UCC News: May 7, 2021

Governor's Revised Spending Plan Out Next Week

The May Revision to the Governor's 2021-22 Budget will be released on Friday, May 14. Tune into the Governor's Facebook, Twitter, and YouTube pages for the press conference and expect a thorough summary from HBE later that evening.

Senate Democrats Propose $5 Billion for Wildfire Response

This week, the Senate Budget Committee released a plan to spend $5 billion in state General Fund revenues over five years on wildfire prevention activities. The new Wildfire Prevention and Resilience Fund would also include $200 million annually from the state's cap-and-trade program, consistent with current wildfire prevention funding levels established in SB 901 (2018). Funds would be used for prescribed burning, fuel reduction, community hardening, pest management, and reforestation. These proposed expenditures come on top of the recently approved $536 million for 2020-21 wildfire prevention efforts.

California Appeals Court Sides with Newsom on Emergency Powers

A California appellate court reversed a Superior Court judge's prior ruling that barred Governor Gavin Newsom from using executive orders to enact or change existing statute as a component of his public health emergency management authority this week.

The three judges unanimously ruled in the case, brought by Assembly Members James Gallagher and Kevin Kiley, rejecting the argument that the Governor could wield unchecked powers, noting that he has an obligation to end the state of emergency "as soon as conditions warrant" and that the Legislature has the power to do the same. Assembly Members Gallagher and Kiley indicate that they plan to appeal to the California Supreme Court.

Additional Emergency Rental Assistance Program Funds Available from ARP

The US Treasury Department started a soft launch of its new portal for Emergency Rental Assistance (ERA 2) Program grantees to apply for this funding. City and county governments with populations greater than 200,000 are eligible to receive another round of direct funding from the US Treasury and should have received information directly, including a link to the portal. Counties and cities with populations under 200,000 may receive funds through state government. The Newsom Administration has yet to announce how it will allocate ERA 2 program funds it receives.

Federal Judge Vacates CDC Eviction Ban

The United States District Judge for the District of Columbia issued a decision this week vacating the US government's nationwide ban on evictions, ruling that the

Centers for Disease Control and Prevention exceeded its authority in imposing the moratorium.

Recall that in September 2020, the CDC issued an order barring landlords from evicting tenants for the nonpayment of rent, citing a 1944 public health law that gives the agency certain powers to prevent communicable diseases from crossing state lines. Congress and the Biden Administration have since extended the ban, which was slated to expire on June 30. The Department of Justice announced it would be appealing the ruling and has requested a stay to keep the CDC order in place pending resolution of the litigation.

LAO Releases Proposed Framework for Expenditure of Federal COVID Relief Funds

As part of its regular "Fiscal Perspectives" series, the Legislative Analyst's Office (LAO) outlines recommendations for the Legislature regarding allocation of federal COVID relief funds. The state is expected to receive about $26 billion in Coronavirus State and Local Fiscal Relief Funds to address the state's direct and indirect costs associated with the pandemic. Since the American Rescue Plan (ARP) offers considerable flexibility to states, counties, and cities that receive such funding, the LAO provides a framework for expenditure of the federal funds.

The LAO's first recommendation is that the Legislature take the time to define its goals and develop a plan for allocating federal funds, as ARP funds are eligible for use through 2024. Additionally, the ARP already has provided substantial assistance to individuals, businesses, and local governments, offering the Legislature the space to thoughtfully develop its own expenditure plan. The LAO further notes that the state's considerable budget surplus – which is anticipated to exceed the State Appropriations (or "Gann") Limit – requires the Legislature to consider how any allocation of federal relief funds would interact with the likely budget surplus in a constrained environment. Given the need to navigate the various constraints facing the Legislature as it considers the unique circumstances of the budget year and beyond, the LAO offers the following recommendations:

Define Goals and Invest in Planning

- *Identify Significant Challenges*: The magnitude of the federal package represents a unique opportunity for the state to take significant steps towards addressing various longstanding challenges that may have been magnified by the pandemic, such as child care, homelessness, housing affordability, student achievement gaps, and broadband access.
- *Develop a Plan*: The LAO recommends the Legislature take time to develop a plan for allocation of the fiscal recovery funds, since there is no obligation for the state to allocate all of its recovery funds as part of this year's budget process. Further, this approach offers the Legislature the opportunity to consider how the state's plan would

interact with future potential federal action (such as the Biden Administration American Jobs Plan).

