



October 2020

September 30 marked the final day for Governor Gavin Newsom to sign or veto the hundreds of bills the State Legislature managed to pass in the midst of the COVID-19 pandemic. Included in the measures enacted this year was \$50 million in funding CSDA advanced for special districts and other local agencies to prepare for public safety power shutoffs (PSPS) and other deenergizations as part of the State Budget. CSDA anticipates releasing details on how special districts can apply for this funding this month. And be sure to open your *CSDA eNews* in the coming months as CSDA's *New Laws Series* will return in October to overview the most significant new laws that will affect special district revenues, governance, and operations in 2021.

Next month's Take Action Brief will provide CSDA's Year-End Legislative Report overviewing every bill CSDA actively lobbied in 2020.

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➤ 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.

Small Loan Tool Reestablished by CSDA Sponsored Legislation

In the days leading up to the September 30 Constitutional deadline for dispensing with legislation passed by the State Legislature, Governor Gavin Newsom signed into law CSDA-sponsored [Assembly Bill 2107](#) related to small, medium-term loans.

This measure stems from a law first-passed in 2004, when the Legislature authorized special districts to utilize Securitized Limited Obligations Notes or "SLONs", with a five-year sunset (the date the statute becomes inactive). Since then, the Legislature has twice approved to extend the sunset via committee omnibus bills.

On December 31, 2019, the authorization for special districts to use "SLONs" expired. This unique financing tool offered a pragmatic, cost-effective, medium-term financing method for a variety of projects without requiring voter approval. Since no committee bill in 2019 included an extension of SLONs for the next five years, a standalone bill was needed for special districts to continue using this important financial tool.

In response, CSDA sponsored AB 2107, carried by Assemblymember Freddie Rodriguez (D-Pomona) and joint authored by Assemblymember Adam Gray (D-Merced), to renew this authorization. It was passed by both houses of the State Legislature with no opposition.

Features of a SLON include:

- Approval by four-fifths of a district board;
- Stated purpose for the debt which could be for either the acquisition/improvement of land, facilities, or equipment;
- Revenue source(s) identified as dedicated to paying off the loan,
- Maturation date of 10 years, and
- Borrowing limit of \$2 million.

AB 2107 takes effect on January 1, 2021 and will sunset in five years unless reauthorized.



➤ 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

Updating the Brown Act to Meet the Times

CSDA has formed a working group made up of a diverse cross-section of special districts to identify opportunities to improve the remote meeting provisions of the Brown Act which was enacted in 1953. This effort largely stems from the COVID-19 pandemic and the Executive Order Governor Gavin Newsom signed at the outset of the Coronavirus pandemic.

[Executive Order N-29-20](#) allows public agency governing bodies to meet remotely during the COVID-19 state of emergency. This was a necessary step in order to allow public agencies to continue effectively providing services and governing their agencies while also protecting the public, board members, and staff from potential health risks associated with close personal contact. In compliance with the Governor's Executive Order, public agencies scrambled to acquire new technologies and adopt new rules and regulations to safely and legally facilitate remote board meetings.

For the most part, special districts were able to continue with the public's business with only minor logistical challenges. However, it has become clear that statutory improvements to the Brown Act could improve the efficiency and effectiveness of board governance using remote meeting technology. Amending state law would also improve the resiliency of essential local service providers who could establish policies, protocols, and technologies around the updated Brown Act without needing to wait to receive and interpret the rules of a new Executive Order in the event of each and every future emergency event.

As part of the review process, CSDA will collaborate with the League of California Cities and California State Association of Counties.

While CSDA will rely heavily on the input of its established working group and the CSDA Legislative Committee, it is important that CSDA hears from all members who may have specific suggestions for updating and improving the Brown Act.

TAKE ACTION

If you have experiences or challenges related to remote meeting participation under the Brown Act, or ideas on how the Governor's Executive Order in effect during the COVID-19 pandemic could be improved upon, please email CSDA's Senior Legislative Representative, Dillon Gibbons, at dillong@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.

CalPERS Decision Affecting Retired Annuitants

Action is needed to prevent CalPERS from increasing liability for special districts and other employers related to how many years the retirement system can reach back when it determines the employer misclassified a retired annuitant. CSDA is asking for special districts to send comment letters to the CalPERS Board opposing the action before an October 23 deadline.

At CalPERS' next board meeting November 16-18, 2020, the board will consider adopting the decision in the matter of the [Appeal Regarding Post Retirement Employment of DUDLEY J. LANG](#) as precedential. As summarized in the [CalPERS' most recent staff analysis](#) in support of their position, the matter provides future guidance to prevent possible litigation on the determination of potential violations of retired annuitant status, reinstatement of the retired annuitant, and the subsequent return of paid-out but unearned retirement benefits.

