Critics Slam Unfairness of ‘Marketplace Fairness Act’

By Matthew Glans

New legislation that would significantly change how customers of online retailers are taxed is being considered in Congress. S. 336, the Marketplace Fairness Act, would expand the ability of state governments to charge sales taxes on purchases from out-of-state retailers, regardless of whether the retailer has a physical presence in the state. The U.S.

‘Untold Millions’ Stolen from Pa. Turnpike

By Eric Boehm

Three former top officials at the Pennsylvania Turnpike Commission and a former state senator ran a political scheme that resulted in “untold millions” of taxpayer dollars being misused and stolen, Attorney General Kathleen Kane said.

Kane (D) said the officials were engaged in a “pay-to-play” arrangement with engineering firms, insurance companies, and banks that had contracts with the turnpike between 2000 and 2011.

Eight men have been charged with various counts of conspiracy, bribery, bid-rigging, theft, and several other charges. Kane said the officials used their power to secure “secret gifts of cash, travel and entertainment, along...
The Heartland Institute is a 29-year-old national nonprofit organization based in Chicago. Its mission is to discover, develop, and promote free-market solutions to social and economic problems. For more information, visit our Web site at heartland.org or call 312/377-4000.

Rein in EPA

EPA Is a Rogue Agency
The Environmental Protection Agency (EPA) is the nation’s leading job killer, implementing and enforcing laws that impose impossible regulatory burdens on American businesses. EPA has perverted the Clean Air Act by declaring carbon dioxide a “pollutant,” despite the plain intent of the law’s authors to exclude such naturally occurring gases, and despite major flaws in the science used to claim carbon dioxide endangers human health.

The Solution
Congress must rein in EPA through deep cuts in the size, power, and cost of the agency. Congress can repeal EPA’s authority to regulate carbon dioxide in the name of “global warming,” and it can demand cost-benefit analysis be applied to all environmental regulations.

The Petition
The Citizen’s Petition to Rein in the Environmental Protection Agency calls out EPA’s unscientific and destructive campaign to frighten people over the threat of man-made global warming and demands “deep cuts in the size, power, and cost of the EPA.” You can sign it online at www.heartland.org, or print out copies and fax signed copies to 312/377-5000, or mail them to us at The Heartland Institute, One South Wacker Drive #2740, Chicago, IL 60606.

You Can Help! By working together, we can rein in the Environmental Protection Agency! We can protect the environment without sacrificing jobs or our essential freedoms. Please help us by signing the petition today.
‘Untold Millions’ Stolen from Pa. Turnpike, Attorney General Says

Continued from page 1

with political contributions” from contractors doing business with the Turnpike Commission.

‘Wielded Power for Self-Enrichment’
“The former state officials charged wielded extraordinary power which they wrongfully used for self-enrichment for their own political purposes,” Kane said. “Those who ‘pay-to-play’ have sought and been rewarded with multimillion-dollar turnpike contracts, and the public has lost untold millions of dollars.”

Former state Sen. Robert Mellow (D-Lackawanna) was the only elected official charged.

According to the grand jury presentment, Mellow was “actively involved in steering Turnpike contracts to particular vendors” and securing political contributions from turnpike officials and vendors, and he personally benefited from gifts, including tickets to New York Yankees baseball games and trips paid for by turnpike contractors, which he did not disclose on state ethics forms.

Charges also were filed against Mitchell Rubin, former chairman of the Turnpike Commission; Joseph Brimmer, former CEO of the Turnpike Commission; and George Hatalowich, a former COO and contract administrator for the Turnpike Commission.

Contracts Funneled to Vendors
All were involved in funnelling contracts to specific vendors and securing political contributions from those vendors.

Pennsylvania State Police Commissioner Frank Noonan called it “a complex scheme.”

He said the investigation was aided by former employees of the turnpike who tried to “do the right thing” and were reassigned or terminated by the commission for speaking out about the criminal activities.

“This has happened all too often in Pennsylvania,” Noonan said. “Pennsylvanians deserve better from our government.”

The investigation began under the watch of Gov. Tom Corbett (R) while he was attorney general and continued under Linda Kelly, whom Corbett appointed to the office when he resigned in January 2011.

Kane said she proceeded with all charges recommended by the grand jury.

The four other men charged were: Dennis Miller, a turnpike vendor; Jeffrey Suzenski, a consultant; and former turnpike employees Melvin Sheltomin and Raymond Zajicek.

Eight Charged So Far
Charges have been filed against all eight men. Six of them—all except Brimmer and Mellow—were arraigned on March 14, and Mellow’s arraignment will take place in the coming weeks, as the timing has to be worked out with federal authorities because Mellow is already behind bars. Mellow was sentenced in January to 16 months in prison for using public funds for political campaigns.

Kane said other public officials may have received political contributions as part of the scheme, but charges were brought against only those who had control over the contributions.

Noonan said the activity at the turnpike was widely rumored and discussed in political circles, but charges were brought only in situations where direct evidence was found by the grand jury.

Kane and Noonan declined to comment on whether more charges were expected, although they both labeled the investigation as ongoing. Both also declined to comment on whether any state officials were given immunity in return for their testimony.

The grand jury investigation lasted 44 months.

According to the presentment, Mellow and another unnamed senator—known as “Senator #6” and identified as a Philadelphian who served as chairman of the Senate Appropriations Committee during much of Mellow’s tenure as Democratic leader of the state Senate—“exerted tremendous influence over the Turnpike” and used their positions to appoint Rubin and other high-ranking officials, who then carried out the senators’ instructions.

The state Senate must confirm appointees to the Turnpike Commission.

“Those who ‘pay-to-play’ have sought and been rewarded with multimillion-dollar turnpike contracts, and the public has lost untold millions of dollars.”

KATHLEEN KANE
ATTORNEY GENERAL
STATE OF PENNSYLVANIA

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West Virginia Bills Would Slash Film Subsidies

By Kathryn Watson

West Virginia may become the next state to temper its love fest with Hollywood.

Two companion bills are winding their way through the legislature. If they continue to garner bipartisan support, the West Virginia Film Office will be required to slash by half the total amount in tax credits it can dole out annually to production companies that film in-state—from $10 million to $5 million.

As the state tries to tighten its fiscal belt, Gov. Earl Ray Tomblin, a Democrat, saw halving film incentives as a way to do that without further burdening taxpayers.

“He’s trying to not raise tax rates in a tight budget time, so he’s closing some of the loopholes,” state Sen. Mike Hall (R-Putnam County), one of the bill’s sponsors, said. Tomblin’s office did not return requests for comment.

Little Demand

For West Virginia’s film tax-credit program, which is intended to stimulate the local economy through spending and job creation, it’s also an issue of demand.

The state over the past few years has not handed out more than $4.8 million in credits in any given year for film and television projects, said Pam Haynes, director of the West Virginia Film Office.

Hall said the governor is simply trying to control the program—“although obviously if there aren’t any films and nobody does anything then we don’t get any activity,” he added.

No Measures

It’s difficult to gauge the benefit of film industry-related activity in the Mountain State, as the state doesn’t track overall economic benefits or jobs created.

“We only have direct-spend numbers,” Haynes said. “We do not have a calculation of economic impact.”

Those direct expenditures vary, from $2.2 million in fiscal 2009 to $16.4 million in fiscal 2010, when Paramount Pictures’ Super 8 filmed in West Virginia with direct expenditures of nearly $15 million, Haynes said.

And to make the West Virginia program even cloudier, the state’s Film Industry Investment Act prohibits the Film Office from disclosing the amounts of tax breaks given to individual projects.

Dubious Benefits

Critics of film industry tax incentives say it’s hard to gauge actual economic impact even in states that do track ripple-effect data. In a 2010 study, the left-leaning think tank Center on Budget and Policy Priorities concluded states often refer to “flawed studies” to overestimate the benefits of incentives.

In neighboring Virginia, where Gov. Bob McDonnell (R) touted the production of Lincoln as an economy booster, the Richmond Times-Dispatch’s Politifact summarized, “It’s hard to pin down Hollywood’s benefit to Virginia.”

Skepticism of incentive programs, combined with tightening state budgets and cases of fraud and abuse by production companies, have led some states to suspend their programs or shut them down entirely.

