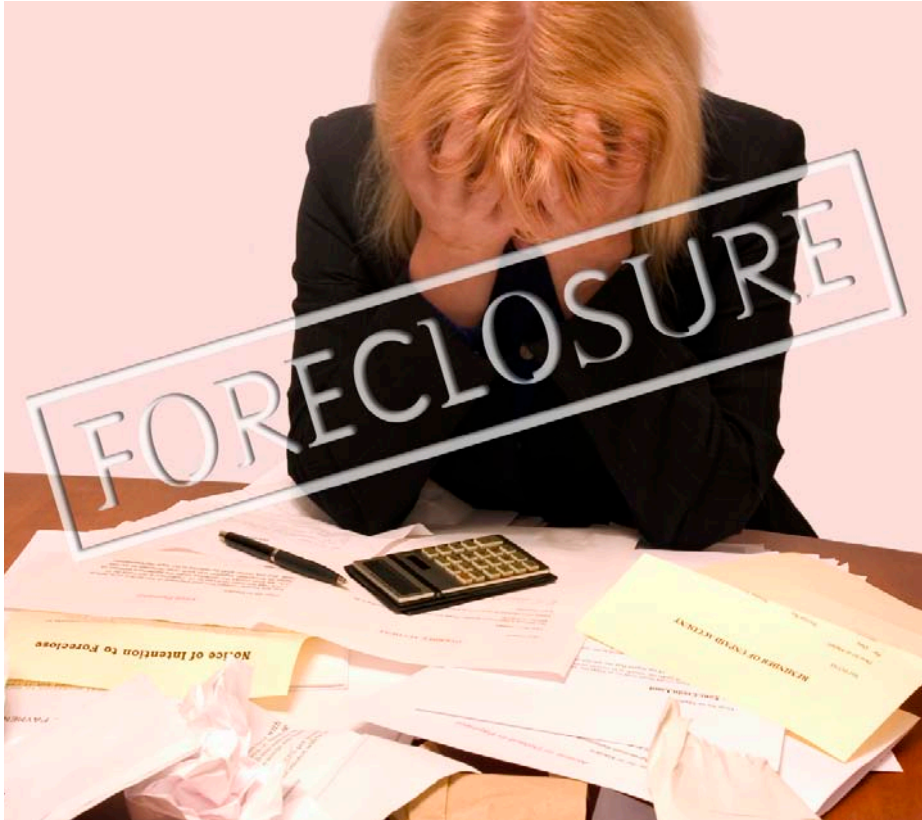


A Subprime Crisis



September 10, 2007

Budget & taxes	5
Housing slump hurting state budgets	
Politics & leadership	7
More states join primary revolt	
Governors	9
Crist ponders selling FL lottery	
Bird's eye view	3
Hot issues	11
Once around the statehouse lightly	13

The next issue of Capitol Journal will be available on September 17th.

Top Story

Many states and the federal government have taken steps to crack down on predatory lending and to help harried homeowners avoid foreclosure. But a few states are turning to an old standby to get their point across: education.

SNCJ Spotlight

Issues 2008: Containing the subprime fallout

Without question, 2007 has been a rough year for the housing market, with home values plummeting and foreclosure rates doing the opposite. The situation may get worse before it gets better, as mortgage industry experts predict that more than two million more subprime adjustable rate mortgage loans may go into default over the next few years.

Subprime loans are fairly straightforward: loans above the prime interest rate offered to people who don't qualify for a lower rate mortgage, such as

“States really should be the one pushing the limits of subprime mortgage regulation right now because the feds simply move too slowly,” says Conklin, who authored AB 440 this year, a measure that imposes harsh penalties on lenders who commit mortgage fraud. “We need to push the envelope.”

