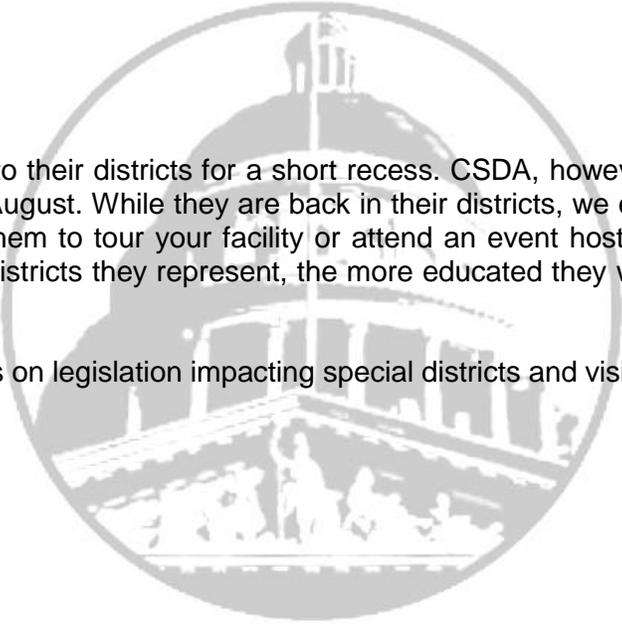




July 2018

In July, legislators go back to their districts for a short recess. CSDA, however, will be busy preparing for the upcoming deadlines in August. While they are back in their districts, we encourage you to reach out to your legislators and invite them to tour your facility or attend an event hosted by your district. The more legislators know about the districts they represent, the more educated they will be on state legislation that affects all special districts.

Read on for the latest details on legislation impacting special districts and visit csda.net/take-action to learn more.



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Contact a local CSDA representative near you!

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➤ REVENUE, FINANCES, AND TAXATION

CSDA's long range policy priority on revenue, finances, and taxation is to ensure adequate funding for special districts' safe and reliable core local service delivery. Protect special districts' resources from the shift or diversion of revenues without the consent of the affected districts. Promote the financial independence of special districts and afford them access to revenue opportunities equal to that of other types of local agencies.

Local Taxes and Fees Initiative Withdrawn

The proposed initiative to put major restrictions on local agency revenue increases was withdrawn by the proponents on June 28, the final day to withdraw initiatives from the November ballot.

The "Tax Fairness, Transparency and Accountability Act of 2018" was a broadly written measure that would have affected all local agencies and their communities. It was largely funded by beverage companies, while CSDA joined a coalition of local government and labor advocates in opposition.

The Legislature held a joint hearing on June 13 to discuss the initiative and [CSDA provided remarks](#) at the public comment portion of the hearing to oppose the initiative. On June 25, [AB 1838](#) was amended as a vehicle for a compromise to the pending [ballot initiative](#). In a deal to get the initiative's proponent, the California Business Roundtable, to withdraw their initiative, the Legislature passed and Governor Jerry Brown signed AB 1838 on June 28. The compromise measure prohibits the imposition of taxes or fees on non-alcoholic carbonated beverages through the year 2030.

Governor Brown expressed in a [signing statement](#) that the initiative would have been "far reaching" and parts of it would have been an "abomination."

While CSDA took no formal position on AB 1838, the Association stood strongly in opposition to the "Tax Fairness, Transparency, and Accountability Act of 2018" and supported the withdrawal of the devastating initiative from the ballot. Had the initiative been placed on the November ballot and approved by voters, it would have severely restricted the ability to raise local and state taxes and fees. Specifically, the initiative would have:

- Increased the vote threshold for a local board to place a tax proposal on the ballot for voter consideration
- Prohibited any tax to be placed on the ballot unless it either specifically identified by binding and enforceable limitation how it could be spent, with any change requiring re-approval by the electorate, among other requirements.
- Amended Proposition 218 to require the impossible standard of predicting actual costs years into the future. Additionally, it created a new, additional requirement that all fees must be "reasonable", but provided no definition as to what reasonable means.
- Changed the agency's burden of proof from "preponderance of evidence" to "clear and convincing evidence" to prove compliance with the new fee requirements
- Precluded the annexation of new territory or consolidation of local agencies, unless the newly annexed or consolidated territory approved all existing taxes and fees of the annexing or consolidating agency by a two-thirds vote.
- Amended the State Constitution in a manner that conflicted with itself. At question was whether the severe new restrictions on local fees apply to property related fees and assessments within Article XIID of the State Constitution, as established by Proposition 218. Due to poor drafting, one part of the initiative included Article XIID charges as what the initiative calls "exempt charges". The initiative subjected all exempt charges to the severe new restrictions outlined above.

