



OVERSEER'S UNDERCURRENT: The Curious Transformation of AB 457

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Pity poor Ed Siu, manager of the Union 76 gas station at 15th and X streets in Sacramento. Television news crews showing up in your driveway is not a good sign - especially when the cameras point at the numbers on the board. At best, you might hope that somebody is doing a fluff piece about the "Save the Big Orange Ball" campaign. But when the cameras are accompanied by politicians, you know something is terribly wrong.

In Siu's case, his station became the photo-op backdrop for Attorney General Bill Lockyer and Assembly speaker Fabian Núñez to introduce their new anti-price-gouging legislation, AB 457.

As you may know, the bill would allow state officials to cap gasoline prices - at the refinery and at the pump - for a period of 60 days any time there is an emergency or an "abnormal market disruption."

"We need to make sure that California is not the victim of any type of market manipulation or Enron-type scheme to artificially inflate the price of gas at the pump," Núñez intoned for the cameras. Existing law is inadequate, Lockyer alleged. "The corner gas station is the only price gouger that we can go after."

Bet that made Ed Siu feel real good about his job, especially since he had reduced his prices by a couple of cents per gallon just before all the politicians showed up.

Since it's never a good idea to trust what lawmakers say about their bills, I thought I'd read AB 457 to see what kind of unintended consequences it may have.

Current law provides for enforcement of the anti-gouging statute if sellers attempt to charge a price that's more than 10 percent higher than previously for a wide range of goods and services after a state of emergency is declared by the president, the governor, or just about any local official. These are listed in statute as "consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline or other motor fuels," as well as hotel or motel room rates.

One thing AB 457 does is to refine this list by replacing "gasoline" with the word "fuel." It defines it this way: "Fuel means products normally used for heating or for generating power, and includes but is not limited to gasoline, oil, alternative fuels, natural gas, coal, ethanol, or additives or supplements that are used to improve the performance of, or to assist in meeting federal or state requirements for use of those products." It also specifies that "seller includes retail sellers and suppliers at every level of distribution."

The new version also broadens the application of this 10 percent price cap to "the occurrence of an abnormal market disruption." How is that defined? Well, it isn't. "Abnormal market disruption," states the draft bill, "means a price increase of at least [blank] percent over the price during the previous 60-day period."

Otherwise, the "state of emergency" declaration that underlies these consumer protections doesn't stem merely from earthquake, fire, flood, riot, or storm, but also from "a natural or manmade disaster or emergency . . . occurring outside of California which affects all or part of California and which has been declared an emergency by the Governor."

If that isn't broad enough for you, the law also states, "It is the intent of the Legislature that this section should be liberally construed so its beneficial purposes may be served."

Let's construe this liberally. Any emergency, real or perceived, anywhere in the state, nation, or world that causes prices for any fuels, commodities, or services to rise above an unspecified level would allow the state to enact price controls on any part of the supply chain. Essentially, we have price controls triggered by any price increase that lawmakers decide is too much, for whatever reason. Violations are considered unlawful business practices and unfair competition, and they are punishable by a year in county jail, a fine of \$10,000, or both.

Critics immediately branded AB 457 "a solution looking for a problem." Evidently that applies not only to the intent of the legislation, but also to the bill itself.

You see, AB 457 is not a new bill at all. It is actually one that has been taken hostage, amended, and reprogrammed from its original purpose to suit political interests - several times, in fact, during this legislative session.

When it was initially introduced in February 2005 by Assemblymember Alberto Torrico (D-Fremont), AB 457 had something to do with public pensions and unfunded liabilities. I'm not sure exactly what, because the language was quite vague.

This is how a legislative analyst described the original bill: "The author believes . . . we should adopt common-sense reforms that will protect hard-earned retirement benefits for workers while ensuring that taxpayer dollars are spent as efficiently as possible."

That's a worthy goal, don't you think? Well, somebody in the Senate must have disagreed because, on June 16 last year, the bill was completely amended to revise the Gambling Control Act by permitting "nonprofit organizations to conduct fundraisers using controlled games." However, these nonprofits could hold only two such fund-raisers each year, for no longer than five consecutive hours, and they would be prohibited from giving out cash or noncash prizes worth more than \$500. Also, no less than 90 percent of proceeds from the fund-raisers must go to actual operations of the organization.

Exactly what problem was this trying to solve?

Then, on August 15, AB 457 morphed into an act requiring police investigation of collisions between trains and pedestrians or trains and motor vehicles. More than 130 persons die in train collisions each year, the revised bill stated, and current law does not require an investigation by the California Highway Patrol or local law enforcement unless a crime is suspected.

AB 457 was going to fix that problem, somehow; but then something else more important came up: gas-price gouging.

Here's the latest. According to the Legislature's bill info pages, AB 457 has been withdrawn from the Senate transportation and housing committee and "referred to the Com. on RLS."

I didn't know what RLS means, so I looked it up on Google. Apparently, it means Restless Legislation Syndrome. It's a dread disease, marked by uncontrollable urges to fix problems that don't exist, curable only by a veto.

Perhaps AB 457 will be amended again before it gets cured by the governor: "An act requiring that in the event of a collision between a train and a nonprofit organization, public pensions may gamble no more than 10 percent of their hard-earned retirement benefits on consumer food items, emergency supplies, fuel, or motel rooms. The California Highway Patrol is authorized to investigate in the event of abnormal market disruptions, Enron-type manipulations, or noncash prizes valued at more than \$500. Common-sense reforms are punishable by fines, imprisonment, or both."

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