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What Will *Kelo* Mean in California?

Legislature Debates Issues Arising from Controversial Supreme Court Decision

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The hue and cry over the recent United States Supreme Court ruling in *Kelo v. City of New London*, that a public agency may use eminent domain to take a privately-owned, non-blighted property for the purpose of economic development, has been heard loud and clear throughout the country. What has struck fear in the heart of property owners has subsequently placed redevelopment agencies and their practices under a microscope. Depending on which expert is asked, the court's ruling may have wide-reaching effects in California. State legislators have taken notice and there has been a flurry of activity on this issue this week.

The Senate Local Government Committee convened an informational hearing this week to discuss the impacts of *Kelo* on California's local governments. Senator Christine Kehoe, committee chair, invited panelists representing the private property rights perspective, as well as that of local governments, to discuss how California law could be changed to further protect the rights of private homeowners and businesses, while maintaining the use of eminent domain for legitimate public purposes. The divergent viewpoints presented highlight the need for a broader discussion about the appropriateness of California's redevelopment policies with respect to the Supreme Court's decision.

The property rights perspective was represented by Timothy Sandefur of the Pacific Legal Foundation, a public interest

legal foundation that specializes in cases involving private property rights, and Michael Berger of the law firm Manatt, Phelps & Phillips, where he has been active in eminent domain and land use law for 35 years. (Mr. Sandefur and Mr. Berger filed amicus curiae briefs with the U.S. Supreme Court in *Kelo v. New London*.) Both offered examples of eminent domain use in California similar to that in the City of New London, Connecticut. Both offered concrete suggestions for changing redevelopment law in California: clarify the definition of "public use;" tighten the "blight" definition in statute; remove or lengthen the time limit to challenge a blight designation; and limit the time during which a property can be designated as blighted. When questioned by members of the committee, the panelists indicated that, with the Supreme Court's decision in *Kelo*, they were concerned that California courts would provide a significant level of deference to a legislative body's determination of "public use," opening the door to a greater number of takings in the state.

In contrast, public agencies, represented by Bill Higgins, an attorney with the League of California Cities' Institute for Local Government, and Joseph E. Coomes, Jr., a senior attorney with the Sacramento firm of McDonough, Holland & Allen and the co-author of *Redevelopment in California*, emphasized that California is not Connecticut. In fact, California's laws on existing rights and procedural protections for property owners in redevelopment areas are not merely adequate, but superior to those in other

states. Further, eminent domain is an important tool for local governments to battle economic and physical blight and to provide important public infrastructure, such as schools, roads, or other public facilities. There are a number of success stories throughout the state that point to the community improvements that legitimate redevelopment practices, including the use of eminent domain, can generate.

While committee members certainly did not agree on an approach to shoring up private property owners' rights in California, it was clear that something would be done. We expect additional discussions and debates to occur over the next weeks as the legislative session winds down and even over the next year. Here is a summary of a number of legislative measures have surfaced to address issues raised by *Kelo*.

AB 590 (Walters) is a statutory prohibition against using eminent domain to acquire private property for private business development. AB 590 has been referred to the Assembly Housing and Community Development Committee.

SCA 12(Torlakson and Kehoe) would prohibit government agencies from using eminent domain for the taking of "owner-occupied residential property" for private use. This measure is currently in Senate Rules Committee.

SCA 15 (McClintock) and ACA 22 (La Malfa) are identical measures that prohibit private property from being taken for private use. Under these constitutional amendments, property taken under eminent domain must be owned and occupied by the condemner and must be used only for the stated public purpose. If the property ceases to be used for that purpose, it must be offered to the original owner or the owner's heirs for the amount of compensation originally received, or the property's new fair market value, whichever is less. Both measures have not yet been set for hearing in their respective houses.

SB 53 (Kehoe) would require new redevelopment plans to declare whether eminent domain will be used, including prohibitions on the use of eminent domain, and a time limit for the commencement of eminent domain proceedings not to exceed ten years. For plans adopted prior to January 1, 2006, the plan must be amended by July 1, 2006 to include such declarations, including a time limit of January 1, 2009 for the commencement of eminent domain proceedings. SB 53 awaits hearing in the Assembly Local Government Committee.

We expect SB 1026 be amended to contain language that would impose a two-year moratorium on the use of eminent domain for the taking of owner-occupied residential property for private use. Authored by Senator Christine Kehoe, the bill would also require the California Research Bureau to report to the Legislature by January 1, 2007 on all condemnations of owner-occupied residential property for private use from 1996 to 2006 and what became of those properties.

SB 1099 (Hollingsworth) would prohibit the use of eminent domain for "agricultural property" unless the condemning government retains direct ownership of the property or the property is transferred to a private entity for health care facilities, public utilities, or transit facilities. SB 1099 is currently in the Senate Rules Committee.

<p>The LEGISLATIVE BULLETIN (ISSN 10403752) is published weekly during the State Legislative Session, by the California State Association of Counties, 1100 K Street, Suite 101, Sacramento, CA 95814. Subscriptions: \$10.00 annually for CSAC members; \$30.00 annually for non-members. Periodicals postage paid at Sacramento, CA . POSTMASTER: Send changes of address to: Legislative Bulletin, 1100 K Street, Suite 101, Sacramento, CA 95814.</p>

Revenue and Taxation

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Property Tax Administration

Discussions continue on the future of the state's financial participation in the property tax administration system. Representatives from Department of Finance, legislative staff, the California Assessor's Association, and CSAC staff met this week to review options for a more fair allocation of costs of the property tax administration system. While no commitments were made, state representatives indicated an interest in pursuing a mechanism that would ensure that the state's estimates for property tax revenues are realized, as the property tax revenue projections in the 2005-06 state budget were unchanged when the \$60 million property tax administration grants were eliminated from the budget.

CSAC will continue to work towards a more fair allocation of costs of the property tax administration system and will not support any efforts that require additional county spending, as counties already pay for an estimated 70 percent of administration costs.

Taxation of Jet Fuel

AB 451 (Yee) – Support

AB 451, by Assembly Member Leland Yee, moves to the Senate floor for a vote next week. This measure provides a statutory remedy to current law that allows the City of Oakland to receive all of the local sales and use tax revenue attributable to United Airlines' jet fuel purchases at all airports in the state, in exchange for granting United Airlines 65 percent of the proceeds of those taxes. CSAC strongly supports this measure, as it would ensure that the sales and use tax revenue from the sale of jet fuel is appropriately allocated to those cities and counties that host airports.

Property Tax

AB 18 – Support

AB 18, by Assembly Member Doug La Malfa, would provide property tax relief to Shasta County, which was declared a disaster area as a result of wildfires in late summer 2004. This legislation is similar to measures passed after the southern California fires and the San Simeon earthquake of 2003, the Napa earthquake in 2000, the floods of 1995 and 1996, the 1991 Oakland fires, and the 1989 Loma Prieta earthquake. This measure would provide a state reimbursement for property tax losses due to property tax relief provided to owners of homes and businesses damaged by this natural disaster.

This measure awaits a vote on the Senate Floor.

SB 457 – Support

SB 457, by Senator Christine Kehoe, would provide property tax relief to Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties, which were declared a disaster area as a result of severe rainstorms and mudslides in December 2004 and January, February, and March 2005. This measure would provide a state reimbursement for property tax losses due to property tax relief provided to owners of homes and businesses damaged by these natural disasters.

This measure was placed on the Suspense File in the Assembly Appropriations Committee this week.

Health and Human Services

For more information, contact Kelly Brooks at 916/327-7500 ext. 531 or e-mail kbrooks@counties.org.

Elder Abuse Reporting Measure Heads to the Governor

SB 1018 (Simitian) – Request for Signature

Senator Joe Simitian's SB 1018 passed off the Senate Floor on August 15 and was transmitted to the Governor. CSAC is co-sponsoring this measure with the County Welfare Directors Association, the California State Sheriffs' Association, and the California Senior Legislature.

- ▶ SB 1018 would assist in reducing the number of financial abuse cases against elder and dependent adults by requiring employees of certain financial institutions — banks, credit unions, and savings and loans — to be mandated reporters of financial abuse perpetrated against elder and dependent adults. While SB 1018 was in the Assembly, a compromise was reached with the financial institutions opposing the measure. The compromise includes the following key provisions:
- ▶ A one-year delay in implementing the individual reporting mandate.
- ▶ A six-year sunset date.
- ▶ A civil penalty that would be levied against the financial institution, not the individual employee, for failing to report. The civil complaint could only be brought against the institution by the attorney general, a district attorney, or a county counsel.
- ▶ A reaffirmation of current law regarding liability of financial institutions, stating that the bill does not limit, expand, or otherwise modify any civil liability that exists under current law.

Only 1 in 14 incidences of elder and dependent adult abuse or neglect are reported. Sadly, even fewer cases of financial abuse – only 1 in 100 – are reported. As the elderly population increases, so will financial abuse. Currently, the state has 3.5 million people over the age of 65 – the largest older adult population in the nation. This figure is projected to increase by 172 percent over the next 40 years. With this increase in life span of the elder population comes increased risk of financial abuse to seniors and dependent adults.

Each year, thousands of elderly and dependent adults are targeted for financial exploitation because they are socially isolated, dependent on others for assistance, or easily intimidated. Eighteen other states have passed similar laws. Reporting by banks has been shown to be very effective in increasing reports of financial abuse and preventing additional losses to victims.

