

THE CAPITOL REPORT

AGC's summary of current legislation

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ALVAREZ-GLASMAN & COLVIN

ATTORNEYS AT LAW

THE CAPITOL REPORT is a publication of Alvarez-Glasman & Colvin. Alvarez-Glasman & Colvin specializes in all aspects of public law, regulatory compliance, law enforcement, environmental law, real estate development, redevelopment, and legislative advocacy.

THE CAPITOL REPORT is intended to provide important information about developments in legislation, but is not intended as legal advice. Application of the law to any given circumstance may vary depending on factual differences and other factors. Alvarez-Glasman & Colvin takes extensive steps to ensure the accuracy of this information, but we recommend consulting with a licensed attorney before making any legal decision.



SUMMARY

The California Legislature is currently tackling the looming budget crisis, as revenues are significantly lower than those of the past several years. In any budget crisis, the major issue is whether to raise taxes or decrease services. The Legislature and Governor Arnold Schwarzenegger have proposed a combination of both.

As a result of the impending budget shortfall, the Governor proposed a constitutional amendment, titled the **Budget Stabilization Act**, which would require the approval of voters to fundamentally change the budget process. The Governor believes the current budget crisis is a result of “auto-pilot spending,” meaning that revenue is tied to the state of the economy while most spending is tied up in contracts and statutory requirements. As a result, the State may experience wild fluctuations in revenue while spending remains constant or increases.



The Budget Stabilization Act would trigger moderate cuts in years when there is a deficit and create the Revenue Savings Account (“RSF”) to hold excess funds in years when there is a surplus. Furthermore, when revenues decrease below the long-term average, funds from the RSF would go to the General Fund to prevent a deficit. However, the Legislature may not rely on the RSF as a free pass to increase spending without a consequential deficit. When a deficit is predicted, moderate budget cuts would occur to avoid the surprising and sometimes dramatic budget cuts California now faces and has faced in the past. Currently, the Governor is requesting a ten percent across-the-board budget cut for all agencies.

This edition of **The Capitol Report** summarizes key legal themes that are expected to be addressed in the 2007-2008 legislative session with a focus on newly introduced bills.

ELECTIONS

In light of the national election in November, a few bills covering the election processes at all levels of government were introduced. In particular, the election bills focus on the importance of a secure mail-in ballot procedure and the prevention of voter fraud.

- > **AB 2218 (Gaines)** pertains specifically to local government property assessment elections by creating a state-mandated program and procedure. AB 2218 restricts local official’s ability to allow new property fees or charges and creates additional requirements for property assessments conducted by counties and cities. Also, AB 2218 would require new security measures during the ballot process in assessment elections. Specifically, AB 2218 mandates specific measures for the handling of assessment ballots and envelopes, the use of private vendors, and the tabulation of ballots. The bill also requires the governing body of the affected agency to submit the proposed fee or charge to the electorate using a mail ballot procedure, if the fee requires voter approval under the California Constitution.



- > **AB 2317 (Walters)** was considered, but failed passage. Specifically, this bill would have prohibited a person from being a registered voter unless he or she could prove citizenship in a prescribed form at the time of registration. This bill did not apply to persons already registered as of January 1, 2009, unless changing registration from one county to another.

LOCAL GOVERNMENT

A recurring issue for many California cities is the extent to which emails are “disclosable” under the Public Records Act (the “PRA”).¹ The California Court of Appeal heard recently arguments by a newspaper regarding whether a city councilmember’s emails sent from her home computer are disclosable under the PRA.² The newspaper argued that although the emails were sent from the councilmember’s home computer, the emails were sent on behalf of the public for a proposed bio-agriculture facility and should be disclosable. The Court’s decision should address whether an email is disclosable because of its subject matter and whether the circumstances under which emails are sent are controlling. Regardless of how the Court decides, the decision will be important for all cities that respond to public records requests.

The following bills proposing modifications to the PRA are also before the California Legislature:

- > **AB 1978 (Solario)** would exempt smaller components of computer software data from disclosure under the PRA. Currently, computer software developed by a state or local agency is not itself a public record under the PRA. Thus, the agency may sell, lease, or license the software for commercial or noncommercial use. AB 1978 would expand the statutory definition of “computer software” to include assembled model data, metadata, and listings of metadata, regardless of medium, and tools by which computer mapping system records are created, stored, and retrieved. This is technically sound because the above-mentioned data are parts which make up a computer mapping system.
- > **SB 1696 (Yee)** was passed by both houses and is awaiting the Governor’s signature. If signed, the bill will permit the public agency to give the final determination as to whether a record is a disclosable public record. This bill would provide that a state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure under the PRA.



