



## September 2020 *Governor’s Desk Special Edition*

The 2019-2020 California Legislative Session has been one for the history books. Facing a pandemic and catastrophic wildfires, State Legislators were left to navigate uncharted waters. They were forced to adapt on the fly, changing the rules of the Legislature to allow for remote voting, and regularly rescheduled hearings, and deadlines in order to meet constitutional deadlines and respond to the crises facing state and local agencies, businesses, families, and others.

Despite these challenges the State Legislature endured and passed a number of significant bills that will impact special districts, their employees, and the communities they serve. Included in this month’s brief is a list of bills that passed the Legislature and are awaiting Governor Gavin Newsom’s signature or veto. Also included is a list of notable bills that failed passage in the last month of session.

The bills highlighted in this brief only represent a partial list of CSDA-tracked legislation. A comprehensive report of all CSDA lobbied bills will be distributed in October in our Annual Year-End Legislative Report following the Governor’s September 30 signature deadline.



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## ➤ Key Bills Awaiting Action by Governor Gavin Newsom

The following measures, actively lobbied or tracked by CSDA, have passed the State Legislature and await action by Governor Gavin Newsom. The Governor may sign these bills into law or return them to the Legislature without his signature (veto) by September 30. Unless otherwise stipulated within the legislation, signed bills will take effect January 1, 2021.

### **AB 685 (Reyes) Employee COVID-19 Exposure Notifications – OPPOSE**

Requires employers to notify employees of potential exposure to COVID-19 in the workplace and provide them with information about leave options. Additionally, in the event of a workplace "outbreak" the employer will also be required to notify local health authorities. The bill has flaws in its drafting with conflicting definitions and unclear protocols. The author of the bill has indicated she intends to have a clean-up bill to address remaining concerns next year.

### **AB 995 (C. Garcia) Hazardous Waste – CONCERNS**

Seeks to re-organize the Department of Toxic Substances Control (DTSC) and, in doing so, repeals several disposal fee exemptions that could affect those special districts that may generate, receive, collect or remediate certain types of waste including household hazardous waste. The measure would create a task force that includes local agencies and would involve itself in creating new fee schedules. Joining a letter with The Solid Waste Association of North America (SWANA), CSDA expressed its concerns about potential impact to both local agencies and to those important programs that deal with household hazardous waste.

### **AB 1867 (Committee on Budget) Employment Leave – WATCH**

This broadly scoped measure covers a variety of unique industries as well as different types of leave. Included in the provisions of the bills is a section that impacts many public employers regarding paid sick leave for persons employed as certain types of health care providers and emergency responders, all of whom were excluded from the paid sick leave provisions of the federal Families First Coronavirus Response Act. The provisions in this state legislation provide 80-hours of paid sick leave, just as the newly passed federal law did for other employees.

### **AB 2107 (Rodriguez) Short-Term Loans for Special Districts – SPONSOR**

Reauthorizes a statute that expired December 31, 2019, which allows a special district to issue securitized limited obligation notes (SLONs) for the acquisition or improvement of land, facilities, or equipment. These notes must mature within 10 years and can be issued to a cumulative \$2 million dollars outstanding at one time. They can be secured with any available revenues. This reauthorized statute would sunset in five years absent future extension or sunset removal.

### **AB 2560 (Quirk) Water Quality: Notification Levels and Response Levels: Procedures – SUPPORT**

Requires the State Water Resources Control Board (State Water Board) to post on its Internet website and distribute through email information when it initiates the development of a Notification Level (NL) or Response Level (RL) for a contaminant.



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## **SB 1159 (Hill) COVID-19 Workers' Comp Presumption – OPPOSE**

Creates a rebuttable presumption until January 1, 2023 that, under certain conditions, employees who contract COVID-19 will be considered to have suffered a workplace injury and will be entitled to workers' compensation benefits.

For firefighters, peace officers, and healthcare workers, who provide direct patient care and contract COVID-19 within 14 days of working. Employers would be provided 30 days to contest the illness is a workplace injury.

Attempts to address workplace outbreaks and applies to all other employees not covered by other sections that work for an employer that has five or more employees. Creates a rebuttable presumption that an employee contracted COVID-19 at the workplace and they are entitled to workers' compensation benefits if the employee contracts COVID-19 during a workplace "outbreak" as defined based on the size of the workplace. This section also contains certain reporting requirement and penalties for falsifying records. This section would take effect from July 6, 2020 (end of the Governor's Executive Order) though January 1, 2023.

## **SB 1383 (Jackson) Expanded Employee 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 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 or may use unpaid time off. 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.