In 2010, a record 40 states offered some version of tax incentives to production companies, according to the conservative Washington, DC-based Tax Foundation. Since then, states including Arizona, Iowa, Kansas, and Washington have abandoned their programs.

Kathryn Watson (katie@watchdogvirginia.org) reports for Watchdogvirginia.org. Used with permission of Watchdog.org.
A bipartisan group of U.S. Senators has introduced the Sugar Reform Act of 2013, Senate Bill 345, to lower sugar prices to consumers and confectionery companies without using federal supply interventions.

Sugar producers and processors have said they will lobby to keep the current program in place.

“Illinois is the ‘Candy Capital of the World,’ but in the last decade the number of jobs in the industry has steadily decreased because of our current policies, which artificially inflate the price of sugar,” said Sen. Mark Kirk (R-IL), who maintains a Senate “candy desk” with candy stocked from Illinois companies. “The [Sugar Reform Act] will end unfair pricing in the industry and keep companies from shipping skilled manufacturing jobs overseas.”

Kirk made his statement at a joint press conference with Congressmen Joe Pitts (R-PA), Earl Blumenauer (D-OR), and Danny Davis (D-IL). A similar reform effort in 2011 garnered 46 votes in the Senate, not enough to advance.

In addition to Kirk, other sponsors of SB 345 include Sens. Jeanne Shaheen (D-NH), Lamar Alexander (R-TN), Frank Lautenberg (D-NJ), Dianne Feinstein (D-CA), Pat Toomey (R-PA), Dick Durbin (D-IL), Pat Toomey (R-PA), Dick Durbin (D-IL), Bob Portman (R-OH), and Danny Davis (D-IL). A similar press conference with Congressmen Joe Pitts (R-PA), Earl Blumenauer (D-OR), and Danny Davis (D-IL). A similar reform effort in 2011 garnered 46 votes in the Senate, not enough to advance.

Confectioners Cheer

“We applaud the Senators’ leadership in supporting an effort to defund a wasteful government program that only benefits one special interest while potentially costing taxpayers millions,” said Larry Graham, president of the National Confectioners Association, who represents confectioners. “The [Sugar Reform Act] will end unfair pricing in the industry and keep companies from shipping skilled manufacturing jobs overseas.”

“The U.S. price of raw sugar falls by 24% to 34% (rounded) depending on the year of the projection. The wholesale refined sugar price falls by 32% to 40%, and the retail refined sugar price falls by 26% to 33%. These effects are net of the increase in the world price of sugar induced by larger imports by the US economy.”

The current sugar program offers loans to processors that are secured by the sugar. Reform advocates say producers could default and “give up” to the federal government their sugar, potentially leaving taxpayers holding the bag. Program supporters say that has not happened because safeguards are built into the system, so the sugar program actually imposes no cost on taxpayers.

In a recent editorial, the Chicago Tribune placed the potential default at 400,000 tons of sugar and a cost of $80 million.

Iowa State University uses an agricultural model that can predict prices of sugar based on supply and demand. The key personnel involved with it are John Beghin and Amani Elobeid, both professors in the department of economics. In a paper they wrote in 2011, they analyzed the probable effects of ending the government’s sugar program and moving to free trade in sugar.

Beghin and Elobeid concluded:

“The U.S. price of raw sugar falls by 24% to 34% (rounded) depending on the year of the projection. The wholesale refined sugar price falls by 32% to 40%, and the retail refined sugar price falls by 26% to 33%. These effects are net of the increase in the world price of sugar induced by larger imports by the US economy.”

The raw sugar price on the world market increases by 2% to 4% or by about 1 cent per pound.

These U.S. price changes reduce the cost of sugar in food processing and sugar retailing with benefits accruing to food processors and consumers. However, they induce contracting margins for all U.S. sugar industries from sugar crops to refiners.

“Domestic sugar production (beet sugar and raw cane sugar) initially declines about 10% and then recovers to nearly unchanged.

“Consumption rises about 15%. Imports rise about 80%. Cane sugar refiners operate at full capacity using raw sugar imports as input. The US shifts from being a net importer of sugar-containing products to being a net exporter.”

The American Sugar Alliance contests the findings. “A 2011 Iowa State University report contained material deficiencies and minimized the negative consequences of eliminating U.S. sugar policy,” the alliance declared in a press statement after the paper’s release.

So the debate between producers and consumers will continue as Congress tries to craft a new five-year Farm Bill, including sugar, by the end of September.

John Skorburb (jskorburb@heartland.org) is associate editor of Budget & Tax News and a lecturer in economics at the University of Illinois at Chicago.

Sugar Program Sweet for Producers, Sour for Consumers
Critics Slam Unfairness of ‘Marketplace Fairness Act’

Continued from page 1

Senate voted April 22 to end debate on the measure and its passage in some form is expected soon.

The legislation proposed by Sens. Dick Durbin (D-IL), Mike Enzi (R-WY), and Lamar Alexander (R-TN) has attracted a wide array of critics, who argued in a letter to Congress the act would override important tax precedents and harm consumers.

The letter was co-signed by several conservative, free-market, and libertarian groups, including The Heartland Institute, which publishes Budget & Tax News, R Street Institute, Americans for Tax Reform, and FreedomWorks. The letter contends the Marketplace Fairness Act represents “an enormous expansion in state tax collection authority by wiping away the ‘physical presence standard,’ a baseline protection that shields taxpayers from harassment by out-of-state collectors.”

Advantage to Traditional Retailers
While some supporters of online taxes argue they are needed to restore a balance between online and bricks-and-mortar retailers, the letter argues the Marketplace Fairness Act would give bricks-and-mortar retailers a distinct advantage over online retailers.

“Bricks-and-mortar sales across the country are governed by a simple rule that allows the business to collect sales tax based on its physical location, not that of the item’s buyer,” the letter states. “Under the ‘Marketplace Fairness Act,’ that convenient collection standard would be denied for online sales, forcing remote retailers to interrogate their customers about their place of residence, look up the appropriate rules and regulations in thousands of taxing jurisdictions across the country, and then collect and remit sales tax for that distant authority.”

“The so-called Marketplace Fairness Act is anything but fair for the marketplace. Giving states a new open-ended power to tax out-of-state residents regardless of physical presence would be a disaster for consumers,” said John Nothdurft, government relations director of The Heartland Institute, in a statement.

He continued, “Bricks-and-mortar retailers enjoy many basic advantages over other retailers. Driving up the cost for purchases made online or by mail order will hinder competition and open taxpayers up to a whole new slew of possible taxes.”

‘Damaging Interstate Commerce’
The letter argues the act could slow the growth of the e-commerce industry, one of the few sectors of the economy that has seen growth in recent years. “Imposing this unworkable collection standard on remote retail sales but not on bricks-and-mortar retail sales would not only be unfair, it would result in enormous complexity while damaging interstate commerce. Online sellers would be weighed down by substantial compliance burdens associated with the existence of over 9,600 separate taxing jurisdictions, each with its own unique definitions, holidays, and rates. The bill’s paltry ‘small seller exception’ of just $1 million (when the Small Business Administration sets the limit as high as $30 million in some cases) in remote sales does little to mitigate the damage.”

One aspect of the Marketplace Fairness Act that has been overlooked by many of the bill’s supporters is its effect on consumers. Bruce Edward Walker, telecom policy advisor to The Heartland Institute, contends consumers could end up paying more out of pocket for online products.

“What’s left out of the zero-sum equation of proposed ‘fairness’ legislation is the diversity of the clientele respectively served by online and bricks-and-mortar stores—the customers who would wind up either paying more out-of-pocket for online purchases or opting to forgo the purchase altogether until they find the item they desire at a garage or estate sale,” said Walker. “Then what? A new tax that promises ‘fairness’ for both Internet and bricks-and-mortar businesses by taxing the second-hand market?”

The letter concludes the Marketplace Fairness Act represents a dramatic expansion of state taxing powers while creating real obstacles for the future growth of online markets. “In seeking to address the failures of the ‘use tax’ systems employed by states, the ‘Marketplace Fairness Act’ ends up giving a federal blessing to a massive expansion in state tax collection authority, the dismantling of a vital taxpayer protection upon which virtually all tax systems are based, while harming a segment (online sales) that despite its dramatic expansion still only accounts for roughly $0.07 of every $1 in retail spending.”

