



March 1, 2013

Last week was deadline week for introduction of new legislation for this year. This week Farm Bureau Governmental Affairs Division staff have been reviewing the 2100 plus bills introduced to identify those of interest to agriculture. Some of the bills are reintroductions of previous legislation or of a subject matter on which there is clear policy guidance. Still others are “spot bills”, the final language of which won’t be fleshed out for some time.

This Friday Review contains a fairly comprehensive catalogue of the legislation introduced of interest to Farm Bureau and analysis of each is now underway to determine how the measures square with CFBF policy. As an FYI, bills must be in print for at least 30 days before they can be heard in their first policy committee.

## **Commodities**

[AB 933](#) (Nancy Skinner, D-Berkley) would allow distilled spirit manufacturers to provide tastings of their products as long as certain guidelines are followed.

[AB 949](#) (Bill Quirk, D-Hayward) is very similar to AB 933, in that it would also allow distilled spirit manufacturers to provide tastings of their products as long as certain guidelines are followed.

[AB 1137](#) (Allan Mansoor, R-Costa Mesa) would legalize the production of industrial hemp in California.

[SB 250](#) (Lois Wolk, D-Davis) would create a state Olive Oil Commission.

[SB 566](#) (Mark Leno, D-San Francisco) is similar to AB 1137 (Mansoor). It would legalize the production of industrial hemp in California.

## **Direct Marketing**

[AB 224](#) (Richard Gordon, D-Redwood City) would define different types of community supported agriculture (CSA) programs. It will create a new system for regulating CSAs in California to provide compliance with state and local food safety requirements. The provisions of the bill will come from recommendations developed by CDFA’s Direct Marketing Ad Hoc Committee.

[AB 996](#) (Roger Dickinson, D-Sacramento) gives new authority to the Department of Food and Agriculture and County Agricultural Commissioners to issue penalties against growers fraudulently selling agricultural products at certified farmers’ markets. It also makes changes to the certification

process farmers are required to complete prior to selling at certified farmers' markets. The bill stems from the discussions by the Direct Marketing Ad Hoc Committee that CDFA facilitated last year.

[SB 599](#) (Noreen Evans, D-Santa Rosa) extends the sunset of the farmers' market program at CDFA until 2018 without making any changes to the existing program.

## **Energy**

Last November voters approved Proposition 39 that changed the out-of-state business tax liability. Initially the funds generated, \$550 million annually for five years from the initiative's anticipated increase in revenue, are to be used to fund projects that create energy efficiency and clean energy jobs. The following bills all give direction on how to administer Proposition 39 funds.

[AB 39](#) (Nancy Skinner, D-Oakland) would appropriate the total \$2.5 billion expected over the initial five years to the California Energy Commission for retrofits of school, university and public facilities.

[AB 114](#) (Rudy Salas, D-Hanford) would direct the funds to the state Employment Development Department for job training and development.

[AB 239](#) (Curt Hagman, R-Chino Hills) would direct the funds to the State Treasury for a revolving fund for clean energy upgrades at schools.

[SB 39](#) (Kevin de Leon, D- Los Angeles) would provide grants to retrofit dilapidated, disadvantaged schools.

[SB 64](#) (Ellen Corbett, D-San Leandro) establishes the intent of the Legislature to use the funds for efficiency and renewable retrofits at public schools, universities and colleges.

Not related to Prop 39, but legislating electrical rates:

[AB 327](#) (Henry Perea, D-Fresno) provides a starting point for electric customer residential rate reform, specifically rate design. Under the current framework small users do not pay their fully calculated costs, which are then picked-up by remaining electric customers. Specifically the bill: 1) Removes the restrictions in state law enacted during the energy crisis and in 2009 that placed limits on rate increases for tier 1 and 2 usage as well as CARE (a low income program); 2) Codifies the principles included in the CPUC's residential rate design Rulemaking, such as rates should be based on marginal cost, providing enough electricity to low income and medical baseline customers at an affordable cost to meet basic needs, encouraging conservation and energy efficiency, and requiring that rates should be stable and understandable; and 3) Provides that the CPUC will report to the Legislature on its recommendations and findings from their Rulemaking by the end of January 2014.

## **Forestry**

[AB 350](#) (Bob Wieckowski, D-Fremont) would expand the exemption that allows small timber to be harvested without a Timber Harvest Plan for fuel reduction purposes. Current law allows trees less than 18-inches in stump diameter and up to 24-inches in some circumstances and this bill would expand it to 28-inches and up to 34-inches in some circumstances. Farm Bureau supports.