CSAC is very appreciative of the hard work of Assembly Speaker Fabian Nuñez, Senator Simitian and Assembly Members Lois Wolk and Patty Berg, along with their staffs, which spent many hours negotiating the compromise language.

Child Welfare Services

AB 363 (Chu) – Support

AB 363, by Assembly Member Judy Chu, builds on the Child Welfare System Improvement and Accountability Act (AB 636, Steinberg), which took effect on January 1, 2004. The measure would fill gaps in the original law and hasten statewide improvement. Specifically, AB 363 would establish a process to allocate funds to counties to implement activities to improve their performance on the outcome measures. Funding would be subject to appropriation in the annual state budget act. AB 363 recognizes the need for new resources that will enable counties to implement the findings and recommendations in their self-assessments and system improvement plans. Importantly, it also recognizes the chronic underfunding of the entire child welfare system. AB 363 is on the Senate Floor Third Reading File.

SB 500 (Kuehl) – Support

SB 500, by Senator Sheila Kuehl, encourages the joint placement of infants and their teen parents when both fall within the jurisdiction of the juvenile dependency court, while allowing the state and counties to maximize federal funds. Additionally, the measure creates a new type of licensed placement for pregnant and parenting teens who are in foster care, in which trained, caring foster parents can help these teens transition to independent adulthood. SB 500 will enable the state to access available federal funding that is not currently being utilized, while expanding the availability of foster family homes where teens and their children can live together. SB 500 is on the Assembly Appropriations Suspense File and is set for hearing on August 25.

County Hospitals and Health Systems

SB 399 (Escutia) – Support

Senator Martha Escutia's SB 399 is related to health care liens and third party liability. Assembly Health Committee passed the measure on July 5. Specifically, SB 399 would restore health care provider's lien rights against a Medi-Cal beneficiary's recovery for injuries caused by a liable third party, but limit the lien to allocations for past medical expenses. Additionally, SB 399 would establish that a Medi-Cal beneficiary has the burden of proof relating to the reasonable and necessary charges for the past medical expenses claimed in the third-party action. This measure is on the Assembly Floor Third Reading File.

Integrated Health and Human Services Programs

AB 392 (Chan) – Support

AB 392, by Assembly Member Wilma Chan, would open the integrated health and human services pilot programs to any county that would like to participate and eliminates the requirement that the Secretary of the Health and Human Services Agency select which counties participate. This measure is on the Senate Floor Third Reading File.

AB 1298 (Evans) – Support

AB 1298, by Assembly Member Noreen Evans, would establish a workgroup to explore streamlining and integrating rules for a number of state programs. Specifically, AB 1298 would require the workgroup to examine ways to conform, streamline, and simplify eligibility for CalWORKs; Medi-Cal; Healthy Families; child care; California Special Supplemental Food Program for Women, Infants, and Children; food stamps; and child support services. Senate Appropriations Committee heard this measure on August 15 and placed it on the Suspense File.

Public Health

AB 547 (Berg) – Support

AB 547, by Assembly Member Patty Berg would allow cities and counties to authorize a clean needle exchange program without a declaration of a local emergency. Under current law, county boards of supervisors or city councils must declare a local emergency in order to implement a needle exchange program. If a local government wishes to continue their needle exchange program, they must renew the local emergency declaration every 14 to 21 days. Current statute, which requires a declaration every two weeks, has been a hindrance preventing many local entities with their own critical public health crisis from providing this important assistance to its constituents. AB 547 is on the Senate Floor Third Reading File.

Medi-Cal

Legislature Holds Hearing on Requiring Managed Care Expansion to Seniors and Persons with Disabilities

The Assembly Health Committee and Budget Subcommittee No. 1 and Senate Health Committee and Budget and Fiscal Review Subcommittee No. 3 held a four-way joint hearing on the proposal to require seniors and persons with disabilities to enroll in Medi-Cal Managed Care on August 16.

A large number of legislators attended the hearing, including Assembly Members Wilma Chan, Hector De La Torre, Greg Aghazarian, Patty Berg, Ira Ruskin, Gene Mullin, Dave Jones, Sam Blakeslee, and Keith Richman and Senators Denise Ducheny, Wesley Chesbro, Dave Cox, Elaine Alquist, and Tom Torlakson.

The hearing resulted in a very thorough discussion on issues with the Medi-Cal Managed Care systems and seniors and persons with disabilities.

Panels included representatives of consumers and providers. The panels focused on plan readiness and transition issues, quality assurance and monitoring issues, the impact on the safety net, and capitation rates.

In the state Department of Health Services' (DHS) opening remarks, administration officials emphasized that the mandatory enrollments of seniors and persons with disabilities in Medi-Cal Managed Care is not about budget savings, but about good policy and better health outcomes. Tom McCaffrey, deputy director at DHS, stated that the state was "not going to do anything to simply meet a deadline." State officials are striving to have some language on the managed care expansion out for public review by the week of August 22 (possibly as soon as August 19).

The mandatory enrollments of seniors and persons with disabilities in Medi-Cal Managed Care will result in an additionally 500,000 patients in managed care in California (currently close to 300,000 patients are enrolled). The county organized health systems (COHS) expansion approved in the 2005-06 state budget will expand managed care to 65,000 seniors and persons with disabilities.

Plan Readiness and Transition Issues

Administration officials stated that they would not start implementation unless a plan is ready to go operational. The state expects the plans to get most fee-for-service providers enrolled, but will likely not enroll all current providers. Beneficiaries in active treatment with a physician may call Health Care Options and get a medical exemption from the managed care plan enrollment. DHS is working with the California Health Care Foundation and the Lewin Group to develop a tool to assess plan readiness. The state does not expect the tool to be developed until August or September 2006. Additionally, the state is working on performance standards. These will be developed before the plan readiness tool.

Consumer suggestions and comments:

- ▶ Accessible providers, including accommodations for cognitive and psychiatric issues.
- ▶ The state needs to analyze data to identify special needs patients.
- ▶ The state needs to minimize adverse selection (advocates are concerned that providers will cap or limit the Medi-Cal patients leaving some without care).
- ▶ Consumer perceptions of managed care: care will be rationed, no access to specialty care. Will there be interpreters for the deaf? Will there be building access?
- ▶ Plans need to be ready before enrollment ever begins.
- ▶ Every person currently has provider relationships and a medical home. The transition should do very little to disrupt or destabilize care.
- ▶ Effective communication will be key (including assistive devices).
- ▶ The state should consider allowing specialists to be primary care providers under Medi-Cal managed care.
- ▶ Commercial networks are not adequate. Stringent state requirements on networks to provide timely care will be important.
- ▶ The state should talk about consumer and provider readiness, not just plan readiness.

- ▶ Beneficiaries should retain the opt in/opt out provision.
- ▶ There is not one category of disabilities.
- ▶ It is critical that plans and providers comply with the Americans with Disabilities Act (ADA).
- ▶ DHS has interpreted the opt-out of managed care provision narrowly. This should be revisited.

Provider suggestions and comments:

- ▶ Transitions in other states have led to patient confusion, treatment errors, and treatment delays. Concern that initially there will be more frequent tests and emergency room visits because doctors and patients do not have an existing relationship.
- ▶ Cultural competency also needs to be addressed in plan readiness.
- ▶ New York experience: plans put limits on access and closed access at points in New York's managed care transition because of inadequate capitation rates. Plans should be prohibited from doing this in California.
- ▶ Many of these patients are chronically ill with one or multiple conditions.
- ▶ Expansion may be hampered by rates (plans will not expand if there are not financially solvent). In some counties, managed care rates are less than fee-for-service.
- ▶ Inland Empire Health Plan (the local initiative in Riverside and San Bernardino Counties) has made a big effort to serve seniors and persons with disabilities. They spoke about many of the initiatives they have implemented to more effectively serve persons with disabilities.

Quality Assurance and Monitoring Issues

Few states have gone forward with the mandatory enrollment of seniors and persons with disabilities in Medicaid managed care. States include Massachusetts and Tennessee and limited parts of Texas; please note that none of these states are comparable to Los Angeles County, much less the State of California.

Consumer and provider comments and suggestions:

- ▶ Hope that state performance standards are higher than "is managed care better than fee-for-service?"
- ▶ Performance should include real time (or close to it) monitoring of access to providers.
- ▶ Beneficiaries should also report length of time to wait for specialists.
- ▶ Plans and providers should have an ADA transition plan for programs, facilities, and services to ensure accessibility. What are the barriers? How can they be removed? How long will it take? How much will it cost?
- ▶ California lacks clear statutory performance standards for plans.
- ▶ Perhaps performance standards for the disabled should be different than for children and families.
- ▶ Geographic location needs to be examined, as well as a providers' ability to serve persons with disabilities.
- ▶ Sufficient monitoring should include providers and beneficiaries.

Impact on the Safety Net

The state estimates that public hospitals could see as much as a 30 percent decline in patient revenue due to the movement of seniors and persons with disabilities out of fee-for-service and into managed care. State officials are open to ways to help keep safety net providers afloat. They did not provide any examples of the kinds of things they would be willing to do to support the safety net.