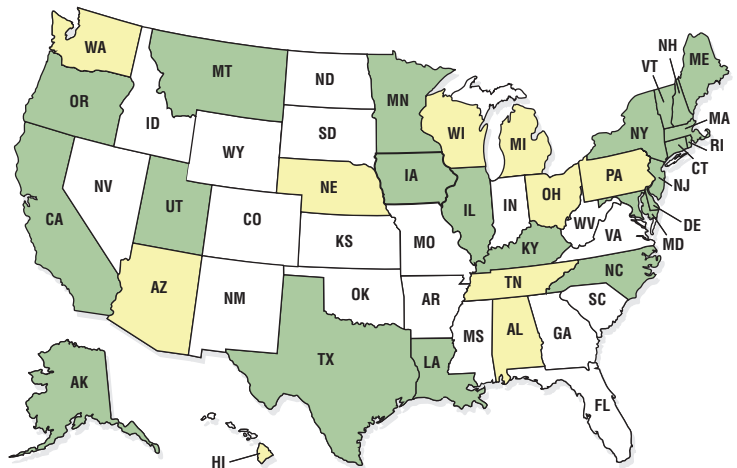
According to the National Conference of State Legislatures (NCSL), states have been gradually addressing predatory lending practices associated with subprime lending. Since 1999, at least 20 states have outlawed loan flipping (re-financing a loan without benefit to the borrower); 25 have banned negative amortization loans (where monthly payments don't cover the principal and interest due, causing the outstanding balance to increase rather than decrease); seven now bar charging excessive fees, such as early-payment penalties; and at least 26 states also force lenders to

consider the borrower's ability to replay the loan before approving the transaction.

Education has also been a key component of the state efforts. According to NCSL, 11 states require borrowers to undergo third-party loan counseling from an approved non-profit institution before a deal can be completed, while another dozen that do not require such counseling compel lenders to notify their customers that they have the right to obtain pre-loan counseling on their own before signing final documents. The ILLINOIS Legislature has also sent Gov. Rod Blagojevich (D) a measure that would require high-risk borrowers in the Chicago area to obtain pre-loan counseling. According to the State Net database, at least three other states — MINNESOTA, NEW YORK and DELAWARE — also have carryover bills mandating third-party counseling, while HAWAII will consider carryover notification legislation.

Finding agreement, however, on what form and degree of regulation offers the best protection for consumers while also not blocking them from home ownership

Bird's eye view



Source: Coalition for Fire-Safe Cigarettes

Passed law Pending

States snuffing out cigarette fires



Cigarette-caused fires are responsible for nearly 900 deaths in the U.S. every year, according to the Coalition for Fire-Safe Cigarettes, a national organization comprised of fire service members, consumer and disability rights advocates and medical and public health practitioners. Starting with NEW YORK in 2003, 22 states have passed laws requiring cigarette manufacturers to market and sell only those cigarettes that automatically go out when dropped or left unattended. Sixteen of those states came on board this year, including NORTH CAROLINA on August 24. Most measures are set to take effect in 2008 or 2009. At least 10 more states have filed similar legislation for consideration in 2008. The accompanying map shows that states which have passed fire-safe cigarette laws and those that will consider them next year.



is no easy task. During a recent seminar on exotic mortgages at the NCSL annual meeting in Boston, VIRGINIA Del. Terry Suit (R) cautioned fellow lawmakers to “avoid having a knee-jerk reaction” to the subprime crisis that would make it more difficult for borrowers, particularly low-income borrowers, to obtain loans. Suit argued that the lenders have already responded to the situation by pulling most subprime loan products off the market, making harsh regulations now something of a moot point.

“Allowing markets to self-correct is fine, but we have to ask ourselves, ‘What is the cost to the people of the state if we have to wait the length of time it takes for the market to correct? How many people need to lose their homes before we act?’”

But NEVADA’s Conklin says depending solely on markets to self-correct is not enough. “Allowing markets to self-correct is fine, but we have to ask ourselves, ‘What is the cost to the people of the state if we have to wait the length of time it takes for the market to correct? How many people need to lose their homes before we act?’ And just because a market corrects, that doesn’t mean the same bad situation won’t happen again.”

The cost has apparently become high enough to elicit action from the federal government. Financial markets both in the U.S. and around the globe have taken a dramatic downturn of late — a deterioration many attribute to the decline of the U.S. housing market. That downward spiral prompted President Bush to recently announce plans to boost by about 80,000 the number of FHA-backed home refinancings in the coming fiscal year, although he did so with the warning that “It’s not the

“There is a big difference between just bailing people out of their obligations and states pushing lenders to get to people before they go into foreclosure.”

government’s job to bail out speculators, or those who made the decision to buy a home they knew they could never afford.” Bush also proposed that Congress further tighten lending rules, particularly for risky subprime loans.

Several states, such as MARYLAND, OHIO, and PENNSYLVANIA, already have similar state-sponsored refinance programs in place, and several more are considering them. Chris Kukla, director of state legislative affairs for the Center for Responsible Lending, says that despite how it might appear at first blush, taxpayer-backed refinance plans are not merely a handout to the lending industry or borrowers. “There is a big difference between just bailing people out of their obligations and states pushing lenders to get to people before they go into foreclosure,” Kukla says.



