Analysis, Commentary and Updates on Legislative and Policy Issues that Affect California Cities

PRIORITY FOCUS

LEAGUE OF CALIFORNIA CITIES

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STATE BUDGET UPDATE: BUDGET MAY BE PASSED THIS WEEKEND

Sacramento was abuzz this week with rumors circulating on a number of issues concerning the state budget. Early this morning, the Assembly passed the budget, which is now headed to the Senate for a hearing later today.

League staff will be monitoring budget advances and will issue a more detailed update next week. Stay tuned to the League Web site and next week's *Priority Focus* for details as they become available.

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CALPERS ANNOUNCES ANNUAL INTEREST EARNINGS AT 18 PERCENT

Delayed Impact on Employer Contribution Rates Expected

At a recent meeting of Gov. Arnold Schwarzenegger's Post Employment Benefits Commission, Ron Seeling, chief actuary for the California Public Employees Retirement System (CalPERS), announced that CalPERS expects to achieve in excess of 18 percent interest earnings on the system's investments for the fiscal year that ended on June 30. *For more, see Page 2.*

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SB 1020 UPDATE: SOLID WASTE DIVERSION BILL MOVES ON

SB 1020 (Padilla), a bill that would require the California Integrated Waste Management Board (CIWMB) to adopt policies, programs, and incentives to ensure that the state achieves a 60 percent solid waste diversion rate by 2012 and a 75 percent diversion rate by 2020, passed the Assembly Natural Resources Committee last week.

The measure was sent to the Assembly Appropriations Committee suspense calendar on Wednesday, July 18 and is expected to be heard in late August. *For more, see Page 2.*

'CalPERS' Continued from Page 1…

This is great news for CalPERS and will significantly decrease the system's current unfunded liability that grew considerably during the downturn in the stock market earlier this decade. The system appears to be on to a "fully funded" or perhaps even "super funded" status it enjoyed in the mid- to late-1990s.

Despite the good news, however, employer members of CalPERS should note that these investment earnings will have a delayed impact on local employer contribution rates.

Background on 'Rate Smoothing'

One of the key changes made by CalPERS because of the unprecedented two years of negative interest earnings of the system in the early 2000s was the institution of "rate smoothing." The actuarial rate smoothing techniques implemented by CalPERS were designed to "smooth" the volatility of employer contribution rates during times of dramatic loss or gain in the system.

This actuarial discipline was demanded by most employers and employees after the sharp drop in interest earnings in the early 2000s. The good news for employers in the rate smoothing techniques is that the losses (contribution rate increases) will not be as dramatic as experienced in the early 2000s. The bad news is that most employers will never see a rate holiday again where little, if any, employer contributions are paid into the retirement system.

The "rate smoothing" techniques put into place by CalPERS are not set in concrete. CalPERS indicated that at the time these techniques were implemented, that if/when employer accounts reach the mark of 100 percent funding on market values, the CalPERS board of directors would be given options to consider for making changes in the smoothing techniques.

It is likely that the state and many contracting employers will reach that funding mark as a result of the healthy investment earnings CalPERS just announced. Among the options for the board could be actions to ease employer contribution rates. The board deliberation on the actuarial smoothing policies may take two to three months before it is complete.

One last issue to consider as a public agency contractor with CalPERS (all cities, counties, and special districts) is that the crediting of interest earnings to the retirement accounts of Public Agencies lags two years behind the timeframe for State of California as an employer.

As a result, the 18 percent reported interest earnings will not impact the rates of Public Agencies until 2009-2010. That said, however, public agency contribution rates continue to be reduced as a result of solid, but less dramatic, CalPERS interest earnings over the past few years.

As deliberations over possible changes to the CalPERS smoothing techniques take place, the League will issue further updates in *Priority Focus*.

'SB 1020' Continued from Page 1…

SB 1020 is part of a much broader discussion about how California should (or should not) proceed beyond the existing 50 percent solid waste diversion mandate that is a part of the Integrated Waste Management Act of 1989 (AB 939 and SB 1322). Because the discussion is ongoing, the current language of SB 1020 is still considered a "spot" for future language. The League of California Cities is in discussions with Sen. Padilla and other solid waste interest groups on the issue. The League currently has no position on SB 1020.

