

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE

Thursday, January 20, 2011, 10:00am - 1:30pm  
CSAC Conference Center, Sacramento

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**A G E N D A**

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Presiding: John Tavaglione, President

**10:00am PROCEDURAL ITEMS**

1. Introduction of New Executive Committee Members
  - *President Tavaglione*
  - *Paul McIntosh, CSAC Executive Director*

2. Roll Call

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3. Approval of Minutes of October 7-8, 2010

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**10:15am SPECIAL PRESENTATION**

4. Report on Governor's Budget for 2011-12
  - *Representative from State Department of Finance*

**10:45am DISCUSSION ITEM**

5. Discussion of Budget Impacts on Counties
  - *Paul McIntosh & Jim Wiltshire, CSAC staff*

*handout*

**11:15am ACTION ITEMS**

6. Appointment of CSAC Treasurer, NACo Board of Directors and Western Interstate Region Representatives
  - *President Tavaglione*

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7. Appointment of CSAC Policy Committee Chairs and Vice Chairs for 2011
  - *President Tavaglione*

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8. Consideration of State and Federal Legislative Priorities for 2011
  - *Jim Wiltshire & Karen Keene, CSAC staff*

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9. Consideration of CSAC County Employee Health Care Benefits Program
  - *Paul McIntosh*

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10. Consideration of Compensation Transparency Principles
  - *Eraina Ortega, CSAC staff*

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11. Consideration of Request for Affiliate Membership
  - *Paul McIntosh*

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**12:00pm LUNCH**

**1:00pm INFORMATION ITEMS**

12. The following items are contained in your briefing materials for Your information, but no presentation is planned:

- ❖ CSAC Finance Corporation Report
- ❖ Litigation Coordination Program Report

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13. Other Items

**1:30pm ADJOURN**

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE  
2011

President: John Tavaglione, Riverside  
1<sup>st</sup> Vice President: Mike McGowan, Yolo  
2<sup>nd</sup> Vice President: David Finigan, Del Norte

Urban Section

Greg Cox, San Diego  
Don Knabe, Los Angeles  
Liz Kniss, Santa Clara  
John Moorlach, Orange  
Gary Ovitt, San Bernardino  
Susan Peters, Sacramento  
Kathy Long, Ventura (alternate)

Suburban Section

Valerie Brown, Sonoma  
Henry Perea, Fresno  
Steve Worthley, Tulare  
Joni Gray, Santa Barbara (alternate)

Rural Section

John Viegas, Glenn  
Terry Woodrow, Alpine  
Lyle Turpin, Mariposa (alternate)

Advisors

Nancy Watt, CAOAC President & Napa County Executive Officer  
Marshall Rudolph, County Counsels Assoc. President & Mono County Counsel

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE

October 7-8, 2010  
The Clement Hotel, Monterey, CA

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MINUTES

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Presiding: Tony Oliveira, President

1. CSAC FINANCE CORPORATION PRESENTATION

CSAC Finance Corporation Board Members Greg Cox, Larry Spikes, Joni Gray, Les Brown and Paul McIntosh provided an in-depth report on the history of the Finance Corporation as well as current activities. A briefing booklet outlining mission and goals, CSCDA, US Communities, CalTRUST, and revenue history was distributed to Executive Committee members.

It was noted that Tom Ford retired as President of the Finance Corporation after serving on the Finance Corp. Board since 1996. A new program that was developed this year was the securitization of Proposition 1A monies.

2. ROLL CALL

Tony Oliveira, President  
John Tavaglione, 1<sup>st</sup> Vice Pres.  
Mike McGowan, 2<sup>nd</sup> Vice Pres.  
Gary Wyatt, Immed. Past Pres.  
Greg Cox, San Diego  
Roger Dickinson, Sacramento  
Liz Kniss, Santa Clara  
Henry Perea, Fresno  
Steve Worthley, Tulare  
Joni Gray, Santa Barbara (alternate)

Merita Callaway, Calaveras  
Robert Williams, Tehama  
Lyle Turpin, Mariposa (alternate)

Finance Corp. Representatives  
Larry Spikes, Kings CAO  
Les Brown, Former CSAC Pres.

3. APPROVAL OF MINUTES

The minutes of August 5 and August 19, 2010 were approved as previously mailed.

4. DISTINGUISHED SERVICE AWARD

Staff requested direction from the Executive Committee in selecting the 2010 recipient(s) of the CSAC Distinguished Service Award. This award is given to persons who have made the greatest contribution to the improvement of government in California. Staff recommended the following four nominees for consideration:

- Dan Wall, Chief Legislative Advocate for the County of Los Angeles
- Tony Oliveira, CSAC President and member of the CalPERS Board

- Senator Roy Ashburn
- Assembly Member Juan Arambula

It was suggested that Sonoma County Supervisor Valerie Brown be added to the list of recipients for her work with the National Association of Counties (NACo), especially serving as NACo President this past year.

Motion and second to approve the four staff recommendations and additional Executive Committee nominee Valerie Brown to receive the 2010 Distinguished Service Award. Motion carried unanimously.

5. CIRCLE OF SERVICE AWARD NOMINEES

The Circle of Service award was created to recognize county officials, department directors, employees, corporate Associates and other CSAC members whose service to CSAC and counties sets them apart. The following nominees were submitted by staff for Executive Committee consideration:

**Greg Cox, San Diego County Supervisor, and Helen Thomson, Yolo County Supervisor** spearheaded the CSAC 2010 Realignment Working Group. They made themselves available over a 10-week period to provide staff direction and facilitation of CSAC's 2010 Realignment Working Group. Both supervisors were actively engaged in CSAC's efforts to determine how a realignment could be structured to benefit counties, resulting in revised Realignment Principles (recently adopted by CSAC's Board of Directors), as well as a framework for future realignment discussions from a programmatic and fiscal perspective.

**Kathy Long, Ventura County Supervisor, and Matt Rexroad, Yolo County Supervisor** served as the co-chairs of the CSAC Reform Task Force, which was convened in early 2010 to address the so-called "Year of Reform," in which CSAC would likely weigh in on the various reform efforts that were circulating at that time. The Task Force met to discuss the proposals that were to be on the November 2010 ballot from the League of California Cities, California Forward, and Rebuild California (that arose from the work of the Bay Area Council). When the Task Force convened in February, both California Forward's and Rebuild California's efforts had withered, with only the measure sponsored by the League slated for the November ballot. The Task Force then focused on the League's measure, which eventually became Proposition 22. Chairs Long and Rexroad led our policy discussion and analysis of Proposition 22, which was sent to four CSAC policy committees with an "oppose" recommendation from the Task Force.

**Jane Dolan, Butte County Supervisor** is retiring this year after serving eight terms on the Butte County Supervisor. Jane was first elected to office in 1978, which makes her current 32-year run as a county supervisor the longest in California. She has served as a board chair on seven different occasions. During this period, Jane worked tirelessly for the residents of her district, Butte County and all of California. She has epitomized what it means to be a public servant.

**Liz Kniss, Santa Clara County Supervisor** has travelled thousands of miles and logged many long-distance minutes as CSAC's representative on health and human services issues in 2010. She served as the chair of the CSAC Health and Human Services Policy Committee. Within CSAC, and as chair of the policy committee, Supervisor Kniss presided over monthly policy committee meetings regarding the state's Medicaid Waiver proposal and the implementation of federal health care reform. At the state level, she attended a state waiver stakeholder meeting and attended briefings by county affiliates on the major issues within the waiver. At the federal level, Supervisor Kniss served as co-chair of the National Association of Counties (NACo) Health Care Reform Subcommittee, and now serves as chair of the NACo Health Steering Committee.

She also presided over weekly health care reform meetings with county affiliates throughout the year. As a result of her advocacy efforts and technical knowledge of federal health care reform, Supervisor Kniss was invited by President Obama to attend the formal health care reform bill signing in March.

**Tom Ford, CSAC Finance Corporation President** has served dutifully on the Board of the Directors of the CSAC Finance Corporation since April 1996 and has served as President of the Board since November 2004. He retired from the Board of Directors on September 17 of this year. Tom made great contributions to counties through his term on the Board including helping form the Investment Trust of California (CalTRUST) and serving on both the National Association of Counties and CSAC Deferred Compensation Advisory Committees as Chair. Since he joined the CSAC Finance Corporation Board in 1996, he helped increase revenues from \$403,096 in FY 96/97 to \$4.2 million in FY 09/10. Tom previously served as Treasurer-Tax Collector of Sonoma County before his retirement from county service.

**Michael Brown, Santa Barbara County Executive Officer** will be retiring this year. He is a life-long public service professional. Michael also serves as Chairman of the Center for Performance Measurement of the International City/County Management Association (ICMA), and holds a 30 years service award from this organization. During his tenure as Santa Barbara county administrator, Michael has been a strong and effective manager and assisted on numerous statewide issues.

**John Sansone, San Diego County Counsel** will retire at the end of 2010, marking 35 years in the San Diego County Counsel's Office, 14 as County Counsel. John has been an active member of the County Counsels' Association, serving on the Cost Shift Committee since its inception and is well-known for his knowledge of mandate law. Besides being an accessible and capable counsel, his legal advice and assistance to CSAC and its member counties in the Proposition 1A and post-Proposition 1A eras has been invaluable.

**Steven Woodside, County Counsel, Sonoma County** is being recommended for his active leadership role with respect to Native American issues of great concern to counties. Specifically, under Steven's leadership, Sonoma County has been a driving force behind pushing for comprehensive fee-land into trust reform at the federal level. Due to Steven's role significant progress was made to forward CSAC policy at the federal level including the formation of a multi-state coalition to develop fee-land into trust reform legislation and successful inclusion of CSAC policy into the NACo Platform.

**Bruce Goldstein, Assistant County Counsel, Sonoma County** is being recommended for his active leadership role with respect to Native American issues of great concern to counties. Bruce serves as the Chair of the County Counsel Committee on Native American Lands which has been instrumental in informing both CSAC state and federal policy on Native American issues. Most recently, under Bruce's leadership, Sonoma County has been a driving force behind pushing for comprehensive fee-land into trust reform at the federal level. CSAC has made much progress to this end over the past 18-months including the formation of a multi-state coalition for fee-land into trust reform and additional NACo platform and policy in line with CSAC's efforts – none of which would have been achievable without the help of Mr. Goldstein.

**Graham Knaus, Director of Administrative Services, Placer County Health and Human Services** provided significant input and analysis as a member of the 2010 Realignment Working Group and each of the RWG Technical Subcommittees: Administration of Justice, Health and Human Services, and Revenues. He was enormously helpful to CSAC staff as the groups analyzed each restructuring proposal and unfailingly provided a relevant and constructive perspective from the county trenches. He also invested considerable time into the mission. In short, Mr. Knaus proved to be a constructive and valuable member of the CSAC Realignment Working Group process.

**William McIntosh, Retired Lassen County Public Works Director (In Memoriam, 1924 – 2010).** He served as the President of the County Engineers Association of California in 1964 and as CEAC Treasurer for many years after his retirement from Lassen County. Bill is fondly referred to as the "County Engineer Extraordinaire" and the "Old Crow" as he created the California Loyal Order of Dedicated Servants or CLODS (CEAC Past Presidents) and was one of the founders of the National Association of County Engineers (NACE). Among his many honors, CEAC created the "William D. McIntosh Lifetime Achievement Award" and NACE named him "Rural County Engineer of the Year". Bill was a true public servant and exemplified dedication and leadership deserving of recognition.

**Verne Davis, Retired Merced County Public Works Director (In Memoriam, 1925 – 2010)** retired as Merced County Public Works Director in 1985 after a distinguished 38-year career. He served as the President of the County Engineers Association of California in 1984 and as CEAC Newsletter Editor for twenty years after his retirement from Merced County. Verne's given CLODS name was "Whooping Crane", which he proudly embraced. Verne was a dedicated and committed public servant known for his creative and humorous style. Mr. Davis should also be recognized for his enduring public service to county government.

**Kirk Kleinschmidt, Kaiser Permanente, Corporate Associates President** is currently serving as the 2010 President of the CSAC Corporate Associates program. Kaiser Permanente has been a long-time supporter of CSAC and the corporate membership program, and Kirk has been an active member of the program and its steering committee since he began with Kaiser more than three years ago.

The Executive Committee added the following three nominees to the list:

**Mike McGowan, Yolo County Supervisor** for his tireless efforts and commitment to forward comprehensive federal fee-land into trust reform. He has been integral to CSAC in forming a multi-state coalition for fee-land into trust reform and our successful efforts to amend NACo policy and platform in support of CSAC's policy objectives.

**Roger Dickinson, Sacramento County Supervisor** for his years of commitment and contributions to CSAC as a member of the Executive Committee as he moves on to the California State Assembly.

**Rich Gordon, San Mateo County Supervisor**, for his years of commitment and contributions to CSAC as President and a member of the Executive Committee as he moves on to the California State Assembly.

Motion and second to approve the staff recommendations and the three additional nominees. Motion carried unanimously.

6. REVIEW OF AUDITED FINANCIAL STATEMENTS

Staff distributed and outlined the audited financial statements for FY 2009-10. It was noted that rental income is down at the Ransohoff building due to an increased vacancy rate and some late tenant payments. Staff was directed to renegotiate the lease with Smith Gallery to a lower rate.

Staff also distributed a list indicating CSAC's "Public vs. Non-Public Funds" as directed by the Executive Committee at its August meeting.

Motion and second to accept the audited financial statements for FY 2009-10. Motion carried unanimously.

7. ACHIEVEMENTS REPORT FOR 2009-10

Paul McIntosh presented the annual CSAC achievements report which outlines progress made during the past year on each policy area as well as federal issues, administration, Finance Corporation, Institute for Excellence in County Government, Corporate Associates, and communications.