Matthew Glans (mglans@heartland.org) joined the staff of The Heartland Institute in November 2007 as legislative specialist for insurance and finance. In 2012 Glans was named senior policy analyst.

IN OTHER WORDS . . .

“The area most Americans consider untouchable is their retirement accounts, their IRAs and 401(k)s, which aren’t subject to tax until withdrawal. Slipping money into an individual retirement account has sometimes been difficult, but most Americans assume that their treasure may germinate undisturbed. Many people maintain several such accounts, valued souvenirs of otherwise painfully remembered job changes. Thoughts of these nest eggs growing safely kept many a citizen sane through the ruction of 2009, 2010 and 2011.

“This budget would crack the eggs. The Treasury explanation explicitly challenges that principle of undisturbed accrual: ‘The current law limitations on retirement contributions and benefits for each plan in which a taxpayer may participate do not adequately limit the extent to which a taxpayer can accumulate amounts in a tax-favored arrangement through the use of multiple plans,’ the Treasury writes.

“Page 18 of the budget suggests that an IRA or 401(k) ample enough to provide pensions of more than $205,000 a year is too high. New penalties apply to money in the plan exceeding a ‘maximum permitted accumulation.’ This reduces whatever benefit was there from compounding.”

— Amity Shlaes writing in Bloomberg View, April 15, 2013

“Giving states a new open-ended power to tax out-of-state residents regardless of physical presence would be a disaster for consumers.”

JOHN NOTHDURFT
GOVERNMENT RELATIONS DIRECTOR
THE HEARTLAND INSTITUTE

INTERNET INFO

Additional articles examining Internet sales taxes, the Marketplace Fairness Act, and the proposed extension of state taxing powers are available at PolicyBot, The Heartland Institute’s free online research database: [http://www.policybot.org](http://www.policybot.org)
Chicago Suburb Borrows Millions to Pay Stadium Debt

By Sean Parnell

Saddled with debt payments after sinking $135 million into the construction of a soccer stadium, the Chicago-area suburb of Bridgeview recently had to borrow an additional $27 million to cover required bond payments.

The Chicago Tribune reported the new borrowing comes on top of more than $218 million in debt cited in the village’s 2011 audited statements.

Brian Costin, director of government reform at the Illinois Policy Institute, reviewed several financial reports for the city and stadium, named Toyota Park, and saw serious consequences for the village’s stadium borrowing.

“Unfortunately, it looks as if there are only two possible future routes for Bridgeview’s 16,446 residents: municipal bankruptcy or significantly higher taxes to pay for the mistakes of politicians past and present,” Costin said.

Millions in Losses

The borrowing was required because Toyota Park, the home field of the Chicago Fire Major League Soccer franchise, has yet to turn a profit, forcing the village to dip into general funds or borrow more to repay the debt.

Bridgeview’s 2011 audit shows operating and debt expenses of $12.5 million at Toyota Park compared to only $4.1 million in revenue, for a loss of nearly $8.4 million. Debt service comprises nearly all of the loss, with $8,160,000 being due in 2011 for stadium debt, according to the 2010 stadium audit.

This is the second time in recent years that Bridgeview has been forced to borrow money to pay stadium debt. In 2011, Bridgeview issued $22.5 million in general obligation bonds to “ease the transition to higher debt service levies,” according to a February 2012 report from Standard & Poor’s.

As a result of Bridgeview’s substantial debt, the 2011 bonds carried an interest rate of 6.75 percent compared to the rates on the original borrowing in 2005, which ranged from 4.5 percent to 5.2 percent, according to Bridgeview’s documents.

Municipal bond rates generally have declined over this time.

A Bridgeview elected official who spoke on condition of anonymity declined to answer questions about the new borrowing or the stadium but said the financial situation would turn around in the next six to eight months.

“The proof will be in the results” the elected official said, adding the village could “crow a little bit” when the turn-around occurs.

No Business Plan

The stadium was built in 2005 to be the home of the Chicago Fire and to host concerts and other events. It opened in 2006 to great optimism.

A June 2006 article in the Chicago Tribune, “Village set up for economic kick,” cited Mayor Steven Landek’s prediction that growing interest in soccer and a swelling immigrant population in the area would “ensure the stadium’s success” and quoted him saying, “This is a great economic anchor for us … [a]nd it’s going to change our lives.”

Despite borrowing $135 million to build Toyota Park and promising stadium revenue would be sufficient to pay operating and debt expenses, there apparently was no economic impact study or business plan showing stadium revenue could fund the bond repayment.

Soaring Taxes

The future for Bridgeview’s taxpayers remains grim. According to a 2012 report from Standard & Poor’s announcing a downgrade in the village’s bond rating from A to BBB+/negative, Bridgeview has “embarked on a multiyear plan to raise property taxes levied for debt service to as much as $9.1 million in 2016, from $2.1 million in 2010.”

Bridgeview’s property taxes are already among the highest in the Chicago region and have tripled in less than a decade.

Summarizing Bridgeview’s current situation, Costin was blunt: “The village leaders attempted to be property speculators and entertainment tycoons. They have failed miserably. This is an example of why government should stick to providing core government services and not build risky entertainment venues backed by taxpayer dollars.”

Sean Parnell (sean@impactpolicymanagement.com) is president of Impact Policy Management, a Washington, DC-area full-service public policy firm.

Is Your Child Being Educated or Indoctrinated?

The British High Court has ruled that Al Gore’s An Inconvenient Truth is partisan propaganda and contains at least 11 scientific errors. It ruled the film should not be shown in classrooms unless accompanied by a document pointing out the scientific errors. The Court also ruled classroom time should be given for presenting an alternative view.

Is your child being forced to watch Al Gore’s propaganda film? If so, you should:

• Call 312/377-4000 and request a free copy of Education or Indoctrination? Al Gore in the Classroom, a collection of background readings produced by The Heartland Institute.

• Talk to your child’s teacher, and if necessary the principal, and ask them to remove Gore from the classroom or provide students an alternative view.

• If your child’s teacher or principal isn’t responsive, contact The Heartland Institute, at think@heartland.org.

Because schools are for learning, not politics.
Aloha! Now Pay Up

By Malia Zimmerman

Are Hawaii lawmakers killing the golden goose and the golden egg? Hawaii relies on tourism, its most lucrative industry, to fuel the economy. A record 8 million visitors to Hawaii spent a collective $14 billion in 2012. Most spend an average of $196 per person per day or $1,800 per trip.

Hawaii lawmakers are considering a proposal that would increase the hotel room tax, known as the transient accommodation tax (TAT), by 2 percentage points from 9.25 to 11.25 percent. Lawmakers say they want and need the money for the general fund to subsidize budget items like social services and education.

Tourism officials and those who work in the industry are warning lawmakers their added tax could severely damage the industry and drive visitors away.

‘Market Is Price-Sensitive’

Mike McCartney, president and CEO of the Hawaii Tourism Authority and a former legislator, said the industry opposes the increase because it will be bad for business.

“Hawaii is a leisure destination, where the visitor’s spending is discretionary. Our visitor market is price-sensitive, and any increase could drive a traveler to a competing destination.”

MIKE MCCARTNEY
PRESIDENT AND CEO
HAWAII TOURISM AUTHORITY

Money Spent on Other Things

The TAT originally was adopted to build a state convention center in 1986 because tourism officials believed a convention center was key in attracting large meetings, McCartney said. The industry originally agreed to a 2 percent rate. At the end of the 1986 session, lawmakers increased the rate to 5 percent and did not earmark the proceeds for building a convention center. When a convention center site was selected five years later, Kalapa said lawmakers had spent much of the money set aside for the convention center on other programs and services, so they increased the tax to 6 percent.

A task force recommended the rate be increased to 7.25 percent so legislators could decrease the state income tax, but lawmakers increased both the TAT and income tax rate.

Hawaii’s convention center largely sits empty on the edge of Waikiki. And lawmakers are looking for ways to make what amounts to a 4 percent increase in the TAT permanent.

Tax Makes Visitors ‘Big Target’

Kalapa said the TAT always has been a “big target” for lawmakers because visitors pay the tax.

