



Economic Development and Legislative Action Committee

Thursday, April 7, 2016 – Noon

America's Christian Credit Union (2100 E Route 66 Glendora)

AGENDA

1. Welcome by Chamber Chair Shelia McClure
2. Chamber update **Sheila McClure**
3. Report by, on the Route 39 Rehabilitation/Reopening project. **Steve Castro, CEO, Azusa Chamber**
4. Report on S.2533 "California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act" **Gary Boyer**
5. **Bipartisan Transparency Act** that the Cal Chamber is endorsing and **AB-33** amended bill concerning Out of Network **Sheila McClure**
 - City of Glendora **Mendell Thompson**
 - Congresswoman Judy Chu **Enrique Robles**
 - Congresswoman Grace Napolitano **Phylyp Bardowell**
 - State Senator Carol Liu **Daniel Cedeno**
 - Assemblyman Roger Hernandez **Ashley Rozatti**
 - L.A. County Supervisor Mike Antonovich **Brian Mejia**
6. Candidate forums: Since there are 8 candidates for the 5th Supervisorial District, 6 for the 25th State Senate District, 4 for the 32nd Congressional District, 3 for the 27th Congressional District and 6 for the 48th State Assembly District it became evident that we could not possibly coordinated forums for all so we will wait until after the June Primary election results and have forums for the final two candidates in each district.
7. Roundtable
 - a. Glendora & Charter Oak Unified School Districts
 - b. Gene Morrill legislative issues
 - c. Glendora BID -
 - d. Introduction of Council Interns and reports
 - e. Citrus College and Azusa Pacific University
 - f. Chamber –

Next Meeting May 5, 2016

California State Route-39 (San Gabriel Canyon Road) Rehabilitation/Reopening Project

A White Paper

Introduction / Background

Originally, Route-39 was a part of Dwight D. Eisenhower's National System of Interstate and Defense Highways that was formed in 1956. The road itself was opened in 1961. Currently, however, California Highway 39 is a road to nowhere. A catastrophic landslide in 1978 due to faulty engineering at Snowy Springs, a 4.4 mile section of Route-39 was swept away disconnecting Route-39 from the Route 2 and the East Fork. This has left thousands residents without an emergency exit out of the San Gabriel Canyon and has also excluding countless businesses from potential commerce opportunities.

Abstract / Business Case

This paper will attempt to briefly compile years of information and data compiled by the Azusa Chamber of Commerce and its affiliates. Through this compilation you, Congress Woman Grace F. Napolitano will be able to assess the situation and hopefully, take action in up righting this unfortunate and precarious situation.

Problem Statement / Introduction

In 2009 the California Department of Transportation (Cal Trans) came to the City of Azusa with a proposal to repair the 4.4 mile long stretch of damaged road. The proposal presented four alternatives to the situation. The only alternative, which Cal Trans specifically did not recommend was to leave the road in current state. After reviewing the proposed alternatives, the City and Cal Trans agreed on the alternative 3. Due to budget shortfalls Cal Trans has wiped their hands clean of their agreement and has proposed that the US Forest Service or Los Angeles County take over the project. Old legalities; however, make Cal Trans' abandonment of Route-39 particularly sticky. Since the 1920's, Cal Trans has been operating the road under a special permit and the only way that they can remove themselves from the situation is to abandon the road. However, according to the US Forest Service in an interview with the LA Times, "The permit does say that if Cal Trans abandons the highway, they have to remove their improvements—meaning the road—and return the area to the natural landscape." Obviously, this would be a far costlier endeavor. Currently, the Cal Trans spends 1.5 million dollars a year maintaining the 27 mile long highway. An additional 4.3 miles of

road would be asinine; however, an additional 4.4 miles connecting Route-39 to Route-2 would bring potentially exponential revenue to the city, county, and state.

State scenic Route-39, according to Caltrans Spokesman Patrick Chandler, “essentially a 27-mile-long cul-de-sac.” Unfortunately, the 4.4 mile stretch of abandoned road connecting route-39 and Route 2 has become the “home” of state protected San Gabriel Mountain Nelson’s Big Horn Sheep. The sheep are not originally from the San Gabriel Canyon; but instead, they were distributed into the area for hunting purposes (Cowan, 1940). In addition, according to a study done by John D. Wehausen of the *White Mountain Research Station*, “Causes of population losses within the WMPA are unknown...there is no single cause for these losses, pneumonia contracted from domestic sheep probably has been the greatest factor.” Pneumonia not roads, traffic or people.

Proposed Solution

Introduction of Solution

After meeting with Cal Trans in 2008, both sides agreed upon Alternative 3, which proposed, for 32 million, “to reconstruct the washed out and damaged SR-39 roadway section for approximately 1,300 linear feet, plus provide a new bridge at Snow Spring slide area. At this location, where the most significant damage has occurred, a concrete box girder bridge would be constructed to allow slide debris and heavy runoff to pass underneath the roadway. The existing catch basin and corrugated metal pipe would be removed. Between post miles 40.96 to 40.97, a reinforced concrete slab bridge with spread footing on bedrock would be constructed to replace the existing damaged crib wall.”