- *Other Considerations*: The LAO suggests examining lessons learned from previous one-time allocations. Should additional program details be included in legislation? What additional resources might be needed to allocate resources effectively?

Identify Gaps

- *Gaps in Federal Assistance*: While federal assistance provided in the ARP is wide-ranging, there may be some individuals and entities that could benefit from assistance. As an example, undocumented immigrants are ineligible for federal stimulus payments and certain local governments – specifically special districts – did not receive any direct assistance.
- *Disparities*: The pandemic has had disparate health and economic impacts warrant the Legislature considering targeting assistance to those Californians more acutely affected by job losses and other longer-term consequences of the pandemic.

Maximize Longer-Term Benefits

- *Mitigate "Cliff" of Federal Assistance*: At least some federal assistance provided to individuals and businesses will likely expire by the fall. The Legislature should consider using a portion of federal fiscal relief funds to phase out assistance to individuals and businesses that still may have challenges with finding work or operate due to continued public health concerns and the pace of economic recovery. Similarly, there may be local government agencies (the LAO cites transit agencies as an example) for which long-term changes are likely due to the pandemic.

- *Prepare for Service Needs as California Reopens*: As public health restrictions abate and people resume normal activities, there may be an increased demand for certain public services.

- *Plan for Possible Long-Term Pandemic Impacts*: Public health concerns may continue for a variety of reasons, requiring the state to continue to conduct vaccine outreach and education, monitor for variants, and prepare for possible future stress on health care and hospital systems. Federal recovery funds offer the opportunity to plan in advance for these possible needs to help the state respond for effectively in the longer term to emerging public health needs.

Assembly Budget Subcommittee No. 4 Discusses Costs of Recall Election

This week, the Assembly Budget Subcommittee No. 4 heard from the Secretary of State's (SOS) Office and the California Association of Clerks and Elections Officials (CACEO) regarding the potential costs associated with a fall recall election. A survey of county elections officials suggests that the local costs of a recall election could near $400 million. Subcommittee members questioned SOS staff and counties regarding the costs of the 2003 recall; SOS indicated that elections administration has changed dramatically since 2003, not the least of which is the implementation of all-mail balloting and the Voter's Choice Act, making a comparison difficult, if not completely unhelpful. SOS staff also pointed out that the state has failed to pay elections-related mandates since 2010, making the state's financial contribution to statewide elections administration essentially zero, outside of equipment investments and special appropriations for pandemic-related costs. A coalition of the California State Association of Counties, the Urban Counties of California, the Rural County Representatives of California, and the CACEO have submitted a formal letter to legislative leaders and budget committee chairs seeking full reimbursement for local costs associated with the recall. The agenda for the meeting is available here and video archive of the hearing is available here.

In related news, the SOS reported that the final tally of verified signatures for the recall election is 1,719,943 – some 220,000 more than needed to qualify. The final validity rate was 79.58 percent.

Budget Subcommittees Hear Dependency Counsel and BSCC Jail Inspection Items

The Assembly and Senate budget subcommittees with jurisdiction over public safety and judiciary matters heard two budget issues of interest this week.