[AB 875](#) (Wes Chesbro, D-Arcata) would implement some of the provisions of AB 1492, the Administration's bill from last year that eliminated fees on Timber Harvest Plans, lengthened the terms of THPs, reduced federal wildfire liability, and paid for the THP review program through a one percent assessment on lumber sales.

[AB 904](#) (Wes Chesbro, D-Arcata) is a spot bill to provide a placeholder if the timber working group is able to reach consensus on how to expand the use of the nonindustrial timber management plan program. Farm Bureau supported Assembly Member Chesbro's previous attempts to expand the program but will not take a position until the proposal is in print.

## **Labor**

[AB 228](#) (Dan Logue, R-Chico) would allow the Labor Commissioner to waive employer penalties for violations of California wage and hour laws if the employer resolves the violation within 30 days.

[AB 263](#) (Roger Hernandez, D-West Covina) creates a new discrimination prohibition in the California Labor Code for an employer engaging in an "unfair immigration-related document practice" (not yet defined in the bill).

[AB 442](#) (Adrian Nazarian, D-Van Nuys) will allow employees to recover liquidated damages in cases where their employer is found to have failed to pay wages due, in addition to liquidated damages that can be recovered under current law by the Department of Industrial Relations.

[AB 1037](#) (V. Manuel Perez, D-Coachella) designates as an "agricultural land use" any employee housing of up to 36 beds in a group housing environment, 12 individual housing units (intended for a single family or household), or 48 individual housing units operated by a governmental entity or non-profit organization.

[AB 1165](#) (Nancy Skinner, D-Berkeley) will require immediate abatement of serious, willful, or repeated violations of Cal/OSHA standards. Current law allows employers to delay abatement of hazards cited by Cal/OSHA pending the exercise of appeal rights.

[SB 435](#) (Alex Padilla, D-Pacoima) requires employers to pay the average piece-rate compensation rate for employees taking rest or recuperation breaks as required by the Heat Illness Protection Standard. The bill also applies the current penalty for failure to provide a rest or meal period (one hour of compensation at the employee's usual rate of pay) for failure to provide rest or recuperation breaks under the Heat illness Protection Standard.

[SB 607](#) (Tom Berryhill, R-Modesto) would permit a non-exempt worker to request a work schedule consisting of work days of up to 10 hours without any obligation for overtime.

## **Land Use**

[AB 57](#) (Mariko Yamada, D-Davis) will clarify the types of compatible agritourism land uses that should be allowed on land protected by an agricultural conservation easement. Apparently, the Department of Conservation and a local land trust have been giving some of the author's constituent farmers grief about u-pick pumpkin patches and corn mazes on property previously restricted by conservation easements. Assembly Member Yamada is hoping that the easement agreements can be clarified to allow these compatible uses, but she wants to be prepared to move the measure forward if the issue is not resolved administratively.

[AB 823](#) (Susan Eggman, D-Stockton) would require a lead agency, for any project that converts agricultural land to a nonagricultural use, to require mitigation measures consisting, at a minimum, of providing replacement acreage through a grant, in perpetuity, of an agricultural conservation easement on the replacement acreage to ensure the long-term protection of the state's agricultural production capacity. The new chair of the Assembly Committee on Agriculture wants the state and local

governments to get serious about mitigation for the conversion of farmland under the California Environmental Quality Act (CEQA).

[AB 976](#) (Toni Atkins, D-San Diego) is identical to two previous failed Coastal Commission measures, AB 226 (Ruskin, retired) in 2009 and SB 588 (Noreen Evans, D-Santa Rosa) in 2011, except that the amount of the penalties that could be imposed is currently blank in AB 976. Both previous incarnations of this proposal allowed the commission's fining authority to start at "not less than" \$5,000 and "not to exceed" \$50,000. AB 976 also allows the commission to record a lien on the property for the amount of the fine should the alleged violator not pay the fine. Farm Bureau vigorously opposed the previous measures and will join a broad coalition of groups opposing this measure, as well. We believe that alleged violations of the Coastal Act should be subject to an independent judicial review. Allowing the commission to act as the cop, prosecutor, judge and jury for their alleged violations of land use policies is contrary to the concept of due process of law. The California Coastal Commission is back with a bill to grant the controversial state agency new authority to levy civil penalties for alleged violation of their land use planning policies.

[AB 1161](#) (Rudy Salas, D-Bakersfield) is modeled after the Civil Code's anti-nuisance provisions, authored by the late Assembly Member John Thurman in 1981, that protects farmers and ranchers from nuisance claims if the agricultural operation has been in existence for three years or more, was not a nuisance at the time it began, and is operated according to local customs and standards. The surface mining industry wants similar protection to agriculture's "right-to-farm" law and AB 116 could provide that.

