CALIFORNIA SPECIAL DISTRICTS ASSOCIATION PRIORITIES

TAKE ACTION BRIEF

August 2020

On July 27th, the State Legislature resumed after a three-week recess due to a COVID-19 outbreak at the Capitol. This second legislative shut-down has further truncated the period for bills to be considered, spawning a flood of new "gut-and-amends" with a very short opportunity for negotiating substantive amendments. CSDA has been diligently monitoring the any legislation that could impact special districts, including CEQA reform and a multitude of human resources and personnel issues surrounding COVID-19. Perhaps most significantly, national coalition efforts led by CSDA have resulted in the introduction of special districts' federal COVID-19 relief legislation, S. 4308, in the United States Senate. This is a companion bill to HR 7073 previously introduced in the House of Representatives.

Inside this edition of the Take Action Brief:

Contact a local CSDA representative near you!

Chris Norden	Northern Network	chrisn@csda.net
Dane Wadlé	Sierra Network	danew@csda.net
Colleen Haley	Bay Area Network	colleenh@csda.net
Cole Karr	Central Network	colek@csda.net
Charlotte Holifield	Coastal Network	charlotteh@csda.net
Chris Palmer	Southern Network	chrisp@csda.net

➢ REVENUE, FINANCES, AND TAXATION

CSDA's long range policy priority on revenue, finances, and taxation is to ensure adequate funding for special districts' safe and reliable core local service delivery. Protect special districts' resources from the shift or diversion of revenues without the consent of the affected districts. Promote the financial independence of special districts and afford them access to revenue opportunities equal to that of other types of local agencies.

Special Districts' Federal COVID-19 Relief Efforts Gain Bicameral Momentum

Special districts' federal COVID-19 relief legislation pushed by CSDA has found a place in the U.S. Senate. On July 23, Senator Kyrsten Sinema (D-Ariz.) and Senator John Cornyn (R-Texas) introduced **S. 4308, the Special Districts Provide Essential Services Act**.

The bipartisan bill is a Senate companion to **H.R. 7073.** The deal was reached after weeks of discussions and negotiations between CSDA, the National Special Districts Coalition and the senators' offices. Since the bill's introduction, Senator Dianne Feinstein and Senator Martha McSally (R-Ariz.) have co-sponsored the legislation. Senator Kamala Harris is an original cosponsor of S. 4308.

"As the COVID-19 pandemic continues to affect communities in California and across the nation, we must ensure that special districts, which can provide critical services such as firefighting, energy and water, healthcare, transportation, and recreation, have access to coronavirus relief funding," Senator Harris said in a **joint press release** with Senators Sinema and Cornyn. "I'm proud to join my colleagues in introducing the Special Districts Provide Essential Services Act—our bill will give special districts the federal assistance they need to provide critical services to their communities during this uncertain time."

The bill uses text of H.R. 7073, but adds greater flexibility for states with less reliance on special districts within their communities and offers states guidance on how to distribute Coronavirus Relief Fund appropriations. Overall, the bill would:

- Require states to distribute five percent of future Coronavirus Relief Fund allocations to special districts within 60 days of receiving funds from the U.S. Treasury. Special districts applying for funding would submit information to their state demonstrating the degree to which they have experienced or anticipate they will experience COVID-19-related revenue loss, grant/inter-governmental revenue loss, or increased COVID-19-releated expenditures.
- Provide flexibility for states with excess funds reserved for special districts that make a good faith effort to distribute funds to districts within the state.
- Direct the U.S. Department of Treasury to consider special districts as eligible issuers to take advantage of the Municipal Liquidity Facility, as established in the **CARES Act**, for access to capital during the current financial downturn.

Download a Sample Letter to Send to Federal Representatives for S.4308

CSDA Advocacy resources regarding COVID-19 are found on our Take Action page devoted to topic to help districts stay up to date. For questions or concerns on Federal COVID-19 advocacy, contact Cole Karr at colek@csda.net.