Application of Solution

The project was ready. All environmental studies had been completed and the 32 million dollars being set aside and work had begun. However, in one swift movement California Transportation Commission swept the rug right from underneath the project. The 32 million dollars was removed and all work was halted.

Future Direction / Long-Term Focus

Despite this setback, the Azusa Chamber of Commerce is still determined to reopen Route-39. As Cal Trans is attempting to wipe their hands clean of the whole situation, it seems that new funder for the project must be found. LA County and U.S. Forest Service appear to be the leading candidates. We see potential for a private funding of the project. Potential candidates are any of the ski resorts who rely on the I-15 as their only means of entrance to their resorts. Residents of the San Gabriel Valley would have far greater access to these resorts if Route-39 were to re-open.

Results / Conclusion

In light of the information presented, it is absolutely necessary that the last 4.4 mile stretch between Route-39 and Highway 2 be restored for public use and for the safety of residents. How this shall come to fruition has been a 35 year struggle. The struggle will not stop until we have reopened the road and thousands have been provided an emergency exit and even more will have the opportunity to experience one of the hidden treasures of the San Gabriel Valley.

Appendices

Cowan, I. McT. 1940. Distribution and variation in the native sheep of North America.
Amer-Midl. Nat. 24:505-580.

DEPARTMENT OF TRANSPORTATION

DISTRICT 7

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*Serious Drought.
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February 4, 2016

Mr. Troy Butzlaff
City Manager, City of Azusa
213 E. Foothill Boulevard
Azusa, CA 91702

FEB 9 PM 2:08

Dear Mr. Butzlaff:

This is in response to your letter to Malcolm Dougherty, Director, California Department of Transportation (Caltrans), regarding the City of Azusa's concerns about the closed 4.4-mile section of State Route 39 (SR-39) within the Angeles National Forest. In your letter, you state that the City of Azusa would like SR-39 to connect to State Route 2 (SR-2) at Islip Saddle so Californians and visitors can enjoy the new national monument within the San Gabriel Mountains.

Although Caltrans is obligated to maintain this highway, the State is facing significant funding shortfalls. A project to reopen this section of highway would be funded within the State Highway Account from the State Highway Operation Protection Program (SHOPP), which has insufficient funds to reconstruct a remote mountainous highway alignment with geologically unstable terrain and sensitive habitat for the Nelson's Bighorn Sheep.

As your letter stated, a Project Report and Environmental Impact Report/Environmental Assessment (EIR/EA) for the SR-39 Reopening Project was approved in 2009 with a preferred alternative to open the closed section between north of the Crystal Lake Road turnoff to SR-2 at an estimated cost of \$32 million. However, after this approval, Caltrans was notified by the California Department of Fish and Wildlife (CDFW) that the Nelson's Bighorn Sheep are a "fully-protected species", which means that not a single sheep can be harmed or killed during the construction of the project or after the opening of the road. Subsequent surveys confirmed that a bighorn sheep population lives and breeds in the project area and traverses the road to travel up and down the slopes. As a result, Caltrans is required to complete another environmental document to study the impacts to the bighorn sheep during construction and after the roadway opens to public traffic. Today, with escalation, the construction cost would substantially exceed the previous programmed funding due to the need for major engineering redesign to protect the users of the facility as well as the bighorn sheep.

Mr. Troy Butzlaff
February 4, 2016
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In May 2012, Caltrans determined that it was no longer realistic or cost effective to pursue the reopening of SR-39 in consideration of the escalating construction costs, geological instability, and circumstances surrounding the Nelson's Bighorn Sheep fully-protected status as designated by the CDFW. State Route 39 is a low-volume, Class 3 highway and the reopening project would not be able to compete for limited SHOPP funds with other projects on high-volume corridors within the state highway network. In fact, the State Highway Account does not have sufficient funding to repair and maintain existing state routes due to greatly reduced highway revenue over the past years. Last month, the California Transportation Commission (CTC) proposed to reduce funding by \$754 million for currently programmed projects over the next five years.

Caltrans continues to repair and maintain the closed section of SR-39, a traversable service road and fire escape route for the U.S. Forest Service, the Los Angeles County Sheriff's Department, the Los Angeles County Public Works Department, the City of Azusa Fire Department and other first responders. Recent work has included construction projects to stabilize slopes, restore the roadway and repair drainage facilities in the closed section.

Caltrans spends \$1.5 million annually for maintenance of this roadway. Our Maintenance Division has worked on eleven (11) emergency projects along SR-39 since 2004, totaling over \$13 million for roadway stabilization improvements (see attachment).