Existing League policy does not address increasing the statewide diversion requirements above 50 percent. Based upon League policy committee review of similar past bills, however, the League has indicated that although it does not support or oppose and increase in the waste diversion rate, any such proposal must also include significant efforts to streamline the provisions of AB 939 to assist in compliance.

In addition, existing League policy supports legislation to provide changes to AB 939 to place more emphasis on implementation of waste diversion programs and less upon strict mathematical accounting (i.e. bean counting); and expansion of market development activities, including the development of non-burn transformation technologies and providing funding for research and development of recyclable materials.

As SB 1020 is amended or negotiations on alternatives progress, the League will keep city officials posted through updates in *Priority Focus*.

AB 1338 Becomes a Two-Year Bill

Measure Would Affect Local Coastal Programs

AB 1338 (Huffman) failed passage in the Senate Natural Resources and Water Committee on July 11. The bill would require a local coastal government to include a nonpoint source (NPS) pollution prevention element in its Local Coastal Program (LCP) when adopting or amending an LCP for approval by the California Coastal Commission.

The measure is now a two-year bill, meaning it is effectively dead in 2007 and may be reconsidered some time in 2008. The League had initially supported AB 1338, as its language directly addressed concerns that the League had over a similar piece of legislation in 2002 that failed to pass.

Upon further review by the Coastal Cities Issue Group, however, the group raised concerns that the bill would create unnecessary duplication and increased workload on the already understaffed California Coastal Commission and recommended that AB 1338 become a two-year bill.

The League's Coastal Cities Issue Group meeting was held on June 1 in Santa Barbara. The meeting was attended by approximately 30 city officials and staff, including Judy Mitchell, chair of the League's Environmental Quality Policy Committee and council member of the city of Rolling Hills Estates.

California Supreme Court Places Limits on Liability Waivers

Liability waivers have been a key asset in helping cities manage the risks associated with recreation programs and activities. A recent decision of the California Supreme Court in *City of Santa Barbara v. Superior Court (Janeway)* has now called into question whether those waivers still provide the protection upon which cities have historically relied.

The California Supreme Court ruled that liability waivers cannot release a city from liability for its gross negligence, which in turn will encourage plaintiff attorneys to plead facts showing that the injury or death was the result of gross negligence.

The case may also impact cities by increasing the liability costs associated with recreation programs. In the past, cities have relied on liability waivers to allow them to dispose of a personal injury or wrongful death case at an early stage through the use of a motion for summary judgment.

If a court finds that there is a factual dispute, the court will decline to grant a city's motion for summary judgment, and instead, set the case for jury trial. This will subject the city to additional litigation costs as well as settlement costs or jury verdicts for cases that previously may have been disposed of by a summary judgment motion.

Litigation Background

This case arose from the drowning death of Katie Janeway in a city swimming pool operated by the city of Santa Barbara in 2002. Janeway was developmentally disabled and was participating in the Adventure Camp program, which was specifically designed for developmentally disabled children. Katie's parent had signed a release that indemnified the city and held it harmless from all liability.

After Katie's death, the Janeways sued the city for wrongful death. The city sought to have the case dismissed, arguing that the Janeways waived their legal rights against the city by signing the release. The trial court declined to dismiss the lawsuit and Santa Barbara appealed to Court of Appeal.

The Court of Appeal held that the release was effective as to the city's "ordinary negligence," but was not effective as to the city's "gross negligence." The Court of Appeal found that a jury could conclude from the facts that the city had been grossly negligent and that this led to Katie's drowning. The case was ordered to proceed to jury trial.

Santa Barbara then appealed to the California Supreme Court. The California Supreme Court began by defining "ordinary negligence" as a "failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm."

In contrast, the court defined "gross negligence" as "a want of even scant care or an extreme departure from the ordinary standard of conduct." The court emphasized that not all waivers of future liability for negligence were void. In this case, the court noted that the Court of Appeal held the liability waiver was effective to the extent it waived liability for the city's ordinary negligence.

Instead, the California Supreme Court focused on whether the liability waiver was effective as to the city's gross negligence. The court concluded that an agreement purporting to release liability for future gross negligence violates public policy and is unenforceable.

