

CAJPA Legislative Update
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Big Issues Surface at End of Session

Session finally closed down after a marathon floor session that began on Friday morning and ended in the very early hours of Saturday morning. The final day of action came on the heels of several consecutive days of (sometimes-raucous) floor debate on literally hundreds of bills. CAJPA's advocates worked throughout the 2011 session to ensure health insurance broker and agent interests were protected.

As normal during the final week of session, policy negotiations intensified, cross and inter-party battles proliferated and some bills were held as hostages despite being unrelated to a particular policy fight.

Even veteran Capitol watchers remarked on the extraordinary number of bills dealing with complex issues that suddenly appeared in the waning days of session and pushed through the process with perfunctory hearings and little or no public notice.

Most agreed that the end of session trend of "gut and amend" -- where the contents of a bill is stripped out and replaced with all new innards -- reached ridiculous proportions in 2011.

Adding to the pain were "Dracula" bills that suddenly were alive again after failing passage in prior hearings and still others that were written late on the last day of session and came before both houses after the midnight session deadline for consideration.

2011 Busy Year for CAJPA

Overall, the Legislature introduced over 2,700 bills in 2011. CAJPA's Legislative Committee reviewed more than 500 bills and tracked nearly 182 bills. Of the 182 tracked bills, CAJPA took active positions on over 50 bills of interest or concern to CAJPA member pools.

CAJPA sponsored three different bills in 2011. All were jointly sponsored with CSAC-EIA.

The first bill, SB 863 (Lieu) is bi partisan legislation that begins the process of reforming how liens are handled in the state workers compensation adjudicatory process. CAJPA is sponsoring SB 863 due to the concern that the current process for filing and resolving lien claims in California's workers compensation system unreasonably interferes with injured workers access to the courts, and imposes substantial costs on employers.

CAJPA was very fortunate to have Senator Ted Lieu (D- Torrance), who is the Chair of the Senate Labor and Industrial Relations Committee, and Assembly Member Curt Hagman (R-Chino Hills), who is the Vice Chair of the Assembly Insurance Committee, jointly author SB 863. Both members are strong proponents of an efficient workers' compensation system that provides adequate benefits to injured workers that do not impose unreasonable costs on California employers.

Additional refinements to the liens process are slated to be inserted into SB 863 bill as stakeholder discussions on a wider worker's compensation reform package coalesce next

year. The bill is currently on the Assembly Floor and will move towards the Governor's desk in 2012 once additional components are agreed to and added to SB 863.

The CAJPA bill is AB 1106, introduced by Assembly Member Katcho Achadjian (R-San Luis Obispo) that addresses the uneven state policy that permits only select types of local governmental entities to obtain a rebate of civil fines paid to Cal/OSHA. AB 1106 allows all local governmental entities to apply for a rebate of Cal/OSHA civil fines, as long as certain conditions are met (i.e. addressing and abating unsafe or unhealthy work conditions) and ensure that public entities maintain a continuing commitment to workplace safety and health issues. AB 1106 was held in the Assembly Appropriations Committee due to minor fiscal concerns but will be re-introduced in 2012.

The final bill is AB 1168, introduced by Assembly Member Richard Pan (D-Sacramento), to require the Division of Workers' Compensation (DWC) to create a fee schedule for services provided by vocational experts in California's workers' compensation system. The bill is in response to the 2009 Workers' Compensation Appeals Board decision in *Ogilvie vs. City and County of San Francisco*. The case is currently on appeal awaiting a ruling from the First District Court of Appeals. AB 1168 does not affect this ongoing litigation in any way.

However, the *Ogilvie* case has created a demand for vocational counselors to be used as expert witnesses in cases where injured workers are contesting their PD rating per *Ogilvie*. These expert witnesses charge on an hourly basis and are paid directly by the employer or the employer's insurer. There is currently no cap on the rate charged by these vocational counselors, which is in direct contrast with most other services provided in the workers' compensation system. AB 1168 will help stem potential abuse of the vocational counselor process by requiring the AD to establish a reasonable schedule of fees that may be charged for these services. AB 1168 is currently on the Governor's desk awaiting action.