In the context of the rest of the initiative, it appeared that the inclusion of Article XIID charges within the definition of exempt charges was a drafting error at best. However, only years of litigation at taxpayer expense would have ultimately resolved this conflicting language had the measure remained on the November ballot and received approval by a majority of voters.



➤ HUMAN RESOURCES AND PERSONNEL

CSDA's long range policy priority on human resources and personnel is to promote policies related to hiring, management, and benefits and retirement that afford flexibility, contain costs, and enhance the ability to recruit and retain highly qualified, career-minded employees to public service. As public agency employers, support policies that foster productive relationships between management and employees, both represented and non-represented.

Union Legislative Response to Janus Decision

It was widely anticipated that the Supreme Court of the United States (SCOTUS) was going to rule in favor of the plaintiff in the Janus v. AFSCME case striking down union "agency shop fees" and requiring public employee unions to be opt-in rather than opt-out. For more information about Janus decision, refer to [Legal Advocacy section](#) on page 6 of this brief.

In an effort to preempt the decision and minimize financial losses for the unions and potential membership decline, various public employee unions have sponsored legislative proposals. Additionally, to speed up the Legislative process, the Legislature included a number of the union sponsored legislative proposals in a budget trailer bill that was signed into law mere hours after the SCOTUS decision was published.

Below are some of the union backed pieces of legislation aimed at stemming the impacts of the Janus decision. CSDA adopted an oppose position to each of the bills listed.

[AB 1937 \(Santiago\)](#) Automatic Payroll Deduction of Union Employees: Requires public agencies, upon request of unions representing their employees, to perform payroll deductions on behalf of the unions. The agencies may charge a one-time startup fee, and the unions would indemnify the agencies from any errors in the deductions.

Status: Senate Appropriations Committee

[AB 2970 \(Cooper\)](#) Confidentiality of Employee Orientations: Makes the date, time, and place of employee orientations confidential and does not allow them to be shared with anyone other than employees, the exclusive representative, or those contracted to provide services during an orientation.

Status: Senate Judiciary Committee

[AB 2017 \(Chiu\)](#) Deterring Potential Employees from Joining Unions: Amends existing law by also prohibiting public employers from deterring or discouraging prospective public employees from becoming or remaining members of an employee organization.

Status: Senate Appropriations Committee

[AB 3121 \(Kalra\)](#) Evidentiary Privileges: Expands the current evidentiary privilege against disclosure of communications to also include union agent-represented worker communications.

Status: Senate Floor

[SB 1085 \(Skinner\)](#) Public Employees Leave of Absence: Requires public agencies with union represented employees, to allow a reasonable number of public agency employee representatives of recognized unions reasonable time off without loss of compensation or other benefits when they are participating in employee representation activities.

Status: Assembly Appropriations Committee

[AB 2154 \(Bonta\)](#) Release Time: Rather than go through the MOU process at the local level, SEIU was sponsoring this bill that would have provided employee union representatives with paid release time to investigate potential or existing grievances, attend employee orientations, and testify before the governing body of the local agency.

Status: Dead

**Union Budget Bill: [SB 866](#) – Signed into law**

Includes the provisions from the following bills listed above: AB 1937, AB 2970, and AB 2017. Additionally, SB 866 includes a new provision related to mass communications - if an employee organization has been recognized or certified as an exclusive representative of employees in a bargaining unit, the public employer that elects to provide certain mass communications are required to meet and confer with the representative concerning the content of the communication. If the employer and the representative do not come to an agreement about the content of the communication, the bill requires the public employer distribute a communication of reasonable length provided by the exclusive representative along with the mass communication.

For more information about the union sponsored legislative proposals, contact CSDA Legislative Representative Dillon Gibbons at dillong@csgda.net. CSDA Business Affiliate Lozano Smith also created a “[Janus Toolkit](#)” for additional information about the Janus decision and how your district should address the decision and newly signed legislation.

➤ GOVERNANCE AND ACCOUNTABILITY

CSDA’s long range policy priority on governance and accountability is to enhance special districts’ ability to govern as independent, local government bodies in an open and accessible manner. Encourage best practices that avoid burdensome, costly, redundant, or one-size-fits all approaches. Protect meaningful public participation in local agency formations, dissolutions, and reorganizations, and ensure local services meet the unique needs, priorities, and preference of each community

Mandate Reimbursement Deadline Would Change Again

Last year, the Commission on State Mandates adopted changes to the submission deadline for test claims. Although adopted through the regulatory process, the changes made it much more difficult for local governments to meet the submission requirements. Under the new regulations that went into effect in April 2018, test claims must be filed within 365 days of incurring increased costs, regardless of where it lands in the fiscal year. Previously, the submission deadline was by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred.

