COMMUNICATOR

October/November
2018

President's Message

Happy October/November!

The new Executive Director is Matthew Duarte. Please check out his bio in this newsletter.

The annual conference will be May 22, 23 & 24, 2019 at South Lake Tahoe Resort. Please keep the dates open. We will be trying to improve on this years attendance and sessions. Some of the new ideas for the conference are a boat ride, dinner cruise or a gondola to the top of Heavenly. The President's reception will be at a later time on Wednesday due to input. If you have any ideas for a speaker (Thank you, Elaine) or topics for sessions, please let Matthew know ASAP.

Rick Richards sits on the California Water Natural Resources and Parks executive committee. Currently the CWNRP committee is working with the state legislators on finalizing the process for park and recreation districts to apply for funding on a per capita basis. A draft should be ready for review within the coming weeks.

Please read all the new items in this newsletter. Many are extremely important to your district.

Remember to VOTE November 6!!! Your vote does count!

This newsletter includes a goodbye from Pat. We all wish him the best in Utah and he is always open for a call.

President, Mark Johnson

CARPD 2019 Conference

Inside this issue:

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Legislative Update

The California Legislature adjourned the second half of the 2017-18 Session on a confident and productive note. Governor Brown had until midnight on September 30, 2018, to sign, veto or allow bills to become law without signature and staying in character to the very end, he vetoed many bills coveted by various interest groups because he wanted to keep a healthy reserve in the General Fund to protect the next Administration from a possible financial downturn.

The Governor maintained his impressive environmental credentials to reduce greenhouse gas emissions by signing two significant items in September. First, he signed **Senate Bill 100 (De León)**[i], which increases the renewable portfolio standard for electricity sales by utilities to their customers from 50% to 60% by 2030. Secondly, he surprised even his own staff by signing **Executive Order B-55-18**[ii] to establish 100% carbon neutrality no later than 2045.

The Governor's record on bills of interest to the recreation and parks community was mostly positive.

As you all know, the Governor participated in the crafting of **Senate Bill 5 (De León)**[iii] during the first year of the Session to provide a $4 billion water, park and natural resources bond measure on the June 5, 2018 ballot. Once approved by the voters by a 56% to 44% majority, the Governor wasted little time in allocating funds in his 2018-19 State Budget. Additionally, the Governor signed **Assembly Bill 1838 (Committee on Budget)**[iv]**,** the 13-year sugared beverage tax moratorium at the local level that prevented the sponsors from pushing an initiative which would have increased all local government tax and fee measures submitted to the ballot to a supermajority vote of the electorate.

The Governor also signed the following bills which the CARPD Legislative Committee actively supported:

Assembly Bill 2329 (Obernolte)[v] allows for an increase in compensation for special district board members for up to six meetings per month based on an adopted written policy describing why more than four meetings are necessary for the effective operation of the district.

Assembly Bill 2600 (Flora)[vi] provides an alternative, streamlined process for the formation of regional parks and open space districts by allowing the effected local legislative body to adopt by resolution the formation without requiring signatures of the public.

Assembly Bill 2615 (Carrillo)[vii] requires CalTrans to work with local agencies, including recreation and park districts, to develop ways to promote safe and convenient access for bicyclists and pedestrians to visits parks.

Senate Bill 929 (McGuire)[viii] requires all independent special districts to establish websites to provide notice and promote transparency to the public. The bill has a delayed effective date of January 1, 2020 and provides an exemption for districts that do not have access to broadband services or do not have the financial resources to maintain a website.

Senate Bill 1428 (McGuire)[ix] disallows a school from denying a work permit for a minor if the permit will allow a pupil to participate in a work program during summer vacation.

The CARPD Legislative Committee also successfully obtained amendments to improve the following bills, which were signed into law:

Assembly Bill 1912 (Rodriguez)[x]**:** Along with our allies from the League of California Cities and the California Special Districts Association, we were successful in obtaining extensive amendments to this bill pertaining to Joint Powers Authorities (JPAs). The bill was narrowed to prohibit member agencies from disclaiming the retirement liability of a JPA and requires the apportionment of retirement liability among JPA members if the JPA's agreement with CalPERS is terminated or the JPA dissolves or ceases operations.

Senate Bill 946 (Lara)[xi] establishes requirements for the local regulation of sidewalk vendors but was amended to allow additional regulation of vending in parks.