8. 2010 CSAC ANNUAL MEETING PROGRAM

Supervisor Tavaglione described plans that Riverside County is making for the 2010 CSAC annual meeting in Riverside next month. The Board of Directors dinner will be held at the Fender Center which houses a program that provides music lessons to disadvantaged youth. County Night will consist of a comedy show by Sinbad at the historic Fox Theater.

9. CALIFORNIA HEALTH CARE FOUNDATION GRANT UPDATE

Staff reported that CSAC received \$20,000 from the California Health Care Foundation for two projects: a scholarship program to allow county supervisors to travel to Washington, DC and national health events; and educational programs run through the CSAC Institute for Excellence in County Government.

Supervisor Terry Woodrow, vice-chair of the CSAC Health and Human Services policy committee, was able to attend the NACo Legislative Conference this year and participate in health-related workshops and committees because of the scholarship program.

Health-related courses offered this year through the Institute for Excellence in County Government included:

*County Health Care Systems – Responsibilities and Resources*  
*Effective Partnerships with County-Funded CBOs*  
*County Mental Health Obligations, Services and Funding*  
*Realignment 101 – How Did We Get It? Where Did It Go?*

10. OTHER ITEMS

Staff outlined details of a state budget compromise that is expected to be voted on by the Legislature today.

Meeting adjourned.



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January 6, 2011

TO: Members, CSAC Executive Committee

FROM: Paul McIntosh, Executive Director

SUBJECT: Appointment of CSAC Treasurer, NACo Board of Directors and Western Interstate Region (WIR) Representatives

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Each year, CSAC appoints a Treasurer, two members to the National Association of Counties (NACo) Board of Directors and two members to the NACo Western Interstate Region (WIR) Board of Directors. This year CSAC once again has an opportunity to appoint a third representative to the NACo Board of Directors because of our status as a 100% membership state. However, there is a possibility that status may change during the year.

Following are Officer recommendations for 2011:

CSAC Treasurer

The Officers would like to recommend Kathy Long of Ventura County as CSAC Treasurer for 2011. Supervisor Long has indicated her willingness to serve.

NACo Board of Directors

Your current representatives are Frank Bigelow, Madera County, Greg Cox, San Diego County, and Keith Carson, Alameda County. The Officers are recommending that these members continue to serve during 2011.

NACo WIR

Del Norte County Supervisor David Finigan currently serves as CSAC representative. The Officers are recommending that he continue to serve during 2011.

Seven years ago, California was provided an opportunity to appoint a second director to the WIR Board. CSAC and the Regional Council of Rural Counties (RCRC) agreed to appoint one each, with the appointing organization paying costs related to its appointee. Brian Dahle of Lassen County currently serves as the RCRC representative. RCRC would like Supervisor Dahle to continue to serve in 2011 and Supervisor Dahle has indicated his willingness to remain in the position.



**CSAC POLICY COMMITTEE  
CHAIRS AND VICE CHAIRS  
2011**

*(as proposed by CSAC Officers)*

**ADMINISTRATION OF JUSTICE**

**Federal Glover, Contra Costa, Chair  
Merita Callaway, Calaveras, Vice Chair**

**AGRICULTURE AND NATURAL RESOURCES**

**Richard Forster, Amador, Chair  
Kimberly Dolbow Vann, Colusa, Vice Chair**

**GOVERNMENT FINANCE & OPERATIONS**

**Bruce Gibson, San Luis Obispo, Chair  
John Moorlach, Orange, Vice Chair**

**HEALTH & HUMAN SERVICES**

**Liz Kniss, Santa Clara, Chair  
Terry Woodrow, Alpine, Vice Chair**

**HOUSING, LAND USE AND TRANSPORTATION**

**Efren Carrillo, Sonoma, Chair  
Matt Rexroad, Yolo, Vice Chair**



January 4, 2011

TO: CSAC Executive Committee

FROM: Paul McIntosh, Executive Director  
Jim Wiltshire, Deputy Director  
Karen Keene, Federal Legislative Coordinator

RE: **Draft 2011 State and Federal Legislative Priorities – ACTION  
ITEM**

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**Recommendation:** Staff recommends that the Executive Committee approve the proposed CSAC 2011 state and federal legislative priorities.

**Background.** As with previous years, CSAC carefully considered a number of options in this year of unprecedented and sustained fiscal crisis. Once again, we concluded that a single, unifying focus on advancing the concept of healthy, safe, and sustainable communities is so fundamental to this association and our members that it warrants standing alone as our primary focus for the year. Our staff will, of course, attend to other key policy areas of significance to counties pursuant to existing policy direction either through CSAC platform or other policy principles and Board of Directors actions. (Indeed, we have identified several time-sensitive topics in a separate document in this packet that require immediate legislative action.)

On the federal side, you will recall that pursuant to a contract renegotiated with Waterman and Associates in 2007, CSAC has a nine-issue advocacy agenda for federal legislative topics. In consultation with the Waterman firm, we have identified seven issues for immediate advocacy. We recommend leaving the two remaining issues in reserve for emerging topics throughout the year.

The seven federal issues of significance recommended for immediate advocacy include:

1. New Authorization of the Nation's Surface Transportation Law (SAFETEA-LU)
2. State Criminal Alien Assistance Program (SCAAP)
3. Federal Climate Change/Renewable Energy Policy
4. Native American Affairs
5. Temporary Assistance for Needy Families (TANF) Reauthorization
6. Secure Rural Schools Reauthorization
7. Clean Water Act

We will maintain our practice of providing internal monitoring of other key federal issues of interest to California counties, including, for this year, the following:

- National Health Care Reform
- Transient Occupancy Tax
- Federal Geothermal Royalties
- Community Development Block Grant (CDBG)
- Child Welfare Financing Reform
- Byrne Grant Funding
- Cooperative Endangered Species Conservation Fund
- 2-1-1 Statewide
- State's Water Crisis
- Payments-in-lieu-of-Taxes
- Levee Vegetation Management

Further background information on the federal priorities — for both direct advocacy and internal monitoring — is provided in the attached materials. The attached draft of priorities was approved by the CSAC Officers in December. Once approved by the Executive Committee, the priorities will be presented to the CSAC Board of Directors for its review and action.

**Recommended Action.** Staff is requesting your action to approve the attached state and federal priorities to guide CSAC advocacy in 2011.



California State Association of Counties

## **CSAC 2011 STATE ADVOCACY PRIORITY**

**DRAFT-DRAFT-DRAFT-DRAFT-DRAFT**  
**As approved by CSAC Officers – December 2010**

### **Counties: Where Safe and Healthy Communities Start**

California continues to be clobbered by massive annual budget deficits, with a \$25.4 billion state budget deficit predicted through 2011-12. Given the dramatic effects of previously approved state budget actions over the last four fiscal years and the likely dire consequences of additional reductions affecting all Californians, the California State Association of Counties (CSAC) will focus its 2011 legislative advocacy on advancing the concept of healthy, safe, and sustainable communities in all 58 counties.

County governments have an important role in communities: we specialize in helping those most in need, in protecting the public, and in creating living and working environments where individuals and industry can thrive. Counties serve every one of California's 38 million residents every day. In this role, counties are uniquely situated to play a critical part in discussions about the most effective and efficient administration and financing of critical public services.

While there are many pressing legislative priorities for counties, none is as critical as the how the Governor and Legislature address the state's persistent fiscal crisis. As a result, CSAC has identified the following principles that will guide our advocacy efforts during the 2011 legislative session. The principles outlined below reflect long-standing policies of the Association as outlined in the California County Platform, and both documents will inform the Association's positions on specific budget and fiscal proposals.

→ **Encourage healthy, safe, and sustainable communities.**

During this time of continued economic crisis, the health, safety, and quality of life for Californians are at risk. Residents across the state are relying on government health and human services and public safety services at rates that far outpace resources. Counties are investing less in the critical infrastructure necessary to support sustainable communities and can no longer adequately support our valued farmland, natural habitat, and open space. CSAC supports streamlined, focused investment in the most critical programs and services that protect the physical and economic wellbeing of all Californians and that provide opportunities for development of sustainable communities and protection of the natural environment for California's future.

→ **Seek budget solutions that address the structural deficit.**

The state's chronic budget troubles require meaningful changes that transcend the short-term deficit. Cost shifts, borrowing, delays, deferrals, and other short-term "solutions" only serve to create additional budget stress in the out-years and exacerbate the state's chronic budget imbalance. All levels of government must focus on the long-term objective of

cultivating reliable revenue sources that are adequate to fund core priorities. CSAC supports reevaluating the state's revenue structure and reviewing program outcomes, as these are necessary steps in developing a sensible state budget solution.

→ **Promote programs and services that stimulate the economy and protect jobs.**

Counties partner with the state to provide services to Californians in interconnected systems – transportation, flood protection, water quality, health and human services, and corrections, to name a few. These systems are important components of a healthy economy and help ensure the quality of life of all residents. CSAC supports evaluation of their needs and functions to ensure they provide cost-effective, adequate, and stable investments that meet current and future needs.

→ **Engage in long-term reform conversations.**

Considering our unique role in providing critical programs and services throughout California, counties seek a partnership with the state that allows us to provide services in an efficient, effective, and sustainable manner, which we believe will result in better outcomes and better lives for all Californians. Counties are committed to providing expertise and assistance in creating practical solutions that achieve meaningful reforms in the relationship between the state and local governments and make effective use of taxpayer dollars.



# **CSAC 2011 FEDERAL ADVOCACY PRIORITIES**

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## **DRAFT-DRAFT-DRAFT-DRAFT-DRAFT As approved by CSAC Officers – December 2010**

*CSAC's contract for federal affairs services with Waterman and Associates provides for a nine-issue agenda. CSAC staff, in consultation with Waterman and Associates, developed the following list of seven federal issues of significance to California's counties, with two issues left in reserve to accommodate emerging topics.*

### **New Authorization of the Nation's Surface Transportation Law (SAFETEA-LU)**

The nation's surface transportation law, SAFETEA-LU, is currently operating under an extension that will expire on December 31, 2010. As of this writing, it appears as though Congress will renew the current extension, although it is unclear how many additional months another continuation of the program will cover. Transportation authorizers are hoping to complete a new six-year transportation bill in 2011.

For its part, CSAC continues to actively promote its transportation reauthorization agenda with key policymakers. Among things, the association is recommending a more streamlined and flexible approach to allocating federal transportation funds to state, regional, and local agencies. CSAC also is promoting several environmental streamlining proposals and is advocating for funding for a number of priority programs, including the Highway Bridge Program and the High Risk Rural Roads Program.

### **State Criminal Alien Assistance Program (SCAAP)**

The SCAAP program is a critically important budget item for many of California's counties. CSAC is one of the leading local government organizations in the fight to protect and enhance funding for SCAAP, which continues to be underfunded by Congress. CSAC will continue to advocate for maximum funding levels to offset the cost of housing undocumented criminals in county detention facilities.

Additionally, CSAC strongly supports legislation introduced by Senator Dianne Feinstein (D-CA) and Representative Linda Sánchez (D-CA) (S 168/HR 1314) that would require the Department of Justice to reimburse local jurisdictions for incarceration costs associated with undocumented individuals that have been convicted or accused of a felony or two or more misdemeanors. The current statute is limited to allowing reimbursement only in cases in which an individual is actually convicted of such crimes. The Feinstein/Sánchez bills are expected to be reintroduced in the 112th Congress.

### **Federal Climate Change/Renewable Energy Policy**

The House of Representatives approved comprehensive climate change and renewable energy legislation (HR 2454) in the 111th Congress, but the Senate was unable to reach consensus on a package due to a variety of reasons. Lawmakers are expected to renew efforts aimed at

addressing global warming in 2011, although it remains unclear whether the size and scope of next year's legislative effort will be as ambitious as previous attempts.

Among other things, CSAC is urging Congress to provide financial incentives to states that adopt and set greenhouse gas emissions reductions targets. CSAC also is urging Congress to provide additional funding for the Energy Efficiency and Conservation Block Grant, which provides resources to local governments for a variety of energy efficiency programs. Additionally, the association is promoting that the widest possible range of renewable energy sources – such as biomass, hydropower, and post-recycled municipal solid waste – qualify as resources to help California meet its renewable energy goals.

CSAC is urging Congress to seek a resolution to the Property Assessed Clean Energy (PACE) program. CSAC supports the continuation of PACE programs and the priority lien status for PACE loans. PACE programs create jobs, stimulate business growth, reduce greenhouse gas emissions and add lasting value to residential and commercial properties without increasing risks of mortgage defaults.

### **Native American Affairs**

In the wake of the U.S. Supreme Court's decision in *Carciere v. Salazar*, which limits the secretary of Interior's trust land acquisition authority to those tribes that were under federal jurisdiction at the time of the passage of the Indian Reorganization Act (IRA) of 1934, several key members of Congress introduced legislation that would overturn the Court's ruling. Under the bills (S 1703/HR 3742/HR 3697), the secretary of Interior would be granted authority to take land into trust for all Indian tribes.

In response, CSAC has been leading a coalition of county government associations that opposes the aforementioned *Carciere* "quick-fix" bills in the absence of much-needed reforms in the fee-to-trust process. Among other reforms, counties are proposing modifications to the IRA that would require tribes to meet a set of heightened regulatory standards as a condition of the secretary of Interior approving trust land applications.

It should be noted that tribes have been mounting an aggressive lobbying effort to include the quick fix as part of any legislation being considered in the waning days of the 111th Congress. Recently, tribes were successful in including *Carciere* fix language in the House Interior Appropriations Subcommittee-approved fiscal year 2011 spending bill.

It remains to be seen whether *Carciere* language will receive final approval by Congress this year. Regardless of passage, this issue and other key tribal matters affecting counties – such as off-reservation gaming issues – are likely to remain ripe for discussion in 2011.

