

What's Happening at the Capitol? June 2, 2008 ö Update

A leadership change is upon us.

Both houses of the Legislature have selected their heir apparent for leadership. In the Senate, Darrel Steinberg (D- Sacramento) has been elected to replace Senator Don Perata (D- Alameda) as President Pro Tempore. Over in the Assembly, Assemblywoman Karen Bass (D-Los Angeles) has been elected to replace Fabian Nunez (D-Los Angeles), becoming the first African-American woman in the country to lead a state legislative body. According to agreements made with the present President Pro Tem, Senator Steinberg will assume his Leadership post after session in late August. Speaker Bass, on the other hand, was sworn into her position on May 12th.

State budget problems.

As for the budget, California's deficit has swelled to an estimated \$8 billion which presents Legislators and the Governor with difficult choices. The Governor and Republican legislators have stated that the state can not "tax its way out of the problem" while Democrats state that the state can not "cut its way out of the problem." In the Governor's budget released in January, he proposed a 10 percent across the board cut in state spending, which incited the ire of Democrats and various special interest groups such as the unions that represent teachers and health care workers. In recent comments, the Governor has indicated that he will not raise taxes but may be interested in closing some existing tax loopholes which Republican lawmakers view as an indirect tax increases. Moreover, the Governor has stated that he is interested in finding "creative ways" to raise revenues conceding that the deficit can not be closed through cuts alone. Many believe that one such "creative way" to raise revenue through fees, most of which are levied against businesses. In contrast, Democrats have been forthright in their belief that taxes should be increased as part of the final budget solution with most of the proposed burden falling on upper income individuals and businesses.

How about that WCAB Appointment?

James Cuneo, 68, of Carmichael, has been appointed to the Workers' Compensation Appeals Board (WCAB). He has served as a commissioner for WCAB since 2001. From 1984 to 2001, Cuneo served as president of the law firm, Cuneo Black Ward & Missler, specializing in worker's compensation law, which he also founded. Prior to that, he was an attorney then partner in the law firm Hanna & Brophy, now Hanna, Brophy, MacLean, McAleer & Jensen, from 1971 to 1984 and staff tax counsel for the California State Department of Employment, now the Employment Development Department, from 1967 to 1970. Cuneo earned a Juris Doctorate degree from Golden Gate University School of Law and a Bachelor of Arts degree from the University of Notre Dame. This position requires Senate confirmation and the compensation is \$128,109. Cuneo is a Democrat. (<http://gov.ca.gov/press-release/8478/>)

Worker's Compensation Bills

We are now halfway through 2008 and there are a number of worker's compensation bills that could potentially end up on the Governor's desk in September.

AB 54(Dymally) Health care coverage: acupuncture. AB 54 would require health care service plans and health insurers to provide coverage for acupuncture under a group plan or policy, except as specified, and as subject to the requirement described above. Because the bill would impose new requirements on health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

AB 419(Lieber) Workers' compensation: public employees: leaves of absence. AB 419 would for purposes of these provisions, require that these employees be employed on a regular, or full-time basis, but would eliminate the requirement that these employees be members of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees' Retirement Law of 1937. The bill would also include local park rangers, community college police, and police of a school district among the public employees entitled to the above-described leave of absence. The bill would provide that the provisions pertaining to a leave of absence shall not apply to certain public safety personnel who are employees of the City and County of San Francisco.

AB 507(De La Torre) Rating organizations: Internet Web sites. AB 507 provides that a licensed rating organization shall, pursuant to regulations adopted by the commissioner after notice and hearing, establish and maintain an Internet Web site for the purposes of assisting any person to determine whether an employer is insured for workers' compensation. This bill contains other related provisions.

AB 514(Lieber) Workplace safety and health: diacetyl. This bill would provide that on and after January 1, 2009, no employer or employee shall use diacetyl in anyway . This prohibition would not apply to naturally occurring diacetyl in food or beverages or certain processes. This bill contains other related provisions and other existing laws.

AB 515(Lieber) Occupational safety and health. AB 515 would declare the intent of the Legislature that the board set as its highest priority protection against the effects of those substances that may cause cancer or reproductive or developmental toxicity. This bill would also require the board to adopt standards establishing permissible exposure limits (PEL) for toxic materials in the workplace that meet specified criteria. This bill would further require that any PEL adopted by the board for a given substance, to the extent feasible, correspond to the health-based occupational exposure level determined for that substance by the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency. In addition, this bill would require OEHHA to submit to the board and to the Division of Occupational

Safety and Health a list of toxic materials that meet the criteria established by this bill, with a recommended health-based occupational exposure limit (OEL), not later than February 1, 2008. The bill also would specify the composition of any advisory committee established by the division as well as findings required to be made by the division and the board relating to the adoption of PELs. The bill would also require the Occupational Safety and Health Standards Board to submit, no later than April 1, 2008, to the Governor and the Legislature a schedule for the adoption of standards and PELs.

AB 550(Ma) Property taxation: business property: audit. AB 550 would delete the requirement that a taxpayer own, claim, possess, or control locally assessable trade fixtures and business tangible property with a full value of at least \$400,000 in order to be audited. This bill would require the county assessor, beginning on July 1, 2009, to annually conduct a significant number of audits, as specified, to encourage accurate and proper reporting. This bill contains other related provisions and other existing laws.