By: Russell W. Noack, Public Policy Advocates, LLC
October, 22 2018

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i Link to text of Senate Bill 100 (De León) *[Chapter 312, Statutes of 2018]*.
ii Link to text of Executive Order B-55-18;September 10, 2018
iii Link to text of Senate Bill 5 (De León), *[Chapter 852, Statutes of 2017]*.
iv Link to text of Assembly Bill 1838 (Committee on Budget), *[Chapter 61, Statutes of 2017]*.
v Link to text of Assembly Bill 2329 (Obernolte), *[Chapter 170, Statutes of 2018]*.
vi Link to text of Assembly Bill 2600 (Flora), *[Chapter 218, Statutes of 2018]*.
vii Link to text of Assembly Bill 2615 (Carrillo), *[Chapter 496, Statutes of 2018]*.
viii Link to text of Senate Bill 929 (McGuire), *[Chapter 408, Statutes of 2018]*.
ix Link to text of Senate Bill 1428 (McGuire), *[Chapter 420, Statutes of 2018]*.
x Link to text of Assembly Bill 1912 (Rodriguez), *[Chapter 909, Statutes of 2018]*.
xi Link to text of Senate Bill 946 (Lara), *[Chapter 459, Statutes of 2018]*.

Defeated Bills Opposed by the CARPD Legislative Committee

I am pleased to report that the following list of bills opposed by the CARPD Legislative Committee were defeated this year:

Assembly Bill 1870 (Reyes)[xii] would have extended the statute of limitations for unlawful employment practices, including sexual harassment claims from one to three years.

Assembly Constitutional Amendment No. 31 (Cervantes)[xiii] would have placed on all public-sector base compensation at the Governor's compensation amount, which is currently $195,803.

A few measures of interest were vetoed by Governor Brown and likely will be reintroduced and pursued with the new Administration early in 2019:

Assembly Bill 1918 (E. Garcia)[xiv] sought to establish an Office of Sustainable Outdoor Recreation within the Natural Resources Agency to promote the importance of outdoor recreation in California. The author was aware that Governor Brown opposed the bill, but he has set the stage to seek enactment next year.

Assembly Bill 2534 (Limón)[xv] and **Assembly Bill 2614 (Carrillo)**[xvi] both sought to establish Equity Grant Programs for under-served "at risk" students to participate in outdoor education experiences was vetoed. The Governor has a policy of requiring these matters to be considered in the context of the State Budget.

The November Election will herald a new Administration and State Legislature. Most polls indicate the Democrat Party will keep the corner office and will pick up seats in both Houses of the Legislature. A 2/3rds supermajority control by the Democrats in both Houses is a distinct possibility. After the dust settles, the CARPD will meet to strategize and establish legislative goals for the 2019-2020 Legislative Session.

By: Russell W. Noack,
Public Policy Advocates, LLC
October, 22 2018

xii Link to text of Assembly Bill 1870 (Reyes)
xiii Link to text of Assembly Constitutional Amendment No. 31 (Cervantes)
xiv Link to text of Assembly Bill 1918 (E. Garcia); Veto message here.
xv Link to text of Assembly Bill 2534 (Limón); Veto message here.
xvi Link to text of Assembly Bill 2614 (Carrillo); Veto message here.

Supreme Court Decision – Janus v. AFSCME

For those District's that have unions, the Supreme Court's decision in Janus v. AFSCME will be of importance to you. The U.S. Supreme Court has made clear that requiring non-union public employees to pay mandatory agency fees is unconstitutional under the First Amendment. There are many ramifications to this decision. The most immediate impact is that public agencies MAY NOT facilitate a union's collection of agency fees from a non-member without that employee's express consent. Therefore, public agencies are immediately prohibited from automatically deducting agency fees from the paychecks of employees.

Therefore, your agency should:

- Review your payroll systems and each collective bargaining agreement, paying particular attention to provisions related to union fees and wage deductions.
- Coordinate internally with your human resources teams and payroll departments to develop an action plan.
- Be ready to address inquiries from employees regarding issues, such as how to withdraw from the labor organization or how to revoke dues and/or agency fee authorizations.

Be mindful of laws prohibiting employers from discouraging or deterring union membership (SB 285) and law which restricts a public employer's ability to communicate with employees concerning their rights to join/support/refrain from unions (SB 866).

Recognize the impact of communication restrictions imposed by SB 866 and immediately determine the best approach to stopping the deductions for any employee who is an agency fee payer. Then, agencies must develop an approach to reaching an agreement with union leadership to identify employees whose fee deductions will be stopped and a method for obtaining an express authorization by each employee before making future payroll deductions.
Any communication sent to employees regarding this ruling will likely fall under SB 866 restrictions, and therefore requires the public employer to "meet and confer with the [union] representative concerning the content of the communication."

By CSAC-EIA

The Rising Tide of Voting Rights Act Claims: What Should My District Do?