Consumer and provider comments and suggestions:

- ▶ After the managed care expansion in the mid-1990s, one-third of county clinics closed.
- ▶ The movement of seniors and persons with disabilities into Medicaid managed care undermines the ability of counties to provide care for the uninsured.
- ▶ Requiring the plans to contract with county hospitals is not enough.
- ▶ There is no data to substantiate that the plans can take seriously ill patients, particularly children served by the California Children's Services (CCS) program.
- ▶ Disabled children should not be forced into mandatory managed care enrollment.
- ▶ The state needs to develop a proper data tracking methodology.
- ▶ CCS should continue as a carve-out.
- ▶ Long-standing provider relationships ensure that providers understand how to maintain patient health status.
- ▶ Financial challenges with the hospital financing waiver: how do you keep a public hospital afloat with just indigent care?
- ▶ The financing mechanism for indigent care under the waiver is the Safety Net Care Pool; this funding source is capped (it does not grow over the life of the waiver).
- ▶ What the state did in the mid-1990s to prop up the safety net was not enough.
- ▶ The geographic expansion to the 13 new counties will impact clinics and community hospitals. Forty percent of Medi-Cal providers in these 13 counties are community clinics and community hospitals.
- ▶ Strongly encourage the state to include historical providers (community clinics) in provider selection.
- ▶ Current plan contracting requirements serve as barriers to clinic participation in Medi-Cal managed care.
- ▶ Minimum patient assignments need to be enforced.
- ▶ Limiting the number and type of providers in networks may be problematic.

Capitation Rates

Since the mid-1990s the California Medical Assistance Commission (CMAC) negotiates rates with managed care plans in Geographic Managed Care (GMC) counties and with COHSs. Rate parameters come from DHS and are based on actuarial principles; rates may be constrained by the state budget. CMAC has also negotiated hospital inpatient rates since the mid-1980s.

Rates are based on fee-for-service rates in the mid-1990s (not on actual costs). The Legislative Analyst's Office (LAO) believes that DHS's rates are inadequate and are not based on costs within each plan. The rate increases for managed care plans have been piecemeal and do not address the underlying instability. The LAO urges a more systemic approach to rate setting. If plans are in constant financial jeopardy, it will affect a plan's willingness to expand.

DHS recognizes that rates are a problem and is doing a comprehensive review of rates (and would be doing so without managed care expansion proposals).

Plan and provider comments and suggestions:

- ▶ CalOptima (Orange County’s COHS) is in a deficit-financing situation. They are projecting a \$25 million deficit, which would have been \$40 million if it had not been for a 3 percent rate increase this year.
- ▶ Prior to 2004-05, COHSs have not had a rate increase since 2000. In 2003, rates were decreased by 2.5 percent. The 2004-05 budget provided a 3.0 percent rate increase.
- ▶ Simple solution: raise capitation rates. Problem: state budget constraints.
- ▶ Health Plan of San Mateo (a COHS) is also operating in a deficit and getting by on prior year reserves.
- ▶ Local initiatives support the expansion but are concerned about rates.
- ▶ The rate setting process needs to have some flexibility built in for complicated patients (specialists, tests).
- ▶ Physicians and physician groups will be on the hook if rates are not sufficient. Ultimately, physicians and physician groups will leave the networks if rates are not sufficient.
- ▶ Should there be greater limits on plan administration (currently it is 15%)?

Public Comments:

- ▶ Senior group suggested that phase in be done on a population basis (seniors, disabled, blind), rather than phased in by county.
- ▶ Alzheimer’s advocates suggested that care management for the cognitively impaired will be crucial to access.

Proposition 36

Status of Previously Reported Legislation

Summarized below are the various measures before the Legislature seeking to amend Proposition 36. At this point, none of the measures below contain an appropriation to extend funding beyond the June 30, 2006 sunset date. It appears that SB 803, by Senator Denise Ducheny, may be the only measure moving.

Bill	Author	Description	Status
AB 104	Bass	Would make numerous substantive revisions to Proposition 36, including permitting incarceration for specified violations; allowing court-ordered placement into a detoxification (including in-custody) or drug court program; and changing eligibility criteria. The measure does not include a provision for extending funding for Proposition 36, but rather contains a statement of intent to fund the program annually.	Awaiting hearing in Senate Public Safety Committee
AB 858	Bass	As introduced, this measure would have extended the sunset date on the annual Proposition 36 appropriation of \$120 million for an additional five years (through FY 2010–11). CSAC supported that version of the bill. The measure subsequently was amended before being placed in the Assembly Inactive File. In its current form, AB 858 contains	In the Assembly Inactive File

Bill	Author	Description	Status
		only intent language regarding ongoing funding and makes various other programmatic changes to Proposition 36.	
SB 556	Migden	<p>Would make a number of changes to the initiative, including imposing a 25 percent cap on the amount of Proposition 36 funds that may be allocated to non-treatment and other specified ancillary activities. However, recent amendments would permit the Department of Alcohol and Drug Programs to waive the cap if a county can demonstrate that how its planned expenditures “would further the purposes of the act and improve treatment outcomes.”</p> <p>Would amend other aspects of the program, including assuring that no participant is denied Proposition 36 treatment because of a co-occurring mental health disorder and extending the maximum length of treatment and aftercare in SACPA from 18 to 24 months.</p>	In Senate Third Reading
SB 803	Ducheny	Does not make an appropriation for continued funding, but states legislative intent to appropriate no less than \$120 million in funds in the annual budget. Makes other programmatic changes, including redefining “successful completion of treatment”; changing evaluation study requirements and timing; requiring drug testing as a condition of probation; changing eligibility requirements, allowing flash incarceration; and increasing by 12 months (to up to 24 months) the extension of treatment services, when necessary.	Set for hearing in Assembly Public Safety Committee (8/23)

2004 Evaluation Report Released

As required under the provisions of Proposition 36, an evaluation report has just been released on the Substance Abuse and Crime Prevention Act (SACPA) for 2004. This report, which can be found on at http://www.adp.ca.gov/SACPA/P36_Reports.shtml, reveals that over 103,000 participants referred to Proposition 36 have entered treatment. It provides important demographic details on the population receiving Proposition 36 treatment, including client characteristics, show rates, type of treatment received, rate of treatment completion, and various success indicators following treatment.

Medicare Part D

County Associations to Host Symposium on Implementation

CSAC, the County Welfare Directors Association, the County Mental Health Directors Association and the County Health Executives Association of California are co-hosting a three-hour symposium on the implementation of the Medicare Part D prescription drug coverage program. This symposium is intended to provide background information and discussion about the roles that county human services, mental health, and health agencies are expected to play in implementing Part D.

Counties are involved in the Part D prescription drug program in a variety of ways.

County human services departments determine eligibility for Medicaid and portions of Medicare, will provide assistance with the “extra help” program available for low-income recipients, and provide case management activities for elder adults

and individuals with disabilities receiving in-home services. In addition, receipt of benefits under Part D may impact eligibility for Food Stamps, also administered by counties.

County mental health departments, as the health plan for Medi-Cal Managed Care for public mental health services, provide case management for their clients and will help to identify appropriate coverage for the prescription drugs their recipients need.

County hospitals and clinics provide acute services and case management to Medi-Cal recipients; county health systems rely on Medicaid reimbursements that may change as a result of the enactment of Part D.

County supervisors, administrators and their staff need to know the counties' role in implementing Part D in order to advocate for appropriate training and funding opportunities and provide leadership and oversight to the process.

Panel discussions featuring county, state, and federal staff and advocacy organizations will focus on the following:

- ▶ County roles and responsibilities in Part D implementation.
- ▶ How to answer client questions about coverage and low-income assistance.
- ▶ Where to send clients for more help if needed.
- ▶ How the advocacy community is approaching Part D.
- ▶ Training ideas and opportunities from counties and federal staff.
- ▶ Questions and answers.

This symposium is intended for program managers in county Medi-Cal, Food Stamp, and In-Home Supportive Services programs; county mental health and health directors; county Public Authority directors; and health and human services specialists in county administrators' offices.

Date & Time: Thursday, September 1, 2005 10 a.m. to 1 p.m.

Location: CSAC Conference Center, 1020 11th Street, Second Floor, Sacramento CA

To register, please send an e-mail to Kelly Brooks at kbrooks@counties.org.

Housing, Land Use and Transportation

For more information, contact DeAnn Baker at 916/327-7500, ext. 509, or e-mail dbaker@counties.org or Farrah McDauid Ting at 916/327-7500 ext. 559, or e-mail fmcdaid@counties.org.

Indian Gaming

Mark your calendars for a day-long forum on Indian gaming hosted by CSAC, the League of California Cities, and the California Tribal Business Alliance on October 26 in Sacramento. Agenda and location details will follow in the coming weeks.

AB 1747 (Wolk) – Support

AB 1747, as amended on July 11 by Assembly Member Lois Wolk, would authorize the Rumsey Band of Wintun Indians, a federally recognized Indian tribe, to join in a Joint Powers Authority (JPA) with Yolo County and other public agencies in Yolo County. The bill would allow the tribe to participate with other area governments in the management of the Conaway Ranch property, and would also place the tribe on equal governmental footing with other area agencies and governments with respect to joining joint powers authorities on matters of significance to the tribe, the county, and other Yolo County public agencies. State law, under the Joint Exercise of Powers Act, authorizes public agencies to join together for the purpose of

jointly exercising common powers for the public benefit, but Legislative authority is needed to authorize a tribe to participate in a JPA. The language of AB 1747 is patterned after existing provisions of law authorizing other tribes to participate in JPAs, including tribes in Del Norte, Imperial and Riverside Counties. For these reasons, CSAC supports AB 1747. The bill is now in its third reading in the Senate.