¹ Cal. Gov. Code §§ 6250 *et seq.* The PRA requires that a state or local agency make all public records available for inspection upon request unless specified exemptions apply.

² *Tracy Press v. Superior Court of San Joaquin County* (3d Dist.) Case No. C056812; (San Joaquin Superior Court) Trial Court No. CV029588.



The following bills would modify the Political Reform Act and the Brown Act:

- > **SB 343 (McLeod)** was passed and takes effect on July 1, 2008. Under SB 343, when any writing relating to an agenda item for an open session of a local agency's regular meeting is distributed within 72 hours of the meeting, the writing must be made available for public inspection. A local agency has two alternative methods for making the writing available for public inspection. The local agency may make the writing available at an office or location designated by the agency and listed on the meeting agenda. The local agency is required to list the address of the office or location on the agendas for all meetings of the legislative body of that agency. Alternatively, the local agency may post the writing on the local agency's Internet Website in a manner making it clear that the writing relates to an upcoming meeting's agenda.
- > **SB 1732 (Romero)** was passed by both houses and is awaiting the Governor's signature. If signed, the bill will prohibit a local agency's legislative body from using a "serial meeting"³ directly or through intermediaries, to discuss, deliberate, or take action on an item of business within the legislative body's subject matter jurisdiction. This would reverse the decision in *Wolfe v. City of Fremont*,⁴ which held that serial meetings violate the Brown Act only when they involve a personal intermediary for members of a local legislative body, and result in a majority actually reaching a collective concurrence regarding a matter to be considered by the body.

HEALTHCARE

As the presidential election approaches, universal healthcare issues are a hot campaign topic. In California, state-wide universal healthcare is far from reality, due to the failure of the Governor's proposed healthcare reform bill. In addition, the Governor's calls for a decrease in Health and Human Agency funding by 1.3 percent virtually erases any hope of a statewide universal healthcare program in the near future.

In response, the City of San Francisco adopted a universal healthcare coverage ordinance for those employed in the City through an employer-paid healthcare program. The ordinance requires employers with 20 or more employees to spend a minimum amount on insurance for employees, set aside money in health reimbursement accounts, or pay a fee to the City's Healthy San Francisco Program. As of June 18, 2008, over 23,000 previously uninsured employees have signed up for the City's plan.

With a huge financial stake in the matter, restaurant owners have been the most vocal opponents of the ordinance, and have brought suit against the City. The Ninth Circuit Court of Appeals heard *Golden Gate Restaurant Association v. San Francisco*⁵ on April 17, 2008, but has not yet rendered a decision. The U.S. Supreme Court rejected an emergency appeal

³ A serial meeting is a chain of communications, each of which involves less than a quorum of a legislative body, but which together involve a majority of the body's members.

⁴ *Wolfe v. City of Fremont* (2006) 144 Cal. App. 4th 533.

⁵ *Golden Gate Restaurant Association v. San Francisco* (Ninth Circuit) Case No. 07-17370.



seeking a temporary stay on the ordinance until the federal courts determine whether it is legal.

If the Ninth Circuit rules in favor of the City, the decision would establish a significant precedent for local governments that wish to provide universal health care through employer plans. If the City is successful, it would be the first in the nation to mandate universal healthcare. The City plans for the program to reach universal coverage by mid-2009.

The Mayor of San Francisco Gavin Newsom also plans to sue the State because of the increased burden Medi-Cal cuts place on local governments when Medi-Cal patients visit emergency rooms instead of doctors. Accordingly, cities that desire to grant universal health care to those who are employed in their cities will be closely watching the Ninth Circuit's decision and San Francisco's potential suit against the State.

FINANCE

State and local agencies are experiencing a financial crunch as property tax values and transfer taxes decline due to the declining property market. State and local governments are also seeing a drop in capital gains, sales, and income taxes. Local government entities anxiously await the Legislature's proposals in light of the State budget crisis.

In light of these financial woes, local governments, such as school districts, counties, and cities, are facing steep budget cuts which could mean layoffs for local government agency employees and a curtailment of services. For instance, many government agencies, including the City of Los Angeles and Los Angeles Unified School District have requested that employees take unpaid vacations to decrease spending. Furthermore, many local government agencies report that layoffs are imminent.



Local government agencies should be mindful that county assessor offices are actively reassessing property values for properties purchased at the height of the housing boom. Reassessment could result in lower property values, which in turn would decrease property tax revenues.

