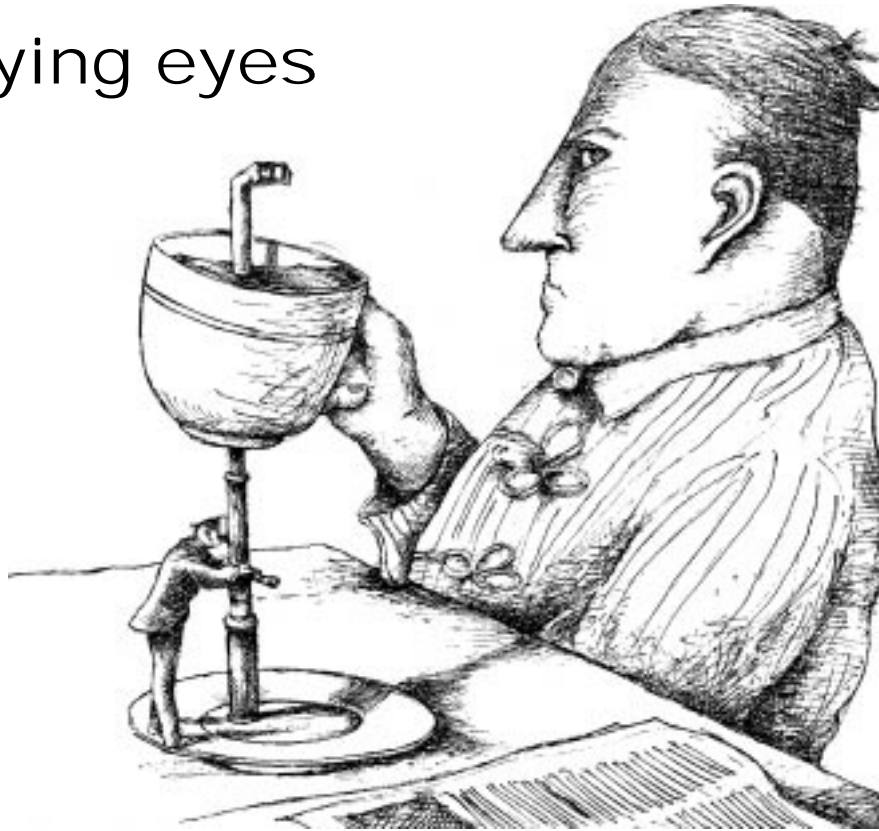


July 4, 2005

Prying eyes



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Top Story

Radio Frequency Identification (RFID) offers retailers the advantage of knowing everything there is to know about items bearing an RFID tag, from origin to purchaser. Which is exactly why some people hate them so much.

SNCJ Spotlight

RFID: Big Brother in your pants?

Whether the government should allow your underwear to spy on you may sound like a question for the tinfoil hat brigade. But today, state lawmakers, Congress, civil libertarians and big businesses alike are asking that very question. Most aren't wearing tinfoil hats.

The technology prompting these questions is Radio Frequency Identification tags, or RFID. These tags are a small (usually four inches square, but some as small as a grain of rice) collection of wires and a memory chip

that allows the chip wearer to be tracked wirelessly from a range of three inches to 33 feet, depending on the manufacturer. (Active tags with their own power supply have a much longer range.)

They can be affixed, sewn or otherwise incorporated into almost any product on the planet. They are cheap, with prices as low as 20 cents and dropping. The industry's goal is to get the cost below five cents a tag.

If you need to track anything, RFID tags are a boon. You aim a handheld reader that sends out a signal. Any tag that receives the signal gets enough power from it to send a reply containing the data that is encoded on the chip.

What is encoded on the chip depends on the application. It could be everything you want to know about the history of a case of Coke, key elements of your medical history or the total chain of ownership of a cow from conception to slaughter.

Retailers and clients can use the tags to keep hyper-accurate track of items in the supply chain. In an era of "just-in-time" inventory, this allows for a streamlined supply pipeline, greatly reducing costs.

Sounds great. So what's the problem? To see the potentially nightmarish future, rent *Minority Report*. Tom Cruise is on the run with a false identity. He walks into a Gap store and the holographic salesgirl says happily "Good afternoon, Mr. Yakamoto, How did you like that three-pack of tank tops you bought last time you were in?"

