NEWS

HILL

[From page 1]

amendment, but he said he hopes that the public will get a chance to vote on it sometime next year.

"We have to start somewhere. … Many of the new legislators that I talked to on both sides of the aisle are just as concerned," said Hill. "We're hoping that they will realize that the public's work needs to be done and that they will see the light."

Tough sell

Assemblyman Ira Ruskin, D-Redwood City, agrees that it will be tough to sell the idea to the Republican legislators, but said that the move is needed to simplify the budget process.

"I'm not sure that the Republicans would want to see a change at this point," Ruskin said. "I think the two-thirds requirement really hurts the people of California."

California lawmakers have failed to agree on a budget on time for 23 of the past 32 years. California is one of only three states to require a two-thirds approval to pass a budget — the other two are Arkansas and Rhode Island — but Ruskin said California is the only state where the two-thirds requirement has created an impasse because the other two states are strongly controlled by one party.

"We're really the only state that has to labor under the necessity of finding a two-thirds majority to pass a budget," Ruskin said. "This is not business as usual in the various states in our union. It's very unusual. It's not a mainstream approach in the American political system."

Long opposed

Republican lawmakers have long opposed such a change, arguing that the two-thirds rule protects taxpayers and keeps the budgeting process bipartisan.

Hill told the Post that the legislation he introduced yesterday, AB 11, which he co-authored with Assemblyman Kevin De Leon, D-Los Angeles, is needed because Treasury Secretary Henry Paulson eliminated taxes on bank mergers. The state stands to lose $300 million in tax revenue from Wells Fargo's acquisition of Wachovia Corp. with the bill, he said.

FISCAL

[From page 1]

reached during a special session last month, which pushed the problem to a new Legislature being sworn in Monday. But there appeared to be little reason to believe that Republican lawmakers would budge.

"If anything, I think our resolve (against raising taxes) is deeper than it has ever been because of the economic realities," Senate Minority Leader Dave Cogdill said Monday.

Democrats don't have the two-thirds majority in either the Assembly or Senate that is required to pass tax increases or a state budget.

During last month's session, Democrats proposed $8.2 billion in spending cuts and $8.2 billion in tax increases. Republicans rejected the proposal and instead sought an economic stimulus program.

Schwarzenegger asked for both, offering essentially the same plan rejected last month.

His proposal includes raising the state sales tax by 1.5 percentage points for three years.

BART

[From page 1]

of voters said they were on track to certify the results by the state-mandated deadline of 5 p.m. today. After certification, any recount would have to be paid for by those who requested it. The partial recount requested in the lawsuit would cost about $400,000, according to an attorney for the county.

Caught by surprise

In a conference held in the judge's chambers before the hearing was set to begin yesterday morning, Santa Clara Superior Court Judge Mary Jo Levinger said the case was filed in the wrong place — catching the plaintiffs' attorney, Marc Hynes, by surprise.

Hynes told the Post that he wasn't aware of a state law that requires lawsuits against the secretary of state to be filed in a county where the state's attorney general has an office. The lawsuit named California Secretary of State Debra Bowen and Santa Clara County Registrar of Voters Jessie Durazo as defendants.

Hynes said that a ruling by a San Francisco judge wouldn't change the ultimate effect of the lawsuit.

If the judge rules in the plaintiff's favor, Santa Clara County won't be able to certify the election today. Instead, the county would have to conduct a manual recount of 10 percent of the ballots cast on Measure B.

Plaintiffs in the suit argue that the state made a mistake in its recount rules, which require a 10 percent manual recount in races where the margin of victory is 0.5 percent or less. For local measures, the margin of victory is defined as the difference between the "yes" and "no" votes. But opponents of Measure B who filed the suit argue the margin of victory should be the difference between the amount needed for passage — in this case 66.667 percent — and the actual vote. Currently, Measure B has a 66.78 percent yes vote — just 0.11 percentage points above the margin needed for passage.

Recount not required

Susan Swain, deputy county counsel for Santa Clara, said that a recount wasn't required by state rules. She said the registrar would simply be following the secretary of state's rules by certifying the election today.

Swain said that if the BART tax opponents wanted the 10 percent recount allowed in state elections code, they should have requested it on Nov. 5, after initial results were reported to the secretary of state.

