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To: **Orange County Sanitation District**

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Subject: Monthly Legislative Report

STATE UPDATES

The first half of August was quiet on the state legislative front with the Legislature adjourned for Summer Recess. Despite the lack of legislative activity, the Summer Recess was a critical time for behind-the-scenes negotiations on bills and final budget activity as the Legislature geared up to tackle the last month of the legislative session. Upon resuming the legislative session on August 14, the Legislature had 1,231 measures to consider before adjourning for the Interim Recess on September 14.

Below is an overview of state activity from the month of August.

State Legislature

During the last two weeks of August, Assembly and Senate Appropriations Committees considered legislation that originated in the opposite house and has an unabsorbable fiscal impact to the state. Typically, any bill with a fiscal impact exceeding $150,000 is placed on the fiscal committee's Suspense File. Measures placed on the suspense file will face consideration during the Appropriation Committees' "suspense hearing" on September 1. These hearings feature the rapid reading of measures and their status. Bills passed out of the Suspense File are moved to each House Floor for a final vote. At this point, each house must pass bills off the Floor by the September 14 deadline.

Bills that made it out of the appropriations committee before the deadline that OC San has supported include AB 246 (Papan) – PFAS in menstrual projects, AB 334 (Rubio) – Conflict of interest, AB 727 (Weber) – PFAS in cleaning projects, and AB 1594 (Garcia) – Medium and heavy-duty zero emission vehicle exemptions.

Constitutional Amendment on Local Tax Measure Update

ACA 13 (Ward) passed the Assembly Floor on September 6 and will now be considered by the Senate before the September 14 deadline. The measure requires an initiative constitutional amendment to comply with any increased voter approval threshold that it seeks to impose on future ballot measures. Additionally, the measure guarantees in the state constitution the ability of local governments to submit advisory questions to voters.

This measure was introduced in response to the Taxpayer Protection and Government Accountability Act, which seeks to raise vote threshold requirements for the passage of state and local tax measures and imposes a stringent burden of proof standard that local governing bodies must meet when modifying or increasing all taxes and fees by justifying their use, need, and duration. The measure has qualified for the November 2024 ballot and is sponsored by the California Business Roundtable and its affiliates. If effectively passed, it would make it extremely difficult for local governments to maintain existing tax revenues and modify them in the future.

The Author and proponents of this measure have made it clear that they intend to qualify this proposed constitutional amendment for the March primary election in order for it to impact the required voter approval threshold for the Taxpayer Protection and Government Accountability Act.

Senator Mike McGuire announced as Pro Tem Designee

During the last week of August, Senate President pro Tempore Toni G. Atkins announced that the Senate Democratic Caucus convened and determined that Senator Mike McGuire will be the Pro Tem Designee, with a transition to be announced next year. Senator McGuire has been integral to several legislative victories, including the 2022 climate package and the infrastructure streamlining package negotiated alongside this year's state budget. It is anticipated that leadership changes as well as new Committee seats will be announced next year after the Pro Tem transition. Due to term limits, Senator McGuire is eligible to serve as Senate President pro Tempore in the California Senate until 2026.

This change in leadership next year will likely be significant, as the Senate President pro Tempore installs committee chairs and chooses memberships of all standing committees. Policies are often shaped at the committee level based on the committee chairs. It is possible that members of the Orange County delegation will have new committee assignments and even new chair opportunities based on this anticipated change.

Supreme Court Upholds California Voting Rights Act

In late August, the California Supreme Court issued a significant decision on the California Voting Rights Act (CVRA), which could impact the way many local governments hope to continue their at-large elections systems. The case, *Pico Neighborhood Assoc. v. City of Santa Monica*, originated when the Pico Neighborhood Association filed suit alleging that the City of Santa Monica's system of at-large voting to elect its City Council discriminated against Latinos. The trial court agreed and ordered the city to switch to district-based voting.

The Court of Appeal *reversed* and entered judgment for the City, holding that the City violated neither the California Voting Rights Act nor the Constitution. In this case, the City noted that the plaintiff offered no valid proof of dilution in order to prove that the City's at-large method impaired Latinos' ability to elect candidates of their choice or to influence the outcome of an election as a result of the dilution of Latino voting rights. Furthermore, the plaintiffs failed to prove that the city adopted or maintained its system for the purpose of discriminating against minorities.