AB 1750 (Horton, et. al) – Neutral

AB 1750, sponsored by the Assembly Committee on Governmental Organization, would have required the California Gambling Control Commission, commencing with the 2005-06 fiscal year, to determine the amount of money needed to be transferred from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund to ensure that each eligible recipient Indian tribe receives up to \$275,000 per quarter of the fiscal year. The bill would require the California Gambling Control Commission to make those payments to each eligible recipient Indian tribe quarterly, and also would provide that if the transfer of funds results in a surplus, the funds shall remain in the Indian Gaming Revenue Sharing Trust Fund for disbursement in future years. The bill would provide that if the amount appropriated for the fiscal year is insufficient to provide eligible tribes \$275,000 for each fiscal quarter, the Department of Finance shall request an augmentation from the Legislature. AB 1750 was placed on the Senate Appropriations Committee's suspense file on August 15, but may be up for another vote when the Committee reviews the suspense file on August 25.

ACA 15 (Nation) – Watch

ACA 15, as amended on August 16 by Assembly Member Joe Nation, would have prohibited the Governor from concluding any Indian gaming compacts in an area defined as urban. Under the definition of urban in the bill, eight counties would have been affected: Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Francisco, San Mateo, and Santa Clara. The remaining counties, while not under an explicit prohibition for gaming, would have fallen under another provision of the bill that would have required community approval prior to allowing gaming. However, Assembly Member Nation agreed to Assembly Governmental Organization Committee Chairman Jerome Horton's suggestion to drop the bill in lieu of conducting a series of informational hearings in the coming months on the urban gaming issue. CSAC did not take a position on the bill as the CSAC Indian Gaming Working Group found that a broader discussion among counties needed to occur to address the entire issue of reservation shopping, whether urban or rural, and prior to delineating areas where it is inappropriate for gaming to occur. CSAC will continue to monitor this issue as it evolves.

SB 288 (Battin) – Request for Comment

SB 288, as amended on August 18 by Senator Jim Battin, would delete the sunset date of 2009 for the Indian Gaming Special Distribution Fund (SDF), thereby making it an ongoing program. It would also appropriate an additional \$20 million to the SDF, thereby backfilling the \$20 million appropriation that the Governor had vetoed from the budget in July. Lastly, SB 288 would require counties to submit their annual SDF reports to the Department of Finance and the Gambling Control Commission each year to help prevent the administrative snafu that led to the Governor's veto.

Senator Battin has contacted CSAC and asked if it would be beneficial to also change the SDF annual report deadline from April 1 to October 1 to allow the Governor to incorporate the reports' information into his budget proposal. Please contact Farrah McDaid Ting at (916) 327-7500 ext. 559 or fmcdaid@counties.org with your comments regarding this possible provision.

SB 288 has been referred to the Assembly Committees on Governmental Organization and Appropriations. In support of those 25 counties that do receive SDF, CSAC expects to lend support to SB 288. However, we are looking for input and urge all counties who take part in the SDF program to contact CSAC and the senator's office with your comments as soon as possible.

SB 922 (Ducheny) – Support

SB 922, as amended July 13 and authored by Senator Denise Ducheny, would clarify language regarding the confidentiality of tribal sites and how local governments handle such information and documents. Currently, the Public Records Act (PRA) exempts records of specified Native American graves, cemeteries, and sacred places from disclosure requirements, but SB 922 would include records maintained by another state agency or a local agency under the PRA exemption. CSAC has been working with tribal representatives, the County Counsels Association of California and the League of California Cities to ensure that SB 922 is a practical fix for the confidentiality language contained within last year's SB 18 and the Governor's

Office of Planning and Research's SB 18 tribal consultation guidelines. SB 922 is an urgency bill and was placed on the Assembly's consent calendar on August 15 by the Appropriations Committee.

Agriculture and Natural Resources

For more information, contact Karen Keene at 916/327-7500, ext. 511, or e-mail kkeene@counties.org, or Farrah McDaid Ting at 916/327-7500 ext. 559, or email fmcdaid@counties.org.

Flood Control

AB 1665 (Laird) – Oppose Unless Amended

AB 1665, by Assembly Member John Laird and sponsored by the Schwarzenegger administration, would impose new duties and requirements on the state, local flood control agencies, and counties relative to flood control facilities and activities in the Sacramento and San Joaquin Rivers drainage. According to the Department of Water Resources (DWR) this bill would affect the following counties: Butte, Colusa, Fresno, Glenn, Madera, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, Tehama, Yolo and Yuba.

Specifically, AB 1665 would:

- ▶ Rename the Reclamation Board the Central Valley Flood Management Board (Board);
- ▶ Require DWR to prepare and submit to the Legislature, before January 1, 2010, a report describing the state plan of flood control;
- ▶ Require DWR on or before January 1, 2007, to prepare a schedule for mapping areas at risk of flooding in the Sacramento and San Joaquin Rivers drainage;
- ▶ Require DWR, in cooperation with the board, before January 1, 2011, to prepare a flood control system status report;
- ▶ Require local agencies with flood protection duties for federal levees, beginning September 15, 2008, to submit annually information on how they plan to address flooding issues;
- ▶ Require the board to prepare a report on flood management for each local agency responsible for the operation and maintenance of a federal flood control facility using information provided by the local agency;
- ▶ Require any county that includes a levee failure inundation zone, to identify each parcel of real property located in such a zone based upon maps provided by the state;
- ▶ Require those counties that include a levee inundation zone to provide a written notice of flood hazard with the annual property tax assessment to each landowner determined by the county to own a parcel of real property located in a levee failure inundation zone.

CSAC has concerns with the flood hazard notice provisions of AB 1665 and will be seeking amendments to have those concerns addressed. The bill is expected to be heard by the Senate Natural Resources and Water Committee on August 23.

Contaminated Property: Methamphetamine

AB 1078 (Keene) – Concerns

AB 1078, by Assembly Member Rick Keene, was placed on the Senate Appropriation Committee's Suspense file on August 15. This bill would enact the Methamphetamine Contaminated Property Cleanup Act of 2005, which would establish remediation and reoccupancy standards for determining when a property, contaminated as a result of methamphetamine activity, is safe for human occupancy. AB 1078 would also require cities and counties to comply with regulations and standards established by this act, and statutorily mandate specified duties upon local health officers. CSAC is working with the author's office regarding costs associated with the bill's implementation.

Crops

AB 1056 (Florez) – Oppose

SB 1056, by Senator Dean Florez, is a two-year bill. This measure specifies that provisions of law relating to field crops are of statewide concern and occupy the entire field of regulation regarding registration, labeling, sale, storage, transportation, distribution, notification of use, and use of field crops to the exclusion of local regulations. CSAC expressed strong opposition to SB 1056 on the basis that it is a statewide preemption of local control.

Solid Waste Collection

AB 259 (Hancock) – Co-Sponsor

AB 259, by Assembly Member Loni Hancock, passed off the Senate Floor on August 18. This bill would clarify that all counties have the authority to collect delinquent fees for solid waste collection through the lien assessment process. It now moves to the Assembly for concurrence.

Asbestos

SB 655 (Ortiz) – Concerns

SB 655, by Senator Deborah Ortiz, was placed on the Assembly Appropriation Committee's Suspense File on August 17. This bill would establish asbestos hazards mapping requirements, and directs the California Environmental Protection Agency to convene a task force to evaluate policies and adopt guidelines for the mitigation of risk associated with naturally occurring asbestos. The bill would also specify various real estate disclosure requirements relative to naturally occurring asbestos, and would include specified asbestos hazards among those hazards required to be identified in a general plan's safety element. SB 655 would also sets forth various directives affecting the development approval process for projects located in asbestos hazard zones.

Mining

SB 668 (Kuehl) – Oppose

SB 668, by Senator Sheila Kuehl, was made a two-year bill. This measure would have amended the Surface Mining and Reclamation Act (SMARA). CSAC is opposed to the provision that would have granted the Department of Conservation unrestricted authority to file injunctions against existing mine operators regardless of the severity of the SMARA violation.

Energy

AB 1383 (Pavley) – Watch

AB 1383, as amended on July 13 by Assembly Member Fran Pavley, would establish, until January 1, 2016, the Low-Income Housing Development Revolving Loan Program to help finance solar energy systems in eligible low-income housing located in the service areas of an electrical corporation. The bill would create the Low-income Housing Development Revolving Loan Program Fund. AB 1383 was placed on the suspense file by the Senate Appropriations Committee on August 15, but may receive one last vote by the committee when it reviews the suspense file on August 25.

SB 1 (Murray) – Watch

Senate Bill 1, by Senator Kevin Murray and as amended on August 18, is referred to as the "Million Solar Roofs Initiative, and is backed by Governor Arnold Schwarzenegger. SB 1 would require the California Energy Commission (CEC) to develop, implement, and fund a program to install 1,000,000 photovoltaic systems, or the generation capacity equivalent of 3,000 megawatts (MW) on residential and commercial customer sites, by 2018. This is to be accomplished through subsidies based on sliding scale according to each homes' energy efficiency. The Assembly Appropriations Committee granted the bill reconsideration and it may be heard on August 25, when the committee is scheduled to review suspense file items.