➢ GOVERNANCE AND ACCOUNTABILITY

CSDA's long range policy priority on governance and accountability is to enhance special districts' ability to govern as independent, local government bodies in an open and accessible manner. Encourage best practices that avoid burdensome, costly, redundant, or one-size-fits all approaches. Protect meaningful public participation in local agency formations, dissolutions, and reorganizations, and ensure local services meet the unique needs, priorities, and preference of each community

CSDA Requests Emergency Waiver for Park Districts' Childcare Programs

Recreation and Park districts are seeking a statewide temporary waiver for public entities that already provide youth programing in an effort to support their communities and working parents as schools move to distance learning. There is a need in many communities to offer more youth programs beyond the current hours of operation to support working families whose situations are not compatible with distance learning.

Recreation and parks districts often work with local school and community partners to off youth day and after school programs, however, their ability to fully serve the needs of our communities and working parents is severely limited by the restrictions on the hours of operation of our public recreation programs.

CSDA and its local government partners representing recreation and parks districts and departments throughout the state have requested that the Department of Social Services use their emergency authority under the Governor's March 4, 2020 proclamation to temporarily suspend the limitation on recreation and park programs to only operate outside of traditional school hours, and the limitations on total hours per week and the programs length.

By providing a broad, statewide temporary waiver for public entities that are already provide programming and facilities and informing all recreation and parks service providers of such a waiver, recreation and park districts can expand their programming to meet the moment during this crisis and support essential workers throughout the state.

Share your experience with child supervision and recreation programs

Please email anthonyt@csda.net your input and questions regarding your district's work with schools and regional offices of the Department of Social Services.

AB 992: Board Members, Social Media, and the Brown Act

Assembly Bill 992 by Assembly Member Mullin (D-South San Francisco) related to local government social media usage has continued to move through the Legislature while most other governance related bills have been held for the year. AB 992 would allow a majority of a local agency's legislative body members to participate in social media platforms, like Facebook, so long as governing members do not partake in discussion amongst themselves or reply directly to each other regarding business within their jurisdiction. Essentially, it would ensure that if one district board member posted something on Facebook and the other district board members "liked" the post, those actions wouldn't be a violation of the Brown Act.

CSDA is supporting AB 992 along with the League of California Cities and the California State Association of Counties. The bill will be heard next by the full State Senate, then it will go back the Assembly for a concurrence vote regarding Senate amendments before heading to the Governor's desk for his signature into law. For any questions about this bill, please contact CSDA's Senior legislative Representative, Dillon Gibbons, at Dillong@csda.net.

➢ INFRASTRUCTURE, INNOVATION, AND INVESTMENT

CSDA's long range policy principal regarding infrastructure, innovation, and investment is to encourage prudent planning for investment and maintenance of innovative long-term infrastructure. CSDA supports the development of fiscal tools and incentives to assist special districts in their efforts to meet California's changing demands, ensuring the efficient and effective delivery of core local services.

CSDA Concerns Removed from Potentially Onerous CEQA Legislation

July brought flurry of substantial amendments to bills, even as the Legislature's Summer Recess fluctuated in duration due to the pandemic. Many of the most significant legislative actions took place in the form of "gut- and-amends" whereby an existing bill's text is completely replaced by an entirely new proposal. Moreover, many of these changes were then post-dated to July 27. This abridged process limited the opportunity for the public to obtain language for amendments before policy hearings. Among these bills, significant CEQA reform efforts re-emerged.

CEQA Judicial and Administrative Process: SB 950 (Jackson) and SB 55 (Jackson)
SB 950 (Jackson) would have made significant amendments to the judicial and administrative processes and placed additional cost burdens on special districts and other local agencies. CSDA and local government stakeholders worked extensively with the author's office to address these concerns and ultimately the bill failed in its policy committee just weeks before the July recess. However, this effort was reborn as SB 55 (Jackson) over the break.

While some of the more onerous provisions of SB 950 were excluded from the SB 55 gut-and-amend, such as mandatory translation of CEQA documents, the bill continued to include provisions that would have placed undue burden on special districts with CEQA exposure, including:

- Export of a CEQA case in a small county to another county
- Diminishing local control and oversight over issues of significant local importance
- Expansion of the list of disclosable records to internal staff/consultant/agency emails

CSDA was able to work with the author's staff, along with local government counterparts, and obtain agreement to adopt our proposed amendments to remove our concerns, should the bill move and have the opportunity for amendment. Due to the nature of this year's session, the amendments would have needed to occur in policy committee and, while the new language was in circulation internally, the language never made it to print publicly. SB 55 is not yet scheduled for hearing and may not move forward given the current restrictions on bill count and internal strife between houses as they barter for hearings.