Since your original letter, the highway south of the Crystal Lake Road turnoff has experienced additional damage, which has resulted in the road closure. Caltrans has awarded contracts for the following three construction projects:

- An emergency project to clear slide material from storm damage at five locations to reopen the road;
- A slope stabilization project at two locations, which will maintain access during construction; and
- A bridge replacement project which will allow traffic access at all times.

Caltrans considers all of SR-39, including the closed section, to be a valuable and scenic corridor and the department is receptive to investigating the potential of at least initially opening the closed segment for Active Transportation Program (ATP) options including hiking, biking and vista views within the closed section of SR-39 within the Angeles National Forest.

Caltrans is willing to partner with the City of Azusa, the Los Angeles County Metropolitan Transportation Authority, and the San Gabriel Valley Council of Governments to fund the project needed to reopen SR-39.

Mr. Troy Butzlaff
February 4, 2016
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If you should have any further questions or concerns regarding this matter, please do not hesitate to contact Gary Slater, Deputy District Director, Planning and Local Assistance Division, at (213) 897-0362.

Sincerely,



CARRIE L. BOWEN
District Director

Cc: with attachment
City Council Members, City of Azusa
Daniel Bobadilla, Public Works Director/City Engineer, City of Azusa
Congresswoman Grace Napolitano, 32nd District
Congresswoman Judy Chu, 27th District
State Senator Ed Hernandez, 22nd District
State Assemblyman Roger Hernandez, 48th District
Supervisor Hilda Solis, 1st District, Los Angeles County Board of Supervisors
Mr. Will Kempton, Executive Director, California Transportation Commission

EMERGENCY PROJECTS

(Rev 3-9-14)

State Route 39 Director's Orders (Fiscal Year 2004/05 to 2015/16)						
Cause : Slide=1, Slip out=2, Washout=3, Fire=4, Culvert Failure=5, Bridge Hit=6, Bridge Scour=7, Earthquake/Volcano=8, High surf/Tsunami=9, Accel' pvmt failure=10, Groundwater=11, Other=12						
Item No.	Post Mile	Authorized	Approved	CCA	Cause	Scope
1	28.0-31.0	\$ 2,100,000	1/29/2016	ON-GOING	3	Clear debris, restore failed drainage systems and repair washed out slopes.
2	41.0-44.0	\$ 2,500,000	04/02/14	06/26/15	3	Clear debris, restore failed drainage systems and repair washed out slopes.
3	16.7-18.1	\$ 600,000	01/24/14	03/18/14	4	Wildfire damage repair (Colby Fire)
4	40.0/44.4	\$ 250,000	06/01/10	Completed	5	Culvert repair
5	17.0-28.0	\$ 1,500,000	09/10/09	11/08/11	4	Morris Fire damage repair
6	32.5-44.4	\$ 147,000	05/19/09	Completed	3	Clear debris, repair rdwy and drainage damage
7	32.5-44.4	\$ 147,000	11/06/08	Completed	5	Clear debris & repair drainage, rdwy shoulder, side-slope.
8	40.0-44.4	\$ 147,000	06/10/08	Completed	1	Clear slide debris
9	40.0/44.4	\$ 120,000	01/05/06	05/11/06	12	remove storm debris from 1/2/06 storm
10	17.7/44.4	\$ 5,000,000	01/11/05	01/05/06	1	storm slides
11	28.0/44.0	\$ 575,000	10/22/04	01/19/05	12	remove storm debris, repair road & drainage
		\$ 13,086,000				



November 17, 2015

Mr. Malcolm Dougherty, Director
California Department of Transportation
P.O. Box 942873
Sacramento, CA 94273-0001

RE: STATE ROUTE 39 REOPENING PROJECT

Dear Mr. Dougherty:

The purpose of this correspondence is to encourage the California Department of Transportation (Caltrans) to reconsider its decision to abandon a 4.4 mile section of State Route 39 (Post mile 40.0 to 44.4) within the Angeles National Forest. Caltrans' decision to keep State Route 39 closed has created both significant economic, transportation and public safety impacts that need to be re-evaluated. Moreover, now that President Obama has declared the San Gabriel Mountains a national monument it is critical that the closed portion of State Route 39 be reopened and connected to State Route 2 so the wilderness area can be safely enjoyed by all Californians.

To provide some history on this issue State Route 39 has been closed since 1978 after a massive mud and rockslide damaged a stretch of the road from Snow Springs, north of Azusa, to State Route 2. In 2009, the California Transportation Commission (CTC) approved a project to rehabilitate, reconstruct, and reopen the closed segment of State Route 39 and programmed approximately \$48 million in the State Highway Operation and Protection Program for these improvements. Although the project was fully funded and construction was scheduled to commence in Fiscal Year 2011-12, Caltrans made a decision in 2011 to abandon the State Route 39 Reopening Project altogether, stating the project was not realistic or cost effective.