CSDA is not contesting the determination of CalPERS as to the violations of the statutes governing retired annuitants, but the LANG decision could also allow CalPERS to look back past the three-year statute of limitations to determine damages and require the retiree and the agency the retiree worked for to pay back the over-payments the retiree received. Without the current three-year statute of limitations, a public agency could be exposed to significant financial liability should CalPERS make a determination that an employer improperly classified an employee as a retired annuitant.

Originally this case was scheduled to go before the CalPERS Board to be adopted as precedential at its meeting in April of 2020 and then again in September of 2020, but at the request of CSDA and others the item was pulled from the agenda due to challenges in soliciting comments during the early days of the COVID-19 pandemic. While challenges remain with regard to soliciting comments during a pandemic, the CalPERS Board has decided to move forward with considering adoption of the controversial decision as precedential.

CSDA is encouraging all special districts that utilize retired annuitants to consider [submitting a comments letter](#) to CalPERS by October 23, 2020 urging the Board not to adopt the LANG decision as precedential.

TAKE ACTION

Submit a comments letter to CalPERS by October 23, 2020 urging the Board NOT adopt the LANG decision as precedential. Download a sample letter on the <https://www.csdanet.net/advocate/take-action>



➤ 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.

Special Taxes Proposed by Voter Initiative Not Subject to 2/3 Vote Requirement

Last month, the California Supreme Court denied a petition to review an important appellate decision that could pave the way for approval of local special taxes put forth by voter initiative with a simple majority vote instead of what was previously interpreted to be a two-thirds vote requirement.

CSDA shared the statewide implications of this case with our members via e-News this past July after the First District Court of Appeal decision in *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C*. The Court of Appeal ruled that the two-thirds voter approval requirement for local special taxes enacted by Proposition 218, a 1996 state ballot measure, applies only to taxes proposed by a government body – such as a special district board of directors – and not to initiatives placed on the ballot by a local initiative of citizens living within the jurisdiction. Shortly after the ruling was issued, a petition for review of the decision was filed by the Howard Jarvis Taxpayers Association and business groups arguing that Proposition 218 requires a two-thirds approval for any special tax increase. However, the petition was denied on September 9 with no comment or dissenting vote from the Justices.

The case involves a San Francisco ballot initiative, Proposition C, brought forth by a voter group seeking to raise \$250 million to \$300 million per year with a tax on large corporations in order to fund programs for the homeless. The ballot measure received 61 percent of the vote and was deemed approved by the San Francisco City Attorney based on the interpretation of another California Supreme Court decision, *California Cannabis Coalition v. City of Upland, et al.*, which held that a voter initiative may propose a general tax at a special election – unlike general taxes proposed by local governments, which may only be presented to voters at a general election.

The Supreme Court in *Upland* asserted that Proposition 218 only places limitations on local governments, and not voters' initiative power. The court ruled that the voter initiative power may only be limited when specifically declared so. Otherwise, the limitations only apply to local governments, including special districts. By extension, San Francisco argued that vote threshold constraints in Proposition 218 (much like the general election requirement) also do not apply to voter initiatives, and therefore Proposition C only required a simple majority for approval, ultimately receiving 61 percent of the vote.

CSDA first brought the *Upland* case to our members' attention in a 2017 e-News article, noting that the vote threshold question would "likely be decided by a future court case." It appears that the recent decision in Proposition C settles the issue for the time being, until such time another appellate court reaches a different conclusion in a future case, which could return the issue to the California Supreme Court.

For questions about this decision and how it may impact special districts generally, contact CSDA Deputy General Counsel Mustafa Hessabi at mustafah@csda.net.



➤ OTHER WAYS TO TAKE ACTION

Learn More

Save the Dates for these 2021 Conferences!

SDRMA Spring Education Day-Sacramento
Tuesday, March 23, 2021

Special District Leadership Academy – South
First-time and Returning Attendee Tracks-San Diego
April 11 – 14, 2021 (no returning track on the 14th)

Special Districts Legislative Days-Sacramento
May 18 – 19, 2021

General Manager Leadership Summit-Olympic Valley, CA (Lake Tahoe Area)
June 27 – 29, 2021

2021 CSDA Annual Conference & Exhibitor Showcase-Monterey, CA
August 30 – September 2, 2021

Special District Leadership Academy – North
First-time and Returning Attendee Tracks-South Lake Tahoe, CA
September 26 – 29, 2021 (no returning track on the 29th)

Board Secretary / Clerk Conference-Anaheim (Garden Grove)
October 25 -27, 2021

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.