the 2002 budget trailer bill AB 3000 is not remitted to the county as part of the traffic violator school fee but instead is remitted to the state General Fund; allows the jury instruction royalties to be deposited in the Trial Court Improvement Fund to fund continued improvement of the jury system.

Status: Signed by governor

JC Position: Sponsor

CIVIL

AB 95 (Corbett), as amended May 12, 2003. Unfair competition law: private enforcement actions

Includes new notice provisions to inform defendants of their rights in UCL actions, and clarifies joinder provisions. Provides that this bill becomes operative only if SB 122 is enacted, and provides that the provisions of the bill are not severable.

Status: Senate Floor

AB 1712 (Assembly Judiciary Committee), as amended July 22, 2003. Civil omnibus

Conforms various statutory provisions of law to the abolition of municipal courts and their unification within the superior courts. Makes other technical and clarifying changes with respect to judicial arbitration proceedings, jury lists, service of process, small claims court, and witness fees.

Status: To governor's desk

JC Position: Sponsor

SB 122 (Escutia), as amended September 5, 2003. Unfair competition law : private enforcement actions

Requires anyone bringing a private UCL action on behalf of the general public to receive a specified notice on each defendant in the action and submit a copy of the complaint to the State Bar or face possible disciplinary measures for failure to do so. Provides that, in order to prevent double recovery, a court may, in the exercise of its equitable powers, allow any party to present information about a prior action against the same defendant, and allow a set off against claims in a later action against that defendant, if the later action is based on the same facts, occurring at the same time, and raises the same issues as the prior action. Provides that a court may, in the interests of justice, order consolidation or coordination of UCL actions. At the option of any party, requires court approval of any settlement or compromise, including any agreement to pay attorney's fees, in connection with a private UCL action brought on behalf of the general public. Clarifies that defendants cannot be joined in a UCL action just because they are engaged in the same or similar businesses and are alleged to have violated the same or similar laws. Makes its provisions contingent upon the enactment of AB 95. Repeals the "non-severability" clause in AB 95.

Status: Assembly Floor

(Continued on page 5)

LEGISLATIVE REVIEW

(Continued from page 4)

CRIMINAL LAW

AB 1273 (Nakanishi), as amended May 1, 2002. Continuances

States that provisions specifying the procedures to continue a hearing in a criminal proceeding are directory only and do not mandate dismissal of an action. Also provides that a court or magistrate shall not dismiss a case if a party fails to comply with these procedures.

Status: Signed by governor

JC Position: Neutral

AB 1306 (Leno), as introduced. Proposition 36: Transfer of jurisdiction

Provides that if a person is sentenced pursuant to the Substance Abuse and Crime Prevention Act (Proposition 36), probation and jurisdiction shall be transferred to the defendant's county of permanent residence at the discretion of the sentencing judge.

Status: Two-year bill

JC Position: Sponsor

SB 3 (Burton), as amended September 3, 2003. Death penalty: mental retardation

Defines mental retardation and establishes court procedures for determining whether a defendant is mentally retarded in response to the U.S. Supreme Court's decision banning execution of a mentally retarded defendant (*Atkins v. Virginia*, 536 U.S. 304). Provides that the issue of mental retardation will be determined by a jury after the guilt phase unless the defendant personally waives the right to a jury on the issue. If the defendant waives the right to have a jury determine mental retardation, the court shall make the determination at a hearing prior to the adjudication of guilt.

Status: To governor's desk

JC Position: No position

SB 877 (Hollingsworth), as amended July 15, 2003. Criminal procedure: discovery

Provides that in cases in which the court orders the prosecution to provide copies of child pornography evidence to the defense, the court may issue any order it deems appropriate to limit the defense to using that evidence in ways that are reasonably necessary to developing and defending the case. Requires the court to give great weight to protecting the identity and the rights of any victim featured in the evidence when drafting orders directing the defense's use of the evidence, while still taking into account the defendant's right to prepare for trial.