But the plaintiffs said they would not have sought a recount on Nov. 5, when Measure B was failing.

ELIAS

[From previous page]

and lasts only for a "reasonable" time — generally interpreted as no more than 30 minutes. The decision, written by the late Justice Lewis Powell and joined by Justice John Paul Stevens, one of the leading liberals on today's court, also says car searches "may be made … in the absence of an individualized suspicion that the particular vehicle contains illegal aliens."

The Border Patrol ever since has used that decision in detaining anyone it believes looks even slightly suspicious when driving up to a checkpoint.

"The complaints we are hearing are that the stops are extending longer," says the ACLU's Stanley. "We understand the concern about preventing another 9-11, but there's always a problem that can be solved by giving up some of our rights, isn't there?"

USCBP, however, says nothing has changed except its manpower and abilities.

"Sure, we're able to do more since we have more people," says Ciliberti. "But our methods are no different than before. The Fourth Amendment still applies. We still need to have probable cause to conduct detailed searches of persons or cars, but not for brief traffic stops. It's not like at the border itself, where the Fourth Amendment does not apply as much. At the border and other entry points we are allowed to reasonably check all baggage and persons."

The bottom line: The Border Patrol's increased manpower means almost anyone can be stopped and searched almost anywhere in California. And any agent doing this would most likely be operating entirely within both the law and the patrol's rules.

E-mail Elias at tdelias@aol.com.

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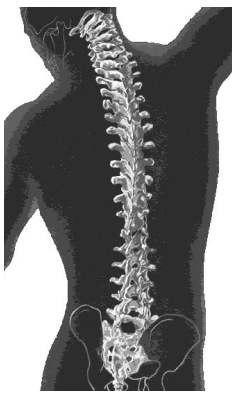

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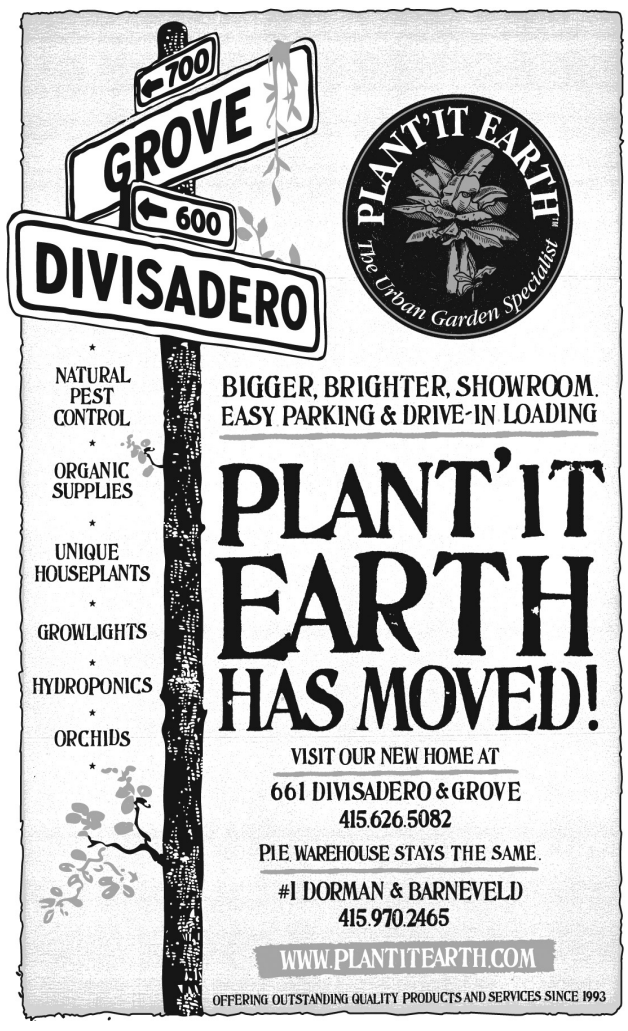

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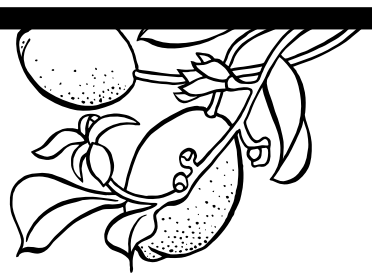

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