While Caltrans may believe that State Route 39 is not worth reopening due to costs, it has an obligation under the California Streets and Highways Code to maintain highways, including all traversable highways which have been adopted or designated as state highways by the CTC (California Streets and Highways Code Section 91). Furthermore, Section 339 of the California Streets and Highways Code designates State Route 39 as a component of the State Highway System (SHS). Finally, Section 100 of the Streets and Highways Code states that Caltrans shall monitor the cumulative impacts of fragmented gaps in the state highway system to identify safety and long-term maintenance issues.

In addition to the obligations set forth under the California Streets and Highways Code, it is my understanding that the permit between Caltrans and the United States Forest Service (USFS), that facilitated the original construction of State Route 39, requires Caltrans to remove the road and restore the area to its natural condition in the event the road is ever abandoned by the State. It seems perfectly clear that rehabilitating and reopening the closed segment of State Route 39 is

not only required under the California Streets and Highways Code, but by doing so Caltrans would also avoid having to remove the road and return the area to its natural condition which in all likelihood will be far more costly than reopening the road.

For your information, I have attached the draft Environmental Impact Report/Environmental Assessment (EIR/EA) that was prepared by Caltrans for the State Route 39 Reopening Project. It is worth noting that the EIR/EA specifically states that reopening State Route 39 will greatly enhance public safety by improving response time for fire suppression and emergency personnel. In fact, both the USFS and the County of Los Angeles have deemed State Route 39 an "essential" route and have publicly sought for it to be reopened. The EIR/EA also lists a number of other safety and transportation related benefits that will be realized by reopening the road. Specifically, reopening State Route 39 is key to the management of forest fuels by the USFS in their proactive efforts to prevent wildfires. Also according to the EIR/EA "if the current Roadway Rehabilitation project were not completed, continued weathering would undermine the highway, consequently placing Forest Service and maintenance personnel on an unstable roadway." Finally, reconnecting State Route 39 to State Route 2 will not only provide vital access to the newly designated San Gabriel Mountains National Monument, which offers significant recreational benefits to millions of people living in the greater Los Angeles metropolitan area and high desert communities, but will provide residents of Azusa and many others living along State Route 39 a crucial secondary outlet from the Angeles National Forest in the event of a fire or other emergency that shuts down the road.

On behalf of the City of Azusa, I encourage Caltrans to reconsider its decision to abandon State Route 39 and to work with the CTC and other state and federal agencies in seeking the funding needed to rehabilitate and reopen this crucial road.

Thank you for your consideration of this matter and please contact me at (626) 812-5238 with any questions you may have.

Sincerely,



Troy L. Butzlaff, ICMA-CM
City Manager

Attachment – As Stated

Cc: w/o attachment

Azusa City Council

Congresswoman Grace Napolitano, 32nd District

Congresswoman Judy Chu, 27th District

State Senator Ed Hernandez, 22nd District

State Assemblyman Roger Hernandez, 48th District

County Supervisor Hilda Solis, 1st District

Will Kempton, Executive Director, California Transportation Commission

Carrie Bowen, District 7 Director, Caltrans

BY GARTH STAPLEY

gstapley@modbee.com

Two pieces of legislation meant to dampen predatory lawsuits brought under the guise of helping disabled people are making progress in Sacramento, both winning rare unanimous support in committee votes on Thursday.

Neither represents the meaningful reform that three local lawmakers sought to champion last year. But both bills show signs of the Legislature finally acknowledging that small businesses have been unfairly targeted by shakedown claims from professional victims.

“It is certainly true that a handful of highly litigious plaintiffs have targeted small businesses, especially those without the financial resources and sophistication to challenge such lawsuits,” says an analysis on Senate Bill 269, co-authored by Democratic Sen. Cathleen Galgiani of Manteca. Republican Assemblywoman Kristin Olsen of Riverbank signed on as well, and Assemblyman Adam Gray, D-Merced, intends to do likewise.

Analyses for that bill – and another less aggressive one authored by Olsen, Assembly Bill 54 – quote from 2014 special reports by The Modesto Bee and Merced Sun-Star, which jointly investigated a wave of predatory legal challenges washing over the Northern San Joaquin Valley. More than 60 businesses were slapped with lawsuits in the name of making life easier for the disabled, while some defendants, including Ripon’s Barnwood Restaurant and Ming’s in Los Banos, closed rather than fight in court or buckle to settlement demands for tens of thousands of dollars.

239

ADA lawsuits or demand letters filed each month, on average, in 2015

“Some of these suits are brought by plaintiffs for personal financial benefit, not out of a desire to improve access for disabled consumers,” the SB 269 document says. That sort of language signals a slight change, reform supporters say, in verbiage otherwise weighted toward the status quo backed by the federal Americans with Disabilities Act.