Status: Signed by governor

JC Position: Neutral

FAMILY LAW

AB 111 (Corbett), as amended May 5, 2003. Child custody: emotional abuse.

In child custody proceedings, requires the court to consider unjustifiable mental suffering inflicted upon a child when determining the best interest of the child. Also revises the definition of unjustifiable mental suffering in the child abuse statutes in the Penal Code.

Status: Senate Public Safety Committee

AB 1108 (Bermudez), as amended September 2, 2003. Child custody: drug testing

Authorizes the court in a child custody proceeding to order a parent to undergo testing for the use of controlled substances or alcohol if the court has determined, by a preponderance of evidence, that there is the habitual, frequent, or continual use of controlled substances or alcohol.

Status: Two-year bill

SB 265 (Kuehl), as amended June 12, 2003. Child custody: domestic violence

Revises the operation of the rebuttable presumption against custody to a person who has perpetrated domestic violence.

Status: Signed by governor

SB 734 (Ortiz), as amended May 22, 2003. Child custody and visitation

Makes various changes related to supervised visitation. Among other things, sets out various factors that the court must consider before granting unsupervised visitation.

Status: Two-year bill

JC Position: Oppose unless amended

JURIES

AB 1180 (Harman), as amended July 2, 2003. Sanctioning of jurors for failure to appear

Clarifies that when an individual is summoned but fails to appear for jury service, the court may, in lieu of using contempt procedures, impose reasonable monetary sanctions on the prospective juror following an order to show cause hearing.

Status: To governor's desk

JC Position: Sponsor

JUVENILE

SB 59 (Escutia), as amended June 11, 2003. Dependent children: appeals

Creates a writ process for juvenile dependency cases involving disputed placement orders that are made after parental rights have been terminated.

Status: Signed by governor

JC Position: Neutral

LEGISLATURE ADDRESSES *ATKINS V. VIRGINIA*

As amended September 3, SB 3 (Burton) reflects an agreement reached between prosecutors and the defense bar on a process to ensure that mentally retarded defendants are not executed.

In January, *The Capitol Connection* reported on the debate taking shape in the Legislature about how to respond to the U. S. Supreme Court's holding in *Atkins v. Virginia*, which prohibits the execution of mentally retarded defendants. The negotiations between prosecutors and the defense bar continued throughout this legislative session, with the differences centering around the definition of mental retardation, the timing of the determination of mental retardation, and which party would bear the burden of proof. The prosecutors argued that mental retardation should be defined as narrowly as possible, and that the defense should bear the burden of proving a defendant is mentally retarded after a guilty verdict, while the defense bar sought a more inclusive definition, and a pre-trial adjudication of guilt with the burden on the prosecution to prove that the defendant is not mentally retarded.

In the meantime, California trial courts have been left to

handle the issue without statutory guidance. In the handful of cases that have been prosecuted since *Atkins*, courts have employed a range of processes. In Riverside and Imperial Counties, mental retardation was determined by a jury, after the guilt phase. In Tulare County, a bench trial was conducted prior to the adjudication of guilt. Recently in Santa Clara County, a defendant raised the issue just before the start of the penalty phase.

SB 3 defines mental retardation as "the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18." The bill provides that the issue of mental retardation will be determined by a jury after the guilt phase unless the defendant personally waives the right to a jury on the issue. If the defendant waives the right to have a jury determine mental retardation, the court shall make the determination at a hearing prior to the adjudication of guilt.

SB 3 is currently awaiting the governor's action.

UPDATE ON UNFAIR COMPETITION LAW

The legislative session came to a close without any reforms to California's Unfair Competition Law (UCL). *The Capitol Connection* has been reporting on legislative efforts to make changes to the UCL since early in the session when the practices of a number of law firms placed pressure on the Legislature to take action. Attorneys reportedly were targeting small, often minority-owned businesses for minor regulatory violations and then seeking settlements after threatening to sue under the UCL.

