

CLEAR ADVOCACY

CLEAR COMMENTARY June 25, 2020



Under what Circumstance Can Reconciling a \$54 Billion Deficit be Considered a Win?

If few budgets ever make people “happy,” a \$54 billion deficit has been a cause for panic, fear, and loathing.

Earlier this week the Legislature and Governor finally reached closure on the outstanding budget issue remaining between them: what to do in the event federal aid fails to materialize later this year. The Governor sought deeper cuts than the Legislature wanted; the Legislature’s unwillingness to enact substantive cuts in an economic crisis was fiscally objectionable to the Governor. As with any good compromise, both sides can claim victory. The legislature protected K-12 and health and social services safety nets from most trigger cuts, while the Governor still got much of what he wanted and can claim his budget is fiscally responsible (higher education and courts take it on the chin).

Once the deal was reached, budget writers raced to draft language codifying the agreement. Recall the state requires any bill to be in print 72 hours prior to being voted on and the budget must be enacted prior to July 1, hence the haste.

The Senate Budget and Fiscal Review Committee heard the 18 budget trailer bills on Thursday. As if the 102 degree afternoon needed more heat, the debate over what some senators felt was a surprise change to the definition of “assault weapon” in the public

safety trailer bill got the committee off to a fiery start as GOP members cried foul over this seeming non-budget issue embedded in the budget. It didn't end there as several other curiously discovered "budget" issues were debated (and which were about as welcome the temperature outside). Hint: foreshadowing for the next item.

Unsurprisingly, the trailer bills were approved and will go to the floor for a full vote.

While nobody is all smiles and there is plenty of pain to go around, the lack of broad opposition and outcry is...deafening. So chalk that up as almost a win.

The Senate will vote on the budget tonight; the Assembly will return to vote on the trailer bills Monday, and then go back into its own recess. The Senate will then finish its remaining house of origin bills by July 2nd and finally recess until July 13, when both houses reconvene for the final month and a half of this unprecedented session.

Unrelated to the Budget, But We Want It Anyway

A common practice to give an issue a competitive advantage when it may otherwise have difficulty passing is to...embed it in the budget! That brings us to Family Leave that was written into trailer bill language at the request of the Governor.

Although the proposed family leave expansion is unpaid, it has a significant burden and cost on an employer. Each leave is "protected," meaning an employer must return the employee to the same position the employee had before going out on leave. This means holding a position open for three months or more.

Opposition to the Family Leave Trailer bill believe it is inappropriately placed in the budget because it does not make statutory changes to implement the Paid Family Leave ("PFL") program. Nor does the proposed language amend the Unemployment Insurance Code regarding PFL. It actually amends the Government Code and the California Family Rights Act. In fact, an employee does not need to be receiving PFL benefits or even need to apply for PFL benefits to take the leave. Lastly, the leave provided by the PFL Trailer Bill (CFRA leave) is actually four weeks longer than the wage replacement benefits provided under PFL (CFRA leave is 12 weeks and PFL is 8 weeks of wage replacement).

The PFL Trailer Bill language is similar to [SB 135 \(Jackson\)](#) of 2019, which failed passage—arguably because it would have placed the same significant burdens on small businesses as this proposed language.

With opposition from a number of legislators having this in a budget trailer bill, the item was placed in a stand-alone bill, [SB 1383 \(Jackson\)](#) with a commitment by legislative leadership that bill would run concurrently with the state budget.

Here is a list of existing leaves of absence that would be added to the proposed 12 weeks of leave proposed in the budget trailer bill:

- **Families First Coronavirus Act** – 12 weeks of leave because of school or childcare provider shut down
- **Federal paid sick leave** – 40 hours
- **Pregnancy Disability Leave** – up to four months
- **New Parent Leave Act** – 12 weeks (budget proposal eliminates this leave, since it would be included in the overall expansion of family leave)
- **Disability Leave under Fair Employment and Housing Act** – no specific amount – but not unlimited either. The leave provided must be considered as a “reasonable” accommodation for the disability
- **Worker’s Compensation injury** – amount of leave based upon doctor’s recommendation
- **California Paid Sick Leave** – minimum of 3 days
- **Paid leave for Organ/Bone Marrow Donation Leave** – 30 days/year
- **Jury Duty Leave** – unlimited
- **Victim of Crime or Witness Leave** – unlimited
- **Victim of Domestic Violence/Sexual Assault** – unlimited
- **Emergency Duty of volunteer firefighters, reserve peace officers, or emergency rescue personnel** – unlimited
- **Civil Air Patrol Leave** – 10 days/year
- **School Suspension Leave** – unlimited
- **School Activities Leave** – 40 hours/year

On Wednesday evening when SB 1383 was presented during the Senate Budget Committee, Senator Richard Roth cross examined the Department of Finance in a manner that would make Perry Mason proud. One of the favorite moments was when the Senator asked if the Department of Finance had consulted with NFIB to determine the impact on small business. The response: “Senator, I can neither confirm nor deny we did that.” What? It seems the DOF spokesperson had watched too many congressional hearings.

In the end, the bill squeaked out and is on the senate floor for further consideration. Look for amendments since votes for the bill are uncertain.

COVID Spikes and Governor Responds

In the face of increasing coronavirus cases statewide, Governor Newsom threatened Wednesday to withhold up to \$2.5 billion in the upcoming state budget from local governments which fail to comply with state mandates on requiring masks, testing, and other measures meant to slow the spread of the virus.



The money is intended to help local governments pay for services needed because of the pandemic. But it is contingent upon counties following emergency orders to enforce the safety measures as they gradually reopen the economy.

California had recorded 7,149 new Covid-19 cases between Monday and Tuesday, a 42 percent increase over the daily record set one day earlier.

On Wednesday, the Governor pleaded with state residents to comply with his new statewide order to wear a mask. The Governor indicated young people, feeling invincible, are not adhering to social distancing and the wearing of masks. And they are spreading the virus.

The Governor has given no indication he may once again close the state economy; however, Texas just paused reopening plans as COVID cases and hospitalizations have jumped in that state.

Whoppers for the November Ballot

Also yesterday, the Senate approved two Constitutional amendments to be placed on the November ballot for voters to decide. Both are big; both needed to be approved prior to the June 25th deadline.

[ACA 5 \(Weber\)](#) would repeal the ban on affirmative action (race-based consideration for universities and public hiring), which was imposed 24 years ago via Proposition 209. The Assembly approved it last week, and the Senate approved it yesterday, with all Democrats and Republican Scott Wilk voting aye.

Also approved was [ACA 6 \(McCarty\)](#), which would restore voting rights to individuals who are on parole. Of note, again Republican Senator Wilk joined 27 Democrats in approving the measure for the November ballot.

Neither measure requires signature by the Governor.

Speaking Further of ACA's...

If June 25th is the deadline for the legislature to place initiatives on the ballot, and there are some more big ACA's pending?....

Such as [ACA 4](#) (which would reduce the voting age to 17), or [ACA 11](#) (which would change the residential property tax basis for the disabled and those over 55) and the mother of all Constitutional Amendments (at least to the legislature), [ACA 25](#), which would permit remote and proxy voting by the legislature in states of emergency.

So if the Senate hasn't voted on them, and the deadline is today?....

Enter Senate [Bill 300 \(Umberg\)](#), which would extend the deadline to July 1!



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