NORWOOD & ASSOCIATES
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California Links

State Senate

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Legislature Delivers On-Time, Historically High $183 Billion Budget To Governor

The California Legislature passed a spending plan for the 2017-2018 fiscal year yesterday, meeting the state's budget approval deadline with a $183.2 billion package that raises school funding, expands a tax credit for the working poor, and gives the Capitol more influence over University of California finances. The main budget bill passed the Senate 28-10 and the Assembly 59-20. The votes come a week after the Democrat-controlled Legislature's budget-writing committee forwarded a plan reflecting agreement with the Brown Administration on a number of matters.

A final agreement followed a few days later when legislators and Governor Jerry Brown came to terms on how to spend revenue from a 2016 ballot measure that raised tobacco taxes. Republicans criticized the contents of the budget, but there was one notable member of the minority party that voted for the package. Senator Anthony Cannella (Fresno) voted in favor because of his support for its transportation project related funding. Senate Republican Leader Patricia Bates (Laguna Niguel) criticized the budget as the biggest in California's history.

Republican lawmakers repeated long standing complaints that other bills in the package, which are theoretically meant to carry out the provisions of the main spending bill, often create major policy in their own right. These were among those measures accompanying the budget: legislation to curtail the state Board of Equalization's power despite an eleventh hour effort from opponents that included oil companies, unions, and small businesses; a bill to make the timeline for qualifying a recall ballot measure months longer; and, legislators approved a measure merging the voter-approved November 2016 ballot measure that legalized recreational use of marijuana with medical legislation previously passed by lawmakers to create a singular regulatory system in California.

This week's plan settles months of disagreement between doctors, the Legislature, and the Governor on how to spend more than $1.2 billion in tobacco tax revenue generated by last year's Proposition 56 – Cigarette Tax Increase. Of the total, $546 million would raise reimbursement rates for doctors, dentists, and other healthcare providers.

Regarding school spending, this totals $74.5 billion for next year, up 4.2% – about $3.1 billion – from the current year. The plan allocates another $50 million to the state-funded After School and Education and Safety program. And, it includes $200 million to continue preschool and childcare provider rate increases included in last year's budget pact. The package increased University of California funding by $131.2 million, and sets a target for UC to enroll 1,500 more students in the coming year. It reflects the Governor's proposal to hold back $50 million until the system carries out recommendations of a recent state audit that criticized the UC Office of the President. The California State University receives an additional $162.3 million. CSU leaders, though, have to find space for students denied entry to their preferred campus or program.

Under the budget plan, the state would end June 2018 with $8.5 billion in the rainy day reserve and another $1.4 billion in the state's regular reserve.

California Supreme Court Makes Decision On Independent Medical Review Challenge

On June 14, the California Supreme Court denied review of the California Court of Appeal for the Third Appellate District's decision in Ramirez v. Workers' Compensation Appeals Board (State Department of Health Care Services) (2017). The case raised various constitutional challenges to independent medical review (IMR). As was the case in Stevens v. Workers' Comp. Appeals Bd. (2015) 241 Cal.App.4th 1074, from the First Appellate District, the Court honored the plenary authority of the Legislature when establishing the workers' compensation system and its component parts and upheld IMR against the various legal challenges raised by the injured worker.

Unlike the Stevens case, however, there were several additional arguments before the Court regarding IMR. The most significant of these was a challenge to the Workers' Compensation Appeals Board (WCAB) decision on reconsideration in Dubon v. World Restoration, Inc. (2014) 79 Cal.Comp. Cases 1298 (Dubon II). The Board's first decision (Dubon I) allowed any procedurally defective utilization review (UR) process to be brought before the WCAB, circumvent IMR, and allow the Board to make medical necessity decisions while the parties were there. Dubon I would have significantly eroded IMR and add considerable costs to the system. On reconsideration, the WCAB decided Dubon I was too broad in its application and came out with Dubon II, limiting the jurisdiction of the WCAB to cases where UR decisions were untimely.

The challenge at the Court of Appeal in Ramirez to Dubon II was in many respects an effort to reinstate Board's original decision in Dubon I. The Court of Appeal in Ramirez agreed with the WCAB's Dubon II decision and decided against rolling the clock back to Dubon I. Regardless of the issue of whether Dubon II was correctly decided, the fact is that not only did the appellate courts decline to review Dubon II but collaterally the Court of Appeals in Ramirez unequivocally upheld it.

Four years into IMR, the volume of IMR remains staggering, as do the many costs associated with that. But from a legal standpoint, and hopefully a legislative one, IMR is now on very solid ground. Continued efforts to erode its function in the workers' compensation system are not productive either for injured workers or their employers. The charge to all, now, is to make IMR better, not to make it go away.

Increase In California Wages Compels Workers Compensation Benefits Hike

California's average weekly wage increased by more than 3.6% to $1,206 in the year ending March 31, which the California Workers Compensation Institute (CWCI) said will boost temporary total disability (TTD) and permanent total disability (PTD) rates for 2018 work injury claims and other workers' compensation benefits tied to the United States Department of Labor – State Average Weekly Wage (SAWW) increases.

Currently, California's TTD) / PTD maximum rate is $1,172 per week, but the CWCI calculates that the increase in the SAWW reported by the US Department of Labor means the maximum will rise to $1,215 per week for claims with injury dates on or after January 1, 2018. State law also ties minimum weekly TTD / PTD rates to SAWW increases, so those minimums will rise from the current $175 per week to $182 for claims with 2018 injury dates.