He notes that in addition to the negative impact on financial markets, “for every foreclosure on your block, your own house devalues by 1 percent.” And because most of the subprime lenders fall under state regulation rather than federal oversight, Kukla says they have an obligation “to help clean up this mess.”

Not all lawmakers agree with that. TEXAS Rep. Burt Solomons (R), a panelist at the NCSL mortgage seminar in Boston, pointed to events such as the recent Supreme Court decision in *Watters v. Wachovia Bank* — which held that national lenders are not subject to state regulation — have limited what states can do to combat many predatory subprime lenders. But Solomons also emphasized that more states can “work the front end” of the situation by requiring pre-loan counseling for most high-risk loans, saying “Many of these loans are very tricky...and intentionally tricky. The key is to get people to understand what they are signing before they sign it.”

That would be fine with Cindi Treat, a now-former homeowner in Rapid City SOUTH DAKOTA. Treat and her husband recently lost their home through what has become an all too familiar story for many homeowners: refinancing with a subprime loan that had a low teaser rate, a very high reset rate and huge prepayment penalties. Although Treat says she was scammed by a lender that intentionally hid details of her loan, she also acknowledges that she did not take the time to understand much of what she was signing.

“I don’t feel we were stupid, but we were ignorant,” she says. “Education is definitely the key thing”

SOUTH DAKOTA Sen. Royal “Mac” McCracken (R), who represents Treat’s district, also agrees that requiring more education is the minimum that lawmakers should be doing. But McCracken also adds that no amount of legal intervention will help people if they don’t use good common sense.

“All states are going to have to do more to help these consumers,” he says. “But in the end, if something looks too good to be true, it probably is.”

— *By Rich Ehisen*

Budget & taxes

HOUSING SLUMP HURTING STATE BUDGETS: Homeowners, realtors, mortgage lenders and other real estate-related businesses aren’t the only ones suffering from the current slump in the housing market. State governments are also taking a hit in their pocketbooks.

FLORIDA, which led the real estate boom a few years ago, is now leading the bust. Lawmakers there are struggling to fill a projected \$1.5 billion hole in the current

Politics & leadership

MORE STATES JOIN PRIMARY REVOLT: Last week, just days after the Democratic and Republican national committees voted to strip FLORIDA of its convention delegates for moving its presidential primaries up to Jan. 29, in violation of the parties' Feb. 5 limit (see PRIMARY SCHEDULE CONTINUES TO DEVOLVE in Sept. 3 edition of *SNCJ*), MICHIGAN shifted its primaries to Jan. 15 and WYOMING's Republican Party moved its delegate-selection convention to Jan. 5, ahead of even IOWA's caucuses and NEW HAMPSHIRE's primaries — at least temporarily.

"We're first in the nation," said Tom Sansonetti, the WYOMING GOP's 2008 county convention coordinator. "At least for the next couple, three weeks until NEW HAMPSHIRE and IOWA move, which I expect they will."

Supporters of the moves in both MICHIGAN and WYOMING cited the same reasons for their actions as their counterparts in other states that have moved up their primaries this year, mainly the desire to have more of a say in who is nominated and

"We're first in the nation. At least for the next couple, three weeks until NEW HAMPSHIRE and IOWA move, which I expect they will."

to make sure that the eventual nominees know what matters to those states.

But there was also a ratcheting up of the rhetoric taking a broader view of the issue. "Ultimately the goal here is to look beyond 2008 and fix

the system, because the system is broken," said Sansonetti. "All this jumping around is because the states feel disenfranchised by letting IOWA and NEW HAMPSHIRE call the shots." Debbie Dingell, a member of the DNC who hails from MICHIGAN, sounded downright rebellious when she declared last week, "This is a war to change the way we select presidential candidates in this country, once and for all."

But ultimately the leaders of the revolution don't seem to feel they have much to lose. "Nobody believes that our delegates aren't going to be seated in the end," said Dingell. (ASSOCIATED PRESS, DETROIT FREE PRESS)

CONTROL OF VA ASSEMBLY UP FOR GRABS THIS FALL: Across VIRGINIA this past weekend, candidates for General Assembly seats turned out in number for parades and festivals marking the traditional Labor Day start of the fall campaign season. And this year's looks to be a heated one.