## **Rural Crime**

[AB 801](#) (Cheryl Brown, D-Rialto) would require that junk dealers and recyclers obtain proof of ownership from individuals trying to recycle nonferrous material with an "indicia of ownership." Farm Bureau supports.

[AB 841](#) (Norma Torres, D-Pomona) would require that junk dealers and recyclers pay for nonferrous material only by check and would allow for the redemption of nonferrous material without recordkeeping or payment limitations if it is worth less than \$20. Farm Bureau has significant concerns with the loophole created by allowing any \$20 transaction to be exempt from the recordkeeping and payment requirements that we successfully put in place in 2008 and will work with the author to address our concerns.

[AB 909](#) (Adam Gray, D-Merced) would create a Metal Theft Task Force Program at the Board of State and Community Corrections, which, when funded, would provide grants to local law enforcement and district attorneys to focus on metal theft and recycling crimes. Farm Bureau is the sponsor of this bill.

[SB 485](#) (Ron Calderon) would give County Agricultural Commissioners and Sealers the authority to inspect the records of junk dealers and recyclers and issue citations if they are found to be in violation of the law. It also allows additional fees to be charged to cover the costs of these inspections. Farm Bureau supports.

[SB 507](#) (Anthony Cannella, R-Ceres) would add arson at an animal feeding operation or livestock sales-yard causing more than \$100,000 in damages to the list of aggravating factors for the crime of aggravated arson. This bill is sponsored by the California Cattlemen's Association after an identical bill failed last year. Farm Bureau supported last year's legislation.

[SB 757](#) (Tom Berryhill, R-Modesto) would exempt secondhand dealers from regulations pertaining to junk dealers and recyclers.

## **State Purchasing Practices**

[AB 199](#) (Chris Holden, D-Pasadena) would require state institutions to purchase California grown agricultural products so long as the price is within five percent of out-of-state products. It would require California schools to purchase California grown agricultural products so long as the price is no higher than out-of-state products. Farm Bureau supports.

[AB 682](#) (Ian Calderon) would prohibit chicken or turkey that is sold in a state-owned or leased building from being “plumped,” which the bill defines as having injected saltwater, chicken stock, or seaweed extract. By prohibiting the sale of “plumped” poultry, the author intends to lower the sodium content of poultry sold in state facilities and prevent the state from paying for plumping solutions added to poultry products.

## **Transportation and Air Quality**

[SB 11](#) (Fran Pavley, D-Agoura Hills and Jerry Hill, D-San Mateo) and [AB 8](#) (Henry Perea, D-Fresno and Nancy Skinner, D-Berkley) continue critical funding programs that help clean the air. These programs are paid for by dedicated vehicle, tire, vessel, and smog abatement fees and do not require general fund revenues. Seventy percent of the criteria air pollution comes from our cars, trucks, trains, and other mobile sources. The state needs to see a 90% reduction in emissions by the mid-2030’s in order to meet federal and state clean air mandates.

One of the key programs extended by [SB 11](#) and [AB 8](#) include the Carl Moyer Program which was instrumental in meeting the 2007 state implementation plan (SIP) commitments from agricultural equipment in the San Joaquin Valley to meet federal Clean Air Act (CAA) requirements. The voluntary reductions that many SJV producers have already accomplished by upgrading their equipment using the Carl Moyer Program, local SJV air district funds and USDA/NRCS Environmental Quality Incentives Programs means that mandatory upgrades are not needed in the first phase of the long awaited agricultural equipment rule (aka ‘The Tractor Rule’).

It is important to note that this does not mean that the agricultural equipment rule will never be implemented in the other 50 counties. The state will begin development of the second phase of the agricultural equipment rule in 2014 in coordination with the development of a new 2015 SIP which lays out the strategies needed to meet the new federal CAA requirements for ozone. US EPA lowered ozone standards in 2006, therefore the standards that must be met in the 2015 SIP are more stringent than the ones needed in the 2007 SIP. The California Air Resources Board (CARB) will rely heavily on getting many of the reductions from advancements in emissions technology, but might need reductions beyond what cleaner engines currently provide. The attainment date for the 2015 SIP is 2032. CARB is expecting the cleanest technologies for agricultural equipment to become available in the 2020 timeframe.