One of CAJPA's successes occurred in the final few days of session with the news that AB 52 (Feuer) was being held. CAJPA-opposed AB 52 attempts to impose an unprecedented system of rate regulation on health plans and health insurers in California. CAJPA worked closely with a large opposition coalition to halt the forward progress of AB 52. However, AB 52 is not dead, only on hold until 2012. CAJPA will continue to closely monitor AB 52 and respond if any attempt is made to move the bill.

CAJPA also built a large coalition of public entities that worked together to halt the progress of SB 931 (Vargas) that sought to prohibit public agencies from using public funds to pay outside consultants or legal advisors for the purpose of counseling the public employer about ways to minimize or deter the exercise of rights of public employees to organize. The problem provisions were eventually stripped from the bill and amended to contain completely different subject matter.

CAJPA also worked in a large coalition of public employers to work out amendments to SB 474 (Evans) where CAJPA originally opposed SB 474 when it contained language that was a significant departure from traditional indemnification agreements among parties to construction projects. CAJPA and other public entities were able to finally remove opposition near the end of session when problem language was removed from the bill.

By the end of session, only 13 bills of interest or concern to CAJPA moved to the Governor desk for action. Two bills supported by CAJPA (SB 264 (Correa) and SB 751 (Gaines) have already been signed by Governor Brown. Eleven more await action on his desk.

Among the remaining 11 tracked bills on the Governor's desk, are some of the most onerous bills that have been opposed by CAJPA throughout the legislative process. CAJPA is now seeking a veto on these bills that include:

- **AB 947 (Solorio)**, a measure that has the potential of significantly increasing employer costs through unreasonable changes in temporary disability benefits.
- **AB 1155 (Alejo)**, dealing with the complex issue of apportionment in workers' compensation.

Bills CAJPA would like to see the Governor sign into law include:

- **AB 335 (Solorio)**, that seeks to reduce the excessive number of benefit notices sent to injured employees.
- **AB 378 (Solorio)**, to remove the financial incentives that exist in some certain specified pharmacy transactions and referrals. All medical treatment should be prescribed based on medical necessity to cure or relieve the effects of the injury, rather than on the potential for financial gain by the prescribing physician.
- **AB 1168, (Pan)**, a bill co-sponsored by CAJPA, that requires a reasonable fee schedule be created for vocational counselor fees.

For more information on CAJPA tracked bills, see the entire CAJPA Priority Bill list below.

Other actions by Legislature in 2011

Some of the non-health related "big ticket" bills considered in the closing days included a bill that gives online retailer Amazon another year before it is forced to collect California sales tax. Legislative leaders made the deal to head off what was likely to be a popular Amazon ballot initiative to exempt internet sales from state sales taxes. Another entirely new bill gives the governor the power for the first time to personally approve certain development projects, and yet another bill moves all ballot measures to November elections.

The Legislature also passed several budget related measures most of which would make technical changes to budget related bills adopted earlier in the summer. However, reports from the state Treasurer and Controller indicate that California still faces multi-billion dollar budget deficits in the coming years.

More than 600 of these were debated in the final two weeks of session with the majority of the bills being sent on to the Governor for action. Governor Brown has until October 9, 2011 to sign, veto or allow a bill to become law without a signature. Unless otherwise stated in a bill, all bills signed take effect on January 1, 2011

As this is the first year of a new administration, the Governor's actions on bills is being closely watched to see if his actions show a clear path of what types of legislation the Governor will or will not sign into law.

The Legislature is scheduled to return to Sacramento on January 4, 2012. Along with new bill introductions, bills still alive but not passed in September will be eligible to be considered once the legislature reconvenes in January.

Keep checking back on www.CAJPA.org for updates and information.