“Making that 9.25 percent rate permanent reinforces the perception that neither the administration nor the legislature can be held to its word. Guess when it comes to ‘easy’ money, it is difficult to keep one’s word,” Kalapa said.

McCartney is concerned about the impact an increase would have on the 166,000 visitor-related jobs.

“Currently, the visitor industry supports more than 166,000 jobs and we anticipate this number to grow this year. However, we are still well below the peak of more than 178,000 jobs in 2005, and the TAT increase could cause a loss of jobs in the tourism sector,” McCartney said.

Malia Zimmerman (malia@hawaiireporter.com) is editor and co-founder of Hawaii Reporter. Used with permission of Hawaii Reporter.com.
Broader Tax Base, $2.2 Bil. in New Revenue in Minn. Governor’s Budget

By Tom Steward

Haircuts, booze, health club memberships, downloaded books, pricey clothing, auto repairs, dating services, lawyer bills, consultants, cigarettes, Rover’s checkups, tattoos—you name it.

It’s the laundry list of services targeted for new taxes that defines Minnesota Gov. Mark Dayton’s $38 billion budget plan, which he hopes will wipe out a projected $1.1 billion deficit, increase education funding by $1.1 billion, and distribute a $500 rebate to homeowners.

As the Democratic-Farmer-Labor Party candidate for governor, Dayton opposed expanding the sales tax as unfair to middle-income families. Today he views tax reform as a legacy. “We cannot afford not to invest. Minnesota’s future success depends upon it,” Dayton says now.

Broader Base, New Business Taxes

The sales tax rate would drop from 6.875 to 5.5 percent, moving Minnesota from seventh- to 27th-highest among the states. At the same time, Dayton calls for a revenue-neutral broadening of the base of goods and services subject to sales tax, increasing income taxes on the wealthiest income earners by $1.1 billion, and imposing business-to-business (B2B) taxes to raise $2.2 billion in additional new revenue.

“By broadening the base and lowering the rate, Gov. Dayton’s budget makes our tax system fairer, modern, and sustainable. It helps put Main Street businesses on equal footing with online retailers and aligns our sales tax rate with neighboring states,” the Minnesota Department of Revenue reported.

Dayton has received little credit for proposing to reduce Minnesota’s corporate tax rate from 9.8 to 8.4 percent while drawing heavy flak for his B2B tax grab from the expected interest groups.

It’s a “horrible idea” to the Minnesota Chamber of Commerce, a “misery tax” to the Minnesota Bar Association, a “hidden tax” to the Minnesota Jobs Coalition, and a “job killer” to the Minnesota Business Partnership. One agency branded it the “StupidTAX.”

News Media in Crosshairs

Perhaps most telling, one of the state’s most consistent editorial voices in support of tax increases of all stripes, the Star Tribune newspaper, has become a leading opponent of the B2B taxes. Publisher Mike Klingensmith told a local media outlet the proposal is “jaw-dropping” and would cut the newspaper’s profits by up to 40 percent.

Minnesota’s largest-circulation daily, the Star Tribune also took the unusual step of suspending contract talks with journalists who have gone without a raise for years pending further analysis of the governor’s plan.

Dayton’s proposed sales tax on newspaper subscriptions, advertising, and publishing services has sensitized others in the print media in particular to the dangers higher taxes may pose to the industry already fighting for survival. Media representatives are lining up to testify against the proposal in legislative hearings.

The Minnesota Newspaper Association has formed a coalition of broadcasters, advertisers, and publishers in protesting the tax.

“No changes would have an immediate, severe, and in some cases, devastating impact on virtually all of the state’s communications businesses, to the many thousands of employees who work in them, and to Minnesota’s economy more generally,” the group said in a statement.

‘Could Be Taxed Three Times’

“We could see the printing at the plant be taxed, the advertising that’s printed in the newspaper be taxed, and the newspaper be taxed. So before it gets to the subscriber it could be taxed three times,” Reed Anfinson, publisher of the Swift County Monitor-News Record, told Dayton at the Minnesota Newspaper Association’s annual conference.

“When you tax something, you get less of it,” said Tom West, general manager and managing editor of the Morrison County Record, at the same meeting. “We are the ones who cover local government and state government, and we are wondering why you would think it would be a good idea to have less information about government and what government is up to.”

The concept of a First Amendment sales tax exemption didn’t go far when a reporter pressed Dayton later on.

“I’m not a constitutional attorney but I don’t think putting a sales tax on newspapers violates the First Amendment,” Dayton said.

Tom Steward (tom@watchdog minnesota.org) reports for the Minnesota bureau of Watchdog.org. Used with permission of Watchdog.org.

“Laying Down the Law”

Kurtis B. Reeg is a policy advisor for legal affairs at The Heartland Institute and president/ managing partner of Reeg Laywers, LLC. With more than 30 years of trial and appellate experience, Reeg is a frequent speaker at local, regional and national seminars and has published numerous articles.

He has represented clients in a wide variety of products liability, class action and toxic tort litigation, insurance coverage and underlying defense.

His depth of experience — including litigation involving aviation, biotechnology, chemicals, construction equipment, drugs and medical devices, hydraulic equipment, ladders, lead, machinery of various types, mold, pesticides, safety equipment, vehicles, matters related to asbestos, silica, herbicides, chemicals and environmental hazards — makes him uniquely qualified to speak on many legal issues.

To book Reeg as a speaker, or for more information, contact Nikki Comerford (ncomerford@heartland.org), 312/377-4000.

“Could Be Taxed Three Times’

“We could see the printing at the plant be taxed, the advertising that’s printed in the newspaper be taxed, and the newspaper be taxed. So before it gets to the subscriber it could be taxed three times,” Reed Anfinson, publisher of the Swift County Monitor-News Record.
California Tax Board Imposes Retroactive Taxes on Capital Gains

By Steve Stanek

When people follow rules, they don’t expect to be penalized years later for having done so. But that is what’s happening in California, where state tax officials have decided to retroactively apply taxes that small business owners and investors were told they would not have to pay.

The Franchise Tax Board’s move “has the potential to have a chilling effect on business creation and entrepreneurship,” said Brian Overstreet, a California entrepreneur who started rallying opposition to the retroactive tax and created the California Business Defense Web site to keep up the heat (cabusinessdefense.org).

“We can’t plan if we can’t rely on rules. The reality is it’s much easier than even 10 years ago to pick up and move and have people work remotely. That’s what the solution is going to be” if retroactive taxation happens, Overstreet said.

“It’s an egregious move by California’s tax board,” said Jeffrey McKinley, a certified public accountant and president and cofounder of Senex Solutions, LLC, which provides accounting services to proprietary trading firms, hedge funds, and commodity trading advisors.

“Given the explosion of state debt and obligations, businesses must adapt and thoroughly assess the political environment of the state they choose to locate, expand, or even remain in. The California tax move appears to be out of the blue, but at some point businesses that naively set up in states that are fiscal disasters run by politicians who routinely treat residents like an ATM shoulder at least some of the blame,” McKinley said.

$120 Million from 2,500

With its many “Silicon Valley” and other startup companies ripe for the picking, California officials predict they can bring in another $120 million of taxes from small business owners and investors who sold a business as much as five years ago. Tax officials estimate 2,500 taxpayers could be affected.

The state government 20 years ago provided a tax incentive to lure entrepreneurs and early-stage investors to California. The incentive allowed the sales of stock of a “qualified” small business to be taxed at half the regular state rate on capital gains or rolled over into a new qualified small business if reinvested within 60 days of the sale.

But the Franchise Tax Board has declared these entrepreneurs and investors will be billed retroactively—with interest—to 2008 for the 50 percent of the taxes they had legally excluded. The state’s tax rate on capital gains several years ago was 9 percent and is now 13.3 percent.

Incentive Unconstitutional

The FTB’s move comes in response to a court decision issued last year in Cutler v. Franchise Tax Board, The Second District Court of Appeal declared one part of the qualified small business stock exclusion unconstitutional because it required businesses to have 80 percent of their payroll and assets in California. The court ruled this provision violated the Constitution’s Commerce Clause.

The court did not direct California to seek back taxes. The tax board staff made that decision.