“This is the first time that the Legislature as a whole is really recognizing that abusive ADA lawsuits exist, and that there are lawsuits that are more about money than justice,” said Kim Stone, president of the Civil Justice Association of California.

Plaintiffs include Robert McCarthy, an Arizona man who has sued California businesses for 14 years, The Bee found, except when incarcerated on child pornography and fraud convictions. He sued 14 businesses in Stanislaus and Merced counties in 2013 and 2014, but none of the 28 federal-court lawsuits he filed in 2015 were local.

WHAT'S GOING ON IS CRIMINAL.

Assemblyman Adam Gray

"What's going on is criminal," Gray said in a recent interview, charging that the status quo "sets up a half-dozen law firms to steal from people."

Last year, Olsen, Galgiani and Gray all introduced ADA reform bills with controversial "right to cure" provisions giving businesses time to fix violations. Facing stiff opposition, Gray and Galgiani withdrew theirs; the Legislature eventually passed a version of Olsen's after it was watered down, but Gov. Jerry Brown vetoed it in October because it contained a \$250 tax credit for businesses making improvements.

Brown also vetoed another bill authored by Sen. Richard Roth, D-Riverside; most of it was resurrected a couple of weeks ago as SB 269, which would give businesses with less than 50 employees 120 days to make minor repairs. It was approved Thursday by the Assembly Judiciary Committee on a 10-0 vote and hearings are expected next week in the Assembly Appropriations Committee.

"ADA reform has to remain a top priority," Olsen said in a recent interview. "Abuse is wreaking havoc on small businesses."

ABUSE IS WREAKING HAVOC ON SMALL BUSINESSES.

Assemblywoman Kristin Olsen

But SB 269's protections would apply only to businesses with the foresight to spring for inspections by a certified access specialist, and only certain "technical violations," such as faded paint on parking lot stripes and the color of disabled parking spot signs, would be included. All protections could be canceled if the bill's provisions eventually are deemed to conflict with the higher federal law.

Also advancing Thursday, on a 17-0 vote in the Appropriations Committee, was Olsen's AB 54, co-authored by Gray. It would require those suing to report certain information in a standard format to the California Commission on Disability Access.

Meanwhile, efforts to put two ADA reform initiatives before California voters have been filed with the state. It's not clear whether either has the financial backing needed for signature gathering to qualify for a ballot.

The status quo “is a dream come true for lawsuit-happy lawyers,” said Andrew Rauch, whose group is called Let’s Solve Access.

The number of ADA-based lawsuits and letters threatening lawsuits in 2014 came to 3,468, the California Commission on Disability Access reported. From 2012 to 2014, two law firms were responsible for 54 percent of such lawsuits.

312 ADA lawsuits filed in California, first quarter 2013

676 ADA lawsuits filed in California, first quarter 2015

“Small businesses are justifiably fearful and angry about being sued,” says the SB 269 analysis.

However, the number of complaints is a drop in the bucket, analyst Alison Merrilees wrote, when stacked next to more than 800,000 total lawsuits filed in 2013, the latest for which California data are available. And those sued amount to less than 1 percent of small businesses, the analysis said.

“The vast majority (of disabled people) would only resort to the extreme measure of filing a lawsuit in response to the most egregious, humiliating and pervasive violations,” Merrilees said in her analysis. “It is unfair for business owners or policymakers to assume that disabled persons are somehow trying to game the system or take advantage of small businesses when they expect compliance with the ADA. Compliance should be something they can count on as they go about their daily lives.”

Garth Stapley:

[Education](#)

CalChamber-Backed Bills to Address Teacher Shortage Move

[March 18, 2016](#) [Mira Morton](#) [Education](#), [Mira Morton](#), [Teaching Training](#), [Top Stories](#)

Two California Chamber of Commerce-**supported** bills that will help California public schools recruit and retain quality teachers passed out of their respective policy committees this week.

[SB 933](#) (B. Allen; D-Santa Monica) provides matching grants to help school districts establish and maintain teacher residency programs to recruit, prepare, and retain new teachers.

[AB 1756](#) (Bonilla; D-Concord) provides one-time funding for postsecondary teacher preparation institutions to develop integrated baccalaureate degree and teaching credential programs.

CalChamber Position

Having strong teachers in every classroom is critical to ensuring more students graduate from high school adequately prepared to enter the workforce or further their education without the need for significant remediation. As such, the current teacher shortage presents a significant threat to the state's ongoing efforts to meet future workforce needs.

Both bills are prudent investments in the most important component of California's education system, its teachers, and will contribute to the long-term health of the state's economy.

Teacher Corps

SB 933 helps high-need school districts establish and maintain teacher residency programs in partnership with teacher preparation institutions, community partners, and other nonprofits, to prepare and mentor new teachers.