Dependency Counsel – On Thursday, the Senate budget subcommittee No. 5 considered, among other topics, a variety of judicial branch items including a focused panel discussion on access to justice issues. This spotlight aligns with the Senate Democrats' priority in its ***Build Back Boldly*** plan to protect essential legal services by augmenting funding for dependency representation as well as investing in legal aid services, county law libraries, and court reporter services. At Thursday's hearing, Leslie Heimov, Executive Director of Children's Law Center of California, provided important background and context for the dependency counsel coalition's funding request to address pandemic-related expenses and caseload impacts as well as to correct for any federal funding shortfall. (Leslie's presentation begins at approximately 1:22 at this link.) The panel discussion across the four access to justice priorities was not associated with a recommended subcommittee action and was provided instead to give members details and context associated with the proposed investments. UCC has explicit policy supporting enhanced funding for the dependency counsel program and is joining advocacy efforts for this augmentation.

Enhanced Jail Inspections – Both the Assembly and Senate budget subcommittees considered the Governor's budget proposal to provide $3.1 million and 14 positions to the Board of State and Community Corrections (BSCC) for enhancing oversight and inspections of county jails. Additionally, the Administration recently released associated trailer bill language authorizing the BSCC to undertake unannounced jail and juvenile facility inspections. The subcommittees received presentations from BSCC staff, the Legislative Analyst's Office – which earlier this year issued a report on the standards and inspections for local detention facilities, as well as a representative of the advocate community that has been calling for enhanced oversight of local facilities. The subcommittee left this matter open.

DJJ Realignment Trailer Bill Moves to Governor

This week, the Senate approved and sent to the Governor SB 92, the trailer bill intended to facilitate implementation of the DJJ Realignment (SB 823, 2020). The measure contains two important components. First, it fulfills the requirement set forth in SB 823 to establish a secure dispositional track for higher-need youth (previously eligible for DJJ) who will be treated and cared for locally; and, secondly, it makes clarifying and conforming changes. A quick summary of the provisions follows:

- Enact new Welfare and Institutions Code (WIC) 875 to provide juvenile courts – and all other involved agencies – with a framework and process for placing youth who previously would have been eligible for DJJ into an appropriately responsive dispositional track to address their programming and treatment needs. In addition to outlining specialized considerations for the court, the framework also is meant to guard against an increase in referrals of youth to the adult court system;
- Clarify language regarding which county agencies are eligible for SB 823 programmatic funding that accompanies the shift of responsibility;
- Restore a previous code section describing who was eligible for placement in DJJ to ensure that – if ever necessary, as specified under WIC Section 733.1 – provisions to revert responsibility back to the state could be executed if funding is not provided to counties;
- Specify that county payments to accompany the shift in responsibility are to be paid annually rather than monthly; and
- Set a hard closure date for all DJJ facilities on June 30, 2023, and require the state's DJJ director to develop a plan by January 1, 2022 for managing the transfer of the youth who remain at DJJ at the final closure date.

Two Consequential Public Safety Bills Move to Senate Appropriations Suspense File

As discussed previously, two measures by Senator Steven Bradford that contemplate considerable county fiscal impacts were heard in the Senate Appropriations Committee this week; both moved to the Suspense File. (Note that the fiscal committees in both houses must take action on measures with fiscal impacts no later than May 21, so we would expect the Suspense File hearings to be held on or just prior to that date.) A brief summary of each measure follows.

As a reminder, SB 493 proposes an array of changes to the Juvenile Justice Crime Prevention Act (JJCPA), including redirection of 95 percent of the program's funding to non-law enforcement local agencies or community-based organizations (CBOs). JJCPA represents a long-standing investment in local juvenile justice responses and, beginning in 2000, has helped local probation along with their CBO partners build a continuum of juvenile prevention and intervention services. It was on this foundation that the state realigned a portion of the juvenile justice system to counties in 2007. Given that JJCPA and the adjacent funding associated with the 2007 shift in juvenile justice responsibility both were realigned in 2011, these programs now enjoy constitutional protections that appear to be abridged by the approach in SB 493. In addition to probation union opposition, the statewide county associations of CSAC, UCC, and RCRC along with the probation chiefs are in opposition to SB 493. The Senate's fiscal analysis recognizes certain aspects of the counties' arguments in opposition.