“As an elected official and taxpayer advocate, I cannot remain silent while state tax officials punish California taxpayers who in good faith followed our laws,” said Board of Equalization member and former California state senator George Runner, who has been working to persuade the tax board to reverse its decision. The BOE is the final arbiter of tax board appeals.

‘Understandably Outraged’

In a February 5 letter to the tax board, Runner wrote, “Understandably, affected taxpayers are outraged by this action. They made business decisions in good faith based on existing California tax law. It is not possible for them to undo these decisions in response to FTB’s retroactive actions.”

He added, “FTB’s action sends entirely the wrong message to investors, entrepreneurs, and job creators doing business in our state.”

Outrage appears to be bipartisan. On February 19, 38 members of the state legislature from both major political parties signed a letter to Selvi Stanislaus, executive director of the FTB, in which they wrote the decision to send retroactive tax assessments “is not acceptable, inconsistent with the law as we understand it and contradicts prior FTB action. … Under no circumstances is FTB staff required [their emphasis] to issue retroactive QSBS assessments going to back to 2008. That is simply not true and there is nothing in the Cutler case—or any other that we are aware of that says so. FTB staff chose [their emphasis] to
“They almost got away with it. ... I’m not sure what would have happened if I had not been affected by this and spoken out. It’s very possible this would have gone through. It’s kind of mind-boggling.”

BRIAN OVER STREET

**The Man Who Sounded the Alarm About California’s Retroactive Taxation**

But for a letter from his firm’s lawyers that Brian Overstreet could hardly believe, more than 2,000 California small business owners and investors already might have received notices that they collectively owe $120 million on capital gains they thought were not to be taxed.

On January 15 Overstreet published an article about the California Franchise Tax Board declaring it would retroactively pursue payment for capital gains that were, at the time, legally excluded from taxation. That article, on the Xconomy.com Web site, detailed what he had learned from his lawyers several weeks earlier.

Before long major newspapers in the state were writing about it, and businesspeople and lawmakers were rising in opposition.

‘Almost Got Away With It’

“They almost got away with it,” Overstreet said of the FTB. “I waited three or four weeks [after receiving the letter from his lawyers] before I wrote the article because I expected someone would start screaming about it, but no one did. I’m not sure what would have happened if I had not been affected by this and spoken out. It’s very possible this would have gone through. It’s kind of mind-boggling.”

In 1999 Overstreet cofounded Sagient Research Systems, an enterprise-focused data company in San Diego that had about 40 employees, all of them in California. In 2012 he sold the company, which resulted in a capital gain. He now runs AdverseEvents in Healdsburg, California, which compiles and provides safety and outcome information on all FDA-approved drugs. Some of that capital gain money has gone into AdverseEvents.

Near the end of 2012, Overstreet’s lawyers notified him the FTB staff had reached a decision that would make the capital gain on his sale of Sagient Research Systems fully taxable, even though, at the time, he qualified for a 50 percent reduction in the tax.

‘Money Spent or Reinvested’

“I’ve spoken to a number of people who had transactions, sold companies, and took a tax exclusion, and what they took out was spent or reinvested. To come up with hundreds of thousands of dollars after the fact, they don’t have that cash sitting around,” Overstreet said.

“Since I’ve raised the noise level on this issue, while the FTB has not backed off, it has said publicly a fix must come from the legislature, and they are happy to do what they need to do to support it,” Overstreet said.

**Bipartisan Fix in Works**

The FTB has said it will wait until the end of the year to send out notices for back taxes. In the meantime, a bipartisan bill was introduced to cancel the retroactive application of the capital gains tax.

“This doesn’t guarantee it gets signed by the governor, but at least we’ll have something in writing to rally people ‘round,” Overstreet said.

— Steve Stanek

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**State Judge Saves Big Drinks in Big Apple**

By Steve Stanek

A ban on large sugared drinks that was to take effect in New York City on March 12 was struck down by a Manhattan state supreme court justice on March 11.

Justice Milton Tingling agreed with the beverage industry and business owners who objected the ban was “arbitrary and capricious.” The ban had been promoted by billionaire media mogul and New York City Mayor Michael Bloomberg. A city health board appointed by the mayor approved the ban last year.

The ban would have limited the size of sugared drinks that could be sold to 16 fluid ounces, but only at certain establishments. Sodas and many other sugared drinks, including smoothies and coffee, were included in the ban. But Tingling noted sugary milk products such as milk shakes were exempted, as were large drinks sold at convenience stores. This, he wrote, was evidence of the ban’s arbitrariness and capriciousness.

“The loopholes in this rule effectively defeat the stated purpose of this rule,” Tingling wrote. He added that setting a size limit would have been the proper purview of the elected City Council, not the appointed health board.

Various business groups, including soft drink makers, restaurateurs, and movie theater owners, sued over the ban. Plaintiffs argued soft drink makers would be forced to change bottles and labels, restaurants and delis would have to change menus and inventories, and movie theaters would lose profits, 20 percent of which come from soft drink sales.

“The court ruling provides a sigh of relief to New Yorkers and thousands of small businesses in New York City that would have been harmed by this arbitrary and unpopular ban,” said the American Beverage Association in a statement. “With this ruling behind us, we look forward to collaborating with city leaders on solutions that will have a meaningful and lasting impact on the people of New York City.”

Bloomberg and his hand-picked health board said they wanted the ban to fight obesity and reduce obesity-related health problems. City officials pledged to appeal the ruling.

“This measure is part of the city’s multi-pronged effort to combat the growing obesity epidemic,” Michael Cardozo, corporate counsel for the city’s law department, said in a statement. “We believe the Board of Health has the legal authority—and responsibility—to tackle its leading causes.”

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Steve Stanek is a research fellow at The Heartland Institute and managing editor of two Heartland publications, Budget & Tax News and FIRE Policy News.
By Steve Stanek

Rita Crundwell of the small town of Dixon, Illinois has been sentenced to nearly 20 years in prison for stealing almost $54 million from the city to finance a lavish lifestyle that included ownership of farms with hundreds of show horses.

In a Rockford, Illinois courtroom on February 14, U.S. District Court Judge Philip Reinhard handed down a sentence of 19 years, seven months in prison. Last November Crundwell, 60, pleaded guilty to wire fraud and admitting stealing $53.7 million. Authorities believe it could be the largest theft from a municipal government in U.S. history.

“You showed much greater passion for the welfare of your horses than the people of Dixon you represented,” Reinhard told Crundwell. “You lived the lifestyle befitting a wealthy person, and you did this on monies that weren’t yours.”

Her thefts from Dixon, the boyhood home of President Ronald Reagan, began in 1990, according to the FBI, and continued until her arrest by federal agents in April 2011. The thefts total nearly $3,376 for every man, woman, and child in this town of 15,700 in northwest Illinois.

City Services Suffer
For years the city budget was strained. Among other things, in recent years the city put off road and streetlight repairs and kept the municipal swimming pool closed to save money. Crundwell explained the money problems by blaming a weak economy and late payments from the State of Illinois.

The news of Crundwell’s arrest staggered city officials and residents. Crundwell was a trusted city employee who began working at city hall part-time while she was still a teenager. She became city treasurer and comptroller and had complete control of money coming in and going out.

At the time of her arrest, Crundwell’s salary was approximately $83,000 a year. Yet during her tenure at Dixon city hall she became internationally known in equestrian circles as the owner of the Meri-J Ranch in Dixon and Beloit, Wisconsin, breeding and showing champion quarter horses. She also owned farms in several other states. In addition to owning some of the nation’s top show horses, Crundwell also owned millions of dollars of other property, including a multi-million-dollar luxury motor home, expensive jewelry, vacation property in Florida, luxury automobiles, and pricey furs.

Her horses and other property have been seized and are being sold. So far the sales have brought in $11 million, most of which is going toward restitution. Officials doubt the rest of her property will come anywhere close to fully reimbursing the city.

Vacation Trips Her Up
In addition to buying expensive property with Dixon’s tax dollars, Crundwell also took lengthy exotic vacations, which proved to be her downfall.

While she was on vacation in 2011, a city employee who had assumed Crundwell’s duties in her absence reviewed the city’s bank statements and became suspicious about hundreds of thousands of dollars of recent deposits and withdrawals from a certain account. That employee took the records to Mayor James Burke, who had no idea the account existed. He contacted the FBI.