School districts will be able to apply for state matching grants of up to \$30,000 per teaching candidate, per year for three years, to help pay the student teacher, cover the cost of their credential program, and bring a master teacher to mentor them. The program will help ensure that all students will have highly qualified teachers in their classrooms.

The bill represents a comprehensive approach that maximizes the use of state dollars by requiring participating school districts to match the state's contribution and use proven teacher preparation strategies to train, support, and retain a new generation of teachers.

Integrated Programs

AB 1756 provides one-time funding to postsecondary teacher preparation institutions to help them develop integrated programs so that students can earn their baccalaureate degree and a teaching credential concurrently, within four years.

These innovative programs will help draw new teachers to the profession, put fully trained teachers into classrooms more quickly, and reduce the amount of debt new teachers have to take on, increasing the value of teacher salaries.

Key Votes

SB 933 passed the Senate Education Committee on March 16 with unanimous bipartisan support, 9-0:

Ayes: Liu (D-La Cañada Flintridge), Block (D-San Diego), Hancock (D-Berkeley), Huff (R-San Dimas), Leyva (D-Chino), Mendoza (D-Artesia), Monning (D-Carmel), Pan (D-Sacramento), Vidak (R-Hanford).

AB 1756 passed the Assembly Education Committee on March 16 with unanimous bipartisan support, 6-0.

Ayes: O'Donnell (D-Long Beach), Olsen (R-Modesto), Kim (R-Fullerton), McCarty (D-Sacramento), Santiago (D-Los Angeles), Thurmond (D-Richmond).

Absent/abstaining/not voting: Weber (D-San Diego).

Both bills go next to the Appropriations Committee of their respective houses.

Staff Contact: [Mira Morton](#)

MARCH 19, 2016 9:00 AM

Dan Walters: Expensive measures are on tap for California ballot

Over 100 ballot measures were filed this year

Voters will face at least a dozen major issues

BY DAN WALTERS

dwalters@sacbee.com

California voters will be hammered by a perfect political storm this year, facing at least a dozen major, high-dollar ballot measures.

The record-low turnout of voters in 2014 lowered the signature threshold of placing initiative measures on the 2016 ballot, although with so many measures circulating, sponsors are forced to pay very high fees to professional signature-gatherers.

More than 100 potential measures were filed. While relatively few will qualify, it will still make for a crowded, controversy-laced November ballot.

A report last week from Maplight, which tracks campaign spending, hints of what's to come. It says that the pharmaceutical industry has already committed \$49 million against a ballot measure that would impose tight controls on drug prices charged to the state.

That's more than 11 times what the drug measure's backer, the AIDS Healthcare Foundation, has spent so far and more than half of the \$81.1 million donated for and against pending ballot measures to date.

The AIDS group will be spread very thin, not only trying to get the drug price measure passed but another initiative that would require actors in porn films to use condoms in sex scenes.

Another big medical issue for voters is a pending, union-sponsored measure to curb hospital executives' salaries.

Still another hint that this could be a record year for spending is that a high-powered business coalition has been formed to oppose a labor union-backed measure to raise California's minimum wage to \$15 an hour and index it to inflation. The coalition includes the California Chamber of Commerce, one of the state's most influential business groups.

Business, however, is divided on a referendum by the plastic bag industry to overturn the state's new ban on its products.

Unions, meanwhile, will be pushing voters to extend the higher income tax rates on affluent taxpayers that were imposed temporarily in 2012.

There was only token opposition to the 2012 tax hike, sponsored by Gov. Jerry Brown, but he hasn't signed on to this year's version, which could clear the way for an opposition campaign.

Lt. Gov. Gavin Newsom, who aspires to succeed Brown in 2018, is pushing two profile-raising measures, one to impose additional controls on ammunition and another to legalize recreational marijuana. The firearms industry will oppose the first, but the lineup of proponents and opponents on the second is still cloudy as agricultural and other interests weigh whether to jump in.

As voters decide whether Californians can legally toké, they'll also decide whether to impose a \$2 per pack hike on regular tobacco products – one certain to draw expensive fire from the tobacco industry. And the industry also may challenge, via referendum, pending bills that would impose more restrictions on smoking.

Brown may be neutral on income taxes, but he'll be active elsewhere.

He'll push his own measure to lighten up criminal sentences – if the state Supreme Court rules that it's legal – and will face stiff law enforcement opposition.

Brown will certainly oppose two measures that could torpedo his two pet legacy projects, twin water tunnels under the Sacramento-San Joaquin Delta and a north-south bullet train.

Brown also criticizes, and may oppose, a measure that would issue \$9 billion in school construction bonds.

It is, to use a Brownism, a yeasty mixture of issues.

Dan Walters: 916-321-1195, dwalters@sacbee.com,

McNerney initiates ADA reform on federal level

Companies slapped with predatory lawsuits would get some time to make repairs

State legislators from this area have tried similar bills in Sacramento without success

BY GARTH STAPLEY

gstapley@modbee.com

STOCKTON

The legislative battle against some predatory lawsuits – a nearly impossible task at the state level – is jumping from Sacramento to Washington, D.C., U.S. Rep. Jerry McNerney said Wednesday.