CEQA Administrative Record and Judicial Process: AB 3279 (Freidman)
This measure included provisions that would have required lead agencies to concurrently prepare the administrative record, working on the assumption that litigation would be advanced, which would have been costly and burdensome to local agencies. It additionally included provisions pertaining to interlocutory remand orders, which is a judicial process that intervenes between the beginning and the end of a proceeding to decide a particular point or matter that is not the final issue of the lawsuit and are only occasionally used by courts in CEQA matters. Through the extended break, CSDA and its coalition partners were able to successfully negotiate amendments from the author's office to remove both provisions. This bill is also not scheduled for hearing at this time and is not likely to move forward.

CSDA will continue to remain vigilant on these and other issues as the final weeks of session produce last minute gut and amendments. For questions or to provide CSDA input on these measures please contact Legislative Representative Alyssa Silhi at alyssas@csda.net.

➢ HUMAN RESOURCES AND PERSONNEL

CSDA's long range policy priority on human resources and personnel is to promote policies related to hiring, management, and benefits and retirement that afford flexibility, contain costs, and enhance the ability to recruit and retain highly qualified, career-minded employees to public service. As public agency employers, support policies that foster productive relationships between management and employees, both represented and non-represented.

Spate of Human Resources and Personnel Bills Set for August Hearings

Over the next month, the California State Legislature will hear a number of bills that could make significant and lasting changes to employment law. Each of the bills are tied in some way to the COVID-19 virus, though some are more loosely tied than others. Below are a few of the bills that will cover public agencies as well as private employers:

SB 1159 (Hill) – Workers Compensation – Oppose
This is a workers' compensation presumption bill related to COVID-19 split into three parts.

Part 1 - Codifies the policy contained in Executive Order N-62-20, which was issued by Governor Newsom on May 6, 2020. This Executive Order and this section of the bill are only effective from March 19, 2020 through July 5, 2020 and creates a rebuttable presumption that employees that worked outside their homes at the direction of their employers that are diagnosed with COVID-19 got sick from their employment and are eligible for workers' compensation.

Part 2 - Establishes a rebuttable presumption for COVID-19 for some classifications of police, fire, and care workers. The presumption maintains many of the provisions that were included in the executive order, including a 30-day decision-making window, a requirement to test positive, and more. Part 2 is effective July 6, 2020 and sunsets on July 1, 2024.

Part 3 - Creates a rebuttable presumption for COVID-19 for all employees and places of employment that are not covered by Part 1 or Part 2 of the bill. The presumption would not always be applicable. Instead, the law would trigger a presumption when there is a cluster of positive tests at any "specific place of employment". The size of the cluster needed to trigger the presumption is different based on the size of the specific place of employment. For employers with fewer than five employees no presumption is applicable. For employers with 6-100 employees a presumption is triggered when five employees test positive for COVID-19 at the specific place of employment within any 14-day period. For employers with over 100 employees the presumption is triggered when five percent of the employees test positive for COVID-19 at the specific place of employment within any 14-day period. Part 3 would also be effective July 6, 2020 through July 1, 2024.

AB 685 (Reyes) – Illness Reporting Requirements – Oppose
The bill would require employers to take all of the following actions within 24 hours after the employer knew or reasonably should have known of COVID-19 exposure to the employee (including police, fire and healthcare districts):

1. Provide a notice to all employees at the worksite where the exposure occurred that they may have been exposed to COVID-19. This notification shall be, at a minimum, in writing in both English and the language understood by the majority of the employees. Employers shall also make every reasonable effort necessary to notify workers verbally.
2. Notify the exclusive representative, if any. This notification shall be, at a minimum, in writing in both English and the language understood by the majority of the employees. Employers shall also make every reasonable effort necessary to notify the exclusive representative verbally.

3. Notify all employees and the exclusive representative, if any, of options for exposed employees including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions.
4. Notify all employees and the exclusive representative, if any, on the cleaning and disinfecting plan that the employer plans to implement prior to resuming work.
5. Notify the Division of Occupational Safety and Health, pursuant to subdivision (b) of Section 6409.1, of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.
6. Notify the California Department of Public Health and the appropriate local public health agency of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.