### **Temporary Assistance for Needy Families (TANF) Reauthorization**

The Temporary Assistance for Needy Families (TANF) program is currently operating on a short-term extension. When lawmakers convene for this fall's lame-duck session, Congress is expected to vote to extend the program through September 30, 2011.

The impending one-year continuation of the TANF program sets the stage for Congress in 2011 to debate in earnest the scope of the next multi-year bill. With the nation's economy continuing to struggle and unemployment rates still soaring, policymakers will be looking at recent trends in welfare rolls and poverty figures as they consider options for reauthorizing TANF.

Congress – as well as previously issued regulations – placed additional administrative burdens on the TANF program. Many of those requirements had the effect of changing the focus on following federally imposed processes to the detriment of moving families into self-sufficiency.

CSAC is urging Congress to restore state and county flexibility to tailor work and family stabilization activities to families' individual needs. CSAC also supports maintaining the focus on work activities under TANF, while recognizing that "work first" does not mean "work only."

### **Secure Rural Schools Reauthorization**

Originally passed and signed into law in 2000, the Secure Rural Schools and Community Self-Determination Act (SRS) represents a contract between the federal government and more than 700 rural counties and school districts that have historically depended on revenues from timber harvests on federal lands in their jurisdictions. These rural communities and schools have relied upon a share of the national forest receipts program to supplement local funding for education services and roads.

In response to the steep decline in timber sales, Congress passed SRS and President Clinton signed the bill into law. The original authorization provided six years of funding, with Congress extending the SRS for one year in 2007. In 2008, the 110th Congress reauthorized the program for an additional four-year period. The current act expires on September 30, 2011, with final payments slated to be distributed in January of 2012.

The SRS program is important to a number of forest counties in California. With the program scheduled to expire at the end of fiscal year 2011, CSAC is advocating for a long-term reauthorization of the SRS.

### **Clean Water Act**

The Clean Water Act (CWA) and subsequent amendments have positively impacted the health of the nation's rivers and streams. At the same time, however, the CWA has created a host of unintended consequences. One such unintentional result of the Act is the continued inability of counties and other local entities to properly maintain flood protection facilities and drainage ditches.

Pursuant to Section 404 of the CWA, the Secretary of the Army Corps of Engineers may issue permits for the discharge of dredged or fill material into navigable waters of the United States and exempts certain activities from the permitting process. Although the Act appears to explicitly exempt maintenance activities of currently serviceable flood control facilities from permitting requirements, the Corps has not interpreted the law in this manner. As a result, virtually all routine maintenance of flood protection facilities and drainage ditches are subject to 404 permits, which has caused significant backlogs in the Corps' permit processing times and ultimately thwarted local agencies from performing routine maintenance in a timely manner.

CSAC will continue to seek an amendment to Section 404 of the CWA to define maintenance of flood control channels or facilities as a non-prohibited activity, thereby providing a permitting exemption for maintenance activities.



## **CSAC INTERNAL MONITORING**

*In addition, CSAC will continue to provide internal monitoring on a number of issues that are of significance to California's counties.*

### **National Health Care Reform**

The landmark Patient Protection and Affordable Care Act federal health care reform law requires states to implement many of its major provisions by 2014. California's counties will play a key role in the implementation of the bill over the next three years and must monitor and participate in the rulemaking and regulatory process at the federal level to help achieve a workable framework to provide health care to all Californians.

### **Transient Occupancy Tax**

CSAC will work to ensure counties' continued authority to assess and collect transient occupancy taxes on the full rate paid by the consumer for all appropriate transient lodging, regardless of whether the consumer pays through a hotel or any other vendor.

### **Federal Geothermal Royalties**

The Geothermal Steam Act of 1970 specifies a formula for the distribution of geothermal revenues to federal, state, and county governments. Under the formula, the federal government retains 25 percent of the revenue, the states receive 50 percent, and county governments receive 25 percent. Attempts have been made to permanently repeal the sharing of geothermal revenues with counties. Given the importance of these revenues to the affected counties, CSAC opposes any legislation that would discontinue geothermal royalty payments to county governments.

### **Community Development Block Grant (CDBG)**

The fiscal year 2010 federal budget included nearly \$4.5 billion for HUD's Community Development Fund, or a roughly \$600 million increase over fiscal year 2009 spending levels. Of the total amount, almost \$4 billion is available for the Community Development Block Grant (CDBG) program.

The CDBG funding provided in the fiscal year 2010 budget is on top of the \$1 billion in funding that was included as part of ARRA. CSAC has actively promoted full funding for the CDBG.

### **Child Welfare Financing Reform**

As part of TANF reauthorization, Congress may consider legislation to reform the child welfare financing system, as well as provide additional resources to stabilize families and train and retain child welfare staff. CSAC supports additional programmatic flexibility along with an updated foster care payment methodology.

### **Byrne Grant Funding**

The American Recovery and Reinvestment Act (ARRA) made significant investments in the Byrne Memorial Justice Assistance Grant (JAG). CSAC strongly supports prioritizing Byrne funding in the annual appropriations process, and we will continue to work collaboratively with our congressional delegation and others in the coming year to secure and promote increased funding for this program and the positive local outcomes it helps achieve.

## **Cooperative Endangered Species Conservation Fund**

CSAC supports increased funding for the U.S. Fish and Wildlife Service's Cooperative Endangered Species Conservation Fund from \$85 million in fiscal year 2010 to \$125 million. This increase would restore the fund to approximately its fiscal 2001 level (adjusted for inflation) and provide much needed support to regional Habitat Conservation Plans (HCPs) in California and nationally.

### **2-1-1 Statewide**

CSAC has actively supported both state and federal legislation to help build and fund a statewide 2-1-1 referral system. 2-1-1 is a free, easy-to-remember telephone number that connects people to essential community information and services. In 2008, over one million Californians called 2-1-1 for help finding needed community services such as rent and mortgage assistance, food and shelter, health care, job training, transportation, child care, and senior care. 2-1-1 also plays an informational role during emergencies and disasters and relieves pressure on the 9-1-1 system at these critical times. This value of this service was evident during the 2007 San Diego wildfires when 2-1-1 call centers provided information and support to more than 130,000 callers in five days.

Currently, just 21 of California's 58 counties have 2-1-1 service. Some funding for 2-1-1 infrastructure may become available via federal economic stimulus funds or federal legislation. CSAC will continue to work at both the state and federal levels to promote the need for a comprehensive statewide 2-1-1 system.

### **State's Water Crisis**

California's political leaders and various state and local water interests continue to pressure California's Congressional Delegation and the Obama Administration to address the State's chronic water shortage. A wide range of proposals are being discussed that would address water transfers, endangered species laws, water quality and Delta protections to name a few. CSAC will monitor these proposals to ensure consistency with the organization's comprehensive policy direction on water.

### **Payments-In-lieu-of-Taxes**

Pursuant to PL 110-343, all counties are receiving 100 percent of authorized PILT payments in fiscal years 2008 through 2012. Prior to fiscal year 2008, PILT payments were subject to the annual appropriations process. CSAC will support efforts to convert the temporary mandatory spending into a permanent feature of the PILT program.

### **Levee Vegetation Management**

CSAC supports modification to the Army Corps of Engineers policy on vegetation management of Corps built flood control facilities that considers regional variation across the nation; includes an exemption provision where appropriate; conforms to other federal and state laws; and, includes local government in a transparent and collaborative process.



**MEMORANDUM**

January 3, 2011

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

To: John Tavaglione, President  
California State Association of Counties

Executive Committee  
California State Association of Counties

From: Paul McIntosh  
Executive Director

Re: **CSAC County Employee Health Care Benefits Program Proposal**

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**Background**

Providing health care benefits to employees, their families and annuitants is a major cost factor for California's counties. Many larger counties provide that benefit through self-insurance, which enables them to contain program costs and flexibility while sustaining a significant benefit. Many suburban and rural counties, though, provide this benefit by contracting with the California Public Employees Retirement System (CalPERS). In fact, 28 of California's 58 counties currently contract with CalPERS.

Over the past decade, these counties have experienced extreme frustration in their relationship with CalPERS. Counties have no input into the setting of rates or the structure of the health care program. Furthermore, because of a five-year opt out period required by CalPERS, counties have no flexibility to shop for competitive products in the health care market.

Against this backdrop, I commissioned a feasibility study to determine the relative risk of CSAC establishing an Employee Health Insurance Benefit Pool. That analysis is attached and finds that indeed such a pool is not only possible, it has the potential of saving California counties significant resources, while at the same time providing CSAC with an additional, sustained revenue stream to support other programs and services.

Many state associations provide employee health benefit pools and I have held conversations with my colleagues regarding their experiences and approach. The model I am proposing is employed by the Texas Association of Counties. This model would provide that CSAC, through a separate not-for-profit corporation, licensed in health care brokerage, would administer the pool, processing claims and managing the benefits plan.

**Proposal**

It is proposed that CSAC establish the California State Association of Counties County Employee Health Insurance Benefits Pool Corporation. This entity would be incorporated under section 501(c)(3) of the Internal Revenue Service Code and would be a licensed health care broker under California law. CSAC would hire a director for the corporation (proposed as a Deputy Director under CSAC) and appropriate staff. The

director would be a highly experienced health industry professional. The corporation would be housed in the Ransohoff Building.

A board of directors, consisting of county and CSAC officials would oversee operations of the corporation, similar to the Finance Corporation Board of Directors, and an advisory committee would be established, comprised of labor and management representatives from counties participating in the pool. The corporation would offer employee benefits packages that would include health, dental and vision care, and in consultation with the advisory committee, would determine benefits levels, co-pays and other plan elements.

Through limited discussion with county administrative officers Madera, Nevada, Shasta and Butte Counties have expressed strong interest in participating. These counties all participate in the CalPERS plan and represent nearly 15,000 insured lives – well over the minimum threshold identified in the study. Merced and Fresno Counties have also expressed an interest.

While the pool would initially target CalPERS counties for participation, there is no known limit to the participants. The pool could ultimately be opened up to any public agency, including special districts, schools and cities.

#### **Timeline**

This proposal would be presented to the Board of Directors for approval at their meeting of March 24, 2011. The corporation would be established in April 2011 and a director hired soon thereafter. During this period, CSAC staff would be working with potential pool participants to structure the benefits plan. Pool participants would need to be identified by July 2011 to provide sufficient time for bargaining with their labor representatives on a potential change in benefits with plan changes taking effect on January 1, 2012.

#### **Costs**

The corporation would be entirely self-sufficient with the costs of administration spread throughout the pool. The corporation would pay CSAC a management and licensing fee, along with costs of administrative support and rental of office space. CSAC would provide a start-up loan to the corporation in the amount of \$500,000 (provided from reserves) to be repaid within three (3) years with interest.

Attachment



NOVEMBER 2010

FEASIBILITY STUDY FOR CSAC TO ESTABLISH  
PROSPECTIVE HEALTH CARE BENEFITS PROGRAM  
FOR COUNTIES CURRENTLY UNDER CONTRACTS WITH CalPERS

*By Quang Thi Ho*



# **FEASIBILITY STUDY FOR CSAC TO ESTABLISH PROSPECTIVE HEALTH CARE BENEFITS PROGRAM FOR COUNTIES CURRENTLY UNDER CONTRACTS WITH CalPERS**

## **1. Overview**

- 1.1. Audience
- 1.2. Objectives
- 1.3. Executive Summary
- 1.4. Background
- 1.5. Assumptions

## **2. Objectives Analysis**

- 2.1. Objective 1: Feasibility
- 2.2. Objective 2: Actions required
- 2.3. Objective 3: Key challenges
- 2.4. Objective 4: Key benefits

## **3. Summary Recommendations**

## **4. Exhibits**

- 4.1. California Counties in PEMCHA
- 4.2. Cal. Admin. Code tit. 2, § 599.515
- 4.3. County of Lake Memorandum, Ceasing to be Subject to PEMCHA
- 4.4. Resolution Template
- 4.5. CalPERS Circular Letter, June 29, 2010

# FEASIBILITY STUDY FOR CSAC TO ESTABLISH PROSPECTIVE HEALTH CARE BENEFITS PROGRAM FOR COUNTIES CURRENTLY UNDER CONTRACTS WITH CalPERS

## 1. OVERVIEW

### 1.1 Audience

This feasibility study is addressed to Paul McIntosh, Executive Director of CSAC.

### 1.2 Objectives

1. Determine whether or not it is possible for California counties currently under contract with CalPERS or other California health care benefit program providers to transition to a health care benefit program offered by CSAC.
2. Identify the actions required for counties to exit their current contracts.
3. Identify the key challenges for counties looking to transition out of CalPERS.
4. Identify the key benefits for counties looking to transition to a CSAC program.

### 1.3 Executive Summary

On an annual basis California counties currently under contract with other health care providers *can* transition to a CSAC health care benefit program by canceling their current contract and then contracting with CSAC.

The motivation to transition to CSAC is driven by two major factors:

- 1) Cost savings, and
- 2) Flexibility and ability to control benefit plan development.

The key barriers to transitioning to CSAC are:

- 1) Lead-time;
- 2) Competitive cost and benefit package;
- 3) Potentially difficult negotiations with county employee bargaining units, and
- 4) CSAC's program stability or lack thereof.

## 1.4 Background

Currently the California Association of Counties (CSAC) is analyzing California's public sector health care marketplace in order to determine whether or not to establish a health care benefit program for its members: California counties' employees, their dependents, and annuitants. The motivation to examine this opportunity is to a) offer its members a financial savings given the power of a collective financial pool, and b) offer its members a competitive or better level of health care products and services than currently available with CalPERS (California Public Employees' Retirement System).