Local governments throughout California have been sued or threatened with suit because of their at-large voting systems over the course of the last several years. For some time it seemed plaintiffs' lawyers were focusing their efforts against cities, but the evidence is mounting that special districts are now one of the chief targets. So what do you do if your district receives a demand letter from an attorney claiming that the at-large elections for your governing board violate the California Voting Rights Act ("CVRA")? This article is intended to help you answer that question and understand the legal issues surrounding CVRA claims. It reviews the key legal standards of the CVRA and recent revisions to the law that allow for districts to voluntarily transition to by-district elections without court involvement.

What is the CVRA and How is it Violated?

The CVRA was signed into law in 2003 and has a loose standard for determining liability. The CVRA forbids a district from using any *at-large method of election* that "impairs the ability of a *protected class* to elect candidates of its choice or influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class…." [1] Hence, the pertinent question is, when does an at-large election system *impair* a protected class's *ability to elect candidates of its choice or influence the outcome of an election*? The answer is, when there is racially polarized voting within a jurisdiction. [2]

How is Racially Polarized Voting Proven?

Racially polarized voting exists when there is a difference in how members of a protected class vote versus members not within the protected class. Sometimes this phenomenon is referred to as "bloc voting."

Whether racially polarized voting exists is generally determined by statistical analyses. Typically, methods known as "regression analysis" and "ecological inference" are performed to assess relevant voter behavior in representative elections. Because these types of analyses are beyond most peoples' expertise, demographers and other professionals are usually called upon to perform—and perhaps more importantly, explain—them.

In determining whether racially polarized voting exists, the comparison is not just between a particular minority population and the white/Caucasian population. The comparison is made between the group whose voting power is asserted to be diluted and all other voters outside that group. Thus, if it were alleged that the votes of Latinos within a jurisdiction were being diluted, the comparison would be between their votes and the votes of whites, African-Americans, Asian-Americans, and all other groups.

Further, racially polarized voting is not determined solely by how the electorate voted in elections involving the district's governing board. In a CVRA lawsuit, the court may look at the voting preferences of groups in not just district board elections, but also in elections involving other agencies (such as cities, counties, and school districts), state elections (for the Assembly or Senate, for example), and ballot initiatives (state or local).

A district's intent or lack of intent to discriminate is also not relevant in determining whether racially polarized voting exists. [3] CVRA violations can occur—and often have been alleged to occur—in jurisdictions where elected bodies are perceived to be progressive on issues of race relations.

Finally, that candidates of a protected class have been elected to a district's governing board does not negate a finding that racially polarized voting exists for that class. Under the CVRA, the history regarding class members' success as candidates is only a factor that may be considered in determining the existence of racially polarized voting. [4]

What is the Remedy for CVRA Violations?

If racially polarized voting exists in your district, the solution is to transition to by-district elections. How is this accomplished? Your district has essentially two options: it can either be forced to transition to by-district elections by a judge (lawsuit), or it can voluntarily transition by following the prescribed statutory framework.

If a court finds that racially polarized voting exists, the CVRA requires it to implement an appropriate remedy. Usually, this involves the court ordering the district to implement by-district elections.[5] In by-district elections, also referred to as "by-division" or "by-ward" elections, candidates reside within election districts that are divisible parts of the political subdivision and are elected only by voters that reside within those districts.[6] (Counties are a good example of local governments that utilize by-district elections.) The idea behind requiring such a remedy is that the protected class will have an easier chance of electing its members to office in smaller, discrete districts than it does when it must compete against the whole electoral population. In theory, the protected class is less likely to suffer from vote dilution when it votes in a districting system.

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1 Elec. Code, § 14027. 2 *Id*., § 14028(a). 3 Elec. Code., § 14028(d). 4 *Ibid*. 5 *Id.*, § 14029. 6 *Id.*, § 14026(b).

When by-district elections are ordered by a court, a judge supervises the district's transition away from its at-large system as part of the remedial phase of the lawsuit. During this phase, although the district has the right to be heard about what the resulting districts should look like, the judge makes the final decision as to where district lines are drawn.

Fortunately, the Legislature has provided a way for districts to avoid having a judge decide such important—and fundamentally political—matters. In 2016, the Legislature enacted AB 350, which created a "safe harbor" by which districts can voluntarily convert to by-district elections and avoid having to defend against CVRA lawsuits.[7]

In this legislation, the Legislature included a key enticement: in exchange for moving away from at-large voting systems, districts can ensure their exposure to a potential CVRA plaintiff's attorney's fees is capped at $30,000. Given the seven-figure attorney-fee awards some public agencies have paid after losing or settling CVRA lawsuits, many public agencies have found this a hard deal to turn down.