The bill defines "Exposed to COVID-19" as exposure to a person with any of the following:

- A positive COVID-19 test.
- A positive COVID-19 diagnosis from a licensed health provider.
- A COVID-19-related order to quarantine from a licensed health provider.
- A fatality that was or could have been caused by COVID-19.

SB 1383 (Jackson) – Additional Leave Eligibility – Oppose

Existing law prohibits an employer who employs *25 or more employees* working at the same location from discharging or discriminating against an employee who is a parent of a child of the age to attend a licensed child care provider or in kindergarten or grades 1 to 12 for taking off up to 40 hours each year to find, enroll, or reenroll their child in a school, to participate in school activities, or address emergency situations at school, subject to specified conditions. Employees may be required to use vacation or other paid time off when taking time off under these provisions and authorizes the use of unpaid time off, to the extent made available by the employer.

This bill would apply these provisions to employers with *five or more employees* and would authorize an employee to take off time in excess of 40 hours in the case of a school closure due to an emergency declaration by a federal, state, or local government agency, up to the duration of the emergency.

While CSDA can appreciate the intended goals of each of the pieces of legislation listed above the implementation and application of the measures will have a negative impact on special districts' operations and essential services to their communities. CSDA advocates that these measures should be amended or reworked to not apply to public agencies.

For questions or to provide CSDA input on these measures please contact Senior Legislative Representative Dillon Gibbons at dillong@csda.net.

➢ LEGAL ADVOCACY

CSDA is the leading legal advocacy voice for all special districts regarding public policy in California and actively tracks and reviews cases of significance affecting special districts in state and federal courts. Under the guidance of CSDA's Legal Advisory Working Group, CSDA files amicus briefs and opines on court cases when appropriate.

Groundbreaking Court Victory for Local Agency with At-Large Election System

For the first time since the passage of the California Voting Rights Act (CVRA) in 2003, a local government with an at-large voting system successfully defended a substantive legal challenge to its election method. The ruling last week from the Second District Court of Appeal in *Pico Neighborhood Association, et al. v. City of Santa Monica* held that "the legislature required litigants to prove both dilution *and* racially polarized voting in order to establish a claim, to have a remedy, and to recover fees." A rehearing petition has been filed by the plaintiffs, and the decision is likely to be appealed to the California Supreme Court, but it nonetheless represents a positive development for any local government facing the threat of litigation to an at-large voting method.

In recent years special districts throughout the state have begun to face legal challenges to their voting systems, and many have sought guidance on switching from an "at-large" to "by-district" voting method to comply with the CVRA. The CVRA prohibits any political subdivision from using an at-large method of election that "impairs the ability of a protected class to elect candidates of its choice or influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class[.]" Prior to the decision in this case, plaintiffs usually prevailed on CVRA claims simply by presenting evidence of the existence of racially polarized voting without also showing dilution of the vote.

In this case, the City argued evidence at trial that demonstrated Santa Monica's at-large election system for City Council members is fair and inclusive and does not dilute the voting power of protected classes. The City pointed to the fact that Santa Monica has a history of electing minority people of color to a variety of local positions. Moreover, the evidence at trial showed that under the at-large election system, between 2002 and 2016, candidates preferred by Latinx voters won at least 70% of the time in Santa Monica city council races.

On February 18, 2020 CSDA joined the League of California Cities to file an amicus brief in support of Santa Monica, authored by Derek Cole from municipal law firm Cole Huber.

The Court of Appeal reversed, ruling that "it is incorrect to read the [CVRA] to say a mere showing of racially polarized voting necessitates a finding a city has misapplied at-large voting. Under the [CVRA], racially polarized voting is a necessary but not sufficient element. Dilution also is an independent and necessary element." The court went on to state that a finding of dilution requires "a showing, not of a merely marginal percentage increase in a proposed district, but evidence the change is likely to make a difference in what counts in a democracy: electoral results." In a separate portion of the opinion addressing the plaintiff's equal protection claims under the California Constitution, the court held that the City did not act with a racially discriminatory purpose and therefore the plaintiff's equal protection claims failed.

For More Information on the Voting Rights Act, redistricting in 2021, and this court decision, sign up for the upcoming CSDA Webinar on August 27th: "Voting Rights Act and Redistricting Update," presented by David A. Soldani from AALRR and Douglas Johnson from National Demographics Corporation.