**CALIFORNIA ASSOCIATION OF JOINT POWERS AUTHORITIES
KEY BILL LIST
AS OF
SEPTEMBER 21, 2011**

<i>BILL/AUTHOR</i>	<i>SUBJECT</i>	<i>POSITION</i>	<i>CAJPA DESCRIPTION</i>	<i>STATUS</i>
AB 22 (Mendoza)	Credit Reports: Use: Strict Limitations	OPPOSE	AB 22 will subject all employers to unnecessary litigation by prohibiting an employer from using credit report information, for employment purposes, unless substantially job-related. CAJPA is seeking amendments to exempt public sector employers from coverage of this measure.	<i>Passed by Legislature TO GOVERNOR</i>
AB 23 (Smyth)	Local agencies: Serial Meeting: Prohibition	WATCH	CAJPA originally opposed AB 23 that proposed to unnecessarily prohibit convening consecutive or serial meetings by public agencies. AB 23 was subsequently amended 4-14 to instead require public announcement of compensation to meeting members at the start of each meeting. CAJPA position changed to "watch" as a result of the amendments.	<i>SIGNED by Governor CHAPTER NUMBER 91, STATUTES OF 2011</i>
AB 30 (Hayashi)	Health Facilities: Security Plans	OPPOSE	AB 30 significantly expands health facility security plan development and content, among other provisions. In 2009, CAJPA worked with the sponsors of AB 1083 (Chapter 506, Statutes of 2009) to update the law to improve hospital safety. CAJPA believes that more time should go by before an assessment can be made that a new law is not working.	<i>Assembly Appropriations SUSPENSE FILE HELD ON SUSPENSE FILE</i>

AB 36 (Perea)	Tax Conformity: Health Care Insurance	SUPPORT	CAJPA supports AB 36 because the bill aligns current state statute with federal tax law. Under federal law today, adult children up to the age of 26 may remain on their parents' health insurance plans.	SIGNED by Governor CHAPTER 17, STATUTES OF 2011
AB 52(Feuer)	Health Care: Rate Approval	OPPOSE	AB 52 adds to the red tape burden by requiring health care plans to obtain regulatory approval for any change in premiums, co-payments, coinsurance, or deductibles in a health insurance policy.	<i>Senate Floor</i> <i>MOVED to INACTIVE 9/1/2011</i>
AB 59 (Swanson)	Family Leave Expansion	OPPOSE	AB 59 seeks to significantly expand the list of those for which CFRA leave may be taken to include adult children, in-laws, grandparents, and siblings.	<i>Assembly Appropriations SUSPENSE FILE</i> <i>HELD ON SUSPENSE FILE</i>
AB 72 (Eng)	Health Care Coverage Mandate: Acupuncture	OPPOSE	CAJPA is concerned that AB 72 unnecessarily will impose new mandated health services that increase employer costs to provide health insurance coverage to employees by at least \$3 per employee per month.	<i>Assembly Appropriations SUSPENSE FILE</i> <i>HELD ON SUSPENSE FILE</i>
AB 211	Workers' Compensation: Supplemental Disability Benefits	OPPOSE UNLESS AMENDED	CAJPA OPPOSES AB 211 UNLESS AMENDED to provide the parties the opportunity to dispute elements of the reporting. Additionally the bill must require substantiation and itemization of any payment of voucher funds to employees.	<i>Passed Legislature</i> <i>TO GOVERNOR 9/7/2011</i>
AB 310 (Ma)	Prescription Drugs	OPPOSE	CAJPA believes that AB 310 limits an employer's ability to control costs for prescription drugs and will require certain employers to change their pharmacy benefits as they already have co-insurance options in place.	<i>Assembly Appropriations SUSPENSE FILE</i> <i>HELD ON SUSPENSE FILE</i>
AB 325 (Lowenthal)	New Leave Mandate	OPPOSE	CAJPA OPPOSES AB 325 which requires employers, including cities, counties and special districts to provide three days of unpaid bereavement leave.	<i>Passed Legislature</i> <i>TO GOVERNOR 9/8/2011</i>
AB 335 (Solorio)	Workers' Compensation: Benefit Notices	SUPPORT	CAJPA supports AB 335 that seeks to reduce the excessive number of benefit notices sent to injured employees.	<i>Passed Legislature</i> <i>TO GOVERNOR 9/8/2011</i>