The appellate ruling essentially stated that even under the CVRA, a plaintiff would have to *prove* that the city could draw districts where the minority group could elect a candidate of choice. This would likely be a default to the federal "majority-minority" construction under the Federal Voting Rights Act, not the more nebulous "ability to influence" standard under the CVRA.

Ultimately, it appears that this decision strengthens the CVRA by having the court invalidate one of the biggest arguments against it - that the "ability to influence" standard was unenforceable. While there isn't a final decision in this particular case, this does create new case law which affirms the CVRA's main tenants and finds that the CVRA is constitutional as a tool in fighting dilution of the voting power of minority populations. Unlike the argument from the City of Santa Monica, agencies do not need to demonstrate they can draw majority-minority districts, like in the federal Voting Rights Act, but just need to demonstrate that a minority population's voting power is being diluted and that a combination of their increased density in a by-district system, along with other factors, can allow them to "influence" the outcome of an election better than the current at-large system.

This decision could have impacts to several cities and special districts whose Board of Directors are elected directly by the people. It is likely that the decision will influence certain individuals to run for local office in a majority vote seat rather than in voting districts.

Clarification on Updates to Levine Act

SB 1439 (Glazer, Statutes of 2022) went into effect earlier this year. The new law requires local elected officials to recuse themselves from votes and discussions involving anyone who has contributed more than $250 to their campaigns. The prohibition covers contributions made 12 months before and after the vote. A similar requirement already existed for officials appointed to local and state boards, but SB 1439 expanded California's Political Reform Act to include most elected officials as well. The Fair Political Practices Commission (FPPC) subsequently issued clarifying actions to prohibit the measure from applying retroactively before its enactment.

In response to its passage, a coalition of special interest groups filed a lawsuit alleging the law is overly broad, improperly alters the state's Political Reform Act, and infringes on free speech protections related to the right to petition governments. The plaintiffs behind the lawsuit included the Family Business Association of California, California Restaurant Association, California Retailers Association, California Building Industry Association, California Business Properties Association, and the California Business Roundtable – all of which expressed their disappointment over the ruling.

The Fair Political Practices Commission, the state agency tasked with implementing and enforcing the law, served as the defendant in the case and was represented by the California Attorney General's Office. FPPC Chair Richard Miadich said the Commission has continued to work on establishing regulations to fully implement the law, despite the lawsuit, and plans to adopt those new rules in Summer of 2023.

New clarification for the law's application in local agency proceedings will go into effect on August 12, and include the following:

- *Individual Donations equal total donations*: The regulations clarify that the threshold for recusal can be met through combining the aggregate donation amounts from one individual to an elected official during a calendar year. This means that five separate donations of $50 throughout the year would trigger the law's limitations.

- *Defining a "pending" proceeding item:* The new clarifying regulations state that a "pending" proceeding includes an upcoming agenda item, or when a reasonably foreseeable decision will come before the official and the official knows or has reason to know the decision is within the jurisdiction of the agency.

- *Threshold for willful contribution awareness*: The regulations further clarify that a "willful contribution" means any contribution that an official willfully or knowingly receives and has actual knowledge that the contribution came from someone with a connection to a pending proceeding or if specified facts exist. A contribution included in a campaign report does not meet these criteria unless the Official has context of its origins and connections to an upcoming proceeding.

- *Timelines for Disclosure*: If an elected official did not know about a contribution made in connection to a proceeding and finds out during the proceeding, the official must publicly disclose the contribution before further participation. The official may participate if the official discloses the disqualifying contribution on the record, confirms that the contribution will be returned within 30 days of when the official knew or should have known about the contribution, and the contribution is returned within that time.

- *Needing a Quorum*: In cases where the Levine Act would disqualify all or most members of a local agency from participating in a decision involving eminent domain, the new regulations clarify that the members may participate under these particular circumstances. However, the regulations warn that an absence is not a trigger for legally required participation in most instances.