

THE CAPITOL REPORT

AGC's summary of current legislation

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SUMMARY

The California State Legislature reconvened on January 7 to begin the final year of the 2007-2008 legislative session – a session overshadowed by an estimated \$14.5 billion state budget deficit. While the Legislature will be considering a number of bills on issues of major concern to local governments in the upcoming year, Governor Schwarzenegger's declaration of a "fiscal emergency" required the Legislature to assemble in a special session to focus on the budget crisis. If the Legislature fails to address the fiscal emergency within forty five days of the declaration, it will be prohibited from acting on any non-budgetary bills or adjourning in joint recess until legislation is passed. Thus, budgetary and economic concerns are expected to predominate the Legislature's focus for at least the earlier period of 2008.



Such concerns were noted in the Governor's *State of the State Address* on January 8, 2008. In it, he called for massive budget cuts to cure the deficit and to ensure California will have a balanced budget in future years. The Governor's proposed budget would affect every aspect of state funding if passed, including: a 10% reduction in all general fund departments, boards, commissions, and elected offices; a \$300 reduction per student in funding for K-12 education; the closure of several state parks; and cuts to various Medi-Cal programs. The Governor also supports an additional surcharge on property insurance to fund fire protection and an \$11 per vehicle increase in vehicle registration fees to fund the California Highway Patrol.

Unlike past budget shortfalls, the State has thus far not asked for assistance from cities and counties. Nevertheless, budgetary and economic developments, such as lower assessed property values, less income from sales tax revenue, and less revenue from property transfer taxes, will undoubtedly have many local agencies feeling the pinch. The Governor's call for a fiscal emergency is only one step toward addressing the State's financial troubles.

This edition of **The Capitol Report** summarizes several key themes which are expected to be addressed in the 2007-2008 session. Though the Legislature has until February 22 to introduce new legislation, a number of topical bills are already active and are profiled below.

HEALTHCARE

The Governor has made statewide healthcare reform a major issue for 2008. Healthcare reform has the potential to create enormous impacts on local agencies which are already facing important legal challenges in this area.



For example, recent court decisions have clarified the financial obligations of cities and counties for hospital costs of criminal suspects prior to arrest.¹ The California Court of Appeal determined that a county is responsible for all of medical expenses incurred prior to arrestee's booking in county jail. Consequently, if a person is arrested and then taken to the hospital prior to jail, the public entity is liable for the expenses incurred.

In addition, there is a debate whether cities and other local government entities can mandate that employers spend a fixed sum on health care for their employees. A federal Court District ruled that San Francisco's ordinance establishing a mandatory employer-paid health care program violated "ERISA," the Employee Retirement Income Security Act.² The Ninth Circuit Court of Appeals has issued an emergency stay in favor of San Francisco to avoid the potential harmful health effects that result from such ruling.³

The Governor's own healthcare reform bill, **ABX 1-1 (Nunez, Perata)** would obviously have enormous implications for local healthcare initiatives such as San Francisco's. However, this proposal recently was stalled by the Senate Health Committee as a result of the budget crisis and disagreements over employers' responsibilities. It is questionable whether the Governor's proposal will proceed.

PRISON REFORM

A looming issue in California is the future of the state's prison system. Since 2003, California's prison population has increased by 8%; yet the cost of maintaining the prison system has increased by 79%, making prison funding the third largest state expenditure after public schools and healthcare.

To respond to the demands these changes place on the state's prison system, **AB 900 (Solario)** was enacted on May 3, 2007. AB 900 was endorsed by the Governor to create a mechanism for increasing prison funding through lease revenue bonds, and to reduce prison overcrowding through the transfer of inmates to "secure community reentry facilities": facilities which would be established throughout the state to serve as a transitional environment for prisoners whose sentences are ending and who will soon be reentering society.

If implemented, AB 900 has the potential to dramatically effect cities and counties, as local governments must decide whether to participate in reentry programs, and whether new reentry facilities will be located in their communities. Of particular concern is the belief by some that reentry facilities will be akin to halfway homes where prisoners are housed without adequate supervision and protection for the

¹ *Sharp Healthcare v. County of San Diego* (2007) 156 Cal. App. 4th 1301.

² 29 U.S.C. § 1000, *et seq.*

³ *Golden Gate Restaurant Association v. San Francisco* (9th Cir. January 8, 2008 Case No 07-17370).



public. Those in support of secure reentry facilities argue that reentry facilities will ease prison overcrowding, will enable low-risk offenders to more easily transition to society, and will enable programs to be implemented which reduce recidivism and reincarceration.