AB 369 (Huffman)	Prescription Drugs: Step Therapy	OPPOSE	CAJPA believes that AB 369 unreasonably limits the ability to use step therapy options in their prescription pain drug programs, leading to increased premium costs to employers providing health care coverage to their employees.	<i>Assembly Appropriations SUSPENSE FILE</i> <i>HELD ON SUSPENSE FILE</i>
AB 375 (Skinner)	Hospital Employees: New Presumptions	OPPOSE	CAJPA OPPOSES AB 375 that would create special rules for certain hospital employees in the workers' compensation system by creating a legal presumption that certain injuries and illnesses, such as MRSA and blood borne infections, are related to employment. Presumptions of industrial causation for specific employees and injury types are simply not needed and create a tiered system of benefits that treats employees differently based on occupation and undermines the credibility and consistency of our workers compensation system.	<i>Senate Floor</i> <i>FAILED PASSAGE 9/9/2011</i>
AB 378 (Solorio)	Workers' Compensation Pharmacy Products	SUPPORT	CAJPA supports AB 378 that removes the financial incentives that exist in some certain specified pharmacy transactions and referrals. All medical treatment should be prescribed based on medical necessity to cure or relieve the effects of the injury, rather than on the potential for financial gain by the prescribing physician. CAJPA believes there should be a strict prohibition against any medical provider reaping huge profits from dispensing pharmacy goods or causing those goods to be dispensed.	<i>Passed Legislature</i> <i>TO GOVERNOR 9/9/2011</i>
AB 392 (Alejo)	Brown Act	OPPOSE	While CAJPA supports transparency in government, CAJPA is concerned that AB 392 would create a hardship for JPAs, particularly smaller pools with limited resources for producing agenda packets. Some of these packets are very large, making it difficult to post background materials. Failure to post means pulling matters from the agenda, potentially causing delays in important and time-sensitive decisions. Last, AB 392 may force some JPAs to develop a web site at significant cost at a time when local governments are dealing with budget cuts and layoffs.	<i>Assembly Appropriations SUSPENSE FILE</i> <i>HELD ON SUSPENSE FILE</i>

AB 400 (Ma)	Mandated Sick Leave	OPPOSE	AB 400 unreasonably expands all public and private sector employer costs and liability through a new paid sick leave mandate covering all employees regardless of full or part-time or seasonal employment status.	<i>Assembly Appropriations SUSPENSE FILE HELD ON SUSPENSE FILE</i>
AB 457 (Wagner)	Public Works: Bidder Challenges	OPPOSE	Unreasonably expands liability of public entities by permitting bidders on public works contracts to obtain fees and costs due to error or omissions.	<i>Assembly Business & Professions 2-YEAR BILL</i>
AB 501 (Campos)	Joint Powers Authorities: Collective Bargaining	WATCH	CAJPA originally opposed AB 501, which sought to impose costly new mandates and liability on all joint powers authorities that include school districts as members by forcing the JPA's to stand in the place of employers for purposes of collective bargaining. AB 501 was subsequently amended to address CAJPA concerns by exempting JPAs formed for risk management or insurance purposes from coverage by the bill.	<i>Passed Legislature TO GOVERNOR 9/7/2011</i>
AB 584 (Fong)	Workers' Compensation: Utilization Review	OPPOSE	CAJPA opposes AB 584 that would create a logjam of utilization review requests and increase the cost of this expense for both insured and self-insured employers.	<i>Passed Legislature TO GOVERNOR 9/6/2011</i>
AB 592 (Lara)	Employment Leave: Interference	OPPOSE	CAJPA is working with a coalition of employer organizations in opposition to AB 592 that proposes to increase liability for all employers who interfere with employee leave.	<i>Passed Legislature TO GOVERNOR 9/8/2011</i>
AB 947 (Solorio)	Workers' Compensation: Temporary Disability Benefits	OPPOSE	AB 947 unreasonably seeks to add injuries requiring treatment that cannot medically be completed within 104 weeks to the list of specified exceptions to the TD cap on weeks of benefits	<i>Passed Legislature TO GOVERNOR 9/8/2011</i>