The bank records showed the primary account holder as the City of Dixon but listed a joint account holder as RSCDA. The checks written on the account listed the account holder as “R.S.C.D.A., C/O Rita Crundwell.”

During the six months the FBI had Crundwell under investigation, she allegedly used more than $3.2 million of city money for her personal and business expenses, “including approximately $450,000 relating to her horse farming operations, $600,000 in online credit card payments, and $67,000 to purchase a 2012 Chevy Silverado pick-up truck,” according to the FBI.

Federal agents documented at least 179 fraudulent invoices showing payments to the Illinois Department of Transportation. City auditors never caught the fraud. The city is suing multiple audit firms that handled the city’s audits and failed to detect the fraudulent invoices and transactions.

Crundwell still faces 60 state charges of felony theft, each of which carries a potential sentence of up to 30 years in prison on conviction. Her attorney is trying to have those charges dropped, claiming prosecution would amount to double jeopardy.

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S\hould the cure be worse than the disease?

So-called “pension obligation bonds” offer an enticing way for Pennsylvania policymakers to avoid a steep increase in pension payments over the next few years, but experts warn to tread carefully.

Swapping one type of debt for another could easily backfire and leave the state in even worse shape.

At a state budget hearing in February, lawmakers and the heads of Pennsylvania’s two major pension funds—the State Employees Retirement System, or SERS, and the Public School Employees Retirement System, or PSERS—discussed the possibility of selling bonds, currently illegal, to pay off a portion of the combined $42 billion debt for the two systems.

In theory, the state could borrow up to about $10 billion on the private bond market and repay that at a lower interest rate compared to what it would pay into the pension funds.

This year, Pennsylvania is paying more than $1.5 billion in pension costs, which will grow to $4.3 billion annually by 2016.

Little to be Gained

“Generally speaking, we don’t favor borrowing to pay for debt,” said Jim McAneny, executive director of the state Public Employee Retirement Commission, which advises the legislature on pension issues.

And while the pension debt is “ugly,” he said the bond approach would require borrowing billions to make even a dent in the obligations. Better to find a way to fund the obligations as they are, McAneny said.

Jeff Clay, PSERS executive director, told lawmakers at the February budget hearing that borrowing $9 billion, if the state could manage to do so, would reduce only marginally the contributions required over the coming decades.

It’s something of a moot point: Under current law, pension obligation bonds are illegal for the state to use.

But that rule, enacted as part of a pension overhaul in 2010, could easily be reversed if the legislature so desired.

Caution Urged

State Sen. Vincent Hughes (D-Philadelphia), minority chairman of the Senate Appropriations Committee, said the bonds should not be off the table, but the issue should be approached with care.

“We have to be very careful with pension bonds, because if you guess wrong, you’re in a very bad situation,” Hughes said.

He pointed to the problems that befell his hometown of Philadelphia after the city embarked on a $1.3 billion pension obligation bond sale in the 1990s.

The city soon relapsed on pension payments and ended up with a deficit as large as it had been before the bonds entered the equation. The city then was faced with the debt to pay on the bonds, in addition to the regular pension debt.

Rick Dreyfuss, a senior fellow on pension issues with the Manhattan Institute, a national free-market think tank, said the situation in Philadelphia was typical of what happens when governments use pension obligation bonds to cover pension debt.

“There are financial risks, and there are political risks,” he said.

‘Abusing Visa to Pay MasterCard’

The financial risks include using new debt to cover old debt—“like abusing your Visa to pay off your MasterCard,” Dreyfuss said. But in theory it can work by paying off the high annual costs of the pension funds with lower annual costs on the bonds, similar to how the state managed a $3 billion debt in its unemployment trust fund last year.

The political risks are far worse. With the pension funds already statute- torily underfunded, the pension bond can give lawmakers another incentive to underfund the plans, Dreyfuss said.

That’s exactly what happened in Philadelphia. The city used the bonds as an excuse for not fully paying into the system and soon fell behind again, into the very hole the pension bonds were supposed to have closed.

A recent study from the Center for Retirement Research at Boston College concluded it was hard to find examples where pension obligation bonds worked because they are usually undertaken by governments in poor financial straits and unable to shoulder the investment risk.

Gov. Tom Corbett (R) wants to reduce payments into the pension system for the next five years to free up money for other areas of the state budget. He has proposed tying that plan to long-term cost savings that would reduce future benefits for employees and would move all future hires into a 401(k)-style pension system, shifting the investment risk from taxpayers to employees.

But the use of bonds is not part of the pension reform plan, according to Jay Pagni, spokesman for the Office of the Budget.

And there is good reason for them to remain in the background.

Rating Agency Warning

Moody’s, a major credit rating firm, issued a statement in December warning governments about the risk of using pension bonds.

“If bond proceeds substitute for annual contributions to pension plans or are used to pay pensioners, we consider it a deficit borrowing and would view the financing as credit negative,” said Marcia Van Wagner, a vice president at Moody’s.

But if governments used pension bonds merely to shift from one form a debt to another, it would be viewed as credit-neutral, Wagner said, though she warned risks still remain.

Eric Boehm (eric@painedependent.com) writes for the Pennsylvania Independent, where a version of this article appeared. Used with permission.
GASB Closing Loopholes that Created Illusions of Pensions Solvency

By Ed Ring

What if most of the public employee compensation enhancements of the past decade or more in California were based on inaccurately optimistic government financial statements? Or to be blunt, what if government decision-makers incorrectly thought they could afford these compensation enhancements because the information they relied on used accounting gimmicks that would land a person in private industry in jail for fraud?

In February the California Public Policy Center (CPPC) published “How Lower Earnings Will Impact California’s Total Unfunded Pension Liability,” which found, using various rates of annual investment earnings, the unfunded figure ranged between $128 billion and $576 billion. This study and others highlighted that starting in 2014, not only will Moody’s Investors Services begin using a much lower investment projection in its credit analysis, but the Government Accounting Standards Board (GASB) will require government entities to recognize this liability on their balance sheets.

The CPPC recently published a new study, “Unmasking Staggering Pension Debt and Hidden Expense,” which considered seven California counties—Alameda, Contra Costa, Marin, Mendocino, Orange, San Mateo, and Sonoma—and restated their balance sheets based on the new GASB financial reporting standards and the new Moody’s credit evaluation criteria.

Researcher John Dickerson calculated the new GASB rules will lower their combined net worth by a factor of 10, from a current reported $10.2 billion to less than $1.0 billion.

In any private enterprise, all of these losses already would have been recognized.

Starting in 2014, GASB will require state and local governments to report their unfunded pension obligations as a liability on their balance sheets, eliminating a loophole in their current regulations.

Dickerson writes, “These seven counties all together would drop from $10.2 billion of Net Assets down to a negative $8.3 billion hole—$19 billion less. On average, they would have more unfunded pension debt than assets.”

One may argue whether Moody’s 5.5 percent discount rate is too low, so let’s accept for the moment the long-term pension earnings projection of 7.5 percent per year as realistic. This still means the seven counties analyzed failed to report more than $10.2 billion in liabilities. And it still means across all of California, the state and local governments failed to report more than $128 billion in liabilities, because $128 billion is the state controller’s officially acknowledged amount of unfunded pension liabilities.

Most Net Worth Erased

For the past decade or more, as cities and counties were negotiating enhancements to public employee pension plans and other compensation enhancements, they were basing their decisions on inaccurate financial statements. Would pension formulas have been increased from 2.5 percent at age 55 to 3.0 percent at age 50, for example, if everyone at the negotiating table had been examining city or county financial statements that correctly recorded these billions in losses?

No business can long survive with bad financial information. Any auditor who’s picked apart a few balance sheets, or any general ledger accountant who’s closed a few fiscal years, understands how easy it is to commit fraud. If bankers and investors are wary of a company’s financial performance and need to see more profit, an unscrupulous entrepreneur might revalue inventory to “market value,” and voila, a loss turns into a profit.

Municipalities Acted Mendaciously

When many of California’s cities and counties fell behind in their payments to the pension funds, they didn’t record a payable on their balance sheet—because GASB didn’t have a standard in place to force them to.

When the time came to make the payment, they needed to borrow the money, but they didn’t want to ask voters to approve a pension obligation bond. So they essentially sued themselves, securing a court ruling that documented they owed the money.