## **SB 1386 (Moorlach) Prop 218 Clarification for Fire Hydrant Funding – SUPPORT**

Restates that "water" for purposes of the Proposition 218 Omnibus Implementation Act also includes fire hydrants and the water dispensed from them. Therefore a property-related water service fee or charge by a local agency may include the costs to construct, maintain, repair, or replace public hydrants and the associated water attached to a water system, to the extent those fees or charges are consistent with the California Constitution, fire codes, and industry standards. The bill would also authorize the fees or charges for the aspects of water service related to hydrants and the water distributed through them may be fixed and collected as a separate fee or charge, or included in the other water rates and charges fixed and collected by a public agency. Ideally, this measure would lessen local agencies' exposure to litigation, like those lawsuits that have already been filed against 81 water suppliers, so that communities may maintain a high level of fire protection.

## **AB 2257 (Gonzalez) Independent Contractors – SUPPORT**

This bill is an AB 5 fix/update bill. Included in the various updates is the addition of public agencies in the business to business exemption. Therefore, the bill would provide greater flexibility for public agencies when contracting for services such as information technology. The exemption allows public agencies, when contracting with a business, to apply the "Borello Test" rather than the "ABC Test" to determine whether the contractor should be classified as an employee or independent contractor.



## ➤ Key Bills Defeated in Last Month of Legislative Session

The following measures, actively lobbied or tracked by CSDA, failed passage in the State Legislature during the final month of the 2019-2020 Legislative Session.

### **AB 6 (Reyes) Attorney General: Duties – OPPOSE**

This bill would have conferred a number of new authorities to the Attorney General, including the authority to pursue civil penalties for acts of water pollution under its own authority.

### **AB 196 (Gonzalez) COVID-19 Workers' Comp for Essential Workers – OPPOSE**

This bill would have established a costly “conclusive presumption” of injury. The bill would have significantly increased workers’ compensation costs for employers by “conclusively” presuming (non-rebuttable) that contraction of COVID-19 by all “essential workers” is a workplace injury.

### **AB 664 (Cooper) COVID-19 Workers' Comp for Health Workers and First Responders – OPPOSE**

This bill would have created a “disputable” presumption whereby, if a firefighter, healthcare worker, police officer, or other first responder contracted COVID-19, it would be assumed they contracted it at work and they would then become eligible for enhanced workers’ compensation benefits.

### **AB 1659 (Bloom) Large Electrical Corporations: Wildfire Mitigation: Securitization – CONCERNS**

This bill was gutted and amended in a last-minute effort by leaders in both houses of the State Legislature to establish the Wildfire Prevention and Community Resilience Fund by issuing a \$3 billion bond administered by the Department of Water Resources. This new debt would have been repaid by extending a non-bypassable charge on large investor owned utilities’ (IOUs) customers for 14 years beyond its current sunset date. The funds would have been appropriated toward a range of wildfire risk reduction activities.

### **AB 1872 (Bloom) “Flushable” Wipes – SUPPORT**

This bill would have required certain nonwoven disposal products to be labeled clearly and conspicuously to communicate that they should not be flushed and prohibited a covered entity from making a representation about the flushable attributes, benefits, performance, or efficacy of those nonwoven disposal products.

### **AB 1958 (Cooper) Levee Protection – SUPPORT**

This bill sought to address homeless encampments from deteriorating the integrity of levee systems by strengthening protections against unauthorized excavations, cuts, alterations, or destruction of a levee. The measure would have protected against premature levee failure, which could result in flooding, displacement of residents, and thousands of dollars of damage to homes and property.

### **AB 3030 (Kalra) Land and Ocean Protection Goals – OPPOSE**

This bill would have declared it to be the goals of the state to protect at least 30 percent of the state’s land areas and waters; to help advance the protection of 30 percent of the nation’s oceans; and to support regional, national, and international efforts to protect at least 30 percent of the world’s land areas and waters and 30 percent of the world’s ocean by 2030. If implemented these provisions could have adversely impacted the delivery of several special district services.





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## **ACR 179 (Voepel) Special Districts Week – SUPPORT**

A non-binding resolution, this measure proclaimed the week of May 17 to May 23, 2020, to be Special Districts Week. This week was intended to coincide with CSDA's Special Districts Legislative Days. It recognizes the important historical role that special districts play in service and infrastructure delivery. The Covid-19 crisis upended most non-binding legislative resolutions and the measure did not move forward.