At this time CalPERS administers health care benefits under PEMCHA (Public Employees' Medical and Hospital Care Act)<sup>1</sup> to nearly 1.3 million public sector employees, their dependents, and annuitants<sup>2</sup>. Approximately fifty percent (28 of 58) of California's counties purchase their health care benefits through PEMCHA.

CalPERS is California's largest purchaser of public employee health benefits (the second largest in the nation after the federal government) and is perceived to set the standard for competitive benefits offered. *Because of its status as the market leader this feasibility study looks primarily at CalPERS as a control model for comparison.*

## 1.5 Assumptions

The development of this feasibility study takes into account the following assumptions:

1. Counties currently contracted with CalPERS are regularly (annually or bi-annually) reviewing and evaluating the cost/benefits and consumer satisfaction of the PEMCHA benefit package. In other words, they are either actively shopping for better health care benefits or are open to considering opportunities for shopping better health care benefits. The term "better" can be defined in terms of financial savings and/or greater products and services.
2. Counties will seriously consider a CSAC health care benefit program.
3. CSAC's primary prospect pool is currently contracted with CalPERS.
4. CSAC's most desirable prospect pool is rural and located in Northern California. This prospect pool represents approximately half of California's counties (28 of 58). *See Exhibit A for a complete list.*
5. CSAC can provide a better health care benefits program and maintain a cost benefit competitive with CalPERS.

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<sup>1</sup> Established by the California Legislature in 1961.

<sup>2</sup> Source: [www.calpers.ca.gov](http://www.calpers.ca.gov)



## **2. OBJECTIVES ANALYSIS**

### **2.1 Objective No.1**

*Determine whether or not it is possible for California counties currently under contract with CalPERS or other California health care benefit program providers to transition to a health care benefit program offered by CSAC.*

All California health care benefit programs have an exit clause in their contracts, which allows the purchasing agency to exit the contract, effectively canceling all services and financial responsibility as per a designated date.

Although each individual benefit provider can designate unique criteria for cancellation, they all allow cancellation on an annual basis providing the cancellation criteria are met. There is no financial penalty for cancellation.

The key cancellation criterion for CalPERS includes<sup>3</sup>:

1. Cancellation can only be made after the contract has been in effect for five years.
2. Once cancelled, agencies will not be eligible to participate in the CalPERS program for five years after the termination date.
3. Cancellation must be made via resolution from the contracting agency's governing party.

### **2.2 Objective No. 2**

*Identify the actions required for counties to exit their current contracts with CalPERS.*

1. Notification. Prior to cancellation with CalPERS, counties must notify and re-negotiate with all bargaining units affected by the cancellation. It is to be noted that each county can differ in its contractual setup with CalPERS. For example, in some cases all or some bargaining units are included under one umbrella resolution of the county's contract with CalPERS. In other cases the County may maintain separate contracts with CalPERS for different bargaining units, each under its own resolution. Therefore, bargaining units under separate resolutions are not required to cancel their contract with CalPERS if they choose not to.
2. Resolution. Cancellation must be made via resolution of the contracting agency's governing party. *See Exhibit C for a resolution template.*<sup>4</sup>

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<sup>3</sup> Source: [www.calpers.ca.gov](http://www.calpers.ca.gov)

<sup>4</sup> Source: [www.calpers.ca.gov](http://www.calpers.ca.gov)

3. Cancellation Period. According to California Code § 599.515 (Contracting Agency Participation), section (e), a contracting agency may terminate its participation under PEMCHA by filing with CalPERS a resolution of the agency’s governing body no later than 60 days after CalPERS Board of directors approves and announces its health care premiums for the following year. The termination will become effective at the end of the contract year.

CalPERS typically announce new premiums on/around June 1. Contract periods are according to the calendar year, January 1 to December 31.

*See Exhibit B for the complete California Code § 599.515, Exhibit C for a Memorandum from Lake County regarding their exit from CalPERS, and Exhibit D for a 2010 CalPERS Circular regarding contract cancellation.*

### 2.3 Objective No. 3

*Identify the key challenges for counties looking to transition out of CalPERS*

The following are six key issues that could pose a barrier for counties looking to transition from an existing contract with CalPERS.

1. Lead-time. A minimum of six months lead-time—generally January to June—is required in order to educate prospective county of the cost/benefits analysis of joining CSAC and affect the change. Once the transition has been agreed upon CSAC must allow counties time for the following:
  - a. Negotiations with the county’s affected organizations (bargaining units);
  - b. Resolution of the governing body approving the change of health care benefits;
  - c. Notification period for withdrawal from the client’s current contract. For example withdrawal from PEMCHA requires notice within 60 days of the announcement of the new premiums (typically mid-year) for effect January 1 of the following year.
2. Equal or better benefits. CSAC must be able to provide equal or better benefits than CalPERS.
3. Financial savings. In addition to general cost savings CSAC must be able to provide financial savings significant enough to override the cost of renegotiations with affected bargaining units, retraining and resetting related administrative processes/protocols.

4. Bargaining units. For some counties negotiations with affected bargaining units may delay or prevent a transition to CSAC.
5. Perception of CalPERS. Due to CalPERS' longevity and status as the largest buying pool for public employee benefits in California, there is a strong perception that CalPERS provides the most overall financial savings as well as the best package of products and services. Although the reality of this perception is false, the perception of CalPERS as the number one player in the marketplace must be addressed and overcome.
6. Stability and experience. Since CSAC will be putting together a brand new program it is unable to draw upon a history of experience and stability for providing health care benefits. Further, although some decision makers may concede that CalPERS' program is limited and may cost more, they may choose to contract with CalPERS due to its long-held experience and perceived stability with providing health care benefits believing that in the long-run the additional cost will be saved in ease-of-administration and execution.

#### 2.4 Objective No. 4

*Identify the key benefits for counties looking to transition to a CSAC program.*

The following are key issues that could benefit counties looking to transition from an existing contract to CSAC.

1. Financial savings. Considered areas of financial savings include:
  - a. Overall cost of benefit premiums (calculation formula);
  - b. Increased options for employer contributions: For example, under the CalPERS program the contracting agency is required to contribute per active employee and annuitant based upon a contractual formula. For some counties these mandatory fees can be significant. Any flexibility or change in the amount of employer contribution could result in substantial overall savings;
  - c. Collective buying power through CSAC may garner further financial savings.
  - d. Reduced administrative cost and stop loss fees.
  - e. No premium tax.
  - f. Long-term rate stability.

2. Control over risk management. CSAC county members can more closely monitor and control risk management by assembling their own pooling arrangement. Further it spreads the risk over larger number of participants.
  
3. Flexibility and control over plan development. Because CSAC is assembling its own program it can achieve greater control over program benefits, which results in a stronger program in addition to potential cost savings. Since there are 58 counties in California that have a wide spectrum of actuarial influences (urban versus rural, large populations versus small, varying demographics, etc.) CalPERS' program does not offer the flexibility or benefits control that some counties—particularly more rural counties with limited nearby medical resources—both want and need to receive equal benefits and services. Some examples of these control points include:
  - a. Direct personal services: CSAC can choose a system that can provide a more personal, high-touch service to members, which results in higher consumer satisfaction. In addition, high-touch service can equal more consumer satisfaction, which can equal good marketing. Every positive encounter that a member has the more positive the impression of CSAC and their employer.
  
  - b. Emphasis on wellness. CSAC can create more emphasis on a wellness benefit program that in conjunction with a high-touch service can increase return on investment, improve morale, reduce absenteeism and generate fewer union grievances<sup>5</sup>.
  
  - c. Access to more providers. CSAC can assemble a program that provides access to more health care facilities, which is especially critical to rural counties that have a more limited number of facilities to choose from. Currently under the CalPERS program, rural counties are limited in the medical facilities covered within their regions.
  
4. Improved negotiations with bargaining units by being closer to the source of program development. County members create their own benefit programs directly whereas with CalPERS such control or customization is not available or difficult to achieve.

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<sup>5</sup> Source: County Association Health Programs, Jones Management Consulting

### 3. SUMMARY RECOMMENDATIONS

Based upon the information outlined in this study *it is possible* for California counties to move out of CalPERS and join a CSAC health care benefit program. This can be done within a 6-12 month timeframe.

But the critical subsequent question is *why* should counties transfer from CalPERS to CSAC?

In order to meet the needs of county government and its employees, CSAC will need to consider the following:

- a) Offer affordable health care benefits to county employees, the counties' most valuable resources;
- b) Encouraging counties in California to join together in a type of health benefit pooling arrangement to appropriately share reasonable risk, take advantage of economy of scale to reduce administrative costs and;
- c) Maintaining pricing stability for its county members. In order to achieve long term cost stability, health and wellness initiatives will be part of the benefit program development.

CSAC's health care benefits program should also provide a competitive cost savings *and* allow counties, particularly more rural counties, greater flexibility and control over program development. It cannot be emphasized enough that the hot points for counties are cost and control—counties want more control. Under CalPERS counties are plugging into a large machine that is unable to customize or address the needs of all of its customers

There are 28 counties with approximately over 75,000 covered lives currently receiving health benefits through CalPERS. Industry wisdom indicates that a minimum of 6,000 to 7,000 covered lives is needed to create a pool benefit program. Further, it has been known through NACo (National Association of Counties) that there are many well run health insurance benefit programs provided by State Associations of Counties. Thus there appears to be a potential market for CSAC.

However, in order for CSAC to succeed in this endeavor, it is going to require a lot of coordination and marketing efforts with lead time to inform and educate prospective counties. There are several key factors to consider in its due diligence approach.

1. Survey the market. It is essential to gather market intelligence about the needs of counties by performing a poll, a survey or workshop. This provides CSAC with definitive data to establish further details about counties' needs and hot spots. How many counties are interested in transitioning to CSAC? What products and

services are most important in consideration of a program package? What control points are most significant? What would their timeframe for transition be?

2. Hire industry expertise. Based upon the anecdotal recommendations of other states—such as Ohio and Texas—who have successfully assembled and executed their own benefits programs, hiring a consultant within the health care insurance industry is indispensable. The consultant can counsel on issues related to organizational development, financing, risk management and detailed benefit packages.
3. Broker partner. All insurance benefits must be provided through a licensed health care brokerage. It can take up to twelve months to interview and select an appropriate brokerage to service CSAC. It is to be noted that once CSAC has started with a brokerage it is likely to continue the relationship long-term and therefore, the selection process becomes key.
4. Create a new entity. An independent organization, whether non-profit or for-profit, should be created in order to finance and administer a healthcare benefits program. This organization will require the oversight of a Board of Directors, management team and staff to service county health care administrators as well as county employees exercising their benefits program.
5. Financing. Depending on the size of the start-up pool, start up funding requirements should be examined carefully. Seed monies may need to come from CSAC Finance Corporation as a loan; assembled and established benefit programs should be in advance of marketing to counties.
6. Start-up minimums. Industry wisdom indicates that a minimum of 6,000 covered lives is desired to setup a program. There are several counties listed in Exhibit A that would fit the minimum required. CSAC only needs to work with one or two of these counties in order to meet the covered lives minimum and begin a pilot program.
7. Marketing. CSAC must roll out a marketing plan to counties in order to educate and inform them of the benefits of their participation in the CSAC program. The roll out can take 6 to 12 months.
8. Timeline. The overall timeline—from initiation to program start—that is required for CSAC to establish a health care benefits program and enroll their pilot customers is approximately 12 to 24 months.

In conclusion, CSAC has an opportunity to create an affordable health care benefits program that counties can control themselves and thus provide better benefits to their employees while maintaining long-term cost stability.

**EXHIBIT A**

California Counties in PEMCHA<sup>6</sup>

<b>County</b>	<b>No. Lives Covered</b>
Amador	239
Butte	4119
Colusa	737
Contra Costa	2694
Glenn	1088
Humboldt	3812
Inyo	1095
Lassen	794
Madera	3063
Mariposa	1129
Modoc	637
Mono	878
Monterey	9781
Napa	3191
Nevada	2614
Placer	7101
Plumas	239
Riverside	2458
San Benito	1095
San Luis Obispo	5084
Santa Cruz	6352
Shasta	4901
Siskiyou	1698
Solano	5306
Trinity	1044
Tuolumne	1301
Yolo	3536
Yuba	1875

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<sup>6</sup> Source: CSAC

## EXHIBIT B

### Cal. Admin. Code tit. 2, § 599.515

Barclays Official California Code of Regulations

Title 2. Administration

Division 1. Administrative Personnel

Chapter 2. Board of Administration of Public Employees' Retirement System

Subchapter 3. Public Employees' Medical and Hospital Care Act Regulations

Full text of all sections at this level Article 1. Definitions, Coverage, Enrollment, Conversion, Minimum Standards, Alternative Benefit Plans, Contributions, Contingency Reserve Fund, Contracting Agency Participation and Medicare Part B

Current selection

**Current selection § 599.515. Contracting Agency Participation.**

(a) **Resolution.** The resolution of the governing board of a contracting agency electing to be subject to the Public Employees' Medical and Hospital Care Act shall be filed with the Health Benefits Division of the Public Employees' Retirement System. If such resolution is filed with the Health Benefits Division on or before the tenth day of any month, the contracting agency and its employees and annuitants will become subject to the Act on the first day of the following month. The effective date of participation where the resolution is received in the Health Benefits Division after the tenth day of any month shall be at midnight of the last day of the following month. The resolution shall designate an officer or employee of the agency who shall be responsible for distribution, receipt and forwarding to the Health Benefits Division enrollment forms for its employees and annuitants, the filing of reports and the transmission of contributions.

A resolution filed with the Health Benefits Division may be revoked by the filing of a resolution of the governing board in the Health Benefits Division no less than ninety days prior to the effective date specified in the resolution electing to be subject to the Public Employees' Medical and Hospital Care Act.