While a number of bills were introduced to address the UCL, only two survived for a chance to advance to the governor's desk. One of these, SB 122 by Sen. Martha Escutia, was amended late in the session to remove its most controversial provision, which would have allowed courts to order disgorgement of profits gained as a result of unfair business practices. This amendment was designed to appeal to more moderate members of the Assembly Democratic Caucus, whose votes were needed for

the bill to pass. However, the bill was also amended to allow for optional court review of settlements of UCL actions as opposed to mandatory court review.

Opponents claimed that the bill lacked any real reforms and it failed passage in the Assembly. A companion bill, AB 95 by Assembly Member Ellen Corbett (D-San Leandro) would have required a plaintiff in a UCL action to provide the defendant with information regarding his or her rights, including the right to seek legal advice. The notice would also inform defendants about how to get more information about UCL actions. AB 95 made it out of the Assembly. However, language in the bill provided that it would only be effective if SB 122 was also enacted into law.

THE GUBERNATORIAL RECALL: IN THEIR OWN WORDS

The Capitol Connection has collected quotes about the gubernatorial recall from public figures as reported in various publications.

Governor Gray Davis:

"There are many reasons to be against this recall. It is expensive, it's undemocratic, it's a bad precedent, and it almost certainly will breed more recalls. The Republicans behind this recall say they want you to oust me for past mistakes. My friends, they don't give a rip about past mistakes. This is all about control in the future, seizing back the governor's chair and believing with so many candidates running for office they can do it with just a handful of California voters. That's what this is all about."

New York Times (August 20, 2003)

Sal Russo, Republican consultant to the recall:

"The budget deficit clearly precipitated the anger. But then it was like pulling a thread on a sweater. The more [voters] thought about it, the more they realized how bad the schools were and that there weren't enough jobs and that they were stuck in traffic and that it was smoggy. Gray Davis is the titular head, and he gets the brunt of it, but this is really an indictment of the whole process."

California Journal (September 2003)

Republican Assembly Member Ray Haynes:

"I'll be real blunt. I was involved in the recall with Tom McClintock from the beginning, but I didn't get involved in this to hand the governorship over to [Democratic Lt. Gov.] Cruz Bustamante. That's something I need to be cognizant of and other conservatives need to be cognizant of. I'm at the point of saying to McClintock, 'Show you can bring the resources to the table to win, or get out of the way.'"

Washington Post (September 2, 2003)

Senator Tom McClintock:

"I'm in this race to the finish. That would be 8 p.m., Oct. 7. I'm old-fashioned. I believe we should have a campaign first and then let the voters decide who wins. They're perfectly capable. At the appropriate time, I'll be prepared to accept Arnold Schwarzenegger's endorsement."

Los Angeles Times (September 2, 2003)

Bruce Cain, director of the Institute of Governmental Studies at UC Berkeley:

"[A Schwarzenegger victory would be] a huge victory for moderate Wilsonian Democratic Republicans who have been in political Siberia for the past five or six years and

have been marginalized not only by the Democrats but marginalized within their own party. So this is double revenge. They not only get revenge on the Democratic Party, but they get revenge on the conservative wing of the Republican Party."

San Francisco Chronicle (August 10, 2003)

Sherry Bebitch Jeffe, Political Scientist, University of Southern California (about Gov. Gray Davis):

"The perception voters have is that he doesn't have an ideology, a central core of values, other than to win elections. He's a pragmatist. He's all about being a risk-averse centrist Democrat, who moves left close to elections in order to consolidate his base. And people are getting a little impatient with the fact he does veer from left to right."

Sacramento Bee (August 24, 2003)

Art Torres, State Democratic Chairman:

"The fact you're finding so much fluidity is because this whole situation is so fluid. To suggest that either party should have a specific strategy is naive, because we've never gone through a recall before."

Sacramento Bee (August 18, 2003)

Allan Hoffenblum, Republican consultant:

"If you have three Republicans running great campaigns and one Democrat running a mediocre campaign, the Democrat probably would win."