Supreme Court Upholds PEPRA Modifications Without Reexamining "CA Rule"

In July 30, the California Supreme Court ruled against public agency employee unions seeking to overturn central elements of the Public Employees' Pension Reform Act (PEPRA) of 2012, while still leaving the so-called "California Rule" intact. This decision is a positive development for public employers because the Supreme Court's decision approves a modification to existing pension benefits without requiring offsetting benefits. The narrow ruling did not address the issue of strictly cost-saving measures.

Under the "California Rule," pension benefits promised to an employee may be reduced only if accompanied by comparable new advantages. According to the court, any modification must "bear some material relation to the theory of a pension system and its successful operation."

Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn. (Alameda) was filed in 2012 by the Alameda County Deputy Sheriff's Association, challenging changes made by PEPRA to the County Employees Retirement Law of 1937 (CERL). In particular, PEPRA excluded certain forms of compensation from the calculation of retirement benefits that had been used by employees for many years, including elimination of overtime pay, on-call pay, call-back pay, vacation and sick leave sold back, recruitment bonuses, and other items from pension calculations (e.g., so-called "pension spiking").

The Alameda County employees filed suit to try to keep those types of pay as pensionable, arguing that PEPRA violates the vested rights of employees protected by the contracts clauses of the state and federal constitution and failed to provide alternative benefits to make employees whole for the reductions. Public employee groups from Contra Costa and Merced counties also filed lawsuits challenging PEPRA that were in the appellate stage; the California Supreme Court combined those suits with the Alameda case.

The Supreme Court held that PEPRA's changes did not violate contracts by amending CERL, and that PEPRA was enacted for the constitutionally permissible purpose of clarifying existing rules and closing loopholes. Notwithstanding the fact that PEPRA reduced benefits, the Court held that there was no requirement to provide employees with alternative advantages because doing so would defeat the constitutionally proper objectives of the pension system. Even if the modification is based on a legitimate purpose, a decision "to impose financial disadvantages on public employees without providing comparable advantages will be upheld under the contract clause only if providing comparable advantages would undermine, or would otherwise be inconsistent with, the modification's constitutionally permissible purpose."

Notably, the Court clearly stated "*[b]ecause we conclude that PEPRA's amendment of CERL did not violate the contract clause under a proper application of the California Rule, however, we have no jurisprudential reason to undertake a fundamental reexamination of the rule."*

For questions about these decisions and their impact on your district, contact CSDA Deputy General Counsel Mustafa Hessabi at mustafah@csda.net.

➢ OTHER WAYS TO TAKE ACTION

Learn More

Update: 2020 Special District Leadership Academy (SDLA) Conferences Cancelled

Due to the ongoing concerns around COVID-19 as well as some district travel restrictions we have made the difficult decision to cancel the two Special District Leadership Academy Conferences for 2020 (August in Lake Tahoe and November in San Diego). All registrants have been notified and we are working with the hotels to secure dates for 2021!

If you are interested in receiving governance training in a virtual environment, we do have all four modules coming up as virtual workshops. The first session, SDLA Module 1: Governance Foundations, will be held on August 25 and 26 from 9:00 a.m. – 12:00 p.m. each day.

Register Here: https://members.csda.net/imis1/EventDetail?EventKey=WORKGOVFDN

Member Benefit

When your agency needs the expertise of a consultant in organizational development, strategic planning or many other areas do you know where to turn? The CSDA Consultant Connection™ was developed to give our members access to a pool of experts who provide free consultations, exclusive discounts, and special benefits for a variety of services. CSDA staff will help you make the connection you need. Visit www.csda.net/consultant-connection for details and a list of participating consultants and their services

Join Today

Join an Expert Feedback Team to provide CSDA staff with invaluable insights on policy issues. Email romanw@csda.net to inquire about joining one of the following teams:

- Budget, Finance and Taxation
- Environment
- Formation and Reorganization
- Human Resources and Personnel
- Governance
- Public Works and Contracting

Stay Informed

In addition to the many ways you can TAKE ACTION with CSDA's advocacy efforts, CSDA offers a variety of tools to keep you up-to-date and assist you in your district's legislative and public outreach. Make sure you're reading these resources:

- CSDA's weekly e-Newsletter
- Districts in the News
- CSDA's CA Special District Magazine

Email updates@csda.net for help accessing these additional member resources.