This gives agricultural equipment owners nearly a ten year window before the second phase of the agricultural equipment rule might be implemented in their area. During this time [SB 11](#) and [AB 8](#) could help provide the incentive funding that will continue to allow growers to upgrade their equipment so that mandatory reductions are not needed in the second phase of the rule as was accomplished for the first phase of the rule. Farm Bureau supports.



[SB 478](#) (Anthony Cannella, R-Modesto) would allow a 53 foot trailer that cannot achieve a 40 foot king-pin-to-rear-axle (KPRA) setting to access Surface Transportation Assistance Act (STAA) and terminal routes if used exclusively in the transportation of livestock. The most commonly used vehicle combination used in the livestock industry are semi-trailers that have fixed axles with a belly that runs level with the rear wheels and does not have the capability to move their axles forward to adhere to the 40 foot KPRA. SB 478, sponsored by the California Cattlemen's Association, would help to alleviate the competitive disadvantage that current California law creates for the shipment of cattle for interstate sale. Farm Bureau supports.

## **Taxation**

[AB 59](#) (Rob Bonta, D-Alameda) would "clarify" a recent court decision, subsequently vacated and now being reconsidered, regarding the ability of school districts to essentially impose a split roll parcel tax. In *Borikas v. Alameda Unified School District*, the First District Court of Appeal initially held that school parcel taxes had to be applied uniformly to both commercial and residential property. The Court of Appeal is going to rehear the case at the request of the Alameda school district. The issue is whether or not the June 2008 voter approved parcel tax can impose a tax on residential parcels at \$120 per year, and at 15 cents per square foot up to a maximum of \$9,500 per year on large commercial and industrial parcels. The parcel tax also includes exemptions for seniors and recipients of Supplemental Security Income (SSI) benefits who own and reside in single-family homes.

The decision initially held that state law did not allow school districts to create property classifications and impose differential parcel tax burdens. However, due to a severability clause, the court did not strike down the entire tax and the school district was authorized to continue imposing the tax, as long as it is applied at the \$120 per-year rate on all parcels, regardless of size or use. The court also ruled that the exemption for seniors and SSI recipients was not a violation of state law. AB 59 may be put into a holding pattern until the Court of Appeal finishes its reconsideration of the issue.

[AB 799](#) (Donald Wagner, R-Irvine) would significantly limit the definition of an "occasional sale" that is exempt from the sales and use tax. Under existing law, an individual can sell tangible personal property on an occasional basis without having to remit sales tax to the state. The only limitation on the definition of an occasional sale is that sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity for which the seller is required to hold a seller's permit. For example, if you are a jeweler then you cannot occasionally sell a diamond ring. Generally, the minimum number of sales to require a seller's permit by a person not otherwise engaged in a selling activity is three in a 12 month period. AB 799 would disqualify an occasional sale if the gross receipts from the sale of tangible personal property are two thousand dollars (\$2000.00) or less. The seller also could not make more than 12 sales of tangible personal property, the gross receipts from which exceed two thousand dollars (\$2000.00) during any 12-month period. Farm Bureau has already notified the author's office that we will likely oppose this measure due to the fact that farmers and ranchers routinely sell farm equipment that meet the current definition of an occasional sale.

[SB 241](#) (Noreen Evans, D-Santa Rosa) would impose an oil severance tax of 9.9 percent and earmark the revenue for higher education and state parks. Senator Evans says the new tax would bring California in line with some other oil-producing states, but California imposes its share of other costs and burdens, including a property tax on unpumped oil reserves. Many believe that the lack of an oil-severance tax is a key reason the industry continues to function in this state.

[SB 355](#) (Jim Beall, D-San Jose) would allow taxpayers who have the 55 percent tax credit for contributions of habitat conservation easements to transfer the tax credit to an unrelated party. The Natural Heritage Preservation Tax Credit Act of 2000 created a program at the Wildlife Conservation Board allowing an income tax credit equal to 55 percent of the value of a conservation easement when it is donated to the state or a local government, or to any nonprofit organization designated by a local government in order to provide for the protection of wildlife habitat, open space, and agricultural lands. Of course to take the credit, contributors need to have sufficient income to offset the value of the credit. This proposal would allow the credit be transferred to other higher income individuals.

[ACA 8](#) (Robert Blumenfield, D-Woodland Hills), yet another constitutional amendment has been introduced to reduce voter approval requirement for local property tax overrides to fund bonded indebtedness. ACA 8 would reduce from two-thirds to 55 percent the voter approval percentage for passage of local bonds for public safety facilities. It is believed that half a dozen or more of these proposals will ultimately be packaged into one amendment instead of presenting voters with multiple amendments.