Concurrently with these issues, a three-judge District Court panel is expected to decide the legality of prison overcrowding in California this year. The panel of judges could choose from several options, including ordering the early release of inmates, or capping state prison populations, thus requiring inmates to remain incarcerated at county facilities.

In response to the overcrowding crisis, Department of Corrections and Rehabilitation Secretary James Tilton is recommending shorter period of parole for well-behaved parolees. By reducing parole periods from the current three-year term to six months, it is believed there would be fewer parole violations and thus fewer parolees reentering prison. In addition, the Governor has noted the possibility of releasing 22,000 inmates early if they meet certain requirements such as having no history of violent behavior. Critics oppose reductions in parole periods, and cite a need for continued oversight over parolees as a necessary element of public safety.

While these issues will likely be of key importance in the coming months, only one bill of note has been introduced thus far: **SB 818 (Negrete, McLeod)** would announce findings concerning the need for rehabilitation of inmates in state prison and would express the intent of the Legislature to fund and construct rehabilitation programming facilities. Because prison reform issues have broad implications for the state, additional bills are likely to become touchstones for further controversy in 2008.

ENVIRONMENT AND GREENHOUSE GAS EMISSIONS

A major issue in the upcoming year will be the responses to recently enacted **AB 32 (Nunez)** and the relation between greenhouse gases, global warming, and the California Environmental Quality Act ("CEQA").⁴ In 2007, the California Attorney General's Office took an active role in applying CEQA standards to greenhouse gas impacts caused by various projects throughout the state. These efforts included the filing of CEQA-related lawsuits against San Bernardino County, ConocoPhillips, and the Port of Los Angeles, alleging that CEQA standards required analysis of greenhouse gas emissions in connection with projects undertaken by those parties.

A settlement agreement reached by the Attorney General and San Bernardino County is perhaps the



⁴ Public Resources Code § 21000, *et seq.*



most relevant development for local government entities because it involved the County's General Plan.⁵ The settlement calls for:

- The County to prepare an amendment to its General Plan describing the County's goal to reduce greenhouse gases attributed to the County's discretionary land use decisions and internal government operations;
- The County must produce an inventory of all known or reasonably discoverable greenhouse gas sources;
- The County is required to establish a baseline inventory of greenhouse gases emitted by sources within the County;
- The County must set a target to reduce greenhouse gases attributed to the County's discretionary land use decisions and internal government operations; and
- The County must adopt feasible measures to control emissions of diesel engine exhaust on projects and facilities under the County's discretionary land use jurisdiction.

If this settlement is viewed as a model for requirements which other agencies must meet to adequately address greenhouse gas emissions, it is clear that local governments will face a number of issues when evaluating large-scale projects in the future. Because the Attorney General has not just targeted general plan amendments, but has also addressed transportation and development projects, it is possible that local agencies may eventually need to account for greenhouse gas emissions through the CEQA process on a great number of projects.

The Attorney General has publicized a number of possible mitigation measures to offset or reduce impact on global warming. Major topics within the mitigation measures include: transportation; energy efficiency and renewable energy; land use measures; water conservation and efficiency; solid waste measures; and carbon offsets. It remains to be seen how these standards will intersect with future CEQA process.

In addition to the effect greenhouse gases will have for CEQA purposes, the Attorney General, along with fifteen other states, sued the U.S. Environmental Protection Agency over its efforts to block a state law aimed at reducing greenhouse gas emissions from vehicles. The issue is over **AB 1493 (Pavley)**, passed in 2002, which would reduce greenhouse gas emissions from cars and light trucks by 30 percent by 2016.

While a number of other environmental concerns are likely to take shape in the coming year, the following is a list of notable bills related to environmental issues which have been introduced thus far:

⁵ *People v. County of San Bernardino, et al.* (August 28, 2007; San Bernardino County Sup. Ct. Case No. CIVS 0700329).



- > **AB 274 (Coto)** would allow a tax credit for brownfield property owners who satisfactorily clean their properties.
- > **AB 842 (Jones)** would require a regional transportation plan to provide for a 10% reduction in vehicle miles traveled and would fund grants to develop infill housing and housing under the Transit Orientation Development Program.
- > **AB 1017 (Ma)** would require that certain appeals of CEQA decisions be made within thirty days of the decision.
- > **SB 97 (Dutton)** would require the Office of Planning and Research to prepare guidelines by July 1, 2009 for feasible mitigation of greenhouse gas emissions as required under CEQA.
- > **AB 493 (Ruskin)** would create the Clean Car Discount Program which would give rebates those purchasing low-emission vehicles.