(b) **Reports.** The agency shall file in the Health Benefits Division on or before the tenth day of each month such reports covering the employees and annuitants enrolled as of the first day of the month as the Board may require, and the total contributions due for each. The report shall be accompanied by payment of the total of such contributions for employees and the employer contributions due for annuitants of the agency enrolled under the program and the employer contribution for administrative costs and the Public Employees' Contingency Reserve Fund.

(c) **Enrollment.** The contracting agency shall make available to its employees and annuitants information concerning health benefit plans and procedures for enrollment and the enrollment forms prescribed by the Board. It shall cause all properly executed enrollment forms to be transmitted promptly to the Health Benefits Division.

(d) **Delinquency.** The Executive Officer of the Board, upon failure of a contracting agency to perform any act required by the Meyers-Geddes State Employees' Medical and Hospital Care Act or these rules, shall on behalf of the Board, make demand for performance of such act on the agency pursuant to Section 22939 of the Meyers-Geddes State Employees' Medical and Hospital Care Act. If such demand is not satisfied, the Executive Officer shall refer the matter to the Board at its next meeting.

(1) The contributions required of a contracting agency, along with contributions withheld from salaries of its employees, shall be forwarded monthly, no later than the 10th day of the month for which the contribution is due.

(2) Interest on late payments:

(A) If a public agency fails to pay contributions due within the prescribed time, interest shall be charged upon the amount due from the due date until received by the System in Sacramento.

(B) The rate of interest to be charged shall be equal to the short-term interest rate for the coverage month due.

(3) Cost assessment for late reporting:



(A) If a public agency fails to file a remittance report as required by these regulations within the time period set forth, an assessment to recover the cost of follow-up and special accounting of \$25.00 for each report shall be made.

(B) If, in the opinion of the Executive Officer, such assessment is insufficient to meet the added costs because of special circumstances, he/she shall determine such costs and make an appropriate supplemental assessment.

(4) Time extension:

(A) A reasonable extension of time for filing remittance reports may be granted by the Executive Officer or designee whenever good cause exists.

**(e) Termination.** A contracting agency may terminate its participation under the Public Employees' Medical and Hospital Care Act by filing with the Board a resolution passed by a majority vote of its governing body. The resolution electing to terminate must be filed with the Health Benefits Division of the Public Employees' Retirement System no later than 60 days after the Board of Administration approves and announces the health plan premium rates for the following year. The termination becomes effective at the end of the current contract year. The election to terminate is irrevocable after the filing of the resolution, and a resolution electing to be subject to the Public Employees' Medical and Hospital Care Act may not be filed thereafter within five years of the termination date.

*Note: Authority cited: Sections 20121, 22794, 22796, 22800, 22830, 22831 and 22846(a), Government Code. Reference: Sections 22901 and 22922-22939, Government Code.*

## HISTORY

1. Amendment of subsection (e) filed 8-5-76; effective thirtieth day thereafter (Register 76, No. 32). For prior history, see Register 75, No 12.
2. Amendment of subsections (a), (b) and (c) filed 6-27-80; designated effective 8-1-80 (Register 80, No. 26).
3. Amendment filed 6-9-86; effective thirtieth day thereafter (Register 86, No. 24).
4. Amendment of subsection (e) filed 4-3-2003 as an emergency; operative 4-3-2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-3-2003 order transmitted to OAL 7-9-2003 and filed 8-18-2003 (Register 2003, No. 34).
6. Amendment of subsection (e) filed 8-4-2004; operative 8-4-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 32).
7. Change without regulatory effect amending subsection (d) and Note filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).
- 2 CCR § 599.515, 2 Previous TermCA ADC § 599Next Term.Previous Term515 Next Term

*This database is current through 9/24/10 Register 2010, No. 39*

## EXHIBIT C



County of Lake

Human Resources

### Memorandum

Date: July 6, 2010

To: The Honorable Board of Supervisors

From: Kathy Ferguson  
Human Resources Director 

Re: Ceasing to be Subject to the Public Employee's Medical and Hospital Care Act (PEMHCA)

As your Board is aware, rising health care costs and health insurance premiums are a concern for employers and employees alike. The County's Group Insurance Committee annually reviews alternatives to the County's current health plan coverage with CalPERS, considering premium rates, plan offerings and design, risk pools, and plan stability.

By a majority vote, the Group Insurance Committee has recommended that the County of Lake withdraw from CalPERS for health benefit coverage in 2011 and move to the EIA Health. The EIA Health plan is sponsored by CSAC EIA and brokered by Alliant Insurance Services, Inc. EIA Health not only provides employees and the County with more competitive premium rates for like coverage, but it also allows the County to control plan design, which we are unable to do with CalPERS health plans. EIA Health requires a three-year initial commitment, during which time the County is guaranteed the pool rate increases.

In order to leave CalPERS for health benefits, CalPERS requires that a resolution be submitted by the public agency's governing board to terminate participation in the Public Employee's Medical and Hospital Care Act (PEMHCA). This resolution must be received by CalPERS no later than 5:00pm on August 16, 2010. This action is irrevocable after filing with CalPERS and the re-entry period to PEMHCA is five years from the termination date.

The attached resolution, electing to cease being subject to PEMHCA after December 31, 2010, is submitted for your review and consideration. Staff and the majority of the Group Insurance Committee recommend your approval and authorization of the Chair to sign this resolution.

**EXHIBIT D**

BOARD OF SUPERVISORS, *(County Name)*, STATE OF CALIFORNIA

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION ELECTING TO CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEE'S  
MEDICAL AND HOSPITAL CARE ACT ONLY WITH RESPECT TO *(Group Name)*

WHEREAS, Government Code Section 22938 provides that a local agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act may cease to be so subject by proper application by the local agency; and

WHEREAS, the *(County Name)*, State of California herein referred to as Public Agency is a local agency which has elected to be subject to the provisions of the Act;

NOW, THEREFORE BE IT RESOLVED, that the Public Agency elects, and does hereby elect, to cease to be subject to the provisions of the Act with respect to *(Group Name)*, and

BE IT FURTHER RESOLVED, that such coverage of the Act cease on  
December 31, **20XX**.

This resolution was passed and adopted by the Board of Supervisors of the *(County Name)*, at a regular meeting thereof on \_\_\_\_\_, **20XX** by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

## Attachment E



P.O. Box 942714  
Sacramento, CA 94229-2714  
(888) CalPERS (888-225-7377)  
TDD – (916) 795-3240  
www.calpers.ca.gov

Date: June 29, 2010  
Reference No.:

Circular Letter No.: 600-037-10  
Distribution: IIB & VII

Special:

# Circular Letter

**TO: ALL PEMHCA CONTRACTING AGENCY HEALTH BENEFIT OFFICERS  
& ASSISTANT HEALTH BENEFIT OFFICERS**

**SUBJECT: CALPERS CONTRACTING AGENCY ADMINISTRATIVE FEE FOR  
FISCAL YEAR 2010/2011, RESOLUTION CHANGE PROCESS, AND  
BILLING CUT-OFF DATES**

### ADMINISTRATIVE FEE FOR FISCAL YEAR 2010/2011

Effective July 1, 2010, the CalPERS Board of Administration set the Public Employees' Medical and Hospital Care Act (PEMHCA) administrative fee to 0.37 percent. The administrative fee is calculated on total active and total retired health premiums each month.

Upon passage of the State of California's fiscal year 2010-11 budget, this new administrative fee will become law, and reflected in a future health premium invoice. The new administrative fee and a retroactive adjustment will be reflected in a line item under the description "Administrative Costs."

### CONTRACTING AGENCY RESOLUTION CHANGE PROCESS

Agencies wanting to change current resolutions based on new premiums, modified Memorandum of Understanding (MOUs), or legislation must submit approved resolution changes by **November 8, 2010 at 5:00 pm**. This will ensure an effective date of January 1, 2011. Resolutions submitted after November 30, 2010 may not be processed in time for a January 1, 2011 effective date.

### CONTRACTING AGENCY TERMINATION PROCESS

Contracting agencies may elect to terminate their participation in PEMHCA by filing a resolution passed by a majority vote of their governing body. The resolution must be filed no later than 60 days after the CalPERS Board approves the health premiums for the 2011 contract year. The resolution electing to terminate must be filed with:

Office of Employer and Member Health Services  
P.O. Box 942714  
Sacramento, CA 94229-2714

The deadline for receipt of the resolution at CalPERS is **August 16, 2010 at 5:00 PM**, and is irrevocable after the filing of the resolution. Terminations are effective on January 1, 2011, and the re-entry period to PEMHCA is five years from the termination date.

### **2010 HEALTH BILLING CUT-OFF DATES**

Attached is a copy of the Health Billing Cut-Off Dates for billing months September 2010 through February 2011 for contracting school districts and public agencies.

All Automated Communication Exchange System (ACES) batch transactions must be keyed and submitted by 3:00 pm on the cut-off date for each billing month.

Cut-off dates differ for school districts and public agencies; for example, in order for a batch transaction to appear on the **September 2010** invoice, employers must key and submit transactions by the following timeframes:

- School districts: **July 30, 2010 by 3:00 pm.**
- Public agencies: **August 10, 2010 by 3:00 pm.**

If a school district or public agency keys and submits a transaction after the cut-off date, the transactions will appear on the following month's invoice. In addition, employers must verify all transactions within ACES batches to ensure that they have been accurately uploaded.

### **HOW PAYMENTS ARE APPLIED**

CalPERS wants to ensure your payments are applied accurately and timely. Please send a copy of the invoice with the monthly payment, as **billed** using Electronic Fund Transfer (EFT) or mail.

**Underpayments:** If an employer does not pay the full amount provided under *Total Payment Due*, the payment received will be applied to the current period only and not to any past due amounts. The *Total Payment Due* includes the current *Invoice ID*, any past due *Invoice ID* and assessed interest and penalties from any prior delinquent month(s).

Please advise CalPERS prior to payment date, if payments need to be applied to prior months, as we will continue to assess interest on a past due month's *Invoice IDs*. CalPERS will reverse assessed interest, if employers can provide documentation that payment was received timely and in full.

**Overpayments:** If an employer overpays the *Total Payment Due* amount and there is not a past due *Invoice ID*, the current *Invoice ID* will be paid and closed, and the remaining credit will be applied to a future *Invoice ID*.

California Public Employees' Retirement System  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

## **KEY POINTS IN RECONCILING**

Contracting school districts and public agencies are strongly encouraged to reconcile their invoices monthly to ensure all enrollments are accurately reflected for active and retired employees. Reconciliation ensures employers are accurately invoiced, that only eligible members are receiving benefits, and provides CalPERS the ability to negotiate lower health care costs. Below are helpful reminders for a successful reconciliation.

- Submit approved resolutions for contract changes timely
- Report health enrollment transactions accurately and timely to ensure transactions will be reflected on the invoice (retain Health Benefits Plan Enrollment [HBD-12] and Declaration of Health Coverage [HB-12A] forms on file for all employees)
- Confirm health enrollment changes by utilizing ACES' Participant Status Change Report and Participant Report
- Reconcile invoices monthly to ensure coverage of eligible members only
- Report the timely separation of members or deletion of dependents to receive the allowed maximum refund (6 months) of health premiums (refer to Circular Letter #600-215-05 at [www.calpers.ca.gov](http://www.calpers.ca.gov))
- Pay timely the full amount of each invoice including assessed interest and penalties; any adjustments will be credited on a subsequent invoice
- Payments must be received by the 10<sup>th</sup> day of each month; allow two banking days from the debit date for EFT payments to be received
- The ACES Information Web Site ([www.calpers.ca.gov](http://www.calpers.ca.gov)) contains information regarding the Public Agency Billing function

We look forward to continuing our relationship with you in 2011. If you have any questions regarding the information provided in this Circular Letter, please contact our Employer Contact Center at **888 CalPERS** (or **888-225-7377**).

Sincerely,

Holly A. Fong, Chief  
Office of Employer and Member Health Services

Attachment - 2010 Health Billing Cut-Off Dates for Contracting School Districts and Public Agencies

California Public Employees' Retirement System  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

## **KEY POINTS IN RECONCILING**

Contracting school districts and public agencies are strongly encouraged to reconcile their invoices monthly to ensure all enrollments are accurately reflected for active and retired employees. Reconciliation ensures employers are accurately invoiced, that only eligible members are receiving benefits, and provides CalPERS the ability to negotiate lower health care costs. Below are helpful reminders for a successful reconciliation.

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We look forward to continuing our relationship with you in 2011. If you have any questions regarding the information provided in this Circular Letter, please contact our Employer Contact Center at **888 CalPERS** (or **888-225-7377**).

Sincerely,

Holly A. Fong, Chief  
Office of Employer and Member Health Services

Attachment - 2010 Health Billing Cut-Off Dates for Contracting School Districts and Public Agencies

California Public Employees' Retirement System  
[www.calpers.ca.gov](http://www.calpers.ca.gov)



January 5, 2011

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

To: CSAC Executive Committee

From: Supervisor Bruce Gibson, San Luis Obispo County, Chair  
Supervisor John Moorlach, Orange County, Vice Chair

**RE: Compensation Transparency Principles– ACTION ITEM**

---

**Recommendation:** The Government Finance and Operations Policy Committee recommends the Executive Committee approve and recommend principles to the Board of Directors that will guide staff in developing positions and discussing proposed legislation and regulation related to the disclosure of compensation provided to public officials and employees. Further, the Policy Committee recommends CSAC support the State Controller's Local Government Compensation Reporting Program. Finally, the Policy Committee recommends the Executive Committee discuss how CSAC could best make use of the data provided to the State Controller.