San Jose Mercury News (August 18, 2003)

Richie Ross, Bustamante strategist:

"[The Governor's campaign] is contacting potential supporters and contributors and telling them don't give to and don't support Bustamante's effort. They're trying to shut it down. We think that is selfish and irresponsible. They want it to be all or nothing, them or no one. And we just don't understand why the lieutenant governor, who's urging people to vote the full ballot, is somehow not being the good guy. If you care about the coast, if you care about choice, if you care about education, and you sincerely believe Democrats are better for those items than Republicans, why would you want to tell Democrats to only vote on one part of the ballot?"

Sacramento Bee (August 18, 2003)

(Continued on page 10)

RIPPED FROM THE HEADLINES

"Ripped From the Headlines" highlights news stories of interest including headlines and lead paragraphs, without editorial comment from The Capitol Connection.

"States Fail Child Welfare Tests, Study Says" *Contra Costa Times* (August 19, 2003)

Not a single state has passed a rigorous test of its ability to protect children from child abuse and to find permanent homes for kids who often languish in foster care.

The 32 states evaluated so far could lose millions of dollars from the federal government if they fail to fix problems within a few years.

The Child and Family Service Reviews are the first time federal officials have tried to measure how well children are faring across state systems created to protect them -- but that often fall short.

The reviews ask whether children are bouncing from one foster home to the next, never able to put down roots; whether siblings taken from their parents are kept together or pulled apart; whether it takes a state too long to finalize adoptions or to send children back to their biological parents.

The reviews have spurred change. After California was found to take too long to finalize adoptions, the state began combining its screening programs for potential foster and adoptive parents. That means the state will not have to conduct a second screening if foster parents decide to adopt.

"Busted Budgets Could Leave Officials Liable, State Warns" *Sacramento Bee* (August 22, 2003)

Gov. Gray Davis' administration is letting its top officials know that if they break their budgets, the money could come out of their own pockets. A recent directive from the Department of Finance reminds managers of a longstanding law that makes them personally liable if they overrun their budgets.

The law has not been used in recent memory, and state managers have heard the warning before, but the letter this month cited it -- twice, in bold face -- in reminding department heads and agency secretaries that the state will no longer tolerate failing to stay within budget.

It also stressed that the newly approved state budget requires that state operations be slashed by 16 percent. It notes that departments are in danger of running out of money if they don't act to curb costs, and points out the personal liability provision.

"Bill on Confidentiality Advances" *Daily Journal* (August 26, 2003)

The Legislature approved a bill Monday that would allow

California lawyers to disclose clients' plans to kill or seriously injure someone without violating rules on attorney-client confidentiality.

The latest measure, AB1101, by Assemblyman Darrell Steinberg, D-Sacramento, would grant California lawyers an exception from the normal duty of confidentiality to disclose a client's threat if the attorney believes it would lead to great bodily injury or death.

It also directs the State Bar to form an advisory committee to issue guidelines for lawyers who have questions on implementing the law. Questions include whether a lawyer must tell a client of the exception and whether a conflict of interest exists once a lawyer discloses a confidence under the law and, if so, how or if that conflict could be resolved.

"Petition Seeks To Lower Threshold For Tax Hikes" *Los Angeles Times* (August 28, 2003)

A coalition of labor, liberal and government reform groups presented state officials with 1 million signatures Wednesday for a ballot measure that they say would resolve the political gridlock that seems to annually haunt California's legislative budget process.

Opponents, however, say it would only result in higher taxes.

The state Constitution requires a two-thirds majority vote in both houses of the Legislature for taxes to be raised. The proposed Budget Accountability Act would lower the threshold to 55%.

Under the current makeup of the Capitol, that change would allow Democrats to increase taxes or institute new ones without a single Republican vote -- and make it impossible for GOP members to block a budget, as they did this summer, by insisting that no taxes be raised.

In addition to lowering the vote threshold for new taxes, the measure would withhold lawmakers' pay when a budget was late, force them to work exclusively on adopting a budget once the June 15 constitutional deadline for doing so had passed, and require legislators seeking reelection to disclose how they had voted on state spending.