## **Water**

There are four measures introduced dealing with the Safe, Clean, and Reliable Drinking Water Supply Act of 2014 (Water Bond). Consideration will be given to altering the size and structure of the current bond measure. The four measures are [AB 142](#) (Henry Perea, D-Fresno), [SB 36](#) (Michael Rubio, D-East Bakersfield), [SB 40](#) (Fran Pavley, D-Agoura Hills) and [SB 42](#) (Lois Wolk, D-Davis). Farm Bureau has a support position for the current \$11.14 billion water bond as approved by the Legislature and signed by the Governor in 2009, but has yet to go before the voters. Farm Bureau will continue to monitor efforts to impact the size and structure of the water bond.

There are nine measures introduced to address nitrate contamination in drinking water. The nine measures as reported in the February 1<sup>st</sup> Friday Review are [AB 1](#) and [AB 21](#) (Luis Alejo, D-Salinas), [AB 30](#), [AB 69](#), [AB 115](#) and [AB 145](#) (Henry Perea-D, Fresno), [AB 118](#) and [AB 119](#) (Committee on Environmental Safety and Toxic Materials) and lastly [SB 117](#) (Michael Rubio, D-East Bakersfield). These measures would facilitate getting financial assistance in a variety of ways to economically disadvantaged communities with drinking water problems, promote consolidation of small water systems, or transfer various duties and responsibilities imposed by California's Safe Drinking Water Act from the Department of Public Health to the State Water Resources Control Board. Hearing dates have yet to be set. Farm Bureau continues to analyze each bill carefully and has a watch position on many of them until language for each is developed further.

There are five measures introduced to address hydraulic fracturing. The five measures are [AB 7](#) (Bob Wieckowski, D-Fremont), [AB 288](#) (Marc Levine, D-San Rafael), [AB 982](#) (Das Williams, D-Santa Barbara), [SB 4](#) (Fran Pavley, D-Agoura Hills) and [SB 395](#) (Hanna-Beth Jackson, D-Santa Barbara). Farm Bureau continues to analyze each bill carefully and has a watch position on many of them until language for each is developed further.

## **Wildlife**

[AB 497](#) (Wes Chesbro, D-Arcata) would change some of the meeting requirements for the Fish and Game Commission. Currently the Commission is required to meet at least 10 times per year and can only hold three of those meetings in Sacramento. This bill would limit the required number of meetings to eight and remove the Sacramento meeting restriction.

[AB 789](#) (Das Williams, D-Santa Barbara) is similar to Senator Corbett's bill last year, SB 1480, to limit certain methods of trapping animals in California, which was vetoed by the Governor. AB 789 would limit the size of conibear traps used on land to no larger than 6-inches by 6-inches. The current limit is 10-inches by 10-inches. Farm Bureau opposed SB 1480 last year.

[AB 896](#) (Susan Eggman, D-Stockton) would reinstate law that was in effect until January 1, 2010 that created a system for mosquito surveillance and control on wildlife management areas owned by the Department of Fish and Wildlife.

[AB 1097](#) (Brian Nestande, R-Palm Desert) would state that the primary function of the Department of Fish and Wildlife (formerly the Department of Fish and Game) is to provide services to persons who fish and hunt.

[AB 1213](#) (Richard Bloom, D-Santa Monica) would prohibit the trapping of bobcats in California. It would also prohibit the importation, exportation, or sale of any bobcat or bobcat part and adds bobcats to the list of fur-bearing mammals.

[SB 132](#) (Jerry Hill, D-San Mateo) would require that the Department of Fish and Wildlife to use nonlethal procedures when removing any mountain lion perceived to be an imminent threat to public health or safety unless the mountain lion is expected to cause immediate death or physical harm. The bill also requires the Department to issue an incident report to the Fish and Game Commission whenever direct action is taken on a mountain lion. Farm Bureau has expressed concern to the author over the impact this bill could have on mountain lions that are relocated into areas of the state with livestock. The bill needs a 4/5 vote to pass.

[SB 749](#) (Lois Wolk, D-Davis) would extend the sunset for the provision that allows accidental take for ongoing and routine farming and ranching activities under the California Endangered Species Act (CESA). It would require that lease revenues generated from agricultural leases on lands owned by the Department of Fish and Wildlife be used to support the maintenance and operations of the lands from where the moneys were originally collected. It also clarifies when the administrative record is closed for purposes of listing species under CESA. This bill is co-sponsored by Farm Bureau, the California Cattlemen's Association, and the California Waterfowl Association.