This allowed them to characterize the pension obligation bond’s issuance as a refinancing of existing debt, avoiding the need to submit the bond to voters for approval.

Then (accounting wonks, pay attention here), when they put the pension obligation bond debt onto their balance sheet as a liability, because they had not recorded a preexisting payable to the pension fund, instead they put the debit onto the top of the balance sheet as an offsetting asset, which they are slowly amortizing.

This behavior violates fundamental accounting concepts, most particularly, matching expenses to the time they are incurred.

But during the 1990s and since, it allowed cities and counties to avoid placing billions in losses on their income statements. That allowed public employee unions, politicians, and arbitrators to make decisions based on flawed, overly optimistic financial information. And it enabled a legacy of contracted compensation increases that are considered by their supporters to be beyond even the power of a bankruptcy court to amend.

Ed Ring (editor@unionwatch.org) is editor of UnionWatch.org, a project of the California Public Policy Center. Used with permission of UnionWatch.org.
Illinois government officials in early March announced they would settle securities-fraud charges the Securities and Exchange Commission filed after an investigation that began last fall.

Without admitting or denying wrongdoing, Illinois officials agreed on March 11 the state would “cease and desist from committing or causing any violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933.”

The SEC complaint centered on Illinois’ reporting of pension obligations. It is the second time the SEC has charged a state with securities fraud. In 2010 the SEC filed fraud charges against the state over its pension obligations.

**‘Failed to Disclose’**

According to the SEC, Illinois “failed to inform investors about the impact of problems with its pension funding schedule as the state offered and sold more than $2.2 billion worth of municipal bonds from 2005 to early 2009. Illinois failed to disclose that its statutory plan significantly underfunded the state’s pension obligations and increased the risk to its overall financial condition. The state also misled investors about the effect of changes to its statutory plan.”

Illinois is widely recognized as having the nation’s worst-funded pension system. Conservative estimates place the underfunding at nearly $97 billion. The state also has nearly $10 billion in unpaid bills. Credit rating agencies have given Illinois the nation’s lowest credit rating.

“Municipal investors are no less entitled to truthful risk disclosures than other investors,” said George S. Canellos, acting director of the SEC’s division of enforcement, in a statement. “Time after time, Illinois failed to inform its bond investors about the risk to its financial condition posed by the structural underfunding of its pension system.”

**Gimmicky Funding Plan**

In the mid-1990s Illinois established a 50-year funding plan for its pension system. At the time, many critics pointed out it put most of the funding burden decades in the future, absolving lawmakers then of much of the responsibility to properly fund the pensions.

The SEC noted that plan in its statement outlining its complaint: “The statutory plan structurally underfunded the state’s pension obligations and backloaded the majority of pension contributions far into the future. This structure imposed significant stress on the pension systems and the state’s ability to meet its competing obligations—a condition that worsened over time.

“The SEC’s order finds that Illinois misled investors about the effect of changes to its funding plan, particularly pension holidays enacted in 2005. Although the state disclosed the pension holidays and other legislative amendments to the plan, Illinois did not disclose the effect of those changes on the contribution schedule and its ability to meet its pension obligations. The state’s misleading disclosures resulted from various institutional failures. As a result, Illinois lacked proper mechanisms to identify and evaluate relevant information about its pension systems into its disclosures.”

The SEC noted Illinois in 2009 began improving pension disclosures and reporting procedures. The commission took those efforts into account in its settlement agreement.

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By Matthew Glans

In a big win for property rights, the U.S. Attorney’s office in Boston has announced it will not appeal a federal court ruling that dismissed the government’s attempt to use civil forfeiture to seize the Motel Caswell, a family-run motel in Tewksbury, Massachusetts.

In January, Magistrate Judge Judith G. Dein of the U.S. District Court for the District of Massachusetts sided with the Caswells, declaring federal forfeiture law should not apply to the motel.

In her ruling, Dein wrote the federal government’s case was “not supported by a scintilla of evidence,” and she accused the government of engaging in “gross exaggeration.”

‘Desperate Need of Reform’

“The Caswell family has been put through the wringer by the federal government for over three years, and we are thrilled that this law-abiding family is now finally safe from civil forfeiture,” said Scott Bullock, senior attorney at the Institute for Justice, which represented the Caswells, in a statement.

He continued, “The Caswells stood to lose everything for which they had worked so hard. This case epitomizes everything that is wrong with civil forfeiture laws and why they are in such desperate need of reform. We will build off of this victory in future cases to once and for all end civil forfeiture and the inevitable abuses that surround it.”

From 1994 to 2008, 15 lodgers at the 56-room Motel Caswell had been involved in drug-related arrests. The government tried to seize the motel under the theory that it was facilitating drug crimes, even though neither the motel’s owners nor their employees were ever accused of being involved in the crimes or even knowing about them.

Dein wrote in her decision the Caswells “did not know the guests involved in the drug crimes, did not know of their anticipated criminal behavior at the time they registered as guests, and did not know of the drug crimes while they were occurring.”

Furthermore, Dein noted, no one told the Caswells of the civil forfeiture threat.

Fight Is Not Over

“We have been living with this legal nightmare for almost four years, and I can’t express how happy we are that this is finally behind us,” said Russell Caswell, who owns the motel with his wife Patricia, in a statement. “But my fight against civil forfeiture is not over. I will continue to speak out against this unbelievable power. I will work to see that no other American family has to go through what our family did.”

The Institute for Justice notes the U.S. Department of Justice’s Asset Forfeiture Fund holds more than $1.6 billion. The fund sends proceeds from properties seized under federal law to law enforcement agencies.

The institute contends police departments pad their budgets by taking property from innocent owners who have never been convicted of or even charged with a crime, as in the case of the Caswells.

Matthew Glans (mglans@heartland.org) joined the staff of The Heartland Institute in November 2007 as legislative specialist for insurance and finance. In 2012 Glans was named senior policy analyst.

Feds Decline to Appeal Ruling

Striking Down Civil Forfeiture

Michigan No Longer Skimming Money from Home Caregivers for Labor Union

By Steve Stanek

The Service Employees International Union is no longer able to claim millions of dollars annually from family caregivers in Michigan.

In 2005, under the administration of Gov. Jennifer Granholm (D), the SEIU won the power to force home-based caregivers to pay dues to the union. Nearly one year ago Gov. Rick Snyder (R) signed a law that ended the designation of these home caregivers as government employees.

The contract between the union and the dummy employer that was created for the scheme officially ended February 28.

$34M Taken from Disabled Persons

During those seven years, more than $34 million was skimmed from Medicaid checks intended to assist developmentally disabled adults and their families and sent to the SEIU.

“It has been a long, winding, and courageous battle,” said Pat Wright, senior legal analyst at the Mackinac Center for Public Policy, in a statement. “I’m glad to see that justice is finally being reached.”

An agreement between the Michigan Department of Community Health and the Tri-County Aging Consortium allowed for the creation of the Michigan Quality Community Care Council, which served as the “employer” for what were really self-employed independent contractors or, overwhelmingly, family members caring for loved ones.

Never Knew of Union Vote

The council was really just a shell organization that enabled the SEIU to conduct a union representation vote in 2007. Of the 44,000 home health care providers in Michigan at the time, only 7,900 voted, and 6,900 cast ballots for the union. Many home caregivers later said they never knew a vote was taking place. They nonetheless were forced into the union.

The Mackinac Center Legal Foundation has filed a legal action with the Michigan Employment Relations Commission seeking to return about $3 million to home-based caregivers. That case is ongoing.

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By Gary H. Baise

As the White House politicized the sequester cuts amounting to $85 billion in lower federal spending, a recent Government Accountability Office (GAO) study identified “more than 1,362 duplicative programs accounting for at least $364.5 billion in federal spending every single year,” according to Sen. Tom Coburn (R-OK) in a letter to the White House on February 26.

Yet little publicity has been generated in the media by the GAO report to Congress, called “2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue.”

On February 14, GAO issued another report that found only two areas where much progress had been made in attempting to save taxpayer dollars and cut federal expenditures.

If you listen to the president, and particularly his cabinet secretaries, you will believe bad news and consequences are in store for Americans because of air traffic controllers being released, USDA food inspectors laid off, teachers fired (false), and three-hour waits in lines at airports due to cutbacks of TSA agents.