"There's not much of a concern about your Campbell's soup can, but there's probably a very big concern about your Calvin Klein sweatshirt or Benetton underwear," says Katherine Albrecht, Founder and Director of Consumers Against Supermarket Privacy Invasion and Numbering (CASPIAN). "RFID can be read remotely right through the things we rely on to protect our privacy like our backpack, briefcase or clothes. Reading devices in floors, carpeting, doorways give you a hidden frisk down to the size and color of underwear."

"On a pair of shoes, each shoe could carry a RFID tag (with a unique number) sandwiched in the sole. Retailers can already discern information about my shoe size, my activities, my taste, but it doesn't tell them where I go. If

The Week in Session

States in Regular Session: CA, DC, MA, NC, NJ, OR, PA, US, WI

States in Special Session: CA "a", OK "a"

States in Recess: IL, MI, NH, NY, OH

States Projected to Adjourn: RI

States in Special Session Projected to Adjourn: KS "a", MN "a", MS "c", TX "a"

States Adjourned in 2005: AK, AL, AR, AZ, CO, CT, DE, FL, GA, HI, IA, ID, IN, KS, KY, LA, MD, ME, MN, MO, MS, MT, ND, NE, NM, NV, OK, SC, SD, TN, TX, UT, VA, VT, WA, WV, WY

States in Special Session Adjourned in 2005: AK "a", CT "a", ME "a", MS "a", MS "b", NV "a", UT "a", VT "a", WI "a", WV "a", WV "b", WV "c"

Letters indicate special/extraordinary sessions

Source: State Net, 7/1/05

you're able to capture that number at the point of sale and link it with Katherine Albrecht, at any time in the future anywhere in the planet [if I was near a scanner], you'd see the unique number and know that I just walked past."

A lot of those in the \$2 billion RFID industry don't see a problem.

"The marketing scenario is completely absurd. Nike is the only one who knows who you are and they're not going to tell anybody," says Mark Roberti, founder and editor of RFID Journal, an online publication that strongly advocates for RFID's many business uses. "The idea that they would sell or share that information is an extremely unlikely scenario. It is ludicrous. The problem with most of the people on the privacy side of the argument is that a lot of their arguments defy business logic."

Of course, some might take issue with any company having their personal information, regardless of the company's willingness to share it with others. But Roberti doesn't think that infrastructure is set up to have

salespeople act on a customer's history. And if a company automated its stores à la Minority Report, he believes there would be a consumer backlash.

Roberti does concede that critics have some valid fears when it comes to RFID being placed in driver's licenses. "The Privacy Rights Clearinghouse makes a good point when they say that even an encrypted RFID tag broadcasts a unique number. Let's say I go to a political rally protesting against the government and

Bird's eye view



States still thin on obesity legislation

According to the North American Association for the Study of Obesity, childhood obesity has doubled in the United States over the last three decades. The result has been a similar rise among adolescents in weight-related illnesses like Type 2 diabetes and hypertension. State lawmakers have considered many remedies for this problem, most notably limiting the sale of junk food in schools. But according to a recent report from the University of Baltimore, states have not done nearly enough. That study gives each state a letter grade based on its efforts to pass legislation addressing eight specific obesity control measures, from limiting school junk food to expanding health insurance to cover obesity treatment. Only CALIFORNIA received an "A" grade for its efforts, while six states received an "F" grade. The accompanying map shows the grade for each state. The full report can be viewed at <http://www.ubalt.edu/experts/obesity/>.



some agent scans the RFID tag in my license,” says Roberti. “Now I go to the airport and I present my driver’s license to get on the plane. Now you say this number belongs to Mark Roberti and we saw the same number at the rally, therefore Mark Roberti opposes the government [and they don’t let me on the plane].”

“That’s a legitimate concern,” says Roberti. “Some people both right and left wing don’t trust the government and think that’s a bad idea.”

Roberti, however, doesn’t believe the time is right for legislation. “We’re talking about passing a law based on a fantastical scenario dreamt up by people who are concerned about this,” he says. “If there is a problem, passing a law makes sense, but if there isn’t, why pass a law?”

When the State Department announced that they wanted to put RFID tags in passports, it became easy to envision a terrorist with a handheld scanner gunning for Americans and snatching or killing any he found.

“The State Department received more comments on this issue than any other in Department history. All but a couple were negative. People don’t want this,” says Bill Scannell, privacy consultant, activist and founder of RFIDkills.com, a decidedly anti-RFID Web site.