SB 426 (Simitian) – Watch

SB 426, as amended June 21 by Senator Joe Simitian, would require the Energy Commission to make a liquefied natural gas (LNG) needs assessment study that assesses demand and supply for natural gas and alternatives to natural gas to meet energy demands, and to determine the number of LNG terminals, if any, needed to meet the state's projected natural gas demand. The bill would also require the Energy Commission to hold public hearings, prioritize the permits for LNG terminals, and provide that these requirements are applicable to every LNG terminal to be constructed or operating in California, irrespective of whether an application has been submitted for the construction or operation of the terminal to any federal, state, or local entity prior to the operative date of the bill. SB 426 was placed on the suspense file by the Assembly Appropriations Committee on August 17, but may be heard on August 25, when the committee is scheduled to review suspense file items.

SB 441 (Soto) – Watch

SB 441, as amended on July 12 by Senator Nell Soto, would prohibit the Public Utilities Commission from requiring the installation of advanced metering infrastructure for any building constructed prior to January 1, 2006 and occupied by a customer with average annual electricity usage of less than 1,000 kilowatt hours per month. SB 441 would also prohibit customers of an electrical corporation with average monthly usage of less than 1,000 kilowatt hours occupying a building constructed prior to January 1, 2006, from being placed on a default time-differentiated rate schedule or other rate schedule using advanced metering infrastructure, without the customer's affirmative written consent. SB 441 passed the Assembly Appropriations Committee on August 17 and is scheduled for a second reading in the Assembly on August 21.

SB 769 (Simitian) – Watch

SB 769, as amended on August 15 by Senator Joe Simitian, would establish the Energy Reliability and Affordability Act to increase energy reliability and affordability by reducing the demand for energy by residential customers. The bill would require the Public Utilities Commission to establish a refrigerator replacement program to provide incentives to owners of limited-income rental residential units with energy inefficient refrigerators to replace those refrigerators with more energy efficient models. The goal of the program would be to expand existing refrigerator replacement programs by replacing a minimum of 50,000 energy inefficient refrigerators in low-income residential rental units each year. SB 769 was placed on the suspense file by the Assembly Appropriations Committee on August 17, but may be heard again on August 25, when the committee is scheduled to review suspense file items.

SB 1003 (Escutia) – Watch

SB 1003, by Senator Martha Escutia and as amended on July 13, would have enacted the Liquefied Natural Gas Evaluation and Terminal Permitting Act. The bill would authorize the State Energy Resources Conservation and Development Commission (energy commission) to establish a permitting process for the construction and operation of liquefied natural gas terminals. The bill also required the Energy Commission to cooperate with requests for information to enable the city or county affected by the location of a liquefied natural gas terminal and to develop and present such recommendations in a timely fashion. The bill also contained a provision, which allows the city or county within whose jurisdiction the terminal is located, to hold public hearings on the proposed terminal. SB 1003 would not take effect if a companion bill, SB 426, were not also passed this session.

Administration of Justice

For more information, contact Rubin R. Lopez at 916/327-7500, ext. 513, or e-mail rlopez@counties.org or Elizabeth Howard at 916/327-7500, ext. 537 or ehoward@counties.org.

Undesignated Fees

Details on Implementation of AB 139 Transmitted to Counties and Courts

A joint transmittal from CSAC and the Administrative Office of the Courts (AOC) was sent to counties and courts earlier this week detailing key elements regarding the implementation of AB 139, the budget trailer bill that codifies the undesignated fee compromise.

Needing most immediate attention is an upcoming deadline that requires courts and counties jointly to provide details on the level of civil assessment revenue received by the county in 2003–04. A certification form to capture that information and certify its accuracy is, under the provisions of AB 139, due on August 31. It is anticipated that the form will be circulated to courts and counties statewide by early next week. In the meantime, CSAC continues to encourage ongoing discussions at the local level to reach agreement on the level of civil assessment revenue from the base year. We also urge counties to review the materials transmitted by CSAC and the AOC carefully, as they contain important details on various implementation aspects of AB 139. The joint memo and related attachments are available at www.csac.counties.org/default.asp?id=290. Further, CSAC and the AOC will continue to explore ways to assist courts and counties in AB 139 implementation issues.

Homeland Security

SB 1015 (Romero) – Request for Comment

Counties are asked to review the provision of SB 1015 carefully. This measure now contains provisions that would statutorily establish and restructure the Office of Homeland Security (OHS). As counties may recall, the current Governor's Office of Homeland Security was created through an executive order in 2003. The Legislative Analyst's Office has pointed out the need to create a more unified approach to homeland security, as contained in its lengthy analysis of the state's homeland security efforts in its most recent budget analysis. (See www.lao.ca.gov/analysis_2005/general_govt/gengov_anl05.pdf#page=13.)

SB 1015 would enact legislative intent to establish the state Office of Homeland Security in the 2006 legislative session, but give the current operation the ability to administer its own budget appropriations. Other changes involve giving access to OHS employees access to certain criminal history and intelligence information and would reappropriate funds to give the office "line item status."

CSAC encourages counties to examine the measure from the perspective of their existing interaction and relationship with the OHS. To the extent that counties rely on the OHS for guidance and direction relating to grant administration, planning, and putting together a statewide homeland security strategy, it might be timely to weigh in with suggestions as to how to enhance those activities. Specifically, comments on how the local-state planning and communication process, especially as it relates to grant disbursement, are encouraged. The measure recently passed the Senate Public Safety Committee, and it should next move to the Senate Appropriations Committee for consideration.

Court Facilities

AB 1435 (Evans) – Support

AB 1435, a measure by Assembly Member Noreen Evans, seeks to clarify the meaning of permissible uses of local Courthouse Construction Funds (CCF). CSAC supports this bill, which now awaits action by the full Senate. This measure makes a number of important, technical changes to statutes governing the transfer of trial court facilities. In an effort to advance the historic work contemplated by SB 1732 (Escutia, 2002), CSAC believes it is important to make clarifications, where necessary, to help facilitate the work that is underway to successfully transfer court facilities to the state.

Proposition 36

Status of Previously Reported Legislation

Summarized below are the various measures before the Legislature seeking to amend Proposition 36. At this point, none of the measures below contain an appropriation to extend funding beyond the June 30, 2006 sunset date. It appears that SB 803, by Senator Denise Ducheny, may be the only measure moving.

Bill	Author	Description	Status
AB 104	Bass	Would make numerous substantive revisions to Proposition 36, including permitting incarceration for specified violations; allowing court-ordered placement into a detoxification (including in-custody) or drug court program; and changing eligibility criteria. The measure does not include a provision for extending funding for Proposition 36,	Awaiting hearing in Senate Public Safety Committee

Bill	Author	Description	Status
		but rather contains a statement of intent to fund the program annually.	
AB 858	Bass	As introduced, this measure would have extended the sunset date on the annual Proposition 36 appropriation of \$120 million for an additional five years (through FY 2010–11). CSAC supported that version of the bill. The measure subsequently was amended before being placed in the Assembly Inactive File. In its current form, AB 858 contains only intent language regarding ongoing funding and makes various other programmatic changes to Proposition 36.	In the Assembly Inactive File
SB 556	Migden	Would make a number of changes to the initiative, including imposing a 25 percent cap on the amount of Proposition 36 funds that may be allocated to non-treatment and other specified ancillary activities. However, recent amendments would permit the Department of Alcohol and Drug Programs to waive the cap if a county can demonstrate that how its planned expenditures “would further the purposes of the act and improve treatment outcomes.” Would amend other aspects of the program, including assuring that no participant is denied Proposition 36 treatment because of a co-occurring mental health disorder and extending the maximum length of treatment and aftercare in SACPA from 18 to 24 months.	In Senate Third Reading
SB 803	Ducheny	Does not make an appropriation for continued funding, but states legislative intent to appropriate no less than \$120 million in funds in the annual budget. Makes other programmatic changes, including redefining “successful completion of treatment”; changing evaluation study requirements and timing; requiring drug testing as a condition of probation; changing eligibility requirements, allowing flash incarceration; and increasing by 12 months (to up to 24 months) the extension of treatment services, when necessary.	Set for hearing in Assembly Public Safety Committee (8/23)

2004 Evaluation Report Released

As required under the provisions of Proposition 36, an evaluation report has just been released on the Substance Abuse and Crime Prevention Act (SACPA) for 2004. This report, which can be found on at www.adp.ca.gov/SACPA/P36_Reports.shtml, reveals that over 103,000 participants referred to Proposition 36 have entered treatment. It provides important demographic details on the population receiving Proposition 36 treatment, including client characteristics, show rates, type of treatment received, rate of treatment completion, and various success indicators following treatment.

Moratorium on Capital Punishment

AB 1121 (Koretz) – Request for Comment

Assembly Member Paul Koretz is authoring AB 1121, a measure that would impose a moratorium on capital punishment in California until such time as the Legislature has considered the recommendations of the California Commission on the Fair Administration of Justice. By way of background, in 2004 then-Senate President pro Tempore John Burton authored Senate Resolution 44 that created the commission, which is charged with studying and reviewing the criminal justice system in California. The commission is specifically tasked with evaluating whether the process has resulted in wrongful executions or convictions, and is charged with examining ways to improve the criminal justice system and recommending changes to assure just, fair, and accurate application and administration of criminal justice in California. The commission’s recommendations and proposals are due to the Legislature by December 31, 2007.

AB 1121 would add Penal Code Section 2700.1 to establish a death penalty moratorium until the commission concludes its work and the Legislature has the opportunity to fully consider its recommendations. However, the measure also provides that if the Legislature does not enact legislation to end the moratorium period, then the moratorium shall expire on January 1, 2009.