“A fairly small number of individuals and firms are causing this havoc in our businesses,” McNerney, D-Stockton, said while announcing federal legislation aimed at significant reform. “A handful of bad actors have taken advantage of the law just to make money.”

A HANDFUL OF BAD ACTORS HAVE TAKEN ADVANTAGE OF THE LAW JUST TO MAKE MONEY.

Jerry McNerney, representative, 9th Congressional District

He referred to the Americans with Disabilities Act, which requires that businesses make life easier for disabled customers. Critics say it's being used in concert with California law to extort payouts from bewildered companies without helping the disabled much.

Special reports by The Modesto Bee and Merced Sun-Star in 2014 found that more than 60 businesses had been slapped with ADA lawsuits in Stanislaus and Merced counties. Barnwood Restaurant & Catering in Ripon and Ming's Restaurant in Los Banos closed rather than fight in court or buckle to settlement demands for tens of thousands of dollars.

Some drive-by plaintiffs “have no intention of entering and enjoying a business,” said McNerney, whose 9th Congressional District includes parts of San Joaquin, Contra Costa and Sacramento counties.

“We had to move,” said Steve Grant, owner of Chuck's Hamburgers, after 56 years in what had become an outdated Stockton building. Its hallways and bathrooms were too small under ADA regulations, and Grant's landlord was unwilling to make changes, he said.

3,468 ADA lawsuits facing California businesses, 2012-14

2 Law firms responsible for 54 percent of those lawsuits

Last year, state lawmakers Kristin Olsen, Cathleen Galgiani and Adam Gray all introduced ADA reform bills in Sacramento with controversial “right to cure” provisions giving businesses time to fix

violations. Facing stiff opposition, Gray and Galgiani withdrew theirs; the Legislature eventually passed a version of Olsen's after it was watered down, but Gov. Jerry Brown objected to its \$250 tax credit for businesses making improvements and vetoed it.

Olsen rebounded this year with Assembly Bill 54, co-authored by Gray, which would require reporting of certain information in a standard format to the California Commission on Disability Access. Both also signed on to Senate Bill 269, which would give businesses with less than 50 employees 120 days to make minor repairs under narrowly tailored conditions that would not apply in most cases. Both bills continue to move through the Legislature in Sacramento.

McNerney's House of Representatives Bill 4719 aims higher, allowing companies 90 days to correct deficiencies and another 30 days if owners are making "good faith" efforts such as obtaining construction permits or hiring contractors. The legislation also contains a "public shaming" requirement that shops post notices visible to customers while in the process of correcting problems encountered by the disabled.

The congressman calls it his COMPLI Act, or Correcting Obstructions to Mediate, Prevent and Limit Inaccessibility. It would define anyone bringing 10 or more lawsuits in a year as a high-frequency litigant, with restrictions on filing more.

Some plaintiffs in Stanislaus County and Merced cases were behind numerous lawsuits, The Bee and Sun-Star found. They include Robert McCarthy, an Arizona man who has sued hundreds of California businesses over 14 years, except when incarcerated on child pornography and fraud convictions.

THE ADA IS SEVERELY ABUSED AND HAS BECOME A MONEY-MAKING SCHEME FOR A SMALL HANDFUL OF ATTORNEYS AND SERIAL PLAINTIFFS.

Rachelle Golden, attorney, Fresno

McCarthy and others have sued in federal court as well as at the county level.

Olsen issued a release commending McNerney and saying it's "crucial that leaders at both the state and federal level continue to work together" on such reform.

Fresno attorney Rachelle Golden called McNerney's effort "an amazing step in the right direction." Injured in a 1999 snowboarding accident, she uses a wheelchair but sympathizes with – and defends in court – companies slapped with ADA lawsuits.

Although conceived as an "important and beautiful thought," Golden said, "the ADA is severely abused and has become a money-making scheme for a small handful of attorneys and serial plaintiffs."

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SB 878 (Leyva)
The Reliable Scheduling Act
Scheduling Bill Concepts