The most extreme consequence of the budget shortfall is bankruptcy. On May 24, 2008, the City of Vallejo filed for bankruptcy, despite the police and firefighters' unions' agreement to a reduced pay increase. While filing for bankruptcy allows a city to renegotiate its debts, a reduction in protective services, such as police and fire, is a likely result.

As more employees retire and the burdens of pension benefits steadily increase, several government entities are considering reversing retroactive pension benefits already awarded. For example, Orange County is attempting to reverse the retroactive pension benefits awarded to the Sheriff's Department, citing it as an unfunded liability, an unauthorized gift of public funds, and payment for work already performed. If successful, Orange County could save \$187 million and other jurisdictions will likely follow its lead.



In order to address the fiscal emergency declared on January 10, 2008, Governor Schwarzenegger signed **ABX3-7**. The bill, which took effect immediately, authorizes a delay in releasing gas tax revenues to cities in order to increase the state's immediate cash flow in July and August. It operates by deferring the payment of gasoline tax revenues to cities and counties in the months of March through July of 2008, with full payment for all deferred amounts made with the regular September payment. This one-time deferral will increase borrowable General Fund resources by \$500 million.

With these fiscal issues in mind, **AB 2676 (Calderon)** sought to prohibit a local government entity from retroactively imposing a transient occupancy tax in certain situations including, but not limited to, parking fees, attrition fees, complimentary rooms, cancellation fees, and "reward" or "point" redemptions. However, this bill will not be given further consideration this term.

Related to these financial constraints, the U.S. Congress requested that bond-rating companies revise the rating standards applied to state and local government debt. When rating companies give lower ratings to local and state governments, cities and taxpayers bear increased costs because bonds issued by these governments are less desirable to investors. Governments with lower bond ratings must provide insurance to back their bonds and now face higher interest rates in light of the current credit crunch.

The State Senate recently passed **SB 344 (Machado)**, to assist bond issuers minimize their losses in the face of higher variable interest rates, and to help issuers retain their tax exempt status. Specifically, this bill allows the acquisition of bonds by or on behalf of a state or local government that issued the bonds, without extinguishing, canceling, or otherwise affecting the bonds.

ENVIRONMENT AND GREENHOUSE GAS EMISSIONS

In 2008, environmental issues remain in the forefront of public discussion. Currently, local governments must immediately comply with South Coast Air Quality requirements that public and private fleet operators acquire alternative fuel or less polluting vehicles for sweeping operations by or for government agencies within the South Coast Air Quality Management District. Under Management Rule 1186.1, all government agencies' new and renewed contracts for sweeping services must be with a fleet that uses alternative fuel sweepers. If the fleet does not use alternative fuel, the agency must solicit bids for sweeping operations using alternative fuel sweepers.

A recurring issue impacting local governments is how to incorporate greenhouse gas emissions into their planning processes. In 2007, State Attorney General Edmund "Jerry" Brown successfully required San Bernardino County to take greenhouse gas emissions into account when drafting its General Plan.

As a result of the Attorney General's stance on greenhouse gas emissions, local governments are attempting to evaluate greenhouse gas emissions in local land use and planning decisions. Several cities are currently attempting to prepare an inventory of all greenhouse gas



emissions within their jurisdictions, including electricity and gas use, solid waste disposal, landfills, vehicles and other transportation.

- > **SB 97 (Dutton)**, enacted in 2007, attempts to clarify how a local agency must evaluate greenhouse gas emissions in local land use decisions. The bill requires that the Office of Planning and Research prepare guidelines for the feasible mitigation of greenhouse gas emissions. Failure to address greenhouse gas emissions in an environmental impact report ("EIR") or other documents required under CEQA do not create a cause of action under CEQA, if the project is funded under the Highway Safety Act, the Traffic Reduction Act, the Air Quality Act, the Port Security Bond Act of 2006, or the Disaster Preparedness and Flood Prevention Bond Act of 2006.

The federal government has acknowledged the need to evaluate global warming as a real and urgent environmental threat. The federal government recently released the *National Water Program Strategy: Response to Climate Change* to address the potential effects of global warming on clean drinking water. The study details the interaction between water programs and climate change, how to mitigate greenhouse gas emissions resulting from water programs, and how climate change will affect future water programs.