Then the concept evolved. Fearing wholesale wireless ransacking of Americans’ passports abroad, the State Department revised the proposed design to include metal threads woven into the passport cover that would act like a “Faraday Cage” blocking signals from leaking out unless it was opened. When people still objected, the proposal said that all the data would be encrypted and range would be limited to four inches.

The Bush administration’s RealID program will mandate standards for state issued identification cards such as driver’s licenses by 2008. Part of the provision is that RealIDs must have some form of contactless interface.

The smart money is betting on RFID because optical barcodes can’t hold as much data. RFID cards could hold photos, biometric information and more.

But the public is leery of wireless tracking, regardless of format. In February, for instance, elementary school officials in Sutter, CALIFORNIA issued RFID cards to automatically take attendance and otherwise track students on campus.irate parents and the ACLU immediately complained, citing privacy issues, leading to the system’s removal. This and similar incidents have prompted some groups to lobby for RFID legislation.

Lawmakers are getting in on the act, too. Nationally, the highest profile bill is California’s SB 682, which passed through the Senate with bipartisan support. The measure would ban state and local governments from including RFID (or other contactless) tags in state-issued documents such as licenses, student or library cards, etc. The government can issue RFID cards if the cards don’t broadcast data

(like the cardholder’s name, address etc.). Instead, they would broadcast a unique encrypted identifier number that can only be read by an authorized machine. The bill would also make it “a serious misdemeanor” for a person to read or attempt to read an identification document without the owner’s knowledge.

Senate Bill 682 echoes proposals found in other states — RHODE ISLAND (HB 5929) and TEXAS (HB 2953) — that would restrict the use of RFID to track students in public schools. Similarly restrictive bills have failed in SOUTH DAKOTA (HB 1114 & 1136), as did a NEW MEXICO bill (HB 215) that called for the removal of RFID tags at the point of purchase. A MARYLAND bill (HB 354) seeking an RFID taskforce was also voted down, as were bills in three states — MONTANA (SB 429), NEVADA (AB 264) and MISSOURI (SB 128) — seeking to force retailers to post signs informing customers about the use of RFID tags have failed.

Four more states are still wrestling with RFID notification bills: NEW HAMPSHIRE (LSR 64), TENNESSEE (HB 300 and SB 699), MASSACHUSETTS (SB 1459) and NEVADA (AB 264). So far, however, RFID supporters there have managed to stave off regulation.

“In the early phases they didn’t go through because lobbyists told lawmakers that it was too early to legislate,” says Albrecht. “After they had managed to get a couple of states to reject them on those grounds, then they were able to tell the subsequent states, ‘oh you don’t want to legislate that, it’s already been rejected by other states so you don’t want to change the trend here.’”

But, Albrecht warns, the political environment surrounding the issue may be about to change.

“Labeling is an absolute minimum. If the industry continues to resist labeling legislation, they’re probably going to get something much worse from their perspective,” she warns. “Maybe outright bans on certain applications of RFID.”

Industry officials say that the new Electronic Product Code RFID specification will allow consumers to kill the tag at the point of sale.

Albrecht believes that the “kill” code only makes the RFID dormant and another signal could reactivate it.

“The only option for deactivating your underwear is microwaving it,” warns Albrecht. “But there’s a good chance it would burst into flames.”

— DON LIPPER

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Budget & taxes

STATES EMPLOYING QUESTIONABLE MEDICAID TACTICS: The growing practice among states of using consultants to help them maximize their federal Medicaid reimbursements is driving up the cost of the program, according to a report from the Government Accountability Office, the investigative arm of Congress. GAO investigators said consultants, which roughly two-thirds of the states now utilize, often employ “questionable billing practices” to obtain more federal Medicaid dollars, and are actually encouraged to do so by the contingency fee system under which they are increasingly being paid. According to Kathryn G. Allen, director of health care issues for the agency, “As of 2004, 34 states — up from 10 states in 2002 — used contingency-fee consultants” to boost their Medicaid reimbursements. William C. Copeland, a consultant for the state of GEORGIA, said the reason states hire Medicaid consultants is because “the program is large, complex and incoherent, and most states cannot afford to hire all the full-time experts they need to unravel the complexities.” But another reason is clearly the size of the return states receive on their investment. For instance, in exchange for the \$82 million it paid in consultant contingency fees, Georgia obtained an additional \$1.5 billion in federal Medicaid reimbursements between 2000 and 2004. Allen said the federal government bears some of the responsibility for the growing trend. “A lack of oversight and clear guidance from the Centers for Medicare and Medicaid Services has allowed states to develop new financing methods that generate additional federal costs,” she said. The GAO also said that the federal government’s practice of negotiating with individual states has led to wide variations in policy from state to state, rather than clear uniform national standards. The comments of U.S. Sen. Charles E. Grassley (R-IOWA), the chairman of the Finance Committee who requested the GAO study, suggest that things might soon change. Congress and federal Medicaid officials have “an obligation to establish clear-cut ground rules and make sure they’re followed,” he said. (NEW YORK TIMES)

