

AUXILIARY ORGANIZATIONS ASSOCIATION

2011 ANNUAL LEGISLATIVE & COMPLIANCE REPORT*

January 2012

The *Legislative & Compliance Update* is reported regularly to the Executive Committee and periodically to AOA standing committees, as well as to the AOA Membership by postings on the AOA Web Site, *Forum*, and with an *Annual Report* at the Association's Annual Conference.

***Updates are cumulative of new or continuing significant matters through December, 2011. The Update may include issue-analysis and commentary that should not be construed as advice or as a position taken by the Auxiliary Organizations Association.**

I. 2010 Highlights

ABX8 7 (Budget Committee –Evans) Environmental pollution: program funding. This urgency bill will reinstate borrowed funds borrowed from the Beverage Container Recycling Fund (BCRF) retroactively to January 1, 2010. This repayment is critical to continued operation of recycling centers, some of which operate through campus auxiliary organizations. Passed Legislature by 2/3 and signed by Governor (3/12).

AB 1971 (Lowenthal) Alumni Information Disclosure. This bill, as amended, is the successor to AB 1222, vetoed by the Governor last year. The existing statutory framework under which the CSU and auxiliary organizations or alumni associations utilize alumni information for affinity-type programs is set to expire on January 1, 2011. This bill would continue the framework with refinements until January 2016. AB 1971 has passed the Legislature and was signed by the Governor (8/27).

SB 330 (Yee) Public Records – Auxiliary Organizations. This bill, as amended repeatedly, reprises last year's SB 218 (vetoed), and attempts to bring certain auxiliary organizations under the *California Public Records Act*, all the while now asserting that the intent is not to make auxiliary organizations under the Bill state agencies (but all the PRA exemptions are predominantly applicable only to "state agencies"). The CSU and AOA oppose this measure. See AOA website, *Forum, Legislative & Compliance Update* for details on the reasons for opposition. Passed Legislature; vetoed by Governor (10/6).

Senator Yee has reintroduced this measure as SB 8 in the 2011-12 Legislative Session. See highlighted update below.

2009 Forms 990 and 990-EZ Now Available

The IRS has finalized the 2009 Forms 990, 990-EZ, schedules and instructions, for filing in 2010-11. Learn about changes made to clarify and modify reporting requirements and find links to the new forms, schedules and instructions website: *IRS.gov*.

Related Form 990 Issues:

Form 990, **SCHEDULE B** – *Schedule of Contributors*. Auxiliary organizations file Form RRF-1 annually with the California Attorney General's Charitable Trusts Section, along with a copy of the most recent IRS Form 990 (and all attachments, including SCHEDULE B, *Schedule of Contributors*). U.S. Treasury Regulations permit organizations to "sanitize" the names of donors from Schedule B when providing (or posting) the 990 to the public. DO NOT "sanitize" the version of Schedule B filed with the Form RRF-1. The Schedule B is not considered a public document when filed by auxiliary organizations (as public charities), so it is not entered in database that gets posted for the public. Bottom Line: submit the entire information on the Schedule B attachment to your Form 990 when filing the annual RRF-1.

II. CSU 2011 CSU Sponsored Bills* of Interest to Auxiliary Organizations:

SB 736 (Cannella) Annual CSU Financial Audits. This bill proposes to eliminate the rotating independent financial audits (at least 10 campuses every 2 years) to a system-wide independent financial statement audit each year, including each campus using GAAP standards. Additionally, requires the inclusion of an addendum summarizing information on transactions with auxiliary organizations for each campus. Finally, provides that additional information shall be publically provided upon request. Before Higher Ed Comm. (7/6).

AB 997 (Wagner) Nonprofits Exempt as Professional Fiduciaries. See below for summary and status.

*Other measures directly impacting the CSU are monitored through the OAIR reporting system. See: <http://www.calstate.edu/air/>

III. Other Bills

AB 10 (Alejo) Minimum Wage. This bill would increase the minimum wage rate to no less than \$8.50/hour for most employees effective January 1, 2012. Held in Appropriations Comm. (5/27).