Historically, CSAC does not take positions on measures related to new crimes, penalties, or sentencing enhancements. Accordingly, we will remain neutral on Assembly Member Koretz's measure to impose a moratorium on executions in California. However, the author's office specifically requested that CSAC encourage counties to examine AB 1121 and weigh in on its provisions. Counties may wish to make direct contact with Assembly Member Koretz's office with their comments and input on this measure, as they deem appropriate. AB 1121 is awaiting hearing in the Assembly Public Safety Committee.

Protection of Public Officials' Personal Information

AB 1595 (Evans) – Request for Comment

AB 1595 seeks to strengthen existing law that offers government and public safety officials protection regarding the privacy of their personal information — namely home address and telephone number. Existing law now prohibits a state or local agency from posting personal information of specified elected or appointed individuals without first receiving written consent. Among the provisions in AB 1595 is one that would expand the universe of individuals who are protected by this prohibition to include state administrative law judges, federal judges, federal defenders, members of the U.S. Congress, and presidential appointees.

The measure makes several other changes, including expanding prohibition against public posting or display of officials' home addresses or telephone numbers on the Internet with the intent to cause bodily harm. It is our understanding that the purpose of AB 1595 is to further advance recommendations that came out of the Public Safety Officials' Home Protection Advisory Task Force, a body that was created statutorily by AB 2238 (Dickerson, 2002). The measure is in its Senate Third reading.

Elder and Dependent Abuse

ACR 8 (Dymally) – Resolution Chapter #28

Counties may recall that CSAC supported Assembly Concurrent Resolution 8 by Assembly Member Mervyn Dymally regarding elder and dependent abuse. The ACR highlights the need to address this insidious societal problem and seeks to raise awareness with the public and policy makers. The resolution, which was recently chaptered, proclaims the month of May Elder and Dependent Adult Abuse Awareness Month.

CSAC has a strong interest in preventing and reducing the incidence of elder and dependent adult abuse. An important step in this process is to continue to heighten awareness among public policy makers and the public at large that we must remain committed to identifying and preventing the perpetration of these crimes. For these reasons, we are pleased to have supported Assembly Member Dymally's resolution and applaud his effort to shine a light on this important public policy issue.

Law Enforcement Interrogations

SB 171 (Alquist) – Two-year bill

SB 171, by Senator Elaine Alquist, would impose a new duty on local law enforcement to provide for electronic recording of custodial interrogations for murders and other specified violent felonies. CSAC — without judging the policy benefits of this measure — took an oppose position on this measure based on its economic impacts alone. CSAC recently learned that the author's office has made this a two-year bill.

Juvenile Justice Coordinating Councils

AB 1448 (Saldaña) – Vetoed

Governor Arnold Schwarzenegger vetoed AB 1448, a measure by Assembly Member Lori Saldaña. As counties will recall, CSAC support this measure that sought to enhance the ability of county multi-agency juvenile justice coordinating council

(JJCC) members to carry out their designated duties without fear of violating provisions of Government Code section 1090 (GC 1090). In vetoing the measure, the Governor offered the following message:

Governmental actions on behalf of the public need significant public scrutiny to ensure that officials act in the public's best interest. Actions from state entities typically receive significant attention and scrutiny, but actions from smaller lesser-known boards generally do not. This lack of attention can make those boards more susceptible to influence from other interests. A strong anti-corruption law provides protection against such interests. Section 1090 of the Government Code is extremely important to California and is one of the strongest anti-corruption laws in the nation. Its purpose is critical in order to ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests. This bill would erode the public's protection in Section 1090 by allowing an exception.

Report on Domestic Violence

Attorney General Releases Task Force Report on Criminal Justice System Response to Domestic Violence

In late July, Attorney General Bill Lockyer released a report from his Task Force on Local Criminal Justice Response to Domestic Violence. The 26-member body studied the criminal justice system response to domestic violence for two years, resulting in over 40 recommendations for system improvements. The report points out a number of challenges at the local level and calls for implementation of key recommendations to increase and improve efforts to stop the cycle of violence. In particular, many system failures were identified around restraining orders, and a lack of coordination at the local level also is hindering more effective responses to family violence. On August 18, the Select Committee on Domestic Violence, chaired by Assembly Member Rebecca Cohn, reviewed the reports findings and received testimony from various stakeholders and task force members.

The report, *Keeping the Promise -- Victim Safety and Batterer Accountability*, as well as additional information of the Attorney General's efforts in the area of family violence can be found at www.safestate.org/domesticviolence.

Economic Development

For more information, contact Steve Keil at 916/327-7500, ext. 521, or e-mail skeil@counties.org or Farrah McDaid Ting at 916/327-7500 ext. 559, or e-mail fmcdaid@counties.org.

Base Realignment and Closure (BRAC) 2005 Update

We are entering the final phase of the 2005 BRAC process, as the federal Base Realignment and Closure Commission recently held hearings in California at several sites, including the Navy Broadway Complex in San Diego on August 5 and the Naval Postgraduate School and Defense Language Institute in Monterey on August 8. The commission also conducted its west coast regional hearing on August 8, and received testimony from Monterey, San Diego, and several western states. On August 11, the commission concluded its public hearing schedule with hearings on reuse issues and the Air National Guard.

The commission is now in the process of finalizing data and testimony with the goal of passing motions the week of August 22. It is likely that the commission will take the better part of next week to complete the final voting process. By law, the commission will then submit their recommendations to the President by September 8., who will approve them and then send them to Congress for a final vote.

For a complete list of military bases and installations slated for closure or realignment, visit www.brac.gov.

Elections

For more information, contact Karen Keene at 916/327-7500, ext. 511, or e-mail kkeene@counties.org, or Farrah McDaid Ting at 916/327-7500 ext. 559, or email fmcdaid@counties.org.

As the November 8 special election draws closer, there has been a flurry of activity related to Proposition 77. On August 13, the California Supreme Court ordered the proposition, commonly referred to as the Governor's redistricting plan, back onto the ballot for a vote of the people. The 3rd District Court of Appeals had previously removed the measure from the ballot on the grounds that the summary language of the measure submitted to the Attorney General and the language that appeared on the petitions signed by voters to qualify for the ballot differed substantially. The Supreme Court's ruling guarantees that the measure will appear before voters in November, but does not preclude legal challenges after the vote. The CSAC Government Finance and Operations Policy Committee is recommending a position of neutral on Proposition 77 to the CSAC Board of Directors, who will determine the Association's final position on the measure at their September 8 special meeting.

AB 738 (Nation) – Pending

AB 738, as amended on May 19 by Assembly Member Joe Nation, would require an individual who receives compensation to circulate an initiative, referendum, or recall petition to wear a badge stating, in no smaller than 30-point font, that he or she is a "paid" signature gatherer. The bill would require the individual circulating the initiative, referendum, or recall petition to wear the badge on his or her chest in clear view of all individuals signing or asked to sign the petition. AB 738 was passed by the Senate Elections, Reapportionment and Constitutional Amendments Committee on July 13, and is scheduled for a third reading in the Senate next week.

AB 783 (Jones) – Support

AB 783, as amended April 7 by Assembly Member Dave Jones, would reinstate statute that required the state to pay the costs of any special election called by the Governor to fill a legislative or congressional vacancy. Such a statute had been enacted in 1993 and expired on January 1, 2005. The author took amendments to make the bill's provisions retroactive, and CSAC supports the bill. AB 783 has been designated an urgency bill and would take effect upon passage, especially in light of the Governor's proclamation to call a special election to fill Assembly Member Mike Gordon's Los Angeles County Assembly district after he passed away recently. AB 783 was placed on the Senate Appropriation Committee's suspense file on August 15, but is scheduled to be voted upon, along with the committee's other suspense file bills, on August 25. We urge all counties to send letters of support to Senate Appropriations Committee Chair Carole Migden and the members of the committee for this critical bill.

AB 1636 (Umberg) – Watch

AB 1636, as amended on August 16 by Assembly Member Tom Umberg, enacts several directives related to electronic voting that were handed down by previous Secretary of State Kevin Shelley. AB 1636 would require an elections official to keep paper record copies, if any, of voted polling place ballots. Assembly Member Umberg agreed to remove language that required the paper record to be used for the 1% manual recount tally, but the remaining provisions of the bill would still place an additional burden on elections officials, and for these reasons, the California Association of Clerks and Elections Officials voted to oppose this bill on June 10. AB 1636 is scheduled to be heard in the Senate Appropriations Committee on August 22.

AB 1757 (Umberg, et. al.) – Watch

AB 1757, as amended on June 21 and sponsored by the Assembly Committee on Elections and Redistricting, would alter existing law that requires the local elections official to publish, not less than one week before the election, a list of polling places designated for each election precinct, followed by a list of precinct board members appointed. This bill would instead require the elections official, not less than one week before the election, to post a list of all current polling places in each precinct and a list of precinct board members appointed by the 15th day before the election and, not later than 28 days after the election, to post a list of precinct board members who actually served on election day. The bill would also require the elections official to post these lists at his or her office and on his or her official Web site, to divide and distribute these lists for posting at the city clerk's office, as specified, and to keep, archive, and make available these lists, as specified. By increasing the duties of local elections officials, this bill would impose a state-mandated local program. AB 1757 was sent to the Governor's desk on August 18.

ACA 18 (Nation) – Pending

ACA 18 was amended on July 12 by Assembly Member Joe Nation to address the time period in which the Legislature could introduce a measure to be placed on the statewide ballot or to supersede measures already qualified for such a ballot.