- **Scope of bill** – This bill will apply to “Food and general retail establishments.” The definition in the language will read: A food and general retail establishment means a retail sales establishment that has a physical location with in-person sales of food or merchandise.
- **Advance notice of schedule** - shall be provided to every employee with a work schedule at least seven calendar days prior to the first shift on that schedule. For example, a schedule issued on a Monday would go into effect the next Monday.
- **“Shift”** - means designated hours of work by an employee, with a designated beginning time and ending time.
- **“Work schedule”** means a written or electronic document that lists all scheduled shifts for all employees for at least 21 consecutive calendar days (3 weeks). Employers may create separate work schedules for each department, division, or worksite. All hours of work for all employees must meet the definition of “shift.”
- **Modification pay** shall be provided to the employee for each previously scheduled shift that is cancelled or moved to another date or time. Modification pay shall also be required for any previously unscheduled shift that the employee is required to work. Modification pay is in addition to the employee’s regular rate of pay for working that shift.
- **“Modification pay”** means additional compensation awarded for modification of a worker’s schedule with less than seven days’ notice . Modification pay shall be calculated based on the employee’s hourly wage.
 - If the shift is modified with **less than seven days’ notice but more than 24 hours’ notice**, the employee shall receive modification pay equal to or greater than **one hour** at their regular pay rate.
 - If the shift is modified with less than **24 hours’ notice**, the employee shall receive modification pay equal or greater **than half of that shift’s scheduled hours at the employee’s regular rate of pay, but in no event less than two hours nor more than four hours.**
- **“On-call shifts”**- For each on-call shift for which the employee is required to be available but is not called into work, an employee shall receive modification pay **equal**

or greater than half of that shift's scheduled hours at the employee's regular rate of pay. This does not apply to on-call time that is required to be compensated as hours worked and for which the employee is in fact compensated under current law.

- **Reporting time pay** – On call pay or modification pay does not need to be provided to an employee who is compensated with reporting time pay as required by any wage order of the Industrial Welfare Commission.
- An employer **does not** have to provide modification pay under the following circumstances:
 - Operations cannot begin or continue due to threats to employees or property, or when civil authorities recommend that work not begin or continue;
 - Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
 - Operations cannot begin or continue due to an act of God or other cause not within the food and general retail establishment's control, including, but not limited to, an earthquake or a state of emergency declared by a local government or the Governor;
 - Another employee previously scheduled to work that shift is unable to work due to illness, vacation, or employer-provided paid or unpaid time off required by existing law or bona fide collective bargaining agreement when the food and general retail establishment did not receive at least seven days' notice of the other employee's absence;
 - Another employee previously scheduled to work that shift has not reported to work on time, is fired, sent home, or told to stay at home as a disciplinary action;
 - Two employees have mutually agreed to trade shifts.
- A food and general retail establishment may provide greater advance notice of an employee's work schedule or changes in an employee's work schedule than what is required by this bill.
- An employer shall not discharge, threaten to discharge, demote, suspend, reduce hours for, or in any manner discriminate against an employee for filing a complaint with the appropriate enforcement agency or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this bill.

- There shall be a rebuttable presumption of unlawful retaliation if an employer discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:
 - The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.
 - The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.
 - Opposition by the employee to a policy, practice, or act that is prohibited by this article.
- **Posting** - In each workplace of the employer, the employer shall display a poster in a conspicuous place containing all the information specified regarding modification pay.
- The Labor Commissioner shall create a poster containing this information and make it available to employers.
- The poster shall state all of the following:
 - (1) An employee is entitled to modification pay.
 - (2) The amount of modification pay provided for by this article.
 - (3) That an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.
- An employer who willfully violates the posting requirements of this section is subject to a civil penalty of not more than one hundred dollars (\$100) per each offense.
- **Enforcement**
 - If the Labor Commissioner, after a hearing that contains adequate safeguards to ensure that the parties are afforded due process, determines that a violation of this article has occurred, he or she may order any appropriate relief, including reinstatement, back pay, the payment of modification pay unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee or other person whose rights under this article were violated.
 - If modification pay was unlawfully withheld, the dollar amount of modification pay withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.
 - If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars

(\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

- Where prompt compliance by an employer is not forthcoming, the Labor Commissioner may take any appropriate enforcement action to secure compliance, including the filing of a civil action. In compensation to the state for the costs of investigating and remedying the violation, the commissioner may order the violating employer to pay to the state a sum of not more than fifty dollars (\$50) for each day or portion of a day a violation occurs or continues for each employee or other person whose rights under this article were violated.
- An employee or other person may report to the Labor Commissioner a suspected violation of this article. The commissioner shall encourage reporting pursuant to this subdivision by keeping confidential, to the maximum extent permitted by applicable law, the name and other identifying information of the employee or person reporting the violation. However, the commissioner may disclose that person's name and identifying information as necessary to enforce this article or for other appropriate purposes, upon the authorization of that person.
- The Labor Commissioner, the Attorney General, a person aggrieved by a violation of this article, or an entity a member of which is aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, back pay, the payment of modification pay unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of fifty dollars (\$50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld modification pay to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars (\$250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney's fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs.
- In an administrative or civil action brought under this article, the Labor Commissioner or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.
- The remedies, penalties, and procedures provided under this article are cumulative.

- **Record keeping** -An employer shall keep for at least three years records documenting the hours worked and modification pay awarded, and shall allow the Labor Commissioner to access these records. An employer shall make these records available to an employee upon request.

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