AB 1699(Duvall) Insurance: surplus line brokers' fees. This bill would require surplus line brokers transacting only on behalf of a surplus line organization to pay in advance a filing fee of \$250 per year or part of a year, as specified. All other surplus line brokers would be required to pay in advance a filing fee of \$500 per year or part of a year, as specified. This bill contains other related provisions and other existing laws.

AB 1874(Coto) State Compensation Insurance Fund. AB 1874 would provide that the board of directors of the State Compensation Insurance Fund is composed of 9 members, 7 of whom shall be appointed by the Governor. The members appointed by the Governor would be required to have substantial experience in private sector positions, as specified. The Governor would appoint the chairperson. The Speaker of the Assembly would appoint one member who would represent organized labor, and the Senate Committee on Rules would appoint one member who shall have been a policyholder of the State Compensation Insurance Fund, as specified. This bill would provide for the terms of office of board members, as specified. This bill contains other related provisions and other existing laws.

AB 2081(Coto) Workers' compensation. AB 2081 would provide that an officer or director who is a sole shareholder holding less than 10% of the shares of the corporation shall be presumed to be an employee of the corporation, and would prohibit such an officer or director from excluding himself or herself from workers' compensation coverage required to be provided to other employees of the corporation, and from being subject to the specified election requirement. The bill would also provide that this presumption may be rebutted by the person or entity asserting the right to be excluded from those compensation requirements by demonstrating by a preponderance of evidence that the officer's or director's shareholder status is bona fide and not established for the purpose of avoiding those compensation requirements.

AB 2091(Fuentes) Workers' compensation: annual study: access to pharmacy services. This bill would require that the study analyze and make recommendations regarding continued access to prescription drugs and pharmacy services by injured workers.

AB 2181(Ruskin) Workers' compensation: Return-to-Work Program: guide. This bill would require the administrative director, in consultation with the Department of Fair Employment and Housing and the Commission on Health and Safety and Workers' Compensation, no later than September 30, 2009, to develop, make available, and publish a guide covering the Return-to-Work Program requirements, containing specified information. This bill contains other related provisions and other existing laws.

AB 2692(Hernandez) Insurance: workers' compensation. This bill would require the commissioner, by regulation, to establish the minimum reasonable pure loss ratio for all workers' compensation insurers. This bill would establish procedures for determining whether the rate of an individual insurer is excessive relative to the minimum reasonable pure loss ratio and would provide for the refund of excess proceeds to employers insured by the insurer during the time when an excessive rate was in effect, as specified.

AB 2754(Bass) Public safety personnel: MRSA skin infections. This bill would expand the scope of this presumption provision to include any methicillin-resistant *Staphylococcus aureus* (MRSA) skin infection.

AB 2969(Lieber) Workers' compensation: medical treatment utilization reviews. AB 2969 would require that any licensed physician who is conducting such an evaluation be licensed in California.

SB 356(Negrete McLeod) List of reportable diseases and conditions. This bill would delete the specified list of required reportable diseases and conditions.

SB 726(Alquist) Workers' compensation: benefits: presumption: blood-borne infectious. This bill would provide that the above-described definition of injury would apply to claims for benefits filed or pending in the County of Santa Clara on and after April 1, 1995. The bill would declare that, due to the unique circumstances pertaining to the County of Santa Clara that the bill is intended to remedy, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

SB 1115(Migden) Workers' compensation: permanent disability reports: apportionment. SB 1115 would provide that race, religious creed, color, national origin, age, gender, marital status, sex, or genetic predisposition shall not be considered to be a cause or other factor considered in any determination made pursuant to those provisions.

SB 1189(Cedillo) Workers' compensation: supplemental job displacement benefits. SB 1189 would require, for injuries occurring on or after January 1, 2009, if the employee has not returned to work within 60 days of a disability becoming permanent and stationary, the provision of such a voucher to an injured employee no later than 74 days after the date the disability has been determined to be permanent and stationary. The bill would require the employer, if the percentage of permanent disability has not been determined, to provide a voucher based on the reasonable estimate of the percentage of permanent disability, as specified, and would require the employer, if the percentage of permanent disability is later determined to be higher than that estimate, to provide the additional voucher amount immediately upon determining the correct percentage of permanent disability. The bill would require an employer, if the percentage of permanent disability is later determined to be lower than the estimate, to

reissue the voucher in the correct amount, and to notify the employee that any unused portion of the original voucher in excess of the appropriate amount is no longer available. The bill would also require an employer to notify the employee, in a manner prescribed by the administrative director, of an employee's determination of permanent disability consistent with those provisions, and of any delay in determining the employee's correct percentage of permanent disability benefits. This bill contains other related provisions and other existing laws.

SB 1309(Calderon) Workers' compensation: implantable medical devices. This bill would provide that those provisions would not preclude an ambulatory surgical center, hospital outpatient department, or insurance carrier from utilizing a surgical implant provider, as defined, for the provision of implantable medical devices. This bill contains other related provisions and other existing laws.

SB 1338(Migden) Workers' compensation: medical treatment: predesignation of physician. This bill would delete the December 31, 2009, repeal date for those provisions pertaining to an employee's predesignation of a personal physician.

SB 1717(Perata) Workers' compensation: permanent partial disability benefits. This bill would eliminate those provisions requiring an employer to pay an injured employee a decreased amount of permanent disability benefits if, within 60 days of a disability becoming of whether the injured employee accepts or rejects the offer . The bill would also revise the formula for computing those benefits for injuries causing permanent disability, which occur on or after January 1, 2009.