BUDGETS IN BRIEF: The PENNSYLVANIA Supreme Court upheld the state’s new slot machine law, Act 71, last week. Gambling opponents had challenged the statute, which allows up to 61,000 slot machines at 14 casinos around the state, mainly on the grounds that it violated the state Constitution’s single subject requirement. The court ruled, however, that the act’s various provisions were unified by a single subject: “the regulation of gambling” (PITTSBURGH



POST-GAZETTE). • **MISSISSIPPI** lawmakers convened in special session last Tuesday to consider Gov. Haley Barbour’s (R) economic development package, Momentum Mississippi, which did not come up for a vote in the House during the regular session. In a press conference held the day before the session began, Barbour said he expects it to be successful, by which he meant it would “accomplish the ends and do it in a brief time” (ASSOCIATED PRESS, COMMERCIAL APPEAL [MEMPHIS]). • **SOUTH CAROLINA**’s largest religious group — the Southern Baptists — have volunteered to help police track down illegal gambling machines in the state. The group will post pictures of illegal machines on its Web site and encourage its 725,000 members and 2,000 churches to report any of the machines they find to a central office in Columbia (ASSOCIATED PRESS, POST AND COURIER [CHARLESTON]). • State tax officials in **SOUTH DAKOTA** have initiated a crackdown on Coyote State churches for failing to pay use taxes on candles, Bibles, song books and other liturgical items purchased out of state. The Department of Revenue and Regulation says it is merely enforcing a law that has been on the books since 1939 (ARGUS LEADER [SIOUX FALLS]). • A federal court hearing began last week in **TENNESSEE** that could determine whether 97,000 of the sickest enrollees in TennCare will be allowed to remain in the program. Gov. Phil Bredesen (D) has proposed limiting benefits for a larger number of enrollees, in exchange for reducing the number that would be completely cut from the program from 323,000 to 226,000 (TENNESSEAN [NASHVILLE]).

Upcoming Elections
 (06/29/2005 - 07/20/2005)

07/09/2005
 Louisiana Special General
 Senate 006

07/19/2005
 Alabama Special Election
 House 072

07/19/2005
 Pennsylvania Special Election
 House 131

— *Compiled by KOREY CLARK*

Politics & Leadership

SPLIT DECISION ON TEN COMMANDMENTS: The U.S. Supreme Court last week handed down decisions in two separate cases regarding the display of the Ten Commandments in government buildings. One of the cases came from KENTUCKY, where two county courthouses had prominently displayed copies of the Ten Commandments, spurring a lawsuit by the American Civil Liberties Union. The other involved a 6-foot granite monument on the grounds of the TEXAS state Capitol building. In the Kentucky case, the jus-

ing, “Nothing’s going to pass until a constitutional amendment does.” What has Republicans so fired up is not only their feeling that the Supreme Court has overstepped its constitutional bounds in ordering the Legislature to appropriate more money for education, but that the court is a threat to all of the progress the GOP has made in lowering taxes and cutting spending in the Sunflower State over the last decade. “It’s as if elections didn’t happen for the past 10 years,” said Sen. Tim Huelskamp (R). “People who want high taxes and unlimited spending lost nearly every election, and now the courts are stepping in.” Viewing their position from that perspective, conservative holdouts aren’t likely to give in, despite a revised government economic forecast indicating that the state will have enough money to meet the court order without having to raise taxes or take some other action that would be particularly unpalatable to them. (ASSOCIATED PRESS, KANSAS CITY STAR, LAWRENCE JOURNAL WORLD)