Under AB 350, plaintiffs are required to send written notice, or a demand letter, to a district before filing a lawsuit alleging that the district's election system violates the CVRA. Plaintiff must then wait at least 45 days before filing a lawsuit.[8] This 45-day window gives the district 45 days to consider its potential liability under the CVRA and decide whether or not to effectuate the transition to by-district elections. The district must adopt a resolution declaring the intent to transition to district-based elections within the 45-day period to stay within the confines of the "safe harbor" provision.[9] Once the resolution of intent to transition to by-district elections is adopted under AB 350, it extends the "safe harbor" period for avoiding a CVRA lawsuit another 90 days.[10] Over the course of the next 90 days, the district is tasked with hiring a demographer to analyze data and construct proposed district boundaries, holding a total of four public hearings to receive input concerning how districts should be drawn and the proposed election sequence.[11]

As AB 350 has been implemented over the course of the last two years, local governments have discovered that additional time can be helpful to ensure a successful transition to district-based elections. For example, one of the critical components of an effective transition from at-large to by-district elections is public outreach, including reaching out to minority communities. Some local governments were finding it difficult to do an effective outreach to, and receive feedback from, these communities within the deadlines prescribed by AB 350. In response to these concerns, the Legislature passed AB 2123, and it was signed by Governor Brown in September 2018.

AB 2123 authorizes prospective plaintiffs and districts to enter into agreements that extend the time period during which a prospective plaintiff is prohibited from filing a CVRA lawsuit for an additional 90 days.[12] However, under the law, the written agreement must include a provision directing that the districts be established no later than six months before the district's next regular election.[13] For any districts that hold primary elections, the written agreement needs to include the requirement that the districts be established no later than six months before the district's next regular primary election.[14] Additionally, districts that elect this approach are required to prepare and make electronically available within 10 days after the agreement is executed the schedule of public outreach events and the public hearings to be held.[15]

What Should My District Do?

Your district need not receive a CVRA demand letter to begin the process to switch to by-district elections. A district can move away from at-large voting systems at any time. Whatever your district's position may be after considering these issues, one thing is clear—your district should not wait until it receives a CVRA demand letter before considering whether a switch to by-district elections is in order. Your district should consider the advantages and disadvantages of such a switch while it still has the ability to carefully consider the issues free of the time constraints and burdens of threatened litigation.

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By: Sean D. De Burgh, *Partner*, Cole Huber LLP

7 *See* Elec. Code § 10010. 8 *Id*., § 10010(e)(1)-(2). 9 *Id*., § 10010(d)(3)(A). 10 *Id*., § 10010(e)(3)(B).

11 *Id*., § 10010(a)(1)-(a)(2). 12 *Id*., § 10010(e)(3)(C)(i). 13 *Ibid*. 14 *Ibid*. 15 *Id*., § 10010(e)(3)(C)(ii).

Patrick Cabulagan's Farewell

To all of CAPRI and CARPD,

As many of you are already aware, I will be retiring on November 30, 2018 from CAPRI and CARPD. This was not an easy decision; however, my wife and I decided it was the right time since our children all live in Utah along with my grand daughter which made the decision easier.

I wanted to wish all of the members of CAPRI and CARPD farewell and thank you for the opportunity I have had over the last 9+ years to work with all of you. I have made a lot of friends along the way and as a result of my job and the associations with all of you, it provided me with a rewarding and fulfilling career with CAPRI and CARPD.

I hope that I have left CAPRI and CARPD better than when I started. I know Matthew Duarte, the new Executive Director will come in and do a great job. The current staff and both Boards at CAPRI/CARPD are awesome and I will definitely miss working with them.

I hope to stop by from time to time – maybe attend a conference or visit the District's. Again, thank you for the wonderful opportunity I have had to work with all of you. You will be missed.

Sincerely,
Patrick Cabulagan
Administrator

New Executive Director: Matthew Duarte

Hello CARPD members!

I am honored and privileged to serve as your new Executive Director. I want to start off by recognizing the great work of my predecessor, Pat Cabulagan, who is retiring to Utah. Pat has been a great leader and advocate for our organization and I know I have some big shoes to fill!

For those of you that don't know me, I am a husband and father of three, ages 8, 5, and 2. As you might suspect, we love spending time in parks! Also, I am a former elected official having served as a Board Member for Valley-Wide Recreation and Park District in Hemet, Menifee, and San Jacinto. I know and appreciate the commitment each Board Member makes in taking the oath of office and I am looking forward to working with community leaders from throughout our State.

As far as my professional background, I am a licensed attorney and most recently was a Partner in a civil litigation law firm in Southern California. It is my hope that my skills and experience will prove valuable to our membership as we move our industry forward.

I appreciate the warm welcome I have received from our Members thus far and I look forward to working side by side with people who share my passion for parks and recreation. I hope you can join us at our conference in Lake Tahoe in May and, if you do, come say hello and introduce yourself. In the meantime, have a great holiday season and thank you for being a part of CARPD!

Executive Director, Matthew Duarte