Senator Bradford's SB 586 would delete existing authority to collect more than 60 court-related fines and fees originally slated for elimination in SB 144 (Mitchell, 2019). On this latter bill, its scope was reduced down to approximately two dozen criminal justice administrative fees and enacted as AB 1869, a 2020-21 trailer bill that also appropriated a limited-term backfill of $65 million in recognition of counties' revenue loss. The Legislature has taken various actions in recent years to reverse trends of previous decades that placed increasing financial burdens on court users and those with criminal justice system involvement, citing the real-life and often financial devastating impacts court-ordered debt can have on those who often can least afford it.

A county coalition comprised of CSAC, UCC, and RCRC has been in conversation with the author's office about the measure and has expressed – as was the case with SB 144 – our concerns about the bill's county fiscal impact, including its potential to negatively affect counties' ability to meet their fine and forfeiture Maintenance of Effort obligations. The author's office has committed to push for a backfill to offset associated revenue loss, and we will continue our cooperative efforts with the author's office and sponsors to address county fiscal concerns. SB 586 also was moved to the Senate Appropriations Committee Suspense File on Monday. The committee analysis identifies major state and local fiscal impacts.

News on Office of Health Care Affordability

In addition to Assembly Member Wood's AB 1130, the Newsom Administration proposed trailer bill language on the Office of Health Care Affordability (OHCA). Senate Budget and Fiscal Review Subcommittee No. 3 discussed the Office earlier this week. The Newsom Administration is collaborating with Dr. Wood on creation of OHCA. However, the Administration has not modified their trailer bill language to reflect conversations with the Assembly Member or stakeholders.

The budget subcommittee heard from a panel of stakeholders, including representatives of purchasers, labor, consumers, hospitals, physicians, and health plans. Chair Eggman noted the divide between the providers (who raised concerns) and health plans, purchasers, and consumers (who were supportive).

The Administration acknowledged issues with the reporting timeline in their trailer bill language due to the pandemic. They will be pushing the baseline years to 2022 and 2023 because they don't want the pandemic years to be the baseline. The Administration also agreed with concerns raised about investments in primary care and behavioral health and modifying spending benchmarks to consider current and former underfunding in both areas.

Dr. Pan raised a number of issues with the Administration about their OHCA proposal, ranging from cost drivers, rural issues, inputs, quality data, definition of provider, alternative medicine, changing technology and the emergence of new diseases. He was particularly pointed in asking when the Newsom Administration plans to engage with the Senate and in trying to elicit a timeline about a final product, noting AB 1130 is still a work in progress. Additionally, he asked whether the Newsom Administration prefers a bill in the policy committee process or a budget trailer bill to implement OHCA. The OSHPD representative did not provide a date or a preference on process but committed to meeting with Dr. Pan about the proposal.

Assembly Budget Subcommittee No. 1 will be hearing OHCA on Wednesday, May 12.

Health & Human Services Budget Updates

Senate Budget and Fiscal Review Subcommittee No. 3 met twice this week to discuss several issues. On the health side, the Subcommittee discussed issues related to the Office of Statewide Health Planning and Development (OSHPD), the Department of Managed Health Care, the Department of Public Health, and Covered California (agenda). On the human services side, they heard issues related to child support and aging (agenda).

The Subcommittee members were extremely engaged on the issue of investments in public health workforce and infrastructure. The California Department of Public Health kicked off the discussion and made many points that local health departments and labor emphasized. The panelists included representatives from the County Health Executives Association of California, the Health Officers Association, California Pan-Ethnic Health Network, SEIU, the California Black Health Network, and the Racial and Ethnic Mental Health Disparities Coalition. Dr. Pan engaged on several issues, noting the hate and personal attacks that public health workers and leaders have been subject to this last year. He also raised mutual aid for public health, planning and approach to laboratory capacity, a public health information technology plan, and the future of the state's Valencia lab. Please recall that the Senate Democrats' budget plan includes investing in public health workforce and infrastructure.