Republicans currently hold a six-seat margin in the Senate and a 17-seat majority in the House of Delegates. But Democrats think they can pick up three to six seats in the lower chamber and actually take control of the Senate in November.



Their confidence stems in part from the unpopularity of President Bush and the Iraq War and, conversely, the high approval rating of Democratic Gov. Timothy M. Kaine and former Gov. Mark R. Warner (D). “We are seeing a real opportunity for our candidates because Virginians have felt very good about how the state has been running under governor Warner and me,” said Kaine.

The GOP leadership’s slow response to the public outcry over the abusive-driver fees passed this year has helped the Democrats’ cause as well.

The Democrats also have momentum on their side. In addition to Kaine’s and Warner’s elections last year, the Dems have picked up seven House seats since 2002.

And political strategists point out that while only a few incumbent Democrats are facing serious GOP challenges, at least eight Republican-held Senate seats and a dozen GOP-controlled House seats could be in the offing. “I’m glad I am not on the ballot this year,” said one GOP strategist. “It’s not going to be an easy year.”

But Republicans believe they can prevail in November by making the case that GOP control means lower taxes, controls on development, more funding for

In the hopper

At any given time, State Net tracks tens of thousands of bills in all 50 states, the US Congress and the District of Columbia. Here’s a snapshot of what’s in the legislative works:

Number of prefiles last week: 105

Number of Intros last week: 228

Number of bills enacted/adopted last week: 147

Number of prefiles to date: 39,187

Number of Intros to date: 159,986

Number of enacted/adopted overall to date: 39,873

— Compiled By JAMES ROSS
(measures current as of 09/06/2007)
Source: State Net database

“This is really going to be a Republican base versus Democratic base election, where it is a test of who can get voters mad enough to show up at the polls.”

Democrats want to run on abuser fees, I am going to run on illegal immigration,” said Sen. James K. “Jay” O’Brien Jr. (R).

If that proves to be the case, then, as Michael Thompson, president of the conservative-leaning Thomas Jefferson Institute for Public Policy, put it, “This is really going to be a Republican base versus Democratic base election, where it is a test of who can get voters mad enough to show up at the polls.” (WASHINGTON POST)

CA SPEAKER PROPOSES REDISTRICTING REFORM: Last week, CALIFORNIA Assembly Speaker Fabian Nunez (D) proposed a measure for the Feb.

education and a get-tough stance on illegal immigration. When voters “understand and hear that message,” said Senate Majority Leader Walter A. Stosch (R), “our candidates stand tall.”

Illegal immigration, in particular, could be the rallying cry for Republicans that abusive-driver fees is likely to be for Democrats. “If



Rendell last week sent out notices asking potential bidders to reply by Oct. 1 on their qualifications for running and maintaining the 530-mile PENNSYLVANIA Turnpike. The governor believes that leasing the turnpike could potentially raise as much as \$1.7 billion a year for up to 99 years. The request Rendell distributed asked potential bidders “to submit detailed information about its team, its toll road operations experience and capabilities, its customer service record, its experience with safety issues and its financial capabilities.” Lawmakers would again have to endorse any sale before it could become final. (PITTSBURGH POST GAZETTE)

Upcoming stories

Here are some of the topics you will see covered in upcoming issues of the State Net Capitol Journal:

- **Scrap metal**
- **Retail health clinics**
- **Family leave**

RITTER LAUNCHES NEW CO SECURITY PLAN: Less than two months after a mentally disturbed man was shot and killed outside of his office, COLORADO Gov. Bill Ritter (D) proposed a new \$1.6 million security plan for the Centennial State Capitol. The plan calls for metal detectors and X-Ray machines at all entrances, outfitting Capitol employees and elected officials with quick-card access devices and increasing the number of State Troopers on duty in and around the building. Senate President Joan Fitz (D), who co-sponsored legislation in 2002 to remove metal detectors from the Capitol entrances, said the changes are necessary to protect workers and visitors. “We want to make sure the public feels safe here,” she said. (DENVER POST)

CULVER PREACHES PATIENCE ON GAY MARRIAGE DEBATE: IOWA Gov. Chet Culver (D) said he supports the state law that bans same-sex marriage. A Hawkeye State judge recently ruled that the law is unconstitutional, but stayed his own decision pending a review by the state Supreme Court. That decision is not expected for up to two years. Culver affirmed his belief that marriage should only be between a man and a woman, but added that “I think we should all take a deep breath and let the judicial process sort itself out.” (DES MOINES REGISTER)