Local governments are also researching other possible methods to curb greenhouse gas emissions. Cities are looking to require more energy-efficient designs and buildings for construction projects. The Attorney General's opinion letters emphasized transit-oriented developments where residents could utilize public transportation or walk to work, shopping, and entertainment. In addition, the following bills were recently introduced:

- > **AB 1065 (Lieber)** would require the California Energy Commission to set forth regulations resulting in a reduction of energy consumption by residential and nonresidential buildings.
- > **AB 2093 (Jones)** would require that a city or county's general plan incorporate policies that reduce the effects of greenhouse gas emissions pursuant to the goals set forth in the California Global Warming Solutions Act.
- > **AB 2176 (Caballero)** would require the State Energy Resources Conservation and Development Commission to allocate at least 60 percent of federal funds received to cities and counties for the purposes of reducing fossil fuel emissions, improving energy efficiency, and reducing total energy use.
- > **SB 1165 (Kuehl)** was considered, but failed passage. The bill would have required a lead agency to prepare or contract to prepare the EIR or related documents, and would have required a lead agency prepare a supplemental EIR if the certification of the prior EIR is more than five years old.
- > **SB 1473 (Calderon)** would require the Building Standards Commission to approve, adopt, and update standards designed to mitigate buildings' environmental impacts. The bill would





also require every city and county to set an additional four dollar fee per \$100,000 in valuation from applicants for building permits. The fee would fund development, research and education on green buildings.

- > **SB 1761 (Perata)** would require the Department of Water Resources' ("DWR") compliance with state-wide reductions of greenhouse gas emission goals. Also, the bill would require DWR to consider greenhouse gas emission in its planning process, and reduce its greenhouse gas emissions under the Global Warming Solutions Act of 2006.

HOUSING

Amidst the rising tide of foreclosures, cities are facing many properties that have been abandoned and/or have fallen into disrepair. Often, these properties are owned by developers or lenders who neglect the properties that are not immediately sold. In response, several cities and counties have enacted ordinances requiring lenders to register foreclosed properties and maintain them in a manner consistent with the surrounding neighborhood.

For example, Chula Vista's ordinance requires every property owned by a lender to have a sign posted identifying the name of a manager and a contact number to report concerns about the property, in addition to registration and maintenance requisites. Chula Vista currently has over 550 properties registered, generating over \$38,000 in registration fees. Though the ordinance is not perfect, Chula Vista Code Enforcement calls the ordinance a success, as it generates revenues and helps maintain property values and the aesthetic value of the community.

An additional problem facing cities and local utilities is the consequences of a landlord who fails to pay utility bills, forcing the utility company to shut off services to tenants. Typically the tenant still innocently pays rent and expects the landlord to pay the utility bills in return. The East Bay Municipal Utility District is looking to approve a policy to prohibit shutoffs of utility services if a landlord does not pay its utility bill in a tenant occupied building.

Another issue arising from lender-owned properties occurs when the lender wishes to displace tenants quickly, sometimes utilizing illegal means. Accordingly, tenants are left with little time and few housing options. Many lenders negotiate with tenants to move out in exchange for money, commonly referred to as "cash for keys." **AB 2450 (Davis)** would require a purchaser of a foreclosure property with tenants to provide at least 90 days' notice, to a tenant before commencing an unlawful detainer. In addition, **SB 1137 (Perata)** would require lenders to maintain foreclosed properties and require a lender to give a tenant 60 days' notice to commence an unlawful detainer.

REDEVELOPMENT AND LAND USE

After a highly publicized campaign, Proposition 98, the **California Property Owner & Farmland Protection Act**, was defeated on June 3, 2008 with 61 percent of voters voting against the proposition. The Act would have prohibited a public agency from taking private property through eminent domain for a private use. This proposition would have also created



limitations on rent control. Proposition 98 would have had a major impact on local agencies use of their eminent domain power because it could have severely limited eminent domain after the U.S. Supreme Court's decision in *Kelo v. City of New London*⁶ greatly expanded the power.



Proposition 99, regarding **Eminent Domain Limits on Government Acquisition of Owner-Occupied Residence**, was passed on June 3, 2008. Proposition 99 prohibits government agencies from using eminent domain to take owner-occupied homes, for both public and private use. This Proposition does not have any provisions for rent control. There are exceptions for public works or improvements, public health and safety and crime prevention. This highly controversial proposition may restrict a city's ability to move on current development projects.