"Davis Signs Bill Curbing Nursing Home Secrecy" *Los Angeles Times* (August 30, 2003)

Gov. Gray Davis has signed a bill that will make it easier for senior Californians to learn if a nursing home has a history of being sued for elder abuse and get details of the allegations against it, his office said Friday.

The bill, AB 634, introduced by Assemblyman Darrell Steinberg (D-Sacramento), will make it more difficult for

(Continued on page 9)

RIPPED FROM THE HEADLINES

(Continued from page 8)

nursing homes to keep such information secret. Case settlements have typically been confidential and therefore off-limits to public disclosure.

Steinberg said access to legal settlements will enable senior citizens and their families in search of a nursing home to discover those with a history of allegations of abuse.

"Scramble In Sacramento As Legislators Race The Clock"

Orange County Register (September 1, 2003)

The way Anaheim Assemblyman Lou Correa describes these critical next days in the Statehouse, you'd think he was describing a war zone. And in some ways - it is.

With just 11 days left in the legislative session and more than 500 bills on file, lawmakers are nervous about the pace - likening the flurry of last-minute amendments to an ambush. And in the post-term-limits era, when one-third of the lawmakers have spent less than a year in the Legislature, it's hard to know who your friends are.

Bills are written in the halls. Amendments to bills are circulated in the chambers on colored paper, each color signifying a new round of amendments. Bills are heard and voted on, sometimes in less than 10 seconds.

"Watch out. Anything could be amended at any time. You have to be alert. You have to keep your ears back and the eyes on the back of your head fully open," Correa said.

It's when the Legislature's racing against the clock that mistakes are sometimes made. There may be no better example of that than AB1890 - better known as the energy deregulation bill. That legislation hashed out in the final days of the 1996 legislative session later gave rise to California's energy crisis.

But it's also the time when some of the biggest and most important bills of the year get the final touches, with the benefit of a deadline.

"Sex-Harass Bill Places Onus On Employees" *Sacramento Bee* (September 9, 2003)

A passenger attack on a bus driver has prompted California lawmakers to pass legislation that would hold employers liable for failing to protect workers from sexual harassment by customers.

AB 76 cleared the Legislature last week and is awaiting action from Gov. Gray Davis. The bill addresses a hot workplace issue spotlighted by a Los Angeles County lawsuit pending before the California Supreme Court.

The bill would make employers liable for sexual harassment by customers or clients if employers -- or their agents or supervisors -- knew or should have known of the harassment and failed to take immediate action to stop it.

Many business groups oppose the measure, arguing that they already can be held liable for sexual harassment committed by employees but should not be responsible for the behavior of customers over whom they have no legal control.

An appellate court ruled last year that employers are not liable under state law for sexual harassment by customers or clients.

AB 76 would repudiate the court's reasoning and mirror protections provided under federal law, according to a legislative analysis of the bill.

"State Agencies Must Find Trims" *San Jose Mercury News* (September 11, 2003)

With California staring at a \$7.9 billion budget hole next year, state agencies have been asked to prepare for a 20 percent reduction in operations.

Finance Director Steve Peace told department heads last week that the state can only afford to continue funding for the most critical and essential functions."

Programs and departments that provide relatively lesser value must be considered for elimination," Peace wrote in a letter Friday.

The request is significant this year because across-the-board cuts are no longer a solution, said finance official Anita Gore. Instead, the letter calls on agencies to consider eliminating programs, reorganizing offices and shifting responsibilities to local government.

"Recall Adds Urgency To Lawmakers' 11th-Hour Voting On Bills" *San Francisco Chronicle* (September 12, 2003)

Democratic lawmakers, fearful of facing a hostile governor next year, are making a final push to send Gov. Gray Davis scores of measures friendly to public labor unions and other liberal interests in the final sprint before the end of the legislative session tonight.

The Democratic majority approved on Thursday everything from a historic effort to boost computer recycling to state-issued identification cards for medicinal marijuana users.