The previous filing period properly reflected an understanding of the local agency budgeting process and allowed districts enough time to gather the relevant information. The regulations as they now hinder a local government’s ability to adequately track associated costs and submit accurate claims. The Commission justified this regulatory change by stating the change was necessary to conform with the Government Code. However, the Government Code is silent on specific submission deadline dates; therefore, the Commission determined the law should be interpreted to have submission deadlines track with the calendar year.

In response to the regulatory change by the Commission, CSDA successfully submitted a legislative proposal included in the Senate Governance and Finance Committee’s omnibus bill, SB 1498, to change Government Code Section 17551 (c) to read “[l]ocal agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. *For purposes of filing a test claim based on the date of incurring increased costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.*”

SB 1498 has received unanimous support to this point in the Legislative process and is expected to be signed into law this year with an effective date of January 1, 2019. The change to the Government Code should result in the Commission updating their regulations again to have the claim test submission deadline track with the fiscal year instead of the calendar year to the benefit of all public agencies.



➤ INFRASTRUCTURE, INNOVATION, AND INVESTMENT

CSDA's long range policy principal regarding infrastructure, innovation, and investment is to encourage prudent planning for investment and maintenance of innovative long-term infrastructure. CSDA supports the development of fiscal tools and incentives to assist special districts in their efforts to meet California's changing demands, ensuring the efficient and effective delivery of core local services.

Bill Prevents Contractors from Indemnifying Special Districts from Liability on Large Projects

SB 1077 (Wilk) would extend some contractor and subcontractor indemnity provisions from residential construction to public works projects such as construction and major repairs. These provisions would prevent a public agency from requiring a contractor or subcontractor to indemnify them for legal costs arising from the contractor's work on a public works project covered by wrap around insurance.

The bill's indemnity exemption provisions would shift first dollar defense liability from the subcontractor to the local agency project owner. This would allow contractors and subcontractors to sit on the sidelines while public agencies are forced to defend their work, at a greater expense to taxpayers.

Public agencies use wrap-around insurance on projects in order to control costs and ensure that there is insurance to protect parties and the owner. We have been assured that subcontractors can find additional insurance beyond the wrap-up to address any concerns they might have with the wrap-up insurance.

SB 1077 would change the current public work provisions to exempt participants from indemnity or liability obligations if the wrap-around insurance is insufficient or depleted. Local agencies are not professional construction contractors or subcontractors. They hire firms pursuant to labor code requirements where the professionals are registered as qualified by the Department of Industrial Relations. Public agencies rely on that certification and the labor code requirements to ensure the public work is done correctly.

Under SB 1077, public agencies would be liable for errors made by these professionals when things go wrong with the public works project, resulting in increased costs for taxpayers.

For more information, please contact CSDA Legislative Representative Rylan Gervase at rylang@cdda.net.



➤ LEGAL ADVOCACY

CSDA is the leading legal advocacy voice for all special districts regarding public policy in California and actively tracks and reviews cases of significance affecting special districts in state and federal courts. Under the guidance of CSDA's Legal Advisory Working Group, CSDA files amicus briefs and opines on court cases when appropriate.

Supreme Court Decision Impacts Public Employee Unions

On June 27, in a landmark decision with a major impact on public employee unions and represented employees, the United States Supreme Court declared “fair share” fees collected from non-members unconstitutional under the First Amendment. As a result of [Janus v. AFSCME Council 31](#), public employee unions in 23 states, including California, will lose the ability to collect fair share fees, used to cover the costs of collective bargaining and enforcing the union contract. The vote was 5-4, with the court's conservatives in the majority.

The decision overturns a 1977 Supreme Court opinion ([Abood v. Detroit Board of Education](#)) that permitted unions to collect fair share or “agency fees” given that unions have a legal obligation to represent all workers, whether or not they choose to be a member of the union. Mark Janus, a child support specialist at the State of Illinois Department of Healthcare and Family Services, argued that Illinois was required to show it has a strong compelling need to bargain with exclusive representatives that overrides employees' First Amendment right not to subsidize union advocacy. Janus's lawyers argued that he objected to the policy positions that the union advocates, and that “bargaining with the government is political speech indistinguishable from lobbying the government.”