EMINENT DOMAIN

Fallout from the U.S. Supreme Court's 2005 decision, *Kelo v. City of New London*⁶ continues to be prominent among legislators and property rights activities. A number of measures are expected to be considered for 2008:

- > **SCA 1 (McClintock)** would permit a government entity to take private property only for a stated public use and to require the consent of the property owner if the taking is for purposes of economic development or increasing tax revenue. The bill would also allow a former property owner to reacquire the property for its fair market value if the property ceases to be used for its stated public use.
- > **ACA 8 (De La Torre)** would require that the stated public use be memorialized in writing prior to the commencement of the eminent domain proceedings. It would also prohibit the taking of an owner-occupied residence, small business, property that is used by the owner exclusively for religious worship, or property used for agriculture if the condemnation is performed for the purpose of transferring condemned property to a private third party. The bill would also allow the former owner to reacquire the property if the property is not used for its stated public use.
- > An initiative measure, entitled the **Property Owner & Farmland Protection Act**, has qualified for placement on the ballot for the June election. The measure would limit the use of eminent domain to public use projects and would invalidate local rent control laws. It would prohibit any taking for a private use and would restrict

⁶ 545 U.S. 469 (2005).



the duplicated use of condemned property (e.g., a home could not be taken to build government housing).

- > The **Homeowners Protection Act**, is another initiative that would bar governments from using eminent domain to acquire an owner-occupied residence for conveyance to a private person or business entity. It would exempt takings for public works, public improvement, public health and safety protection, and crime prevention.

Voters in other states have passed similar ballot initiatives in response to *Kelo*. Oregon voters passed two measures, Measure 37 and Measure 49, to control eminent domain powers. Measure 37, as passed by voters, allowed a property owner whose property value was reduced by environmental or land use regulation to claim compensation from the state or local government and, if the government failed to give compensation within one year, allowed the property owner to use the property under the regulations at the time the owner purchased the property.

However, Measure 49, subsequently adopted in 2007, limited Measure 37 by restricting the development of subdivisions on high value farmlands, forestlands, and groundwater restricted lands; and restricted the development of commercial or industrial developments projects on land zoned for homes, forests, farms, and other uses. Similar measures were passed by voters in Arizona (Proposition 207) and Nevada (State Question 6).

Both Measure 37 and Measure 49, as well as Propositions 207 and 506, are relevant to eminent domain issues in California and may be influential as California's eminent domain debate continues.

AFFORDABLE HOUSING

In response to the current housing slump, legislators are expected to tackle issues affecting affordable housing and the recent surge in foreclosures. These issues are especially relevant in the upcoming year, as California faces a rising tide of foreclosures and displaced families affected by volatility in the housing market. Thus far, the following bills have been introduced for 2008:

- > **AB 1017 (Ma)** would establish the California Affordable Housing Revolving Department and Acquisition Program to fund projects to develop and preserve affordable housing. The Program would make loans to private developers to purchase property and construct affordable housing.
- > **AB 1449 (Saldana)** would modify the Density Bonus Law to: require moderate income homes to remain affordable for thirty years; allow a jurisdiction to not grant concessions unless the applicant requests a density bonus; and eliminate the density bonus if the applicable zoning ordinance does not include a maximum density.



- > **AB 884 (Dymally)** would require the California Tax Credit Allocation Committee to consider whether a project eligible for low-income housing tax credits is an infill project or one that eliminates blight.
- > **AB 971 (Portantino)** would create the Community Workforce Housing Innovation Program to assist cities, counties and school districts to recruit staff by making affordable housing available to employees.
- > **AB 1538 (Lieu)** would allow the California Housing Finance Agency to accept donations into the California Housing Trust Fund to assist homeowners to refinance home loans with variable interest rates into fixed interest loans.
- > **SB 926 (Perata)**, an urgency measure in response to rising foreclosures, would require lenders to personally meet with those facing foreclosure to discuss mortgage restructuring options, require lenders to notify homeowners well in advance of an adjustable interest rate hike, and require lenders to maintain foreclosed properties.