**Background.** In July, when news broke that city officials in Bell, California were receiving unusually high salaries and benefits, focus turned to local governments as state officials and legislators sought to increase transparency for publicly-provided salaries and benefits. While counties have long been required by statute and the constitution to publicly set salaries and to operate in a transparent manner, the state-level response to the Bell salary scandal has placed additional burden on counties. New reporting requirements from the State Controller's Office (SCO) have been implemented and additional legislation and regulation will be considered in 2011. In November, the Policy Committee and Board of Directors directed staff to develop a proposal to address compensation transparency and disclosure issues rather than wait and respond to proposals coming from the Legislature and other entities.

For additional background, please see the attached report to the Government Finance and Operations Policy Committee dated November 2, 2010.

**Policy Considerations.** In October, State Controller John Chiang launched the Local Government Compensation Reporting Program to collect salary, compensation and benefit information for all elected, appointed and employed personnel and require cities and counties to annually report the information for any staff to which they issue a W-2 form. All counties have complied with this reporting requirement and the information is available in a searchable database on the SCO website. On December 9, Senator Lou Correa introduced SB 46, a bill identical to his SB 501 that failed in 2010. For several classifications of county employee and elected official, SB 46 will provide nearly identical information to that which is



already available on the SCO website, albeit in a different format, as the bill would require the Secretary of State to create a new form to be completed by the specified employee or elected official. Additionally, the Fair Political Practices Commission will pursue a new addendum requiring salary data from specified filers of the Form 700.

In November, the Policy Committee and Board of Directors directed staff to develop a proposal to address compensation transparency and disclosure issues. Upon consideration of the options and discussions with stakeholders, staff recommended and on January 5, 2011 the Policy Committee approved that in lieu of developing yet another reporting requirement, CSAC instead support the SCO's Local Government Compensation Reporting Program and seek recognition by the Legislature and stakeholders that the SCO database is the single source of required reporting and disclosure of compensation. Further, staff recommended and the Policy Committee approved the adoption of principles for compensation disclosure and transparency as discussed below.

In addition, the Policy Committee discussed whether CSAC could provide a service to counties by describing the data that is reported to the SCO by, for example, explaining why compensation levels might vary amongst counties. The Policy Committee recommends the Executive Committee discuss this issue at its next meeting.

### **Suggested Principles for Compensation Disclosure and Transparency**

Avoid duplication. The SCO database should be the single source of required disclosure of public employee and elected official compensation data. Every county has complied with the requirement and it is likely that the reporting will soon become routine. Any county may choose to additionally make this information available on their website or to link to the SCO database, but additional mandates are unnecessary. The creation of additional forms by the Fair Political Practices Commission or the Secretary of State will only lead to redundancy and confusion. The Legislature could seek additional information or provide the SCO with explicit authority for the reporting program if there are perceived deficiencies with the existing program.

Keep requirements consistent with the Brown Act and Public Records Act. Timelines for providing information to the public via website, photocopy, or other means should be consistent with existing requirements in the Brown Act or Public Records Act. New standards should not be created.

Maintain simplicity. Any and all compensation disclosed should be streamlined and specific enough to allow apples to apples comparisons. It is important that any reporting requirement be clear enough to allow agencies of various sizes with

various levels of staffing and software capabilities to be able to make consistent reports.

Apply to all levels of government. All compensation of public officials and employees, at every level of government, is public information. The SCO database should be expanded to include all public employees, including state and judicial branch employees.

**Action Requested.** The Government Finance and Operations Committee recommends the Executive Committee approve and recommend to the Board of Directors the suggested principles for compensation disclosure and transparency and support of the State Controller's Office Local Government Compensation Reporting Program.

**Staff Contact.** Please contact Eraina Ortega ([eortega@counties.org](mailto:eortega@counties.org) or 916/327-7500 x521) or Faith Conley ([fconley@counties.org](mailto:fconley@counties.org) or 916/327-7500 x527) for additional information.

**Materials.** "Compensation Transparency – INFORMATIONAL ITEM", November 2, 2010 report to the Government Finance and Operations Policy Committee.



November 2, 2010

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

To: Supervisor Bruce Gibson, San Luis Obispo County, Chair  
Supervisor John Moorlach, Orange County, Vice Chair  
Members, Government Finance and Operations Policy Committee

From: Eraina Ortega, Legislative Representative, Employee Relations  
Faith Conley, Legislative Analyst, Employee Relations

**RE: Compensation Transparency – INFORMATIONAL ITEM**

---

**Recommendation:** This item is for information only.

**Background.** In July, when news broke that city officials in Bell, California were receiving unusually high salaries and benefits, focus turned to local governments as state officials and legislators sought to increase transparency for publicly-provided salaries and benefits. While counties have long been required by statute and the constitution to publicly set salaries and to operate in a transparent manner, the state-level response to the Bell salary scandal will undoubtedly place additional mandates on counties. One new reporting requirement has been implemented and others are likely to be included in Legislation in 2011. Below is a summary of the actions taken and those under consideration by policy makers in an effort to prevent the abuses seen in Bell.

**State Representatives Seek to Improve Compensation Transparency**

**State Controller John Chiang issues reporting requirements.** In early August, State Controller John Chiang announced new reporting requirements and instructed all California cities and counties to provide the salaries for each classification of elected official and public employee. The Local Government Compensation Reporting Program is intended to collect salary, compensation and benefit information for all elected, appointed and employed personnel and requires cities and counties to include the information for any staff to which they issue a W-2 form. The new information is intended as a supplement to the fiscal reports already required by the Controller. The salary data was due on October 1, 2010 and annually thereafter and was posted on the Controller's website on October 25.

**State Treasurer Bill Lockyer asks CalPERS to take action.** State Treasurer Bill Lockyer in late August asked the California Public Employees' Retirement System (CalPERS) to review existing policies and determine if new procedures could prevent the abuses that have been disclosed. The Treasurer recommended that, among other things, CalPERS review the guidelines used to determine membership in a group or class of employment for the purpose of justifying salary increases, implement effective triggers for an automatic review by the CalPERS Compensation

Review Unit for certain compensation increases and produce an annual public report on compensation trends that includes a list of the 100 highest salaries and compensation paid by CalPERS state and local agencies. CalPERS staff are expected to make recommendations in late 2010 in response to Treasurer Lockyer's request.

**Attorney General Jerry Brown opens investigation into legality of Bell salaries and seeks information from cities and counties with employees earning more than \$200,000.** Attorney General Brown in July launched a joint investigation with CalPERS into the compensation paid by the city of Bell and other local government entities, examining records to determine whether improper activity or other illegalities occurred. On September 15, Brown filed a lawsuit against former Bell city officials, charging the defendants with fraud, negligence and abuse of public trust. Brown has vowed to investigate any government official in California making over \$300,000 per year in total compensation. In a letter to city and county government officials dated October 14 and titled, "California Attorney General's Office Public Salaries and Benefits Investigation," Brown requested local governments provide the following data:

- The names, total compensation amounts and base salaries of any employees who received a total monthly compensation equal to \$16,600 or a total annual compensation of \$200,000 over the last three years.
- The name, plan administrator's name and the address of any retirement plan to which the government entity makes contributions for retirement benefits for such employees.
- The total number of employees employed by the government entity.

Brown requested the information be submitted to his office no later than October 25.

**CalPERS establishes compensation task force.** In August, CalPERS established the Public Employee Compensation and Benefits Task Force (task force). The task force is comprised of labor and employee organizations, local government associations (including CSAC and the League of California Cities), and CalPERS and legislative staff. Its purpose is to discuss transparency and regulation of public employee compensation and benefits.

Accordingly, the task force was divided into three sub-groups:

- **Compensation.** The Compensation sub-group will discuss existing federal Internal Revenue Code caps placed on compensation and benefits paid by public retirement systems and the CalPERS definition of a group or class of public employees.
- **Transparency.** The Transparency sub-group will focus on what information should be made public to prevent abusive compensation practices and how to avoid having duplicative reporting requirements.

- **Risk Pooling.** The Risk Pooling sub-group will discuss the impacts experienced by local agencies within the same risk pool when one local agency member of the pool grants excessive compensation and benefit packages to its employees.

Both the Compensation and the Risk Pooling subgroups met in August and September and are tentatively scheduled to meet again on November 5. CalPERS plans to convene a meeting of the entire task force later this year to review discussions and make recommendations.

### **Legislation Introduced**

In the wake of the Bell salary scandal, the Legislature introduced several bills to require additional regulation and disclosure of total compensation of elected officials and public employees and to limit pensions. Many of the bills did not pass the Legislature due to disagreement about the inclusion of state and Legislative employees and the two bills that passed the Legislature were vetoed by the Governor because they were not part of a comprehensive solution. CSAC staff expects this discussion to continue in the next legislative session. The following bills were considered in 2010:

**AB 192** (Gatto) would require any CalPERS contracting agency that provides more than a 15 percent raise to an individual to bear the entire cost of the retirement increase even for service with a previous employer covered by CalPERS. The measure attempts to address the issue that some cities will pay higher retirement costs because they previously employed employees of the City of Bell who were granted excessive salaries.

AB 192 was put on hold for 2010. Legislation to address this issue is expected in 2011.

**AB 194** (Torrico) would create a new cap on the salary or payrate that is used to determine a pension benefit. In addition to the IRS cap of \$245,000 on total compensation that applies to anyone who became a member of a public retirement system after June 30, 1996, AB 194 proposed a new state cap on salary or payrate of \$217,483 that would apply to anyone who becomes a member of a public retirement system on or after January 1, 2011.

AB 194 was vetoed by the Governor.

**AB 827** (De La Torre) would prohibit any employment contract for a local, unrepresented employee from including the following:

- An "evergreen" clause (a clause that provides for an automatic contract renewal and/or compensation increase).

- A severance payment greater than 12 months salary.
- An automatic raise that exceeds a cost-of-living adjustment (COLA).

Additionally, AB 827 would require that prior to providing a raise in excess of a COLA to an unrepresented employee that reports to the legislative body of a local agency, that employee must be given a performance review. The vote to implement the raise would be required to be made in open session.

AB 827 was vetoed by the Governor.

**AB 1955** (De La Torre) would require the State Controller to determine whether a charter city is an excess compensation city, as defined, and would mandate penalties if such a determination is made. AB 1955 would also amend the Brown Act to require five days notice prior to considering a contract for employment.

AB 1955 was defeated in the Senate.

**AB 2064** (Huber) would require all levels of government to post employee salary information on their websites. AB 2064 was not taken up for a vote in the Senate and therefore failed.

**SB 501** (Correa) would require an elected or appointed officer of a county, city, city and county, school district, special district, or joint powers agency who is also required to file a Statement of Economic Interest (Form 700) as published by Fair Political Practices Commission to also complete a new form developed by the Secretary of State. The new form would include disclosure of the following:

- Annual salary or stipend.
- Employer payments to the filer's deferred compensation or defined benefit plans.
- Automobile and equipment allowances.
- Supplemental incentive and bonus payments.
- Employer payments to the filer that are in excess of the standard benefits that the employer offers for all other employees.

The elected officials and employees required to report are:

- State officers, judges, court commissioners, members of various state commissions, members of boards of supervisors, district attorneys, county counsels, county treasurers, chief administrative officers of counties, city officials, members of city councils, other public officials who manage public investments and candidates for any of these offices at any election.

As an alternative to individuals filing the new form, a county that maintains a website may compile the information required for each filer and post that information on the internet. SB 501 died in the Assembly Rules Committee.

### **Legislature Convenes Hearings**

In addition to legislation, on September 22, the Assembly Local Government and Accountability and Administrative Review Committees held a hearing with the Joint Legislative Audit Committee regarding the transparency of local government pay. CSAC was represented by Nancy Nittler, Personnel Director for Placer County, who testified about the steps county governments are already obligated to take with respect to public employee compensation transparency.

On October 20 in Santa Ana, the Senate Local Government Committee convened a hearing titled, "Transparency and Accountability: Pursuing the Public's Right to Know". The hearing asked Legislators to consider the following policy questions:

- Should state law require more compensation disclosure?
- What compensation should public officials disclose?
- Which public officials should disclose their compensation?
- How should public officials disclose their compensation?

Supervisor Kimberly Dolbow Vann of Colusa County represented CSAC at the hearing. A copy of her written statement is attached.

Finally, Assembly Member Mike Gatto held a town hall style meeting in Glendale on October 21 to discuss the issues surrounding his AB 192 (discussed above). CSAC staff spoke about the importance of reciprocity in recruiting and retaining qualified county staff.

**Policy Considerations.** Counties should expect to witness a continued effort to increase the transparency of public agency compensation through state oversight and additional reporting requirements. Some form of the legislative proposals outlined in both AB 192 and SB 501 are expected to be introduced when the Legislature reconvenes next year.

**Action Requested.** No action required at this time.

**Staff Contact.** Please contact Eraina Ortega ([eortega@counties.org](mailto:eortega@counties.org) or 916/327-7500 x521) or Faith Conley ([fconley@counties.org](mailto:fconley@counties.org) or 916/327-7500 x527) for additional information.

**Materials.**

Supervisor Kimberly Dolbow Vann Written Statement to Senate Local Government  
Committee





September 30, 2010

Paul McIntosh  
Executive Director  
California State Association of Counties  
1100 K. Street, Suite 101  
Sacramento, CA 95814  
916-327-7500 x506

Dear Mr. McIntosh:

The Council of California County Law Librarians (CCCLL) is comprised of representatives from the 58 county law libraries throughout the State. Established by law in 1891, California county law libraries are open to the public and provide free access to legal resources. Our mission: To strengthen, improve, promote, and advocate legal information services that support access to justice for all Californians. The membership of CCCLL believes that we share the goals of CSAC in improving the quality of life of California residents. To that end, CCCLL kindly asks to be considered for CSAC Affiliate Membership.

We would be happy to meet with you to further discuss Affiliate Membership.