In addition, the following are bills that have been introduced in 2008 regarding redevelopment and land use:

- > **AB 842 (Jones)** would require the Department of Housing and Community Development to give Infill Incentives Grant Award priority to projects located in jurisdictions with adopted plans for reducing the amount of vehicle miles traveled by at least ten percent.
- > **AB 1832 (Saldana)** would repeal local agency authorization to grant tidelands and submerged lands to the United States for public or governmental use. However, this bill would not overturn the decision of a Federal District Court Judge concerning San Diego's tidelands or the tidal settlement agreements entered by the state.
- > **AB 1850 (DeVore)** failed passage, but was granted reconsideration. This bill would create the Office of Public-Private Partnerships to develop formal public-private partnership agreements to aid in construction and maintenance of the State's infrastructure.
- > **AB 2151 (Jones)** would provide that the Department of Alcoholic Beverage Control may deny a license or a license transfer even if it is approved by the redevelopment agency, unless the local governing body gives its approval as necessary for public convenience.
- > **AB 2280 (Saldana)** would make several changes to a developer's density bonus for particular projects. It would require that qualified senior citizen housing must have 100 percent of its units for senior citizens and would revise the percentages for lower, very low, and moderate income households required for qualification. It would also provide additional requirements regarding low income units, and would require a city to make findings based upon substantial evidence, if it does not a grant a concession or incentive.
- > **AB 2495 (Feuer)** would state the Legislature's intent to create public-public partnership agreements with local government agencies, when it enacts relevant legislation.

⁶ *Kelo v. City of New London* (2005) 545 U.S. 469.



- > **AB 2520 (Walters)** would extend the life of a tentative subdivision and parcel maps by two years and extend the life of vesting tentative subdivision and parcel maps by one year.
- > **AB 2604 (Torrico)** would change the law regarding a local agency's collection of fees or charges on a residential development for the construction of public improvements or facilities. This bill would require a local agency, if it acts to defer the collection of fees until the close of escrow, to make a finding that the economic benefits of deferring the collection of the fees outweighs the economic detriments.
- > **AB 2705 (Jones)** failed passage, but was granted reconsideration. This bill would add public transit services and facilities for public transit to the types of services that may be financed under the Mello-Roos Community Facilities Act.
- > **AB 2867 (De Leon)** would require a ranking mechanism under the Housing and Emergency Shelter Trust Fund Act awarding priority points to energy efficient housing projects that utilize green construction.
- > **SCA 19 (Kehoe)** would allow fire safety retrofitting improvement that meets fire safety building standards to avoid triggering a new assessment under the property tax laws.
- > **SB 1185 (Lowenthal)** is an urgency bill that would authorize a 24-month extension on all existing tentative subdivision and parcel maps.
- > **SB 1518 (Correa)** would require that all new multi-family construction have separate water meters and submeters for every unit in the project. The bill would also allow property owners to charge tenants living in units without submeters for water use appropriate of the unit's square footage and number of residents.

GROUP HOMES

Many California cities have been grappling with issues regarding group homes, particularly sober living homes. To compound the problem, it is now common for several registered sex offenders to live together in the same group home.

Recently, the City of Newport Beach enacted an ordinance restricting the location of sober living homes. The ordinance requires sober living homes to obtain a use permit to remain open and restricts where new sober living homes may be located. Currently, the ordinance faces criticisms from both sober living home operators and local residents who believe the regulations are too little, too late.⁷

The following is a list of bills related to group homes:

⁷ *Concerned Citizens of Newport Beach v. City of Newport Beach* (Cal. Central Dist.) Case No. SACV08-192 AG (RNBx); *Sober Living by the Sea v. City of Newport Beach* (Cal. Cent. Dist.) Case No. SACV08-00200 JVS (MLGx).



- > **AB 724 (Benoit)** would re-write the law regarding the licensure of sober living homes. Current law requires the licensure of various community care facilities by the State Department of Social Services; this bill exempts a sober living home from licensure under these provisions.
- > **AB 1875 (Huff)** would define “overconcentration” for purposes of residential care facility licensing to distances of 1,000 feet or less. AB 1875 would allow a denial of a license for a residential care facility based upon overconcentration only to the extent consistent with federal law.
- > **SB 914 (Hollingsworth)** was allowed reconsideration, but failed passage. This bill would have allowed a city to require a community care facility housing a registered sex offender to obtain a business license.
- > **SB 915 (Hollingsworth)** was allowed reconsideration, but failed passage. If passed, this bill would have allowed local ordinances to zone as an adult-oriented business any community care facility that houses a parolee required to register as a sex offender.
- > **SB 992 (Wiggins)** would mandate the Department of Alcohol and Drug Programs to administer the licensure and regulation of adult recovery maintenance facilities.