## **SB 217 (Portantino) Recreational and Organizational Camps - OPPOSE UNLESS AMENDED**

This bill would have added "recreation camp" to the existing definition of "organized camp," and defined it as a camp that operates for profit or nonprofit purposes, serves five or more children, and operates for at least five days during any season. These camps would have needed to be licensed and comply with a long list of requirements and mandates among which include fees and inspections. It would have required each recreational camp to employ a camp director and a medical professional. It set minimum age limits and training requirements on camp counselors, junior counselors, lifeguards, and other staff and volunteers and counselor-to-camper ratios. It would have imposed specified requirements on high-risk activities including, among others, riflery, archery, horseback riding, climbing, swimming, and scuba diving.

## **SB 729 (Portantino) PAGA Relief Meal and Rest Breaks Working from Home – SUPPORT**

This bill would have placed a two-year moratorium on Private Attorney General Act (PAGA) lawsuits against employers for violations of meal and rest break requirements while employees are working from home. Employers still would have had to comply with meal/rest period underlying law, and this bill would not have eliminated administrative or civil enforcement for the underlying violation.

## **SB 1173 (Durazo) Union Orientation Enforcement Liability – OPPOSE**

When the employee orientation law was signed in 2018 it included a requirement that public agencies share employee information of existing employees with unions at least every 120 days and every 30 days for new employees. This bill would have imposed liability on a public employer for violations of the requirements if the violations occurred three or more times in a 12-month period. The employer would have been liable for the reasonable expenses of a union incurred while enforcing its rights, including staff time and payments to associated counsel.

## **Wildfire Mitigation Funding**

In a last-minute effort to fund wildfire risk reduction activities, State Legislators worked to introduce a budget trailer bill proposal that would have provided \$500 million in wildfire mitigation funding, including funding consistent with SB 901 (Dodd, 2018) which CSDA supported. The proposal arose after the constitutional deadline requiring all bills to be in print for 72 hours prior to a vote. It would have needed the Governor to implement his powers to waive this provision in connection to the statewide emergency declaration for wildfire. The measure met resistance by the Assembly Speaker who questioned the appropriateness of the 72-hour rule waiver and lack of proper vetting. CSDA was positioned to support this effort, in concert with local government partners, and will continue to monitor developments in the next legislative session. It is anticipated this effort will be picked back up in January 2021 in some form.



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## ➤ FEDERAL ADVOCACY

### COVID-19 Relief Advocacy Stretches into September

September typically brings a sense of edginess to Capitol Hill as federal lawmakers procrastinate action on 12 annual appropriations bills ahead of the September 30 fiscal year deadline. This year, with ongoing COVID-19 relief negotiations, an economic downturn, and general election around the corner, September 2020 is shaping to be a potentially dramatic, yet impactful, with implications on special districts' advocacy for federal relief.

The Republican-majority U.S. Senate leadership has signaled that most of its Republicans may have settled on a solution to move forward on what Majority Leader Mitch McConnell, R-Ky., calls a "narrow" measure for COVID-19 relief. Debate on the measure could occur in the first half of September. However, no new funding for state and local government pandemic relief is expected in the legislation soon to be introduced. Rather, the anticipated measure is expected to include \$500 billion – potentially as high as \$700 billion – for schools, the postal service, vaccine development, COVID testing, and \$300/week for enhanced unemployment.

Meanwhile, White House Chief of Staff Mark Meadows and House Speaker Nancy Pelosi, D-Calif., continue their discussions. Meadows signaled in an August 31 television interview that the Trump Administration is willing to compromise on \$1.3 trillion with added assistance for small business; however, Pelosi is holding steady on a \$2.2 trillion figure – a sign that an impasse may remain if the Senate can pass a bill.

With 10 of the 12 appropriations bills packaged in two omnibus bills pending in the Senate, the debate over COVID-19 relief may be rolled into what could be an omnibus appropriations bill to fund the government. Some Senate Republicans have endorsed the concept of moving the two issues together, which could complicate pending negotiations and the legislative process. It is looking more likely that a continuing resolution, which is an extension of the current fiscal year's appropriations into a portion of the next fiscal year, may be passed until after the November 3 election to stave off a government shutdown.

This means both H.R. 7073 and S. 4308, the Special Districts Provide Essential Services Act, is still in play, and there may be additional time to rally support among California's Congressional Delegation. As of September 5, Senator Dianne Feinstein, Senator Kamala Harris and [23 members](#) of the California House Delegation support these bills, leaving 29 representatives left to support H.R. 7073. Building support from California representatives is a key strategy to signify the bill as a priority for House leadership, with both Speaker Pelosi and Minority Leader Kevin McCarthy representing districts in the state.