PUBLIC SAFETY

A proposed initiative, the **Safe Neighborhoods Act**, is planned for the November ballot. The initiative, which must be approved by the Attorney General and receive the requisite number of signatures prior to qualifying for the ballot, focuses on gang prevention. The Act would fund additional crime prevention programs to construct new county jails, repair jails and juvenile facilities, and increase state funding for law enforcement activities.

Additional provisions in the initiative include increasing penalties for gang recruitment and accessories to gang crimes, streamlining procedures for civil gang injunctions, prohibiting bail for defendants who commit violent crimes if they are in the U.S. illegally, and a number of other provisions focusing on strengthening penalties and deterring children from entering gangs. The measure would also limit hearsay rules when a defendant has intimidated or tampered with a witness.



The measure is important for local agencies facing problems with parole and probation populations. The measure would allow counties with overcrowded county jails to house offenders in temporary jails or treatment facilities. This aspect of the measure may trigger similar concerns as those associated with “secure reentry facilities” proposed by the Governor’s prison reform bill, AB 900 (profiled above).



SEX OFFENDERS

Jessica's Law, enacted by voters in 2006, prohibits convicted sex offenders from living within 2,000 feet of any school or public park where children regularly congregate. It also allows cities to establish their own enhanced restrictions on residency. Recently, however, Jessica's Law has come under increasing scrutiny as local law enforcement attempt to enforce its provisions.

Critics assert that the law is so overly restrictive that convicted sex offenders must go 'underground' to avoid detection. Because many urban areas are completely prohibited, sex offenders are claiming homeless status and sleeping outside so they may be able to stay in the same neighborhood. Supporters argue that Jessica's Law has been an important public safety measure that has led to safer neighborhoods and playgrounds.

The Attorney General has interpreted Jessica's Law to apply only to *current* probationers and parolees, and *not* to sex offenders who are no longer on probation or parole. In 2006, the Governor signed **AB 1015 (Chu and Spitzer)**, which created the California Sex Offender Management Board to assess statewide practices and make recommendations. The Sexual Offender Management Board is currently developing recommendations on Jessica's Law which will likely influence the Attorney General and future efforts to implement and/or reform Jessica's Law.

Thus far, one bill of potentially great significance to local agencies has introduced: **AB 601 (Arambula)** would require the Governor to create a committee to develop a model ordinance for rural communities to restrict the residency of sex offenders.

Meanwhile, a number of legal challenges to various provisions of Jessica's Law – most notably, legal restrictions on *sex offender residency* – have been filed and are pending at various levels of review. As these challenges are litigated, the legality of Jessica's Law may be questioned, inspiring legislators to propose additional changes to the law.

GROUP HOMES

The issues surrounding "sober living homes," "residential care facilities," "recovery houses," and other group homes have gained prominence. In a recent opinion letter, the Attorney General opined that the Department of Alcohol and Drug Programs may not take into account the need for treatment facilities or the sufficiency of existing facilities to meet local need when deciding whether to approve an application for a licensed treatment facility. In contrast, the Department of Social Services may consider certain local criteria when deciding whether to license residential care facilities.⁷ In addition, the Attorney General found that a city's zoning authority may not be exercised so as to restrict alcohol or drug treatment facilities serving six or fewer persons from locating within 500 feet of each other.

⁷ *Opinion of Brown* (2007) No. 07-601.



Currently, all residential care facilities licensed by the Department of Social Services must be inspected every five years. The Governor's proposed budget would cut funding for inspections of residential care facilities. Such issues trigger local concerns about lack of oversight over licensed group homes, as well as local autonomy over proliferation of unlicensed "sober living" facilities. Due to the high profile of these issues, issues concerning group home oversight and regulation may become matters of important legislative concerns as the Legislature proceeds in 2008.

EDUCATION

Many in the state will be focused on education funding this year as budget proposals move around the Capitol. The Governor's proposed budget would make across-the-board cuts to all education funding. However, this reduction in education funding may also be a result of a decrease in students at public schools.

In the February primary election, California voters will decide **Proposition 92**, which would increase funding for community colleges by creating guaranties similar to those for K-12 education funding.

The Governor has also promised to implement the No Child Left Behind Intervention Program, which would send "teams" into California's 98 lowest performing school districts to identify problems and offer solutions for resolving them. Additionally, the program calls for a sliding scale of intervention depending on a school district's academic performance which, in certain cases, may lead to the removal of school district administrators and/or a takeover of the district by the state.