While not as "sexy" as the OHCA, the Administration is proposing to turn OSHPD into a state department – the Department of Health Care Access and Information (HCAI). There are a number of potential changes to how the new Department will oversee health care workforce issues and bears watching. OSHPD proposes trailer bill language to recast the office as HCAI, including the following components:

- Licensing Board Demographic and Other Data Collection – The proposal is based on federal recommendations about workforce data.
- Transition California Healthcare Workforce Policy Commission to California Health Workforce Education and Training Council – The new council would provide guidance on statewide education and health workforce training needs across key areas, including general physician education, primary care and behavioral health, and would advise on increasing the supply and diversity of physician and non-physician providers, as well as the placement of providers in medically underserved areas. The council would support the programs currently covered by the commission, such as the Song-Brown Program, as well as those currently covered by the Health Professions Education Foundation (HPEF), which is proposed to transition its programs to HCAI. HCAI would consider the council's policy recommendations as part of its administration of all of its workforce programs, including funding and award selection.
- Absorb Health Professions Education Foundation Programs – OSHPD administers the Health Professions Education Foundation (HPEF), a 501(c)(3) non-profit public benefit corporation established in 1987 through legislation. The proposed trailer bill language would dissolve the 501(c)(3) structure as of January 1, 2022, and absorb its programs within the new department. The California Healthcare Workforce Education and Training Council would support these programs and make recommendations on funding and awards.
- Updates SB 17 Prescription Drug Reporting – SB 17 (Hernandez), Chapter 603, Statutes of 2017,
- Transition Health Care Workforce Clearinghouse to California Health Workforce Research and Data Center –The Data Center would be the recipient of the demographic and other data collected by healing arts licensing boards and, in addition to continuing the analysis and reporting previously conducted by the clearinghouse, would also report on the outcomes and effectiveness of health care workforce programs.

In addition to the organizational changes proposed in the trailer bill language, OSHPD also proposes to transition the following two programs from the Department of Health Care Services to the HCAI Primary Care Office: 1) the Office of Rural Health and 2) the J-1 Visa Waiver Program, which gives priority to applications from primary care physicians who will work in federally designated underserved areas.

This week Senate Budget and Fiscal Review Subcommittee No. 3 also discussed the restoration of $31.1 million ($10.6 million General Fund) in ongoing to support underfunded Local Child Support Agency (LCSA) staffing and services.

Next week Senate Budget and Fiscal Review Subcommittee No. 3 will discuss issues related to the Department of Health Care Services and Department of Social Services. Assembly Budget Subcommittee No. 1 will resume hearings next week. Items to be heard include telehealth, the Office of Health Care Affordability, various behavioral health issues, child care, and student mental health.

New PPIC Survey on Vaccine Hesitancy

The Public Policy Institute of California released a survey this week on Californians' views toward vaccinations. The survey was conducted on April 14 and reveals demographic, geographic, and political party preference differences.

- Overall, four in ten Californians (39%) report that they have already had the vaccine. One in four (26%) say they will get the vaccine as soon as it is available and 15% say they will get it either in a few weeks (6%) or a few months (9%) after it is available.
- One in five Californians are more hesitant, saying either they would wait a year or more after it is available (7%) or would not get the vaccine (12%).
- Three in ten African Americans said they would either wait a year or more (11%) or that they would not get the vaccine (18%), making them the most likely race/ethnic group to hold this view.
- Residents in the Central Valley (8% wait at least a year, 20% will not get vaccine), the Inland Empire (9%, 19%), and Orange/San Diego (15%, 8%) are more likely than those in Los Angeles (7%, 6%), and the San Francisco Bay Area (6%, 5%) to express hesitancy.
- There are also noteworthy differences across political parties. Republicans (10% wait at least a year, 22% will not get vaccine) and independents (7%, 17%) are far more likely than Democrats (4%, 3%) to be hesitant.