PRISON REFORM

In California, the budget concerns and ever-increasing prison population makes the early release of non-violent offenders a viable option to ease the State’s budget crisis. Governor Schwarzenegger’s latest budget proposal called for more than 22,000 non-violent inmates to be released from prison 20 months earlier than their original release date. However, a recent settlement between the State, inmate advocates and law enforcement authorities would implement much less drastic measures. Specifically, the settlement seeks to trim the prison population by 170,000 inmates by 2011. This will be achieved by alternative sentencing and, most importantly, re-entry facilities. Re-entry facilities, initiated under **AB 900**, are designed to implement more effective rehabilitation and focus on preventing re-offending and parole violations. The re-entry concept might be a more sensible approach to alleviating prison overcrowding and budget concerns.

AB 900 was enacted on May 3, 2007. Specifically, AB 900 makes a \$750 million bond available to California counties that plan on opening a “**secure community reentry facility**” as a transitional environment for prisoners whose sentences are ending. Reentry facilities would be funded by the State, subject to budget evaluation on a year-to-year basis. The facilities would also be run by State employees.

Counties proposing sites for reentry facilities would become eligible for State funding to modernize or expand county jail facilities. Since many counties are in dire need for county jail upgrades and revamping, applying for AB 900 funding is a very appealing possibility. The preferred recipients of jail construction funding are counties that assist the State in creating re-entry facilities, assist in mental health day treatment and crisis care for parolees, and provide a continuum of care for parolees with mental health and substance abuse needs.



There were many concerns about the deadline for funding proposals from the counties and the ability to gain cooperation from local cities and officials. Because AB 900 was enacted in May 2007, and specific criteria for funding was finalized in December 2007, the March 2008 deadline for initial proposals did not provide a sufficient opportunity to solicit valid community input or to inform local governments.

Because county proposals receive higher priority if they can identify a facility stipulated in Board of Supervisors' resolutions and City Council's resolutions, many counties chose not to apply because they did not receive local support and participation.

On May 8, 2008 the Correctional Standards Authority issued its AB 900 Phase I Jail construction conditional awards. Of the 24 counties that applied, 12 received funding, for a total of \$750 million in bond money split between the counties. The funding would create up to 10,326 jail beds and 6,950 reentry facility beds.

San Bernardino and Orange Counties both requested \$100 million in funding and received the full amount. Both counties received full preference for proposing reentry facilities. Los Angeles County also submitted a request for \$100 million, but only received \$33 million, in part because they did not propose a definitive re-entry facility site. Several other counties' proposals were rejected entirely.

Calaveras County had an appeal hearing on June 19, 2008 to dispute their award amount from the AB 900 funds. The outcome of the appeal is pending.

PUBLIC SAFETY

Throughout California, the first six months of 2008 saw a marked increase in gang violence. Many rural areas, such as the Central Valley, and fast-growing inland regions have experienced a notable increase of violence.

In response to the recently publicized gang violence near schools, the Los Angeles City Council will vote on a proposed ordinance requiring a 90-day jail sentence for anyone convicted of possessing a gun within 1,000 feet of a private or public school.

The following is a list of introduced bills related to public safety:

- > **SB 1126 (Cedillo)** would allow the prosecuting attorney to pursue any assets of a criminal street gang or anyone who knew or should have known of the illegal acts in a nuisance action against the gang. Note that only members of the criminal street gang who created, maintained, or contributed to the creation or maintenance of the nuisance shall be personally liable for the payment of the damages awarded.
- > **AB 2420 (Huff)** failed passage, but was granted reconsideration. This bill would have prohibited a law enforcement agency or local government agency from implementing a policy prohibiting a peace officer from inquiring into a person's immigration status or to arrest and book a person who is an illegal alien.



- > **AB 2562 (Fuller)** failed passage, but was granted reconsideration. This bill increases the penalty for those who violate provisions requiring them to register as a member of a criminal street gang. This bill makes a violation of those registration provisions a felony, rather than a misdemeanor, and punishable by up to three years in prison.
- > **SB 550 (Ashburn)** failed passage. This bill would have automatically enhanced a crime to an aggravated status for purposes of sentencing, when a person is convicted of certain gang-related offenses within 1,000 feet of a park.