In response, AFSCME argued that “agency fees pass First Amendment muster because they prevent free-riding, support workplace fairness and maintain labor peace.” The union's brief disputed the notion that everything a union does is political, pointing out that “many collective bargaining topics are (about) mundane employment conditions...generally do not raise matters of public concern, yet consume significant union resources.”

Justice Samuel Alito wrote for the majority, “we conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.” The majority based its ruling on the First Amendment, ruling that compelling payment to unions that negotiate with the government forces public employees to endorse political messages that they may disagree with.

In her dissent, Justice Elena Kagan wrote, “[t]he majority overthrows a decision entrenched in this nation's law – and in its economic life – for over 40 years... And it does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy.”

The decision means that a public employer cannot deduct an agency fee to a public sector union from an employee's pay unless the employee has affirmatively consented to the payment, specifically saying, “neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed...to be effective, the waiver must be freely given and shown by ‘clear and compelling’ evidence.”

Special districts should carefully evaluate their options and legal risks before taking any action, and public employers should not communicate about the *Janus* decision with employees, unless they discuss their options with legal counsel in light of the decision as well as recently enacted [SB 866](#) (which went into effect upon its signing on June 27).

CSDA will continue to monitor all legal cases and legislation affecting special districts and represented employees. If you have any questions about the *Janus* decision, contact Legislative Analyst – Attorney Mustafa Hessabi at mustafah@csla.net.



➤ DISTRICTS MAKE THE DIFFERENCE

Districts Make the Difference was created to increase public awareness and understanding of special districts across California. The campaign website, www.districtsmakethedifference.org provides a public place to learn more about special districts and the positive effect they have on their communities, while also serving as a resource for districts to download useful materials, collateral, and information.

Promote the Student Video Contest!

It's time to start promoting the Districts Make the Difference 2018 Student Video Contest! Summer is the perfect time to encourage high school and college students to create a 60-second video highlighting how special districts truly make the difference in communities throughout California.

Students have the opportunity to win a scholarship for their video. The first place winner will be awarded \$2,000 with \$1,000 awarded to the second place winner and \$500 awarded to the third place winner. Also, if a student is from the area of a participating chapter, their video will be automatically entered for the local chapter division of the contest.

Students can start working on their videos prior to the submission period which will run **August 27 to September 30**. Interesting and creative videos take some time to create so encourage students to start working on their video now. After the submission period closes, CSDA officials will select the top five finalists and feature those videos on the Districts Make the Difference website. The public will then vote for their favorite video throughout the month of November.

Do you know a student who may be interested? Do you know a teacher, principal, superintendent, or school board member that can help promote the contest? Spread the word!

There are promotional materials including a flyer, social media graphics, and sample website content available at www.DistrictsMaketheDifference.org/video-contest.org to help you promote the contest.

The contest [rules](#), [application](#), and the [2017 winning videos](#) are also available at the Districts Make the Difference website.

Promote the contest today and your district may have a starring role in one of the winning student videos!



www.DistrictsMaketheDifference.org

Learn more about our public outreach campaign at www.DistrictsMaketheDifference.org and engage with us on social media:

- Like us on Facebook.com/CASpecialDistricts
- Follow us on Twitter @CA_Districts
- Use the hashtag **#DistrictsMaketheDifference** when posting your stories on social media.
- Download the logo to your homepage and link to www.DistrictsMakeTheDifference.org

If you have any questions about the video contest or how to better utilize CSDA's public outreach campaign, please contact CSDA's Public Affairs Team at pr@csla.net.



➤ OTHER WAYS TO TAKE ACTION

Learn

The 2018 CSDA Annual Conference and Exhibitor Showcase [website](#) is now live, and registration is open! Additionally, directly download the [brochure](#) for detailed information on the conference. The conference will take place Sept. 24 – 27, 2018 at the Renaissance Indian Wells Resort and Spa. [Register here!](#)

Engage

CSDA's online [Career Center](#) gives member agencies a venue for posting job opportunities and connecting with the talent and experience they are looking for.

Give Feedback

Join an Expert Feedback Teams to provide CSDA staff with invaluable insights on policy issues. Email marcusd@csla.net to inquire about joining one of the following teams:

- Budget, Finance and Taxation
- Environment
- Formation and Reorganization
- Human Resources and Personnel
- Governance
- Public Works and Contracting

Stay Informed

In addition to the many ways you can **TAKE ACTION** with CSDA's advocacy efforts, CSDA offers a variety of tools to keep you up-to-date and assist you in your district's legislative and public outreach. Make sure you're reading these resources:

- CSDA's weekly e-Newsletter
- Districts in the News
- CSDA's CA Special District Magazine

Email advocacy@csla.net for help accessing these additional member resources.