PAWLENTY REJECTS SPECIAL SESSION: MINNESOTA Gov. Tim Pawlenty (R) rejected a proposal from Democrats to hold a two-day special session on funding issues associated with rebuilding the collapsed I-35 bridge and relief for flood victims in the southeastern part of the Gopher State. Pawlenty said it was premature to worry about state costs for the bridge because the federal government is already committed to paying for the replacement. The governor also said he would use his executive powers to help needy flood victims in the short term and propose long-term flood relief legislation at a later date. (ST. PAUL PIONEER PRESS)

— *Compiled by RICH EHISEN*

Hot issues

BUSINESS: The **CALIFORNIA** Assembly and Senate approve AB 1108, a measure that bars the use of certain toxic chemicals in toys and child-care products designed for children younger than 3 years old. The measure moves to Gov. Arnold Schwarzenegger (R) for review (LOS ANGELES TIMES). • Still in **CALIFORNIA**, the Senate endorses AB 702, which would make it illegal to advertise or conduct a live musical performance using the name of a commercially-recorded band without any of that band's members or the band's permission to do so. It returns to the Assembly (LOS ANGELES TIMES).

CRIME & PUNISHMENT: U.S. Dept. of Justice officials issue a report that says the **NEW JERSEY** State Police have made so much progress in eliminating racial profiling that the agency no longer needs federal supervision. Federal authorities have monitored the Garden State police since 1999. State officials must still formally petition the federal government to lift the oversight decree (NEW YORK TIMES). • **ILLINOIS** Gov. Rod Blagojevich (D) signs legislation that allows the judge or jury to presume that a driver was acting recklessly if they were under the influence or speeding when they struck a construction worker or a child in a safety zone. It goes into effect June 1, 2008 (CHICAGO TRIBUNE). • Still in **ILLINOIS**, Blagojevich signs SB 940, which requires Prairie State hospitals and mental health facilities to report the names of dangerous patients who receive inpatient or outpatient treatment to the State Police. The measure also requires police to submit the names of anyone prohibited from owning a firearm to the FBI's National Instant Criminal Background Check System (JOURNAL-REGISTER [SPRINGFIELD]).

EDUCATION: The **CALIFORNIA** Assembly approves SB 490, which would ban the sale of food containing artificial trans fats on kindergarten through 12th grade school campuses. It moves back to the Senate (LOS ANGELES TIMES).

ENVIRONMENT: A federal appeals court gives the U.S. Navy temporary permission to use high-powered sonar during exercises off the coast of **CALIFORNIA**. Environmental groups sued to block the use of sonar, citing potential damage to marine life. The court will take the issue up again in November (LOS ANGELES TIMES). • The **CALIFORNIA** Senate approves AB 821, a proposal to ban the use of lead ammunition in condor habitats. Seventeen condors, an endangered species, have been found to have lead poisoning and state wildlife officials believe the birds have recently been feeding on the carcasses of animals shot by hunters with lead ammo. It flies back to the Assembly (LOS ANGELES TIMES). • Citing a threat to an endangered fish species, a federal judge orders limits on the amount of water that can

be pumped from Northern to Southern **CALIFORNIA**. Those limits would be put in place from the end of December, when the endangered delta smelt are about to spawn, until June, when young fish can move into areas with better conditions and more food. Environmental groups sought the reduction, claiming the huge pumps used to draw water into the intrastate channel were killing the fish (LOS ANGELES TIMES).

HEALTH & SCIENCE: A joint **KANSAS** House-Senate committee votes not to recommend a statewide smoking ban. Lawmakers said that local governments should have the option to set their own smoking policies (WICHITA EAGLE). • The **MICHIGAN** Senate endorses a proposal that would allow schools and local governments to pool their workers' health coverage and require public employers to competitively solicit bids for health benefits. It moves to the House (DETROIT NEWS). • The **LOUISIANA** Supreme Court rules that lawsuits alleging that Pelican State hospitals lacked adequate evacuation plans during Hurricane Katrina cannot be treated as malpractice cases. The decision means that potentially hundreds of similar lawsuits will not have to go through state medical malpractice review boards before going to trial (TIMES-PICAYUNE [NEW ORLEANS]).

IMMIGRATION: The **CALIFORNIA** Senate approves AB 976, which bars cities and counties from enacting any ordinance that forces a landlord to inquire, compile, report or disclose information about the citizenship or immigration status of a tenant. It returns to the Assembly (LOS ANGELES TIMES).