CSDA is calling on district that are constituents of federal representatives who have yet to cosponsor H.R. 7073 to send in a letter of support for the bill and urge its inclusion in future coronavirus relief legislation. Members of Congress yet to cosponsor include Representatives Aguiar, Barragan, Bass, Calvert, Cardenas, Chu, Cook, Correa, Garcia, Gomez, LaMalfa, Lieu, Lofgren, Matsui, McCarthy, McClintock, Nunes, Pelosi, Peters, Porter, Roybal-Allard, Ruiz, Sanchez, Schiff, Sherman, Swalwell, Torres, Vargas and Waters.

To date, CSDA has been notified of 333 letters sent to federal representatives on this effort. CSDA thanks special districts for their engagement and the influence it has had to secure 25 federal California representatives.

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[Download a Sample Letter to Send to Federal Representatives](#)

*For questions or concerns on Federal COVID-19 advocacy, contact Cole Karr,  
Public Affair Field Coordinator-Central Network, at [colek@csda.net](mailto:colek@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.

### Significant Win for Water and Utility Agencies in Supreme Court Proposition 218 Case

On August 3, the California Supreme Court issued a noteworthy decision for special districts that collect property-related fees and charges, such as water rates and utilities fees. The unanimous opinion in [Wilde v. City of Dunsmuir](#) held that water rate charges and utility fees are not subject to challenge by referendum because they fall within an exemption for "tax levies." The case involved whether a water rate plan resolution is subject to a referendum by voters, or if it can only be changed through the initiative process.

CSDA informed our members about this important case in [June 2019](#), and is proud to have joined a coalition of local government associations to file an [amicus brief](#) to the Supreme Court in support of the city.

#### Background

The distinction between a referendum and an initiative is important: a referendum is a challenge by voters to an enactment already made by the legislative body, whereas an initiative is a legislative proposal placed on the ballot to be decided by voters. Most importantly, an initiative operates prospectively and is less disruptive to municipal finances than a referendum, which automatically suspends the resolution the moment signatures are certified until and unless the voters reject the referendum when it is later taken up at the ballot.

California voters adopted Proposition 218 to add article XIII C to the California Constitution by which they expressly reserved their right to challenge local taxes, assessments, fees, and charges through defined protest proceedings and, subsequently, via initiative. At issue in this case was whether the electorate can use the referendum power (Cal. Const., art. II, § 9) to challenge a city's resolution increasing water fees or is such a challenge expressly limited to the power of initiative (Cal. Const., arts. XIII C & XIII D, § 6).

In 2018, the Third District Court of Appeal held that voters' adoption of Proposition 218 did not repeal the right to challenge local resolutions and ordinances by referendum, and that a public agency's adoption of a water rate plan is a legislative decision subject to referendum. The Court of Appeal decision reversed precedent that exempted local taxes, fees, and other property-related revenue measures from referendum (but not an initiative, as permitted by Article XIII C, section 3 of the California Constitution). If not overturned, the court's decision would have permitted referenda against property-related fees and potentially served to destabilize the finances of districts that provide water, sewer, and solid waste services, among others.

Fortunately, following the Supreme Court decision in *Wilde*, a resolution adopting a water rate plan or utility fee in accordance with the requirements of Proposition 218 cannot be challenged by referendum, although it is still subject to initiative. The Court held that a municipal water rate could be considered a "tax" for purposes of an exemption from the referendum process, and that a halt to the City's ability to levy its water rates would potentially undermine the City's ability to manage its fiscal affairs, including providing water service to residents.

For a detailed analysis of the *Wilde* decision and its implications, read ["The Worth of Water?"](#) by Michael Colantuono from municipal law firm Colantuono, Highsmith & Whatley. Mr. Colantuono was an author of the amicus brief filed on behalf of CSDA and the local government coalition and argued the case before the California Supreme Court.



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## ➤ OTHER WAYS TO TAKE ACTION

### Learn More

In response to district travel restrictions as well as ongoing concerns surrounding COVID-19, CSDA will be presenting our 2020 Board Secretary / Clerk Conference VIRTUALLY!

[Register Today for the 2020 Virtual Board Secretary/Clerk Conference!](#)

Whether you are a new or an experienced board secretary/clerk, continuing education is essential to keeping current on the many aspects of your job. All attendees will experience two and half days of live and recorded education along with two live keynote presentations, two refreshment breaks, two lunches, two happy hours, exhibitor demonstrations and much more!

### Join Today

Join an Expert Feedback Team to provide CSDA staff with invaluable insights on policy issues. Email [romanw@csla.net](mailto:romanw@csla.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@csla.net](mailto:updates@csla.net) for help accessing these additional member resources.