"The recall certainly gives optimism to the more progressive members of the Legislature that they can actually get their legislation to the governor's desk and signed, since we all know that he is attempting to appeal to his Democratic base for survival on Oct. 7," said Sen. Joseph Dunn, D Santa Ana. "That's just the nature of the beast."

"We woke up one morning to find we didn't have four years -- we had four months," noted state Sen. Don Perata, D Oakland.



Judicial Council of California
Administrative Office of the Courts
Office of Governmental Affairs

770 "L" Street, Suite 700
Sacramento, CA 95814
Telephone 916-323-3121
Fax 916-323-4347

Editorial Board

Martin Riley, Editor-in-Chief
June Clark
Kate Howard
Ray LeBov

Story Manager

Thomas Stevenson

Contributors

Eraina Ortega
Dan Pone

Production Staff

Wendy Baham
Yvette Trevino

Subscribe Today!

The Capitol Connection is delivered electronically each month to subscribers at no charge. People interested in subscribing may contact:

Yvette Trevino
916-323-3121,
yvette.trevino@jud.ca.gov

Looking for a past issue of the *Capitol Connection*? Find it online! *The Capitol Connection* is available on the Internet at www.courtinfo.ca.gov/courtadmin/aoc/capconn.htm.

IN THEIR OWN WORDS

(Continued from page 7)

Garry South, former campaign manager for Davis:

"The real story here is that it's Cruz's people who are calling up donors saying the governor is toast. This is all typical Richie Ross. It's partly smoke to cover what they are doing and partly to set up an excuse when they don't come up with the money they thought they would."

San Francisco Chronicle (August 20, 2003)

Governor Gray Davis (on Schwarzenegger's qualifications):

"He meets the minimal qualifications. He exceeds the voting age, and he is a resident of California. Sometimes people want a little more. Like a little experience."

New York Times (August 28, 2003)

Zev Yaroslavsky, Los Angeles County Supervisor:

"Appearing to be too close to Davis could be limiting Bustamante's potential vote growth. The trouble, though, is the more he separates from the governor and the more he campaigns for himself, the more he may be perceived as an opportunist."

Los Angeles Times (August 26, 2003)

Sal Russo, Republican strategist:

"Political insiders never like it when the people get involved and are active and exert their will. It's a cozy club, the big business, big labor, big politicians are

quite content to have it as their playground. They resent it when the people get involved."

Sacramento News & Review (August 7, 2003)

Tony Quinn, campaign analyst:

"Expecting Schwarzenegger to sit around and come up with a bunch of position papers is missing what the public wants from him. Arnold's greatest asset is his perceived independence from the political class. What this recall is all about is an assault on the whole political order."

Los Angeles Times (Date Unknown)

Bruce Cain, director of the Institute of Governmental Studies at the University of California, Berkeley:

"Even though the official line is no and Cruz, the line on the street with a certain number of voters is going to be yes and Cruz. They're not dumb and they know they can only get Cruz if they vote yes and Cruz."

San Diego Union Tribune (August 10, 2003)

Dan Schnur, consultant to Peter Ueberroth:

"Conservatives want to win, but they want to win on principle. McClintock has to convince them he can win. Schwarzenegger has to convince them he has the principles."

San Francisco Chronicle (September 11, 2003)

News from the AOC

In addition to *The Capitol Connection*, the Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these online on the California Courts Web site at www.courtinfo.ca.gov. To subscribe to these newsletters, contact PUBINFO@jud.ca.gov.

CFCC Update: Reports on developments in juvenile and family law, including innovative programs, case law summaries from the AOC's Center for Families, Children and the Courts; grants and resources, and updates on legislation and rules and forms. Published three times a year. See www.courtinfo.ca.gov/programs/cfcc/resources/publications/newsletter.htm.

Court News: Award-winning bimonthly newsmagazine for court leaders reporting on developments in court administration statewide. Indexed from 2000 at www.courtinfo.ca.gov/courtnews.