SOCIAL POLICY: An **IOWA** judge suspends enforcement of his own previous ruling that the Hawkeye State's ban on same-sex marriage is unconstitutional. Opponents of the judge's original ruling have already taken the matter to the state Supreme Court, which is not expected to decide the case until 2009 (DES MOINES REGISTER). • **KANSAS** Gov. Kathleen Sebelius (D) issues an executive order that bars state agencies from discriminating against workers based on their sexual orientation or gender identity. The state already bars discrimination in hiring and employment based on race, ethnicity, gender, national origin and age (LAWRENCE JOURNAL-WORLD).

POTPOURRI: The **CALIFORNIA** Senate endorses AB 105, which prohibits minors under age 14 from using tanning facilities. The measure also requires minors ages 14 to 18 to obtain parental consent before using a tanning facility. The bill now heads back to the Assembly (ORANGE COUNTY REGISTER). • **WEST VIRGINIA** Gov. Joe Manchin (D) signs legislation that allows victims of domestic abuse, sexual assault or stalking to shield their address when registering to vote. The Mountain State becomes the 26th to adopt such a measure as a means of protecting people from stalkers (REGISTER-HERALD [BECKLEY]).

— Compiled by RICH EHISEN

Once around the statehouse lightly

IF GOD BE FOR US...Who can be against us? According to NEW MEXICO Governor and Democratic presidential hopeful Bill Richardson, the answer is any state looking to move its primary before IOWA's. As reported by the *Des Moines Register*, during a campaign stop in the Hawkeye State last week, Richardson told a crowd that Iowa should be the first state to hold a primary "for constitutional reasons, for reasons related to the Lord." He also vowed not to campaign in any locale that dared to defy holy writ by cutting in front of his state. The comment drew snickers from many in the crowd, including one man who said, "I don't know what God had to do with choosing IOWA among other states." Richardson later downplayed the comment to the Associated Press, calling it "an off the cuff remark."

STRANGER THINGS HAVE HAPPENED: Two years after Hurricane Katrina, New Orleans' economy is floundering, 40 percent of the pre-storm population has not returned, entire neighborhoods remain in ruin and crime is rampant. So what's a mayor to do? According to a recent report from the USA Today, if you are New Orleans mayor Ray Nagin, you run for governor! Yes, in spite of a 65 percent disapproval rate in the Big Easy and almost universal condemnation for his handling of Katrina both before and after the storm, the man more famous for making outrageous public statements known as "Naginisms" than for good public policy seriously floated the idea of seeking the governor's office this fall. An apparent lack of support nixed the idea. Hard to imagine that.

IF ONE IS GOOD...then 15 must be better. So goes the thinking in the Slidell, LOUISIANA courthouse, which recently ran afoul of civil libertarians for a painting of Jesus that has been hanging on the wall for more than a decade. In an attempt to make an ACLU lawsuit go away, city officials decided more is less — more paintings equaled less hassle. So, according to the *DALLAS MORNING NEWS*, they added portraits of 15 other "notable lawgivers in history," from Moses to Napoleon Bonaparte, as well as a framed copy of the U.S. Constitution. No go, says the plaintiffs, who say the display still violates the constitutional guarantee of separation of church and state.

CAN'T WE ALL JUST GET ALONG? Which is surely what freshman CALIFORNIA Assemblyman Kevin De Leon must be thinking these days. As noted in the *Capitol Weekly*, De Leon has been trying to broker a peace between agitated Central Valley beekeepers and equally miffed seedless orange growers. According to the orange growers, when bees perform their pollination magic on oranges, said citrus fruit



grows seeds, which kind of ruins the whole “seedless” marketing strategy. Buzz off, say the beekeepers, who contend the seeding is not the work of their bees, but of orange farmers who plant their crops too close to other citrus crops. De Leon is attempting to take the sting out of both camps by introducing the Seedless Mandarin and Honeybee Coexistence Working Group Act, which would set up a government group to mediate the mess. Not sure if it will work, but he at least gets kudos for coming up with one of the longest bill names of the year.

— By *RICH EHISEN*

In case you missed it

Lawmakers consider thousands of bills every year, with only a relative few of those measures destined to become law. With all but a handful of statehouses done for the year, our August 6, 2007 issue took a look at how states handled some of the year’s hottest issues.

In case you missed it, the article can be found on our Web site at http://statenet.com/capitol_journal/08-06-2007/html.

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