SEX OFFENDERS

Currently, there is a nationwide debate regarding laws prohibiting sex offenders from living within specified distances from schools, parks, and other locations where children regularly congregate. One controversial issue is whether such laws are retroactive (i.e., whether such laws apply to sex offenders who were convicted and served their time prior to the law's enactment). The Ohio Supreme Court determined that Ohio's Jessica's Law statute was not retroactive and could not be applied to a registered sex offender who bought a home within a prohibited area for sex offenders.⁸

California's Jessica Law, enacted by the voters under Proposition 83, prohibits registered sex offenders from living within 2,000 feet of schools and parks, and also prohibits them from living together in a single family dwelling except under limited circumstances. It also provides a powerful tool for cities and counties to enact *community-specific* restrictions on where registered sex offenders may live.

Accordingly, many cities enacted their own versions of Jessica's Law by imposing stricter guidelines on where registered sex offenders may live. Often these ordinances prohibit sex offenders from living within certain distances of bus stops, daycare centers, arcades, and other places where children would regularly congregate.



Alvarez-Glasman & Colvin recently drafted an ordinance for the **City of Pomona** imposing further restrictions on registered sex offenders, including a prohibition from residing within 2,640 feet from day care centers, video arcades, playgrounds, bus stops, youth sports facilities, public swimming pools, and skate parks.

As the areas where registered sex offenders may live become more restricted, multiple sex offenders living at one property has become a common occurrence. Although there is law regarding multiple sex offenders living in one **house**, there are no laws addressing multiple sex offenders living in the same **apartment building**. Because Jessica's

Law has effectively barred registered sex offenders from living in wide swaths of urban areas, it is increasingly common for offenders to reside in concentrated areas. Landlords outside of the restricted areas find it increasingly lucrative to rent to multiple sex offenders who often pay higher rents because they have limited housing options.

⁸ *Hyle v. Porter* (2008) 117 Ohio St. 3d 165.



The City of Pomona's ordinance addresses this problem. The ordinance prohibits more than one registered sex offender from living in an entire apartment or condominium complex and creates liability for both the sex offender and landlord or manager who rents the property.

Furthermore, the San Bernardino County Board of Supervisors recently voted to draft an ordinance that would require sex-offender background checks prior to issuing a business license to drive or operate an ice cream truck and would require the County to reject applications from registered sex offenders.

The California Sex Offender Management Board reported that there was a significant increase in the number of registered sex offenders identifying themselves as transient, due to the lack of housing options. Labeling oneself as transient contravenes Jessica's Law because the registered sex offender is allowed to sleep in various locations without giving the actual addresses to local law enforcement.

The following is a list of newly introduced bills seeking to fine-tune Jessica's Law:

- > **AB 370 (Adams)** failed passage, but would have empowered a local agency to prohibit registered sex offenders on parole from living in a residential facility that serves six or fewer people, including sober living facilities, if another registered sex offender is living there.
- > **AB 2363 (Ma)** would allow a landlord to terminate a residential tenancy, in order to protect a person at risk, if the tenant is a registered sex offender. This bill would protect landlords even in jurisdictions that have rent control ordinances requiring specific cause to pursue an eviction.
- > **SB 501 (Hollingsworth)** failed passage, but would have required registration as a sex offender under Penal Code Section 290 to be under penalty of perjury. If passed, the bill would have made a sex offender guilty of a felony if the offender failed to register, falsified registration or otherwise violated the registration requirement. Currently such violations are misdemeanors.
- > **SB 1163 (Maldonado)** would require a registered sex offender to display a license plate or sticker on any vehicle the offender drives indicating the driver is a registered sex offender. However, this bill will not be given further consideration this year.
- > **AB 2007 (Horton)** would require the Department of Justice to post on its public web site whether a person, while registered as a sex offender, was convicted of another sex offense. However, this bill will not be given further consideration this year.
- > **AB 2169 (Cook)** would prohibit a city or county from issuing a license to operate an ice cream truck to any person required to register as a sex offender. However, this bill will not be given further consideration this year.
- > **AB 2334 (Runner)** failed passage but would have tolled the parole period of a person being considered for a sexually violent predator commitment from the beginning of the person's



evaluation rather than from the actual determination that the person was a sexually violent predator.