ACA 18 now requires the Legislature, following certification of an initiative measure for the ballot, at least 124 days before the election on the initiative measure, to introduce a bill or constitutional amendment, containing provisions substantively identical to those of the initiative. If the Legislature does so, ACA 18 would require the Secretary of State to immediately withdraw the initiative measure from the ballot if, not later than 117 days prior to the general election at which the initiative measure is scheduled to be submitted to the voters, a bill is enacted or a constitutional amendment is passed, setting forth only provisions substantively identical to those of the initiative measure, or setting forth provisions of the initiative measure in an amended form that is consistent with the purposes and the intent of the initiative as endorsed in writing by the proponents. ACA 18 is written to take effect on January 1, 2007.

This bill originally addressed the required number of signatures by registered voters needed to qualify an initiative, referendum or constitutional amendment on the statewide ballot. Also, it was reported in the June 3 Bulletin that ACA 18 had been designated a two-year bill, but the bill was revived and passed by the Assembly Elections and Redistricting Committee on July 5 and referred to the Assembly Appropriations Committee. The Appropriations Committee placed ACA 18 on their suspense file on August 17, and is scheduled to review suspense file items one last time on August 25.

SB 117 (Murray) – Pending

Senate Bill 117, by Senator Kevin Murray and as amended on April 19, would require an elections official to provide a business reply, postage paid envelope to all absentee voter, and would establish the Absent Voting Postage Fund to be paid out of the state's General Fund to implement the bill. The Appropriations Committee placed SB 117 on their suspense file on August 17, and is scheduled to review suspense file items one last time on August 25.

SB 370 (Bowen) – Watch

SB 370, as amended on June 21 by Senator Debra Bowen, would originally have allowed elections officials to subtract the number of permanent absentee voters from the total number of voters in any precinct. However, language was later added to provide that on a direct recording electronic voting system, the electronic record of each vote shall be considered the official record of the vote, except that the paper record shall be the official paper audit record and shall be used in the manual tally and any recount. On June 21, author Bowen agreed to take out the original precinct provision, but retained the manual paper tally language. This provision would greatly increase the duties of elections officials, but SB 370 was passed out of the Assembly Appropriations Committee on July 13. Appropriations Chairwoman Judy Chu had asked Senator Bowen to continue working with elections officials on the problematic portions of the bill, but Bowen indicated that she was still unclear on election officials' concerns. If your county has concerns about this bill, we urge you to contact Senator Bowen's office with your specific concerns as soon as possible, as the bill is in its third reading in the Assembly next week.

SB 469 (Bowen) – Pending

SB 469, as amended on July 13 by Senator Debra Bowen, would require an initiative, referendum, or recall petition to reflect, in specified language, whether it is being circulated by a paid circulator or by a volunteer. SB 469 was passed by the Assembly Appropriations Committee on August 18.

SB 506 (Poochigian) – Watch

SB 506, as amended May 31 by Senator Chuck Poochigian, would allow a lengthy list of public safety officials or those minimally associated with public safety to complete a confidential voter registration application, thereby keeping their voter registration records confidential and prohibiting the records from being disclosed to the public. County election officials take great care to handle confidential voting records with the utmost of caution, including instituting separate storage, viewing, and processing procedures for such records. In light of this fact, and because the list of eligible public safety officials in SB 506 is so lengthy, this bill could potentially greatly increase the workload of election officials. SB 506 was passed on a unanimous vote by the Assembly Appropriations Committee on August 18.

SB 1016 (Bowen) – Watch

SB 1016, as amended on August 15 by Senator Debra Bowen, would change existing law, which sets forth the requirements for the information to be provided on the affidavit of voter registration, including that the affidavit of registration include the affiant's California driver's license number, California identification card number, or any other identification number specified by the Secretary of State. This bill would additionally authorize the use of the last 4 digits of the affiant's Social Security number on the affidavit of registration, and would require that the affiant be advised on the affidavit that only one type of identification number need be provided, as specified. The bill would require the affidavit of registration to contain a specified statement about confidentiality of the personal information of certain voters, a statement that commercial use of voter registration information is a misdemeanor, and a toll-free hotline telephone number that the public may use to report suspected fraudulent activity concerning the misuse of voter registration information. SB 1016 was passed by the Assembly Appropriations Committee on August 18.

SB 1050 (Bowen) – Watch

SB 1050, as amended on August 15 by Senator Debra Bowen, would require a liberal interpretation of the statute that requires that a ballot be counted if the name of the write-in candidate is written in the manner described by the voting instructions. SB 1050 specifies that if a voter's intent can be construed, regardless of whether the voter literally complied with instructions, that vote may be counted. Unlike AB 43, SB 1050 has not been amended to apply only in the case of a recount, and the mandate provisions remain intact. Elections officials testified before the Assembly Elections and Redistricting Committee on June 21, stating that many counties' voting equipment was unsuited to complying with the bill's requirements, and as such, would add a substantial burden on registrars to the point that each ballot in every election may have to be examined individually to comply with the bill's provisions. The Senate Appropriations Committee placed AB 1050 on its suspense file on August 17, but the committee is scheduled to review suspense items on August 25.

Washington, DC Report

For more information, contact Joe Krahn, Waterman and Associates, at 202/898-1444, or e-mail jk@wafed.com.

Members of Congress left Capitol Hill in late July to begin their traditional month-long summer recess, having made substantial progress on a number of high-profile issues. After a flurry of votes in both chambers, the House and Senate adjourned on July 29, with lawmakers scheduled to return on September 6.

Among the measures Congress cleared before the August break was the massive surface transportation reauthorization bill (HR 3), which was approved on July 29. Nevertheless, a 12th short-term extension of prior law was needed to keep federal transportation funds flowing to states and localities through August 14. Members and congressional staff needed time to enroll the legislation and forward it to President Bush for his signature.

Congress also approved a comprehensive energy bill (HR 6) prior to leaving town, handing President Bush a major legislative victory that he had been seeking since 2001. Action on the energy measure came on the heels of another significant win for the president - final passage of the Central American Free Trade Agreement.

In another key development on Capitol Hill, Sonoma County Supervisor Valerie Brown, a CSAC Executive Committee member, testified before a House Government Reform subcommittee regarding methamphetamine, a dangerous drug that is rapidly spreading across the nation. Supervisor Brown testified on behalf of the National Association of Counties (NACo).

It should be noted that CSAC President and San Diego County Supervisor Greg Cox and Supervisor Brown have been appointed to NACo's newly created Meth Action Group.

In other news, Congress recently passed and President Bush signed into law two fiscal year 2006 appropriations bills – the Interior Department and related agencies and funding for the Legislative Branch. Completion of the 10 remaining spending bills for next year will be high on the congressional agenda when lawmakers return to Washington next month.

Included in the fiscal year 2006 Interior spending bill is \$236 million for the Payments-in-Lieu-of-Taxes (PILT) program – the highest level ever provided by Congress. The \$236 million appropriation for PILT represents a \$9 million increase over current spending levels.

When Congress reconvenes after Labor Day, the Senate will begin debate on President Bush's nominee to the U.S. Supreme Court, John G. Roberts, Jr. The Judiciary Committee's confirmation hearings will begin September 6, with a committee vote on Roberts' nomination set for September 15. Senate leaders are aiming to begin floor debate on the nomination no later than September 26 - in time for the next term of the high court, which begins on October 3.

Reauthorization of TEA-21

Nearly two years after the landmark Transportation Equity Act for the 21st Century (TEA-21) first expired, the 109th Congress finally put the finishing touches on a new long-term rewrite of the nation's surface transportation laws. Shortly before adjourning for the August recess, both the House and Senate overwhelmingly approved a new \$286.4 billion transportation bill that will keep federal highway and transit programs operating through fiscal year 2009.

As expected, President Bush signed the measure into law despite the fact that the bill's final spending level exceeded the White House's limit on new transportation funding. The legislation - dubbed the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) - exceeds the Bush administration's proposed spending limit by \$2.4 billion.

Under the new law, total surface transportation contract authority is set at \$295 billion, with guaranteed spending totaling \$286.4 billion over six years, a 38 percent increase over TEA-21. It should be noted that the additional contract authority was negotiated with the White House after conferees agreed to include a rescission of prior contract authority totaling \$8.6 billion. The additional spending will be applied after fiscal year 2009.

Of the \$286.4 billion in new guaranteed spending, \$228 billion is reserved for the federal highway program, while \$52 billion is set aside for transit activities. The remaining \$6 billion is available for a number of safety-related programs.

Although the bill's overall funding level was by far and away the most controversial matter facing lawmakers throughout the reauthorization process, the "donor" vs. "donee" state battle also factored prominently into the protracted debate. As expected, donor states - those states that send more gas tax revenue to the Highway Trust Fund (HTF) than they ultimately receive back in highway dollars - mounted an aggressive campaign to recover a greater percentage of funding.

After a series of intense negotiations, the final bill requires donor states to continue to receive a minimum of 90.5 cents on the dollar in fiscal years 2005 and 2006. However, in fiscal year 2007, the minimum rate of return will increase to 91.5 percent, and will top out at 92 percent in fiscal years 2008 and 2009. The bill also guarantees that donee states will receive at least 19 percent more highway funds than under previous law. With regard to California, the state is slated to receive a 34.3 percent increase in highway funding over the life of the new act.

