

CSDA-Sponsored AB 557 (Hart) Signed into Law

California Special District Association, 10/11/23

On October 8, Governor Newsom signed Assembly Bill 557 (Hart) into law, a bill sponsored by CSDA related to the Ralph M. Brown Act (the Brown Act) and emergency remote meeting procedures.

AB 557 builds on the success of Assembly Bill 361 (R. Rivas, 2021), an earlier bill also sponsored by CSDA that was widely used by public agencies during the height of the COVID-19 pandemic and other emergencies. AB 361 allowed local agencies to meet remotely during certain states of emergency using revised Brown Act meeting procedures; while this made it possible to conduct the people's business during emergency situations, the authority provided by AB 361 was set to expire at the end of 2023 due to the inclusion of a sunset date in the original legislation. In light of this sunset date, CSDA and other local government stakeholders sponsored AB 557, which struck the sunset date from the emergency remote meeting procedures, thereby extending them indefinitely. Following the passage of the earlier bill, AB 361, CSDA had heard from some of its members and other public agencies that the 30-day renewal process involved in the AB 361 framework was too cumbersome, as some agencies with fixed meeting schedules had times throughout the calendar year when greater than 30 days would elapse between each public meeting. AB 557 remedies this by changing the 30-day duration of AB 361 resolutions to 45 days, providing agencies with an additional two weeks before it will be necessary for the agency to renew its resolution under the AB 361 process in order to continue meeting remotely under the modified Brown Act procedures.

CSDA was joined by the California State Association of Counties, the League of California Cities, and the California School Boards Association in sponsoring AB 557. Each of these local government stakeholder associations had members affected by the operation of the emergency remote meeting procedures, meaning each had reason to support the bill. By coming together to support AB 557, the bill had clear and obvious local government support. Additionally, the bill's author, Assembly Member Gregg Hart (D-Santa Barbara), was previously a county supervisor for Santa Barbara County and a council member for the City of Santa Barbara. In Assembly Member Hart's capacity as a county supervisor, he played a vital role in navigating the county's response to the COVID-19 pandemic, meaning he was exceptionally well-versed in the specifics of local government emergency response and well-suited to author the bill.

AB 557 managed to pass through the Legislature without a single "no" vote, though it was not without some trial and tribulation. Confusion about some specific wording in the portion of the California Government Code section that the bill was amending ultimately was resolved by striking all references to "social distancing" within the bill's text, though that change did not meaningfully affect the operation of the underlying emergency remote meeting procedures. Adding some further drama to the process was the fact that a slew of other bills seeking to amend the Brown Act, also in relation to remote meetings, were introduced this year. That there were bills that intended to amend the same California

Government Code section meant that AB 557 would be caught up in the double-jointing process, in order to avoid a situation where AB 557 or another Brown Act bill would be unintentionally chaptered-out and nullified. It also necessitated educating stakeholders that AB 557 was distinct and unique from the other bills.

Nevertheless, AB 557 managed to overcome the obstacles in order to make its way to the Governor's desk, where it managed to get Newsom's signature and become law. The volume of support from CSDA members – stretching to multiple pages in committee analyses – made clear just how important this legislation was, and proved instrumental in the bill's passage. CSDA will continue to advocate on behalf of its members on this and related matters.

New California Law takes aim at injustices in water rights system, but barely

San Francisco Chronicle, 10/10/23

Gov. Gavin Newsom signed a rare piece of legislation this weekend that confronts the problems with California's deeply entrenched, and often unfair, water rights system.

The new law, SB389, gives state regulators clear authority to investigate the validity of water draws by some of California's biggest and most privileged water users, many of which have long evaded scrutiny due to their senior — and nearly untouchable — water rights.

The state's water rights system generally lets those who first claimed water from rivers and creeks, including farm suppliers and cities, to take all the water they want while everyone else gets what's left over. The enduring hierarchy has been criticized for disadvantaging those who weren't able to get in early, including indigenous people who were barred from taking part.

But while SB389 marks an unusual, and many would say overdue, update to the system, it's a small one. The legislation was weakened in the face of opposition, and two other bills that also sought to rein in senior water users this year didn't make it through the Legislature.

"This is better than getting nothing," said Tim Stroshane, recently retired policy analyst at Restore the Delta, a Stockton-based group that advocates for equitable water distribution. "I think it can help strengthen the legal basis by which the water board can do its job."

Many water agencies opposed SB389 and the other water-rights bills out of concern that changes to the system would undermine the vast and pricey infrastructure, built on longstanding water rights, that sends water across the state.

SB389 was introduced by Sen. Ben Allen, D-Santa Monica, amid uncertainty over how far state regulators could go to investigate the authenticity of a senior right. Because senior rights, meaning those acquired before 1914, predate the creation of the State Water Resources Control Board, legal questions have persisted about whether the state can regulate — and review — these water users.

The city of San Francisco, which initially opposed the legislation, is among California's many senior water rights holders. The city has claims on the Tuolumne River in the Sierra and gets much of its water from the pristine flows at Hetch Hetchy Reservoir in Yosemite National Park. The San Francisco Public Utilities Commission, though, dropped its opposition after changes were made to the bill.

Old water rights like the cities can be difficult to document. Being more than a century old, the original paperwork and evidence of historical water use may be gone. At the same

time, to ensure legal water use and uphold the water-rights system, regulators need the power to make sure diversions are authorized.

The new law clarifies that the state water board can look into pre-1914 water rights and demand information from water users, which sets the agency up for stripping the water right, should it be found invalid.

The final legislation, though, diluted some of the board's abilities to investigate a water user. For one, the law doesn't include an earlier provision that would have allowed regulators to look into the abandonment of a water right, or "forfeiture," without a conflicting claim to the water. Also, perhaps more significantly, regulators have to show cause for pursuing an investigation.

"It now includes important guardrails to prevent a blanket fishing expedition," said Kris Anderson, legislative advocate at the influential Association of California Water Agencies, which was against SB389 until changes were made. "We're happy that we're able to get to a place where we could remove our opposition."

Two other pieces of legislation, which joined SB389 in what was viewed as a campaign to take aim at injustices in the water rights system, stalled out this year.

AB1337 sought to codify the state water board's ability to restrict, or "curtail," senior water rights holders. It was introduced by Assembly Member Buffy Wicks, D-Oakland.

AB460 sought to streamline the board's ability to crack down on water rights holders who illegally take water and boost fines to as much as \$10,000 a day. The legislation followed an episode last year on the Shasta River where ranchers flouted curtailment orders, deciding that paying penalties was easier than going without water. It was authored by Assembly Member Rebecca Bauer-Kahan, D-Orinda.

The failed bills could be reconsidered next year.