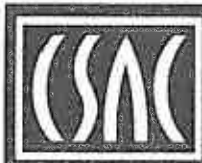
Thank you for your consideration.

Sincerely,

Karen M. Lutke  
CCCLL President  
Director, San Mateo County Law Library  
710 Hamilton Street  
Redwood City, CA 94063  
650-363-4913

Kathryn Bates Turner  
CCCLL Vice-president  
Director, Yolo County Law Library  
204 Fourth Street, Suite A  
Woodland, CA 95695  
530-666-8918

CC: CCCLL



CALIFORNIA STATE ASSOCIATION OF COUNTIES  
FINANCE CORPORATION

January 6, 2011

To: CSAC Executive Committee  
From: Tom Sweet, Executive Director, CSAC Finance Corporation  
RE: **Finance Corporation Program Update  
INFORMATION ITEM**

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The following are highlights of the numerous programs that the CSAC Finance Corporation offers to your counties:

**CalTRUST**

- CalTRUST continues to grow with current assets in excess of \$1 Billion.
- Online trading is now available to CalTRUST participants.
- Bill Pollacek has retired as Treasurer/Tax Collector of Contra Costa County and is no longer on the CalTRUST Board of Trustees.

**California Communities**

- On January 5<sup>th</sup> the CSCDA Commission approved a financing of up to \$457 million for Sutter Health to finance and refinance medical support facilities.

**U.S. Communities**

- All 58 counties continued to utilize U.S. Communities in 2010 and there was growth among counties who previously had little or no usage of the program.
- A new office supply vendor, Independent Stationers, has replaced Office Depot as the U.S. Communities office supply provider. As of the beginning of the year Office Depot is no longer a U.S. Communities provider.

**General Information**

- I have announced my retirement to be effective in June 2011.
- There is currently a public member vacancy on the CSAC Finance Corporation Board of Directors.
- The CSAC Finance Corporation Board of Directors will be holding a Board Retreat in San Francisco on January 28<sup>th</sup>, 2011. Topics they will discuss include:
  - A program and services overview;
  - New potential services and partnerships;
  - The CSAC Finance Corporation Mission.
- We continue to meet with individual counties and their department heads to present our programs and benefits. Please let us know if you would like a meeting set with your county's department heads.

If you have any questions regarding these or any other CSAC Finance Corporation programs please do not hesitate to contact us via phone, 916.327.7500 x556, or via email, [tsweet@counties.org](mailto:tsweet@counties.org); Laura Labanieh at 916.327.7500 x536 or [llabanieh@counties.org](mailto:llabanieh@counties.org).



# County Counsels' Association of California

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## BOARD OF DIRECTORS

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Patrick K. Faulkner  
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2010-2012

Pamela Walls  
Riverside County  
2010-2012

EXECUTIVE DIRECTOR  
Jennifer B. Henning

## MEMORANDUM

**To:** Supervisor John Tavaglione, President, and  
Members of the CSAC Executive Committee

**From:** Jennifer Henning, Litigation Coordinator

**Date:** January 20, 2011

**Re:** Litigation Coordination Program Update

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At your Executive Committee's request, this memorandum will provide you with information on the Litigation Coordination Program's activities since your last regular meeting in August.

### I. New Case Activity Since Last Executive Committee Meeting

#### *Airis SFO v. City and County of San Francisco*

Unpublished Decision of the First Appellate District, 2010 Cal.App.Unpub.LEXIS 7546 (1st Dist. Sept. 22, 2010)(A121855), *petition for review pending* (filed Nov. 1, 2010)(S187802)

San Francisco entered into an Exclusive Negotiation Agreement (ENA) with plaintiffs to build a cargo facility at the airport, which required the parties to negotiate in good faith to reach agreement on a Development Agreement and Lease. The parties further agreed that any agreed upon Development Agreement and Lease would be subject to the approval of the San Francisco Board of Supervisors "in their sole and absolute discretion." The parties reached agreement on a Development Agreement and Lease, but the Board rejected it. Plaintiff sued the city for breach of the implied covenant of good faith and fair dealing. A jury returned a verdict in plaintiff's favor, but the trial court granted the city's motion to set aside the verdict and issue a judgment in the city's favor. Plaintiff appealed, and the Court of Appeal reversed in an unpublished opinion. The court found that in order to recover reliance damages, plaintiff did not have to prove causation—i.e., that the Board of Supervisors would have approved the Development Agreement and Lease but for the alleged breaches of good faith and fair dealing. CSAC has filed a letter in support of review.

#### *City of Clovis v. County of Fresno*

Pending in the Fifth Appellate District (filed May 21, 2010)(F060148)

A number of cities filed this action against Fresno County challenging the method used by the county to calculate the property tax administration fee (PTAF) charged to the cities. The county was following the "SB 1096 Guidelines" prepared by the California State Association of County Auditors in response to the Legislature's enactment of certain provisions of the 2004-2005 Budget Act. Under

the Guidelines, the county did not charge any PTAF for services relating to the funds paid under the VLF swap in the 2004/2005 or 2005/2006 fiscal years. Beginning in 2006/2007, the county included the funds paid under the VLF swap as additional property tax share to each city and apportioned the total property tax administration costs to each city based on this share. The cities argued that the county should not have included the VLF swap property tax revenues in calculating their PTAF share. The Fresno County Superior Court ruled in favor of the cities, and Fresno County has appealed. CSAC will file a brief in support of the county.

***City of San Diego v. Bd. of Trustees of the Calif. State University***

Pending in the Fourth Appellate District, Division One (filed May 25, 2010)(D057446)

The city brought this action against CSU's certification of an EIR and approval of a revised master campus plan for CSU San Diego, challenging the CSU's refusal to guarantee funding for off-campus environmental mitigation. During the CEQA process, the city identified approximately \$20 million in necessary traffic and infrastructure costs required for the total campus build-out. And while the CSU acknowledged at least \$6 million of these costs, it alleged it met its obligation to secure funding by making a budget request to the Legislature, even if the Legislature does not ultimately appropriate the funds. The trial court ruled in favor of CSU, finding it met its obligations by simply asking for an appropriation. The city has appealed. The case is the first to attempt to apply the Supreme Court's decision in *City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341, which rejected CSU's argument that it could not lawfully pay for offsite project mitigation. CSAC will file a brief in support of the city.

***Delia v. City of Rialto***

621 F.3d 1069 (9th Cir. Sept. 9, 2010)(09-55514), *petition for rehearing denied* (Nov. 8, 2010), *petition for cert. to be filed*

Plaintiff, a firefighter, was placed off-duty for 12 shifts after he became ill following response to a toxic spill. Given a history of disciplinary problems, his supervisors believed he may not have been truthful about the extent of his injuries/illness, so the city hired a private investigation firm to conduct surveillance and outside counsel to conduct an internal affairs investigation. The federal Ninth Circuit Court of Appeals eventually concluded that the techniques used during the investigation violated plaintiff's right under the Fourth Amendment to be protected from a warrantless unreasonable compelled search of his home. However, the court found the city and its employees were granted qualified immunity because the right was not clearly established at the time of the constitutional violation. Importantly, the court denied qualified immunity for the outside counsel used to conduct the investigation, creating a split of opinion between federal courts on the issue of immunity for outside counsel. The city's outside counsel will be seeking United States Supreme Court review, and CSAC will file a brief in support.

***Greene v. Camreta***

588 F.3d 1011 (9th Cir. Dec. 10, 2009)(06-35333), *petition for rehearing en banc denied* (Mar. 1, 2010), *petition for cert. granted* (Oct. 12, 2010)(09-1454)

The Ninth Circuit Court of Appeals has found that a child protective services caseworker violated the constitutional rights of two minor girls who were interviewed at their school in connection with a sexual abuse investigation. After an arrest was made in connection with sexual abuse of another minor, there was a concern that the two minors involved in this case may have also been abused. The social worker went with a deputy sheriff to interview the girls at their school, and sometime later the mother brought this lawsuit arguing the interview

violated the girls' Fourth Amendment rights. The Ninth Circuit agreed, holding that plaintiff stated a claim for a Fourth Amendment violations. The State of Oregon petitioned for U.S. Supreme Court review, which CSAC supported, and review was granted. CSAC has also filed a brief in support of the State on the merits.

***Hines v. California Coastal Commission***

186 Cal.App.4th 830 (1st Dist. June 17, 2010)(A125254), *request for depublication and petition for review denied* (Oct. 13, 2010)(S185805)

Back in July, CSAC submitted briefing in an Alameda County case in which the First District allowed a CEQA challenge to move forward despite the fact that CEQA concerns had not been raised by plaintiffs at any stage of the proceedings before the county. (*Tomlinson v. County of Alameda* (2010) 185 Cal.App.4th 1029.) Our brief was submitted in response to the court's request for supplemental briefing on the impact of the recently-published decision in *Hines v. California Coastal Commission*. In *Hines*, the court upheld Sonoma County's determination that a single family home project was exempt from CEQA. The court concluded that plaintiff failed to exhaust administrative remedies by failing to raise CEQA concerns at any stage of the process in front of the county or the Coastal Commission. Plaintiffs sought depublication, which CSAC opposed. Review and depublication were both denied.

***In re K.C.***

Previously published at: 184 Cal.App.4th 120 (5th Dist. Apr. 26, 2010)(F058395), *petition for review granted* (July 14, 2010)(S183320)

The Fifth District Court of Appeal has found that a father does not have appellate standing to challenge a juvenile court's denial of a request by a dependent minor's grandparents for placement. Although the court acknowledged that the father has a fundamental liberty interest in the child's companionship, custody, management, and care, the court held that the father was unable to show that he was injuriously affected by the court's denial of the grandparents' petition. In so ruling, the court expressly disagreed with a 2008 appellate decision, creating a division among the courts. The Supreme Court granted review to resolve the dispute. CSAC filed a brief in support of Kings County.

***Madison County, NY v. Oneida Indian Nation of New York***

605 F.3d 149 (2d Cir. Apr. 27, 2010)(05-6408), *petition for cert. granted* (Oct. 12, 2010)(10-72)

Under a relatively recent Supreme Court decision, local taxing authorities can impose real property taxes on land owned in fee simple by Indian tribes. (*City of Sherrill v. Oneida Indian Nation of New York* (2005) 544 U.S. 197.) In the present case, the Second Circuit Appellate Court in New York concluded that counties could impose a tax on a tribe, but could not foreclose on tribe-owned property for non-payment of county taxes. The court concluded that the tribe was immune from suit under the long-standing doctrine of tribal sovereign immunity. A concurring opinion put the issue this way: "The holding in this case comes down to this: an Indian tribe can purchase land (including land that was never part of a reservation); refuse to pay lawfully-owed taxes; and suffer no consequences because the taxing authority cannot sue to collect the taxes owed. This rule of decision defies common sense. But absent action by our highest Court, or by Congress, it is the law." Madison and Oneida Counties sought Supreme Court review, which the Court granted. CSAC filed a brief in support of the counties.

***Martinez v. County of San Bernardino Civil Service Commission***

Unpublished Decision of the Fourth Appellate District, Division Two, 2010  
Cal.App.Unpub.LEXIS 8043 (4th Dist., Div. 2 Oct. 12, 2010)(E049406), *request to publish denied* (Nov. 3, 2010)

Plaintiff, a county employee had several negative evaluations and warnings related to tardiness and falling asleep at work. A county-ordered medical wellness evaluation found him able to work with no restrictions, though he also had a neurological consultation, which resulted in a recommendation for further testing for narcolepsy. Ultimately, plaintiff was dismissed. The Civil Service Commission upheld the dismissal. The trial court affirmed, noting that although it had concerns about the way the county handled the disability issue, plaintiff's tardiness alone was enough to justify the dismissal. In an unpublished opinion, the Court of Appeal affirmed, concluding that plaintiff never proved he had a disability, and that the "regarded as disabled" theory did not apply. The county asked the court to publish the decision, which CSAC supported, but the request was denied.

***Qualified Patients Association v. City of Anaheim***

187 Cal.App.4th 734 (4th Dist. Div. 3 Aug. 18, 2010)(G040077), *petition for review / depublication denied* (Dec. 1, 2010)(S186752)

In 2007, the City of Anaheim adopted an ordinance prohibiting marijuana dispensaries within the city since "federal and state laws prohibiting the possession, sale and distribution of marijuana would preclude the opening of medical marijuana dispensaries sanctioned by the City of Anaheim." Patients filed this challenge, and the trial court upheld the ordinance. After the case was argued and submitted, the court requested additional briefing on issues related to state preemption of the ordinance. CSAC submitted a brief in response to the court's request. The court eventually issued its decision concluding that federal regulation of marijuana in the Controlled Substances Act does not preempt California's decision in the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA) to decriminalize specific medical marijuana activities under state law. The court also found that the MMPA did not unconstitutionally amend the CUA. However, on the question posed by the court for additional briefing -- whether the CUA or the MMPA preempt the city's ordinance -- the court concluded the issue was not ripe for review because plaintiffs did not appeal the trial court's order denying their request for a preliminary injunction restraining enforcement of the ordinance on preemption grounds. The city sought Supreme Court review. CSAC asked the Court not to take the case, but to depublish it instead. The Court denied both requests.

***Retired Employees Assoc. of Orange County v. County of Orange***

Pending in the Ninth Circuit Court of Appeal (filed July 1, 2009)(09-56026)  
Question Certified to the California Supreme Court (Aug. 18, 2010)(S184059)

Since approximately 1966, the County has provided health care benefits to its retired employees. In 1985, the County began pooling the retirees with active employees in the rate-setting process, which allowed retirees to pay lower premiums and receive greater coverage than they otherwise would. Over time, the County found its employee health plans were underfunded. So effective January 1, 2008, the Board approved a resolution to "split the pool," which created different premium pools for active and retired employees, resulting in significantly higher health insurance premiums for the retirees. The retirees sued in federal court, alleging breach of contract and due process claims, as well as a violation of the California Pension Protection Act of 1992. The district court ruled in favor of the County, but the retirees appealed to the Ninth Circuit. After briefing was completed on appeal (including an amicus brief from CSAC), the court certified, and the California Supreme Court agreed to

consider, the following question: Whether, as a matter of California law, a California county and its employees can form an implied contract that confers vested rights to health benefits on retired county employees. CSAC has filed a brief in support of the county in the California Supreme Court.