SINE DIE: At a press conference following the conclusion of his state’s 2005 legislative session, **ALASKA** Gov. Frank Murkowski (R) said he thought the session was a success, and he praised lawmakers for what he considered to be some of their top achievements: increasing funding for education, changing the state’s retirement system to create 401(k)-style investment accounts for new employees, and drawing on the revenue windfall that resulted from elevated oil prices last year to provide money for capital construction projects. Some of the lawmakers, themselves, however, didn’t view the year in quite the same light. On top of their gripe that the session drug on two weeks longer than scheduled, they complained that too much of the state’s oil windfall was already spent; that changes to the retirement system don’t do anything to diminish the state’s current \$5.7 billion in unfunded liability; and that despite the resignation of the state’s attorney general earlier this year over alleged ethics violations, they didn’t manage to pass ethics reforms (ANCHORAGE DAILY NEWS). • **CONNECTICUT** lawmakers started off the 2005 session strong, with the passage of ethics reforms in the wake of former Gov. John Rowland’s ethics scandal. And the General Assembly hit a couple of other high notes as the session progressed, becoming the first legislative body in the nation to allow civil unions for same sex couples and the third to provide funding for stem cell research. But despite those accomplishments, the state’s new governor, M. Jodi Rell (R), was irate that lawmakers, despite substantial bipartisan support, failed to pass both her transportation improvement initiative and the campaign finance reforms that everyone agreed were critical to curb the abuses that characterized the Rowland years (HARTFORD-WTNH, FAIRFIELD COUNTY WEEKLY). • Despite its closely-divided legislature (a narrow 51-49 Republican majority in the House and an even 25-25 split in the Senate), **IOWA**

managed to get some significant things done this year. Lawmakers provided increased funding for education, from preschools to community colleges; new restrictions on the sale and use of methamphetamine; and the toughest sex offender law in the country, described by Gov. Tom Vilsack (D) as “Two strikes and you’re in for life.” In addition, the Legislature passed Medicaid reform legislation that could serve as a model for other states, and strengthened Vilsack’s economic development program for state-based businesses, the Iowa Values Fund (GLOBE GAZETTE [MASON CITY], RADIO IOWA).

• **LOUISIANA’S** 2005 legislative session, which ended June 23, was a rough one for Gov. Kathleen Blanco (D). Although the governor succeeded in obtaining passage of a tax on private and community hospitals to fund care for the poor and uninsured, and to bolster the state’s Medicaid program, the session was dominated by the battle over Blanco’s proposed \$1-per-pack tax increase on cigarettes to pay for teacher raises, which ultimately went down to defeat. And that failure came after resistance to other tax hikes the governor had proposed — on alcohol and video poker — forced her to abandon them in favor of the cigarette tax alone. On top of that, after higher oil prices produced a revised state economic forecast that projected the state would take in an additional \$360 million in the current and upcoming fiscal years, lawmakers reversed some of Blanco’s economic reforms, including major cuts to grant funds she’d derided as “slush funds.” Some observers said the governor’s difficulties this year were the result of a concerted effort on the part of the Republican minorities in both houses to oppose her agenda, which they called a first for a Capitol where personal and regional alliances have traditionally mattered more than party affiliation. “It’s the first time that I can remember that normal, two-party partisan politics had emerged so clearly in this Legislature,” said Louisiana State University political science professor Wayne Parent. Whether the partisanship will continue next session — and 2005 comes to be known as the year partisan politics came to the Pelican State — won’t be known until next year. But with about two-thirds of the Legislature up for re-election in 2007, due to term limits, the chances are pretty good (ASSOCIATED PRESS, TUSCALOOSA NEWS, TIMES-PICAYUNE (NEW ORLEANS)).

Upcoming Stories

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

Medical marijuana - where to from here?

Eminent Domain - What will states do now?

Tracking the progress of the year’s biggest legislative issues

And many more...

— *Compiled by KOREY CLARK*

absence of the governor, Napolitano contends that since modern technology allows her to stay in constant contact with state officials, being out of the country does not necessarily constitute “absence” (ARIZONA DAILY STAR [TUCSON]).