Following the tradition of previous transportation reauthorization bills, SAFETEA-LU includes over \$22 billion in congressionally earmarked projects. Of that total, \$16 billion is designated for thousands of high-priority projects in nearly every congressional district, while another \$6.2 billion is available for projects of national and regional significance.

The basic structure of TEA-21 will remain intact under SAFETEA-LU, with the Surface Transportation Program, the Bridge Program, and the Congestion Mitigation and Air Quality Program all slated for sizeable increases. The legislation also creates a new \$5.1 billion Highway Safety Improvement program. Within the safety program, funds are set aside for a new high-risk rural road safety initiative.

With regard to environmental streamlining, the final legislation includes a new surface transportation pilot demonstration program that will allow five states, including California, to assume the environmental review responsibilities of the federal Department of Transportation with respect to certain highway projects. The pilot program will reduce administrative red tape, expenses, and duplicative procedures for high-priority transportation projects, helping states to better meet their critical transportation safety, capacity, and infrastructure needs.

It should be noted that enactment of the aforementioned pilot program was a key priority for CSAC, the League of California Cities, and Governor Schwarzenegger's administration. Under the leadership of Congressman Gary Miller (R-CA) and Senator Barbara Boxer (D-CA) - both of whom are key players in the transportation arena - California's participation in the limited pilot was secured amidst contentious final negotiations on the reauthorization bill.

There also are several other provisions in SAFETEA-LU that address environmental streamlining, including provisions that establish a streamlined project development process for all projects requiring an environmental impact statement. Additionally, the legislation creates a pilot program that would allow five states to assume DOT's environmental review responsibilities with regard to the Recreational Trails program and Transportation Enhancement activities.

Medicaid

Upon their return from the August recess, members of the Senate Finance and House Energy and Commerce Committees will have until September 16 to craft budget reconciliation legislation containing provisions to cut federal entitlement programs. Of the \$35 billion in cuts slated for all federal entitlements, Medicaid is expected to shoulder approximately \$10 billion of the burden. It should be noted that because reconciliation legislation cannot be filibustered in the Senate, other measures such as TANF reauthorization could be attached to it.

Senate Finance Committee staff is currently working in a bipartisan manner to design a menu of Medicaid savings options for senators to consider when they return on September 6. Near the top of the list of options appears to be proposals that would modify reimbursement parameters – especially to pharmacies – for generic drugs. Committee staff has indicated that a substantial mark up is currently allowed in that particular process.

Also under discussion are proposals for tighter restrictions on transfers of personal assets in order to qualify for long-term care, as well as increased government scrutiny of doctors who appear to be making more claims than is realistically possible for their individual practices. Senate staff has signaled that the Finance Committee plans to adopt a bill by the September 16 deadline; if the panel fails to do so, it will lose control over its programs to Senate budget hawks after that date. Provisions in the House counterpart bill are expected to be crafted by the Republican leadership.

On a related matter, earlier this month the U.S. Department of Health and Human Services (HHS) sent legislative language to Capitol Hill which, among its provisions, would further target intergovernmental transfers, block grant the amount reimbursed for Medicaid administrative costs, and reduce to 50 percent the federal share of costs paid for targeted case management. Many of these provisions have been proposed and rejected by Congress previously. Offering language at this point, however, helps HHS position itself for the upcoming reconciliation debate.

In other news, the 28-member HHS Medicaid Commission met the week of August 15 to discuss options for achieving \$10 billion in Medicaid savings. The meeting marks the second official gathering of the commission, which must submit its short-term recommendations to HHS Secretary Michael Leavitt by September 1. These options will also be forwarded to Congress for consideration during the mark-ups of the reconciliation bills in mid-September.

SCAAP

In mid June, the full House approved its version of the fiscal year 2006 Science-State-Justice-Commerce Appropriations bill (HR 2862). Among other things, the measure provides funding for state and local law enforcement and criminal justice initiatives, including the State Criminal Alien Assistance Program (SCAAP).

As reported out of the House Appropriations Committee, the lower chamber's original Justice funding bill included \$355 million for criminal alien incarceration costs, or a boost of roughly \$55 million over current spending. In a victory for California's counties, members also adopted on the House floor an amendment that added \$50 million to the SCAAP account, bringing proposed spending for fiscal year 2006 to a total of \$405 million.

Across Capitol Hill, the Senate Appropriations Committee approved its draft fiscal year 2006 Justice spending bill in late June. Included in the measure is \$170 million for SCAAP, or roughly \$130 million less than what is provided under current law.

Although the Senate's proposed funding level for SCAAP is far less than the House figure – and represents a proposed cut from fiscal year 2005 spending – the upper chamber traditionally provides fewer dollars for the program. In fact, in 2002, the Senate Appropriations Committee voted to eliminate funding for SCAAP.

Indian Gaming

On July 27, the Senate Indian Affairs Committee conducted an oversight hearing on the regulation of Indian gaming. The committee heard testimony from members of Congress, Bush administration officials, and several tribal leaders from various parts of the country.

The hearing was the fourth in a series of inquiries conducted by the Indian Affairs panel designed to solicit opposing viewpoints on potential changes to the Indian Gaming Regulatory Act (IGRA). Although it is unlikely that the committee will consider major IGRA-reform legislation in the remaining days of the first session of the 109th Congress, the panel's chairman, Senator John McCain (R-AZ), has indicated his willingness to reexamine the law and consider modifications to IGRA in the future.

It should be noted that Yolo County Supervisor Mike McGowan recently submitted comprehensive written testimony to the Senate Indian Affairs Committee on behalf of CSAC. Among other things, McGowan's testimony discusses California's unique experience with respect to the proliferation of off-reservation gaming, and highlights the need for Congress to address the myriad of issues that impact county governments as a result of increased gaming throughout the state.

Finally, across Capitol Hill, it remains to be seen whether the House Resources Committee will act on IGRA-reform legislation in the current session of Congress. According to staff, Resources Committee Chairman Richard Pombo (R-CA) will likely issue a second, modified version of his draft IGRA-related bill, which seeks to restrict off-reservation gaming.

TANF Reauthorization

Reauthorization of the Temporary Assistance for Needy Families (TANF) program continues to be caught in a legislative quagmire. To date, the program is operating on a tenth short-term extension, which provides programmatic authority through September 30.

As has been the case for the last several months, the House GOP leadership is waiting for the Senate to act on its version of TANF reauthorization (S 667). House leaders have noted that the lower chamber has twice adopted bills in recent years without any similar action taken by the full Senate.

Although the Senate Finance Committee approved its TANF bill back in March, Senate Budget Committee Chairman Judd Gregg (R-NH) has argued that the legislation's new spending for child care and other support services exceeds the spending targets set in the congressional budget resolution. He and other budget hawks have indicated that they will object to floor consideration until the funding issues are resolved. Additionally, even if agreement is reached on the spending parameters, the Senate Republican and Democratic leadership would have to agree on how much floor time to allocate for debating the bill, which could prove to be difficult given the substantial amount of must-pass legislation the Senate needs to take up this fall.

Internet Sales Tax

As previously reported, the Streamlined Sales Tax Project Board met July 1 and announced that 18 states representing almost 30 percent of the population with a sales tax have signed onto the Streamlined Sales and Use Tax Agreement (SSUTA). Under the SSUTA, once 10 states representing 20 percent of the population enact implementing legislation, states are then able to work with vendors on a voluntary basis to require the collection of remote sales taxes. The new, uniform sales tax system is expected to become effective on October 1.

Despite the voluntary progress among key states and vendors, legislation has not been introduced in the first session of the current Congress that would allow states to take the next step of requiring vendors to collect and remit sales taxes on remote purchases. It remains unclear if legislative proposals will be unveiled this year, or if lawmakers will defer such action until next year.

In the meantime, the issue of Internet access taxes continues to garner much attention on Capitol Hill, effectively preempting the issue of Internet sales taxes. Recently, the Multistate Tax Commission registered strong opposition to congressional

efforts to make an existing ban on Internet access taxes permanent. According to the MTC, efforts to ban access taxes represent an unwarranted preemption of state authority.

Social Security

With the long-overdue highway and energy bills completed just prior to the August recess, proponents of overhauling the Social Security system have renewed their calls to make room on this fall's legislative calendar for consideration of a comprehensive retirement reform package. In the House, the chairman of the Ways and Means Committee – Representative Bill Thomas (R-CA) – is expected to introduce a retirement bill shortly after Congress reconvenes in early September.

The major roadblock to passage of any Social Security reform measure continues to be disagreements over the creation of individual investment accounts, the centerpiece of President Bush's Social Security overhaul plan. Other obstacles also stand in the way, however, including options that could result in future benefit cuts or an increase in the retirement age. Furthermore, it appears that Social Security reform remains a long shot in the Senate, where Democrats have threatened to filibuster any bill that includes individual accounts.

It should be noted that while details of several of the primary reform plans are not currently available, there is no indication that mandatory Social Security participation for newly hired state and local employees will be included in the proposals.

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2005 Calendar of Events

SEPTEMBER

- 8 CSAC Board of Directors Special Meeting, Sacramento
- 21-23 RCRC Annual Conference, Mariposa County
- 29-30 Executive Committee Meeting, Santa Barbara

OCTOBER

- 12-14 CAOAC Annual Meeting, Monterey County

NOVEMBER

- 29-Dec 2 CSAC Annual Meeting, Santa Clara County

DECEMBER

- 1 Board of Directors Meeting, Santa Clara County