AB 1106 (Achadjian)	Cal OSHA Civil Fine Rebates: Public Entities	SPONSOR SUPPORT	CAJPA and CSAC-EIA are jointly sponsoring AB 1106 to address the uneven state policy that permits only select types of local governmental entities to obtain a rebate of civil fines paid to Cal/OSHA. AB 1106 allows all local governmental entities to apply for a rebate of Cal/OSHA civil fines, as long as certain conditions are met (i.e. addressing and abating unsafe or unhealthy work conditions) and ensure that public entities maintain a continuing commitment to workplace safety and health issues.	<i>Assembly Appropriations SUSPENSE FILE</i> <i>HELD ON SUSPENSE FILE</i>
AB 1155 (Alejo)	Workers' Compensation	OPPOSE	CAJPA opposes AB 1155 that is an unnecessary erosion of the workers compensation laws. CAJPA is unaware of any instance in which a claim was denied or apportionment has been granted as a direct result of unlawful discrimination. AB 1155 invites litigation and gamesmanship, increasing costs to the system and funneling monies away from injured workers.	<i>Passed Legislature</i> <i>TO GOVERNOR 9/9/2011</i>
AB 1168 (Pan)	Workers Compensation	SPONSOR SUPPORT	CAJPA and CSAC-EIA are co-sponsoring AB 1168. With the advent of the Ogilvie decision, more claims involve the use of vocational consultants as experts regarding loss of earning capacity. The cost of these consultants is borne by the employer/insurer, regardless of who raises the issue. There is currently a wide disparity in what is being charged by these consultants. Rates of \$250 per hour are common and total cost can reach several thousand dollars. CAJPA believes there is a need to establish a reasonable and consistent fee schedule as proposed in AB 1168.	<i>Passed Legislature</i> <i>TO GOVERNOR 9/6/2011</i>
SB 27 (Simitian)	Public Retirement	OPPOSE	CAJPA is concerned about one of the main provisions in SB 27: the requirement of a separation period of at least 180 days, prior to a retiree being eligible to be employed by a public agency. CAJPA believes this provision is shortsighted and will have the unintended consequence of raising costs for JPAs and other public agencies	<i>Assembly Appropriations Suspense File</i> <i>HELD on SUSPENSE 8/25/2011</i>

SB 46 (Correa)	Public Officials: Compensation Disclosure	WATCH	CAJPA's original concerns regarding duplicative paperwork provisions were addressed with amendments. CAJPA will continue to work with other public employers and author to address remaining issues.	<i>Passed Senate 8/22/2011 TO ASSEMBLY HELD at DESK</i>
SB 63 (Price)	Automatic External Defibrillators	OPPOSE unless AMENDED	SB 63 increases liability of all high schools that obtain and maintain automatic external Defibrillators (AEDs), unless trained, maintained and used in strict accordance to the proposed statute. CAJPA is concerned that, without full, unconditional immunity, schools will not only incur new costs associated with buying, training and maintaining the AED, but also face costly new lawsuits regarding the use or non-use of the AED.	<i>Senate Appropriations SUSPENSE FILE HELD ON SUSPENSE FILE 5/26/2011</i>
SB 129 (Leno)	Medical Marijuana	OPPOSE	CAJPA opposes SB 129 that seeks to establish a protected classification for employees who utilize medical marijuana and thereby undermines employer ability to provide a safe and drug-free workplace for all employees.	<i>Senate Floor 2-YEAR BILL</i>
SB 264 (Correa)	Skateboard Parks: Immunity Extension	SUPPORT	CAJPA supports SB 264 that extends current provisions in law that provide for a limited immunity for those who operate public skateboard parks.	<i>SIGNED by Governor CHAPTER NUMBER 232, STATUTES OF 2011</i>
SB 457 (Calderon)	Workers' Compensation Liens	NEUTRAL	CAJPA originally opposed SB 457 that sought to set up another standard for payment of medical provider billings outside the Official Medical Fee Schedule adopted by the Administrative Director of the Division of Workers Compensation. SB 457 was subsequently amended to address CAJPA concerns	<i>Passed Legislature TO GOVERNOR 9/7/2011</i>
SB 474 (Evans)	Indemnity	NEUTRAL	CAJPA originally opposed SB 474 when it contained language that was a significant departure from traditional indemnification agreements among parties to construction projects. CAJPA is now NEUTRAL on the bill as proposed to be amended 6-27-2011 that address public entity liability concerns.	<i>Passed Legislature TO GOVERNOR 9/8/2011</i>