- A new Quinnipiac University poll indicates that 58 percent of participants believe **FLORIDA** Gov. Jeb Bush’s (R) involvement in the Terry Schiavo case was more about politics than sincere conviction. That same poll also showed that while 49 percent approve of Bush’s job performance, 70 percent say he should not run for president in 2008 (ST. PETERSBURG TIMES).
- **CONNECTICUT** Gov. M. Jodi Rell (R) vetoed a bill that would have required the executive branch of the Constitution State government to issue a written impact statement to the legislature before it could lay off state employees if those layoffs would affect more than 5 percent of an agency’s staff. Rell called the measure “too far reaching” (HARTFORD COURANT).
- **MASSACHUSETTS** Gov. Mitt Romney (R) proposed requiring all Bay State residents to have some form of health insurance or agree to pay their medical bills out of their own pockets. Uninsured people would face tax penalties and garnishment of their wages for unpaid medical bills (BOSTON GLOBE).

— *Compiled by RICH EHISEN*

Hot issues

B **USINESS:** The U.S. Supreme Court rules that local governments can use the power of eminent domain to legally seize homes and businesses against the will of the owners for the sake of private development. The ruling upholds an earlier **CONNECTICUT** Supreme Court ruling that will allow a Fort Trumbull neighborhood to be seized in order to make way for a private office complex and deluxe condominiums (ASSOCIATED PRESS).

- **RHODE ISLAND** Gov. Don Carcieri (R) vetoes legislation that would have eventually raised the Ocean State’s minimum wage from \$6.75 to \$7.40 per hour (PROVIDENCE JOURNAL).
- The **OREGON** Senate endorses a proposal to require all cigarettes sold in the Beaver State to be “fire-safe,” meaning they will self-extinguish if not being smoked. It now moves to the House (GAZETTE-TIMES [CORVALLIS]).
- A **CALIFORNIA** Assembly committee kills SB 852, a measure that would have extended a Golden State statute that requires companies to inform customers of any personal electronic data breaches to also cover paper records and data tapes (SACRAMENTO BEE).
- **FLORIDA** Gov. Jeb Bush (R) vetoes SB 1146, which would have required an independent commission to approve any government contract worth more than \$1 million if the services the private vendor provides are to be outsourced (ST. PETERSBURG TIMES).



CRIME & PUNISHMENT: The **CALIFORNIA** Supreme Court rules that current Golden State sentencing guidelines do not grant lower court judges too much power over the defendant or the jury. The ruling rebukes a challenge that could have forced the resentencing of thousands of prisoners (LOS ANGELES TIMES). • The **OREGON** House endorses a measure that would mandate the posting of the names and pictures of dangerous sex offenders on a state-run Web site. The proposal goes to the Senate (GAZETTE-TIMES [CORVALLIS]). • A **NEW JERSEY** Assembly committee approves a bill that would require the most dangerous sex offenders to wear a satellite-monitored electronic ankle bracelet 24 hours a day. It moves to the full Assembly (TRENTON TIMES). • **TEXAS** Gov. Rick Perry (R) signs SB 60, which creates the sentence of life without parole for capital crimes committed in the Lone Star State (AUSTIN AMERICAN-STATESMAN).

EDUCATION: Several major national magazines, including *Time*, *Newsweek*, *People* and *Sports Illustrated*, agree to eliminate tobacco ads in their school library editions nationwide. Tobacco ads are already banned in classroom editions (VIRGINIAN-PILOT [NORFOLK]). • **TENNESSEE** Gov. Phil Bredesen (D) signs legislation that requires all Volunteer State schools to develop anti-bullying policies by Jan 1 2006. The policy must address bullying both on school grounds and at bus stops or other school events (COMMERCIAL APPEAL [MEMPHIS]). • **OREGON** Gov. Ted Kulongoski (D) signs SB 755, which requires school districts to make public the disciplinary records of employees convicted of sexually abusing students (STATESMAN JOURNAL [SALEM]).

ENVIRONMENT: A federal appeals court upholds a district court ruling that bans the use of pesticides near streams in **WASHINGTON, OREGON** and **CALIFORNIA**. The lower court ruled in 2004 that no-spray buffer zones be established near rivers that hold endangered salmon, but the federal Environmental Protection Agency challenged that ruling. The EPA has not said if it will pursue the

In the Hopper

State Net's database tracks tens of thousands of bills in all 50 states at any given time. Here's a snapshot of what's in the legislative works:

Number of 2005 prefiles last week: 223

Number of 2005 Intros last week: 1,090

Number of bills enacted/adopted last week: 734

Number of 2005 prefiles to date: 33,358

Number of 2005 Intros to date: 152,408

Number of enacted/adopted overall in 2005: 32,297

— Compiled By JAMES ROSS
(Measures current as of 6/30/05)
Source: State Net



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