- > **AB 2354 (Galgiani)** would provide that a person possessing, offering or distributing child pornography would be punishable by imprisonment in a state prison and a fine not exceeding \$10,000. However, this bill will not be given further consideration this year.
- > **AB 2409 (Nava)** would prohibit the destruction of files for any juvenile offender 14 years of age or older who commits a sexually violent offense. However, this bill will not be given further consideration this year.
- > **AB 2410 (Nava)** would prohibit the release of the name of any victim of a sexually violent predator by specified law enforcement agencies.
- > **AB 2593 (Adams)** would officially classify a sober living facility as a single family dwelling for purposes of Jessica's Law. In addition, a hotel room within a hotel would also be considered a single family dwelling. Accordingly, hotel rooms and sober living facilities would be subject to State laws prohibiting more than one sex offender on parole living within a single family dwelling.
- > **AB 2681 (Smyth)** failed to pass, but was granted reconsideration. This bill would express the intent of the Legislature to enact legislation that would restrict registered sex offenders' access to the internet.
- > **AB 2781 (Runner, Sharon)** would require felony convictions for certain child pornography offenses and indecent exposure to the list of specified sexual offenses requiring broadest disclosure to the public by the Department of Justice.
- > **SB 1178 (Anaestad)** requires the Dental Board of California to deny licensure to individuals who are required to register as sex offenders.
- > **SB 1187 (Battin)** would add convictions for certain child pornography offenses and annoying or molesting a minor under 16 years of age to the list of specified sexual offenses requiring the broadest disclosure by the Department of Justice on the internet.
- > **SB 1203 (Runner)** failed passage, but was granted reconsideration. This bill would toll the parole period of a person being considered for a sexually violent predator commitment from the beginning of the person's evaluation rather than from the actual determination that the person was a sexually violent predator.
- > **SB 1253 (Alquist)** would require the State Authorized Risk Assessment Tools for Sex Offenders training committee to monitor consistency and quality of risk assessment and to arrange for qualified experts to train persons responsible for overseeing training.
- > **SB 1546 (Runner)** would specify that the psychologist or psychiatrist performing the original evaluation of a sex offender who has been referred by the State Department of Mental Health may be an independent professional. Also requires that the Department of Mental



Health must provide a report to the Legislature on its progress in hiring qualified state psychologists or psychiatrists.

EDUCATION

The dialogue on education issues in 2008 centers around the State's budget crisis as the Governor proposed a decrease in per-student spending. School districts are finding themselves in a budget crunch. In response to these budget cuts, on June 6, 2008, the United Teachers Los Angeles Union hosted a protest where thousands of L.A. teachers picketed during the first hours of school. Although the focus of education debate in the upcoming months is on the budget, the following is a list of bills on a variety of education issues:

- > **AB 86 (Lieu)** would add bullying by electronic act or system to the School/Law Enforcement Partnership program.
- > **AB 2173 (Caballero)** would give school districts the ability to impose higher fees on building developers to fund school construction needed to keep up with community growth.
- > **AB 2639 (Lieu)** would require school districts to include in its annual report each school's safety plan.
- > **SCA 17 (Simitian)** would authorize a school district to impose a parcel tax, with a fifty-five percent voter-approval.
- > **SB 844 (Calderon)** would expand the definition of a "safe school zone" to include private schools and widen the area to 1,500 feet from a school. However, this bill will not receive any further consideration by the Legislature this year.

PUBLIC CONTRACTS

Governor Schwarzenegger is focusing on the State's need for improved infrastructure while at the same time championing public-private partnerships. Proposition 1B money is beginning to flow to cities to improve local transportation infrastructure. The State's infrastructure is tied to a desire to build more "green construction" and transit-oriented developments.

The following is a list of newly introduced bills:

- > **AB 642 (Wolk)** would authorize a city to enter into design-build contracts for the construction of buildings. In addition, the bill authorizes any public agency to enter into a design-build contract to construct a wastewater facility.





- > **AB 983 (Ma)** would require the Governor to submit a report on current and proposed contracts for services in the amount of \$5,000 or more along with the annual Governor's Budget.
- > **AB 2600 (Niello)** failed passage. The bill would have stated the Legislature's intent to authorize local government agencies to enter into performance-based infrastructure partnerships for eligible facilities.
- > **SB 1642 (Yee)** would require that when a public works contract does not provide for an alternative dispute resolution process, a public works contract would be subject to an alternative dispute resolution process with specified timelines when there is a dispute between the contractor and a local agency, charter city, or charter county for more than \$50,000.
- > **SB 1698 (Romero)** would mandate specific requirements for obtaining a contractor's license. It would require a contractor to obtain a public works certification by passing an exam from the Contractors' State License Board to perform work as a contractor or subcontractor on a public work. This bill would also require the Board to develop the examination, would specify the subjects that the examination must cover, and would authorize the Board to deny or revoke a certification if the contractor fails or has failed to comply with the laws or regulations applicable to public works or commits or has committed other specified acts. The bill would authorize the Board to charge each applicant a fee in an amount sufficient to pay for the costs of administering the examination, not to exceed an unspecified amount.

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