SB 751 (Gaines)	Health Care	SUPPORT	CAJPA believes that SB 751 is common sense legislation that will provide needed information to employees early in the course of treatment on the cost of the health services provided.	SIGNED by Governor CHAPTER NUMBER 244, STATUTES OF 2011
SB 810 (Leno)	Single Payer Health Care	OPPOSE	CAJPA believes that SB 810 takes away choice in healthcare. Under current law, those who wish to buy more, less or different coverage than others can often make those choices, just as those who have other priorities can exercise them in the market. Under SB 810, one size fits all, no matter what an individual's preference might be.	<i>Senate Appropriations</i> SUSPENSE FILE HELD ON SUSPENSE FILE 5/28/2011
SB 826 (Leno)	Workers Compensation: Reporting Penalties	WATCH	CAJPA originally opposed SB 826 concerning claims administrator compliance with current reporting mandates. Bill was subsequently amended to substantially reduce fines and impact of the bill.	<i>Passed Legislature</i> TO GOVERNOR 9/7/2011
SB 857 (Lieu)	Public Employment: Unlawful Strikes Costs	OPPOSE	CAJPA opposes SB 857 (Lieu) that unreasonably seeks to prevent the Public Employment Relations Board (PERB) from reimbursing expenses resulting from unlawful strike activities that cause harm to the public and the public agencies that serve their interests	<i>Passed Legislature</i> TO GOVERNOR 9/01/2011
SB 863 (Lieu)	Workers' Compensation Liens	SPONSOR SUPPORT	CAJPA-sponsored SB 863 (Lieu) is bi partisan legislation that begins the process of reforming how liens are handled in the state workers compensation adjudicatory process. CAJPA is sponsoring SB 863 due to the concern that the current process for filing and resolving lien claims in California's workers compensation system unreasonably interferes with injured workers access to the courts, and imposes substantial costs on employers.	<i>Assembly Floor</i> To INACTIVE FILE 8/22/2011
SB 866 (Hernandez)	Health Care: Prescriptions	SUPPORT	CAJPA believes that SB 866 will reduce confusion and speed up the time frame for employees obtaining their prescriptions	<i>Passed Legislature</i> TO GOVERNOR 9/9/2011

SB 883 (Correa)	Good Faith Defense	SUPPORT	CAJPA SUPPORTS SB 883 that provides employers with an affirmative defense when relying in good faith upon, and in conformity with, the opinions received from the division of Labor Standards Enforcement (DLSE).	<i>Senate Judiciary</i> <i>2-Year Bill</i>
SB 931 (Vargas)	Public Employers: Prohibit use of Outside Counsel	NO POSITION	Originally OPPOSED by CAJPA because SB 931 sought to provide unfair advantage to one side of the collective bargaining process by denying public sector employers the right to outside counsel on labor related issues. subsequently gutted and amended to contain unrelated issues concerning payroll cards.	<i>Passed Legislature</i> <i>TO GOVERNOR</i> <i>9/9/2011</i>