The League of California Cities encourages cities to consult with their city attorneys and risk managers regarding this case. The League thanks Don Margolis of the San Francisco City Attorney's Office for writing the friend-of-the-court brief to the California Supreme Court on behalf of the League.

Letters Needed in Support of a Temporary Extension of the Internet Tax Moratorium

With the temporary extension of the Internet Moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce set to expire on Nov. 1, the U.S. House of Representatives Judiciary Committee is set to re-examine the issue.

The House Judiciary Committee has scheduled a hearing to discuss the Internet Moratorium next week. The committee also plans to mark-up legislation on this issue during the week of July 30. Currently, no House version of the temporary extension of the Internet Moratorium legislation has been introduced, although several permanent extension measures have.

Take Action!

The League of California Cities is in support of a temporary extension and is asking Utility Users Tax (UUT) cities with Democratic members on the House Judiciary Committee to write their Congress member, urging them to introduce or co-sponsor legislation that would extend the Internet Moratorium for another three years. A sample letter is located at www.cacities.org/federalresources.

Background

Earlier this year, in both the House and the Senate, bills were introduced -- H.R. 743 (Eshoo-Calif.), H.R. 1077 (Campbell-Calif.) and S. 156 (Wyden-Ore.) -- that would make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent. In the Senate, however, another proposal has emerged, S.1453 (Carper-Del.), which would extend the Internet Moratorium for four more years. California Sen. Dianne Feinstein has signed on as a co-sponsor of S. 1453.

The hearing next week will be the first in the House to address the Internet Moratorium. The League will continue to monitor the issue as it develops.

Public Employee Post-Employment Benefits Commission Meeting Set for July 27

The next meeting of the Public Employee Post-Employment Benefits Commission will take place on Friday, July 27, from 10 a.m. to 4 p.m. at the University of California, San Diego. The focus of this meeting will be on providing for the pension and health care needs of California's school employees. City officials interested in following the commission's work on post-employment benefits are encouraged to attend.

The commission was established by Gov. Arnold Schwarzenegger's signing of Executive Order S-25-06. Its goal is to propose ways to address unfunded post-employment benefits. By Jan. 1, 2008, the commission must send a report to the Governor and Legislature that will:

- Identify the full amount of post-employment health care and dental benefits for which California governments are liable and which remain unfunded.
- Evaluate and compare various approaches for addressing governments' unfunded retirement health care and pension obligations.
- Propose a plan to address governments' unfunded retirement health care and pension obligations.

The commission includes 12 members. Six, including the chairperson, were appointed by the Governor, three were appointed by the Speaker of the Assembly Fabian Núñez, and three were appointed by the Senate President Pro Tem Don Perata. A full listing of the commissioners is located at www.pebc.ca.gov/commissioners.html.

For more information on the meeting, contact Ashley Snee Giovannettone at (916) 869-9419.

U.S. Communities Launches 'Go Green' Initiative

U.S. Communities/Green is now offering public agencies and nonprofits direct access to "green" products and services, making it the one-stop source for public agency access to a broad line of environmentally-certified products and services.

U.S. Communities/Green has identified numerous items - from Energy Star to Green Seal - in its contracts that meet third-party environmental certification standards to help public agencies meet their responsible procurement needs. For more information, visit the Green program Web site at www.uscommunities.org/gpa/green.

By aggregating the purchasing power of public agencies nationwide, U.S. Communities – the national purchasing alliance co-sponsored by the League of California Cities – gives cities and other public agencies access to publicly bid products and services as very deep discounts, saving both time and money.

More than 270 cities in California use one or more of the master contracts available through U.S. Communities. This new green feature on the Web site allows you to search and find thousands of environmentally responsible products available through U.S. Communities contracts.

More information about U.S. Communities is available at www.uscommunities.org. Cities are encouraged to share this information with purchasing agents, public works officers, finance officers, or other appropriate city officials.

Find a Bill, Legislators, Leg Committee, or Ask League Leg Staff

Visit (and bookmark!) the League's Legislative Resources Web page (www.cacities.org/legresources). You'll find a roster and contact information for the League's legislative staff; the online Bill Search program, background materials on lobbying your legislators, and more.