CWCI has confirmed the new TTD / PTD rates for 2018 injury claims with the California Department of Industrial Relations – Division of Workers Compensation. Beginning next January, other workers' compensation benefits, including TTD paid two years or more after injury, life pension and PTD payments for injuries on or after January 1, 2003, and installment payments on death claims, will also increase due to the SAWW increase, according to CWCI.

Legislature Votes To Overhaul Board of Equalization

This week, the Legislature voted to effectively gut the Board of Equalization, the agency that collects taxes throughout the state and serves as an intermediary for settling disputes between taxpayers and elected officials. The Board of Equalization has been plagued with scandal in recent years, including donations of questionable natures, cloudy campaign contributions, and taxpayer-funded office renovations. Additionally, an audit that was carried out in March found that members of the board had created hostile working conditions by intervening in routine operations and intimidating state workers, as well as intentional misallocation of tax revenue.

While the proposal to dissolve the agency was introduced by State Controller Betty Yee in May, there have been calls to dismantle the Board for nearly 90 years. The Board of Equalization was initially created in 1879 to ensure that property taxes were collected equally across California, but it has grown in scope since then to become one of the three main tax-collecting agencies in the state. Calls to dissolve the Board began in 1929 from good government commissions and the Legislative Analyst's Office, and Yee's proposal was endorsed by Governor Brown, Assembly Speaker Rendon, and Senate President Pro Tem Kevin de Leon.

The overhaul of the Board will strip it of nearly all of its powers and responsibilities, moving them over to two new departments. One, the Department of Tax and Fee Administration, will take on the responsibilities of managing several different tax and fee programs, such as various tobacco, cannabis, and sales taxes. It is expected to be functional as of July 1st. The other department that is not yet names will manage the responsibility of acting as a tax court, but it does not yet have a name or an expected date of operation. There are some responsibilities of the Board that are detailed in the California constitution and as such will remain in their purview, such as overseeing the collection of property taxes. However around 90% of the Board's 4,800 employees will be moved to the new departments where they will continue their current job functions under new direction.

While the decision to strip the Board of most of its authority has been widely praised by most officials, some who oppose the idea wanted to protect its powers as a tax court. Senator Cathleen Galgiani stated that "This is happening very quickly and I'm worried we are leaving taxpayers with even less than equivalent of a public defender." Republicans who opposed the bill mentioned that they may challenge it in coming months on the basis of a portion of the California constitution that prohibits the Legislature from creating or abolishing departments with urgency legislation.

Workers Compensation System Impacted By California Attorney General Opioid-Related Action

Nearly 2,000 Californians lost their lives due to the opioid crisis in 2015. Consequently, California Attorney General Xavier Becerra today announced that the state along with a bipartisan coalition of Attorneys General from across the country are investigating whether drug manufacturers have engaged in unlawful practices in the marketing and sale of opioids. The Attorneys General are investigating opioid manufacturers' potential role in creating or prolonging this epidemic.

According to the California Opioid Overdose Surveillance Dashboard, in 2015 there were approximately 4,000 emergency department visits for opioid overdoses and nearly 25 million opioid prescriptions. This naturally affects the state's workers' compensation system, as opioids are a readily prescribed painkiller as a result of workplace injuries. California has the third most deaths related to opioid overdose in the country because of the state's size. "The opioid crisis is a serious public health threat that is taking the lives of too many Californians, destroying our communities, ripping apart families, and impacting the work of law enforcement," said Attorney General Becerra.

The coalition of Attorneys General is using its investigative tools, including subpoenas for documents and testimony, to determine the appropriate course of action to address the opioid epidemic. In California and nationwide, opioids – prescription and illicit – are the main driver of drug overdose deaths. Opioids were involved in 33,091 deaths nationwide in 2015, and opioid overdoses have quadrupled since 1999.

After several intense debates between opposing interests, the California state Senate approved a proposal to raise gas taxes and vehicle fees by $5.2 billion per year to pay for road repairs. In both the state Senate and Assembly, the bill was the subject of scathing attacks by Republicans who accused majority Democrats of shamelessly manipulating the budget process.

Bill To Revise Legislator Recall Elections Approved Against Republican Wishes

The Democrat majority in the Legislature changed the manner in which legislators could be recalled in California. Senator Josh Newman (Dem-Fullerton) voted for this year's $5.2 billion transportation plan, which is why a political campaign partly funded by the California Republican Party seeks to remove him from office by submitting more than 31,000 voter signatures to trigger a special election before his four-year term ends in 2020.

However, a controversial bill to revise the rules of special recall elections against lawmakers was approved by both houses of the Legislature on Thursday, benefiting Newman in this battle against the Republicans.

The bill, one of 17 pieces of legislation related to a new state budget, would add new procedures to the recall process. It allows voters up to 30 days to remove their signature from a recall petition, if they change their mind about supporting it. It would also create a new process to review the costs associated with a recall election.

In addition, complaints were filed alleging that voter signatures are being gathered for a recall election by promoting a repeal of the upcoming increase in California's gas tax. "The campaign literature, materials and other messaging clearly demonstrate an effort to persuade voters to sign a petition based on false and misleading information regarding the content of the petition," wrote Richard Rios, Newman's attorney, in the complaint.

These events would likely slow down the process enough so that any recall election for Newman would be delayed to next June, where he likely would benefit from higher turnout.