***Sheppard v. North Orange County Regional Occupational Program***

Pending in the Fourth Appellate District, Division Three (filed Apr. 29, 2010)(G041956)

This is an action for unpaid wages brought against the North Orange County Regional Occupational Program (NCROP), which is a vocational training JPA comprised of several school districts. Plaintiff, an instructor for the NCROP, alleged he was not paid for his preparation time in violation of the Industrial Welfare Commission's (IWC) Wage Order 4-2001. That wage order purports to apply to public entities, but the authorizing statute (Labor Code section 1173) does not make express reference to public employers. The trial court ruled in favor of NCROP, finding the wage order does not apply to public entities. After the case was fully briefed, the court requested that the Attorney General submit an amicus brief addressing whether the IWC can extend wage requirements to public entities, and if so, whether aggrieved employees have a private right of action to enforce the wage orders. The Fourth District reversed, concluding that the minimum wage provision in Wage Order No. 4 2001 applies to plaintiff's employment with NCROP, but as urged by CSAC's amicus brief, the court expressly limited its holding to employees of public school districts, and not to other public employees.

***Sierra Club v. County of Orange***

Pending in the Fourth Appellate District, Division Three (filed Aug. 27, 2010)(G044138)

The Sierra Club made a Public Records Act request for the county's "Landbase" in an electronic GIS file format, but would not pay the county's standard GIS Basemap licensing fees. The trial court agreed with the county that Government Code section 6254.9 excepted from the Public Records Act the information in the format sought by the Sierra Club because the county has the statutory right to license the GIS system. The trial court also noted that the county was willing to make the information available in a different format. The Sierra Club is seeking an extraordinary writ from the Fourth Appellate District. CSAC will file a brief in support of the county.

***Tomlinson v. County of Alameda***

188 Cal.App.4th 1406 (1st Dist. Oct. 6, 2010)(A125471), *petition for review/depublishing pending* (filed Nov. 15, 2010)(S188161)

Plaintiffs challenged the county's decision to approve a subdivision development, deeming it exempt from CEQA under the categorical exemption for in-fill development. The First District first determined that section 21177's requirement to exhaust administrative remedies does not apply to an action challenging an exemption determination. The court went on to conclude that the in-fill development exemption did not apply to this project because it was not "within city limits," as is required. Earlier this summer, the court granted rehearing, but has now issued an amended opinion confirming its earlier holding on both the exhaustion and the in-fill exemption issues. CSAC requested depublishing, and the Real Party in Interest is seeking California Supreme Court review.

***Trinity Park v. City of Sunnyvale***

Pending in the Sixth Appellate District (filed May 11, 2010)(H035573)

The City approved housing project that included as a condition of approval 5 below market rate (“BMR”) units. The developer did not object to the BMR units, but when most of the homes were completed and many were sold, the developer filed this action alleging the BMR requirements were unjustified housing exactions. The trial court ruled in the city’s favor, concluding that by waiting until after construction of the project, plaintiff had allowed the statute of limitation to run. On appeal, plaintiff argues that the lawsuit is timely based on the protest procedures in Government Code section 66020, which raises the issue of whether inclusionary housing requirements that do not involve the payment of fees are “exactions” entitling the developer to use the protest procedures in the Mitigation Fee Act. CSAC has filed a brief in support of the city.

***Yorba Linda Water District v. Superior Court (Lindholm)***

Writ Petition in the California Supreme Court Denied (filed Oct. 19, 2010)(S187404)

This litigation arose following the Freeway Complex Fire in November 2008. Plaintiffs’ homes were burned in that fire, and they brought this action against the water district alleging that the water provided by the District was not sufficient to allow fire crews to put out the blaze. They raised tort and inverse condemnation claims. The trial court concluded that the district was immune from the tort claims, but permitted the inverse condemnation claims to go forward. The District sought a writ from the Fourth Appellate District, which was summarily denied. The District’s writ petition in the California Supreme Court, which CSAC supported, was also denied.

**II. Amicus Cases Decided Since Last Executive Committee Meeting**

***Bravo v. County of Tulare***

Unpublished Decision of the Fifth Appellate District, 2010 Cal.App.Unpub.LEXIS 7403 (5th Dist. Sept. 17, 2010)(F058719)

**Outcome: Positive**

Plaintiff sued the county for serious injuries he sustained at age seven months while in foster care. The complaint alleges that county social workers were made aware of bruises on the child on three occasions, but that they negligently failed to remove him from the foster home. He ended up in the emergency room where he was diagnosed with Shaken Baby Syndrome. (The foster father is facing criminal charges.) The trial court granted Tulare’s motion for summary judgment, finding the placement of the minor, the extent of the supervision of the placement, and the failure to remove the minor from the home were all actions protected by discretionary immunity. The trial court also found that the social workers’ knowledge of the bruises, under the facts provided, was not sufficient to trigger the mandatory reporting/investigation requirements. The Fifth District affirmed in an unpublished decision, concluding, “there being no factual dispute, that as a matter of law, the County and its employees are immune from liability for conduct in deciding whether to intervene in and remove a child from a placement.” CSAC filed a brief in support of the county.



***Building Industry Association v. County of Stanislaus***

190 Cal.App.4th 582 (5th Dist Nov. 29, 2010)(F058826), *petition for rehearing denied* (Dec. 21, 2010)

Outcome: Positive

This case is a challenge to the county's agricultural land mitigation program. The program includes a General Plan policy requiring a 1:1 ratio mitigation as a condition of approval for any change in the General Plan land use designation from agricultural to residential. The program's guidelines allow the mitigation requirement to be satisfied by either obtaining a mitigation easement over an equivalent area of comparable farmland, paying an in-lieu fee (for small conversions), or implementing another measure approved by the Board. The BIA successfully challenged the program in superior court, but the Fifth District reversed. The court found that the trial court should have given deference to the county's land use determination, rather than placing the burden upon the county to demonstrate the validity of the mitigation requirement. The court also concluded that the one-to-one ratio concept is reasonably related to the county's farmland conservation goal. Finally, the court concluded that the fact that Government Code section 815.3(b) prohibits the county from conditioning the issuance of land use approvals on the applicant's granting of conservation did not invalidate the mitigation program.

***City of Arcadia v. State Water Resources Control Board***

--- Cal.App.4th ---, 2010 Cal.App.LEXIS 2150 (4th Dist. Div. 3 Dec. 14, 2010)(G041545), *ordered published* (Dec. 22, 2010)

Outcome: Negative

Twenty cities in the Los Angeles area challenged the Water Board's 2004 Triennial Review of the Water Quality Control Plan for the Los Angeles Region. The plan included standards for stormwater and urban runoff that the cities alleged did not take into account the factors required to be considered under Water Code sections 13241 and 13000. Specifically, the cities argued that the Board considered potential future uses of the stormwater and urban runoff rather than probable future beneficial uses of the water, as is required by statute. As a result, the cities argued they faced unreasonable and unachievable Total Maximum Daily Loads (TMDLs). The trial court agreed and issued a writ of mandate requiring revision of the Water Quality Standards in the Basin Plan, though the court permitted the current TMDL's to remain in place until the new standards are developed. The Water Board appealed the trial court's ruling. The Fourth District reversed, concluding that the Regional Board sections 13000 and 13241 do not impose obligations that can be enforced through a writ of mandate. The court found that "the expansive scope of the Legislature's findings contained in section 13000, plus the findings in the 2001 MS4 permit citing water quality objectives for discharges to the state's coastal waters, allowing a regional board to interpret its authority under section 13241 to include the development of water quality objectives based on potential, as opposed to probable, beneficial uses would be appropriate." CSAC filed a brief in support of the cities.

***Conservatorship of Whitley***

50 Cal.4th 1206 (Nov. 8, 2010)(S175855)

Outcome: Negative

Petitioner served as conservator for her brother and objected to a Regional Center proposal to move her brother to a different facility. The First District agreed with petitioner that the proposed move was improper. Back at the trial court, petitioner sought attorney fees under CCP 1021.5 (private attorney general). The Regional Center objected, arguing she did not meet the 1021.5 criteria because even if an important public right was at issue, a significant

benefit was not conferred upon the public or a large class of persons, and the financial burden imposed on petitioner was not out of proportion to her personal interest in blocking the transfer. The trial court agreed and denied fees. The First District affirmed, but the California Supreme Court reversed, concluding that a litigant's personal nonpecuniary motives may not be used to disqualify that litigant from obtaining fees under Code of Civil Procedure section 1021.5. CSAC filed a brief in support of the Regional Center.

***Fogarty-Hardwick v. County of Orange***

Unpublished Opinion of the Fourth Appellate District, Division 3, 2010

Cal.App.Unpub.LEXIS 4436 (4th Dist. Div. 3 June 14, 2010)(G039045), *petition for review denied* (Sept. 29, 2010)(S184795)

Outcome: Negative

Plaintiff and her husband divorced and were involved in child custody proceedings in family court. After an allegation of sexual abuse of one of the children, the county's Department of Social Services filed a petition. The family court proceedings were stayed while the juvenile court acted on the petition. The children were initially placed with their mother, then in a group home and a foster home. The parties ultimately reached an agreement awarding custody to the father, and the juvenile court terminated jurisdiction in favor of informal monitoring. The family court then resumed its activities and also awarded the father custody with weekend visitation for mother. Mother then filed this action in Superior Court alleging the county violated her civil rights by deceiving the juvenile court. A jury found in mother's favor and awarded her nearly \$5 million. The court later awarded over \$1.6 million in attorney fees. The county appealed, but the Fourth District affirmed. The court concluded that the dependency orders were not final for collateral estoppel purposes, and that there was no compelling reason to conclude that, in the absence of the social worker's misconduct, the family court's custody orders would have been the same. The county sought Supreme Court review, which was denied. CSAC filed a brief in support of the county in the Court of Appeal.

***Guggenheim v. City of Goleta***

--- F.3d ---, 2010 U.S.App.LEXIS 25981 (9th Cir. Dec. 22, 2010)(06-56306)(en banc)

Outcome: Positive

This is a facial takings challenge to a mobilehome rent control ordinance. In relevant part, the ordinance limits any increases in mobile home rents on an annual basis to 75 percent of the increase in the local Consumer Price Index. The district court granted summary judgment to the city. A panel of the Ninth Circuit reversed, but en banc review was granted and the full court affirmed the district court's decision. The court noted that since plaintiffs bought the park when the ordinance was in place, they had no reasonable expectation of being able to charge higher rents than the ordinance allowed. In other words, "the price they paid for the mobile home park doubtless reflected the burden of rent control they would have to suffer." The court also denied plaintiffs' due process and equal protection claims. CSAC filed an amicus brief in support of the city.

***Humphries v. County of Los Angeles***

--- U.S. ---, 131 S. Ct. 447, 2010 LEXIS 9444 (Nov. 30, 2010)(09-350)

Outcome: Positive

Plaintiffs were accused by their rebellious child of child abuse. The charges were found to be false. Criminal charges against them were dropped and a juvenile dependency case was also dismissed. However, without a procedure to have their names removed from California's Child Abuse Central Index (CACI), they remain on the index and allege a variety

of injuries to their reputations, jobs, and volunteer opportunities. They brought this action alleging a due process violation in the way CACI is maintained because identified individuals are not given a fair opportunity to challenge the allegations against them. The Ninth Circuit agreed, but found that as to the county, the individual defendants were entitled to qualified immunity. However, the court issued an unpublished order granting interim attorney fees to the plaintiffs under 42 U.S.C. section 1988. The U.S. Supreme Court granted review and reversed, concluding that the county could not be required to pay attorney fees without a finding that it was its own policy, rather than the State's, that caused the constitutional violation. CSAC filed a brief in support of the county.

***Sonoma County Water Coalition v. Sonoma County Water Agency***

189 Cal.App.4th 33 (1st Dist. Oct. 8, 2010)(A124556), *petition for rehearing denied* (Nov. 2, 2010)

Outcome: Positive

The Sonoma County Superior Court struck down the Sonoma County Water Agency's 2005 Urban Water Management Plan adopted pursuant to the Urban Water Management Planning Act (Water Code §§ 10610 et seq.). Specifically, the court found that "[u]nder the plan, while the volume of available water may be adequate to meet future demands, the availability of that water has not been adequately addressed. Even if there is a sufficient volume of water to draw from, access may be limited for other reasons, such as environmental considerations and the existence of suitable facilities for the transmission of that water." The court was also concerned about relying on rights to water flows that the Agency does not yet possess, the failure to coordinate with relevant agencies, the failure to consider the impact of recycled groundwater on the availability of water supply in the future, and a lack of specificity of demand management measures intended to address water shortfalls. On appeal, the First District reversed agreeing with the Agency that "the trial court failed to accord deference to the expertise and discretion of the Agency, improperly made de novo determinations, and imposed requirements not found in the Act." The court recognized the importance of a thorough and adequate plan. "But here the Plan was clear as to its assumptions. . . . The Plan was not deficient for failing to assert a level of certainty in its anticipated water supply that could not be justified, or for failing to plan an alternative supply which would necessarily be at least equally uncertain. It did not mislead. The Agency was not required to plan based on alternative hypothetical scenarios its experts considered unlikely to occur, rather than focusing its resources on those circumstances it reasonably anticipated." CSAC filed a brief in support of the Agency.