This may happen, but it should not. In 2012, GAO produced a 428-page study that outlines inconceivable duplication, overlap, and fragmentation that can be cut back to save more than $360 billion every single year!

Dozens of Duplications
The GAO report should be required reading for taxpayers and presidents because it includes Mitt Romney’s claim of 47 different federal programs for job training, 20 programs devoted to homelessness, 17 grant programs for disaster assistance, and 17 programs for technical assistance to entrepreneurs, with five of these entrepreneur programs being run by USDA.

The report goes on and on outlining federal government overlapping, duplicative, and wasteful programs.

GAO claims there are nine federal agencies, including the U.S. Department of Agriculture, that have duplicative and fragmented programs to defend food and agriculture systems against potential terrorist attacks and major disasters. GAO suggests there are 32 programs where there needs to be substantial elimination of overlap and just plain stupidity.

Duplicative Diesel Programs
One program involves a subject of interest to agriculture: diesel engines. There are 14 grant and loan programs at the Department of Energy, Department of Transportation, and Environmental Protection Agency, plus three tax activities, that have as a goal reducing mobile-source diesel emissions.

Diesel exhaust contains air pollutants of nitrogen oxides and particulate matter as well as some other pollutants. Since 1984, EPA has lowered the amount of pollutants “… from new diesel engines by more than 98%.”

EPA and other agencies now want to pursue 20 million old diesel engines of which there are approximately 13 million in trucks on the roads, plus seven million non-road engines such as our tractors, combines, and irrigation pumps. There are also 47,000 locomotive and marine engines.

DOE, DOT, and EPA duplicate one another by issuing grants, loans, retrofits, rebuilding of diesel engines, installing devices to reduce idling, and converting diesel engines to use cleaner fuels. GAO claims there are 14 programs that focus on these goals and waste taxpayer money.

One example identified by GAO showed several instances of duplication. Apparently one state transportation agency received $5.4 million from DOT to upgrade 37 buses to hybrid diesel-electric buses plus $3.5 million from another DOT program to replace diesel buses with four new hybrids plus $2.3 million from a DOT Clean Fuels program to replace four more diesel buses with hybrid electrics.

‘Uncoordinated Program Efforts’
The GAO report claims the three agencies do not talk regarding diesel-related issues and points out that “… uncoordinated program efforts can waste scarce funds, confuse and frustrate program customers, and limit the overall effectiveness of the federal effort.” Plus, wasting millions of taxpayer dollars!

GAO also claims “… few agencies collect performance information on their diesel emissions reduction activities.”

The DOE questioned several of GAO’s findings but said GAO’s findings “mischaracterized the agency as having statutory responsibility for diesel emissions reductions.” (Really.)

GAO “… clearly identifies fragmentation, overlap, and duplication among the fourteen federal programs that fund diesel emissions reduction activities.”

Coburn has every right to demand that the administration stop its silly assertions that $85 billion cannot be cut if common sense is applied. When the United States Government Accountability Office claims at least $364.5 billion of our tax dollars are being wasted in duplicate programs, someone needs to pay attention!

Gary H. Baise (gbaise@ofwlaw.com) is an Illinois farmer and trial attorney at the law firm Olsson Frank Weeda Terman Bode Matz PC, where he specializes in agriculture and environmental issues.

This blog post originally appeared at FarmFutures.com and is reprinted here by permission. To see more of Gary Baise’s insights, visit FarmFutures.com.
Tenn. Pole Fees Could Create New ‘Broadband Tax’

By Matthew Glans

Broadband users in Tennessee could soon see a big increase in their monthly bills if legislation now before the state legislature passes.

Senate Bill 1222 and House Bill 1111 are companion bills that would allow Tennessee’s electric cooperatives and government-owned utilities to raise the fees they charge telecom companies, including cable providers, to attach fiber optic lines to public utility poles.

The bills’ sponsors argue the fee increases will allow the power companies to better maintain the utility poles and hold down electricity prices.

The current average pole attachment rate paid by cable companies in Tennessee is $17 a pole a year. The national average is $7. Under the proposed bill, the cost of a utility pole would be shared equally among cable companies, Internet service providers, and electric companies. Electric utilities could charge telecom companies $33 for each attachment per pole per year, more than four times the national average.

Critics argue the legislation benefits only the government-owned power providers and would result in increased costs for consumers and slower broadband investment and development.

Bartlett D. Cleland, policy counsel for the Institute for Policy Innovation, argues increasing the pole attachment fees would constitute a broadband tax increase on consumers.

“This proposal would allow rates to rise radically—effectively creating a broadband tax—for pole attachments to 371 percent of the national average, and double the current Tennessee rate, which is already 143 percent higher than the national average,” said Cleland. “Justification for such a stunning increase is scant, since the electric company’s costs do not increase because of the pole attachments. Of course, higher costs slow investment. All of this results in a big bill, and a big loss, for the consumer.”

Thomas Schatz, president of Citizens Against Government Waste, argues the higher pole attachment fees could harm the state’s economy.

“This legislation also creates a disincentive to providers for further broadband investments in the state of Tennessee, by increasing the costs to broadband providers,” wrote Schatz in a letter to Lt. Governor Ron Ramsey. “As you are aware, Internet access is a key driving force in today’s economy, and access to broadband Internet service provides economic growth and innovation across the nation.”

$20 Million in New Costs

According to the Chattanooga Times-Free-Press, the bill could create more than $20 million in new costs statewide. The Tennessee Cable Telecommunications Association told the newspaper the fee increase would discourage broadband investment in the state and “erase 1,050 miles of planned broadband deployment.”

In most instances private telecom companies pay pole attachment fees to private power companies. Rates are determined by market forces and FCC regulations. This is not the case with electric cooperatives and government-owned utilities in Tennessee. The government owns the poles, so the rent is not determined by market forces. Cable companies bear the costs of adding fiber to the poles, so any revenue from the fees is pure profit for the government utility.

The electricity market in Tennessee is unique.

“Other states have looked at the issue but I am not sure of final disposition. An important difference in Tennessee is the TVA [Tennessee Valley Authority], which owns many of the poles,” said Cleland. “Tennessee also has a large number of government utilities which compete in broadband so they are pushing to be able to increase fees.”

Third-Party Possibility

Other proposals would take a different approach in determining pole attachment fees. HB 567 and SB 1049 would use a neutral third party to resolve rate disputes, a system in use in several other states.

Despite the high fees in Tennessee, Cleland argues pole tax regulations should remain a state issue.

“As in most things the states are better situated to address problems, Tennessee has some particular challenges to work out. In addition, one of the last things we need is a national rate-setter. The market can and should sort these things out.”

Matthew Glans (mglans@heartland.org) joined the staff of The Heartland Institute in November 2007 as legislative specialist for insurance and finance. In 2012 Glans was named senior policy analyst.

IN OTHER WORDS...

“After spending years dogged by unpaid debts, California labor leader Charles Valdes filed for bankruptcy in the 1990s—twice. At the same time, he held one of the most influential positions in the American financial system: chair of the investment committee for the California Public Employees’ Retirement System, or CalPERS, the nation’s largest pension fund for government workers.

Valdes left the board in 2010 and now faces scrutiny for accepting gifts from another former board member, Alfred Villalobos—who, the state alleges, spent tens of thousands of dollars trying to influence how the fund invested its assets. Questioned by investigators about his dealings with Villalobos, Valdes invoked the Fifth Amendment 126 times.

“California taxpayers help fund CalPERS’s pensions and ultimately guarantee them, so they might wonder: How could a financially troubled former union leader occupy such a powerful position at the giant retirement system, which manages roughly $8230 billion in assets? The answer lies in CalPERS’s three-decade-long transformation from a prudently managed steward of workers’ pensions into a highly politicized advocate for special interests. Unlike most government pension funds, CalPERS has become an outright lobbyist for higher member benefits, including a huge pension increase that is now consuming California state and local budgets. CalPERS’s members, who elect representatives to the fund’s board of directors, ignored concerns over Valdes’s suitability because they liked how he fought for those plusher benefits.”

Steven Malanga, writing in City Journal, Winter 2013
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