AB 22 (Mendoza) Consumer Credit Reports. This bill would prohibit an employer, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes unless the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, or confidential information, and (2) the position of the person for which the person is sought is a position in the state Department of Justice, a managerial position, a position in a city, county, or both city and county, that of a sworn peace officer or other law enforcement position, or a position for which the information contained in the report is required to be disclosed by law or to be obtained by the employer. Amended version passed Assembly; Enacted (10/11).

AB 59 (Swanson) Expand Family Leave. This bill would increase the circumstances under which an employee is entitled to protected leave pursuant to the Family Rights Act by (1) eliminating the age and dependency elements from the definition of "child," thereby permitting an employee to take protected leave to care for his or her independent adult child suffering from a serious health condition, (2) expanding the definition of "parent" to include an employee's parent-in-law, and (3) permitting an employee to also take leave to care for a seriously ill grandparent, sibling, grandchild, or domestic partner, as defined. Held in Appropriations Committee (5/27).

AB 153 (Skinner) Sales Tax for Online Purchases. This bill would require sales taxes to be collected from online purchases, with exceptions. Passed Assembly, in Senate Gov't & Finance Committee. (7/6).

AB 361 (Huffman) Benefit Corporations. This bill allows the creation of benefit or B corporations and permit corporate directors to pursue a broad set of public benefit objectives similar to nonprofit missions in addition to profits. Enacted (10/9). Effective January 2012.

AB 450 (Wieckowski) CSU Food Service Contracts. This bill would require the policies and procedures for the acquisition of food services to ensure a service contractor fully discloses to the campus, auxiliary organization, or other unit of the California State University all discounts, rebates, allowances, and incentives received by the service contractor from its suppliers, as specified, and to disclose and pay to the campus, auxiliary organization, or other unit of the university the full amount of the discount, rebate, or applicable credit, as specified. This bill would require the policies and procedures for the acquisition of services be available for review as part of any audit conducted under specified provisions. The bill would require any necessary changes to the policies and procedures for the acquisition of services be implemented upon the renewal, extension, or amendment of an existing agreement or as part of any new service agreement. Passed Legislature, vetoed by Governor (10/8)

AB 657 (Gordon) Electronic Statement of Information. Existing law requires corporations to register with the Secretary of State and file annual statements of information with specified information. Existing law requires the Secretary of State to annually mail a notice of compliance three months prior to the close of the applicable filing period. This bill would revise and recast those provisions and would instead allow a corporation to receive the annual renewal notice provided by the Secretary of State by electronic mail. The bill would make conforming changes to the statement of information, including with regard to mailing and street addresses. Enacted (9/1).

AB 795 (Block) Smoke-free Campuses. This bill authorizes enforcement of smoke-free campuses by CSU Trustees. Enacted (10/8).

AB 844 (Lara) Eligibility for Student Government. This bill would provide that a student who is exempt from paying nonresident tuition and without lawful immigration status under specified conditions is eligible to serve in any capacity in student government at the California State University or the California Community Colleges and to receive any compensation, as defined, that is connected with that service to the full extent consistent with federal law. The bill would also state that it is declaratory of existing law. Enacted (10/8).

AB 975 (Ma) Unemployment Insurance Regulations extended to Professional Employer Organizations. This bill would set a regulatory regime over private “professional employer services.” May have implications for auxiliary organizations providing employer services to other auxiliary organizations on a service bureau basis. Passed Assembly. Held in Senate Labor & IR Committee. (6/16).

AB 997 (Wagner) Nonprofits Exempt as Professional Fiduciaries. This bill, among other things, would exclude many nonprofit, tax-exempt entities, including auxiliary organizations, from the *Professional Fiduciaries Act*, if serving as the trustee of a charitable gift incidental to its purposes under specified conditions. Enacted (9/26).

AB 1211 (Silva) Nonprofit Corporations. This bill Clarifies state law related to board decision-making, reporting requirements upon dissolution, and the Attorney General’s oversight of nonprofits. Enacted (10/4). Effective January 2012. A Summary Analysis will be posted on the AOA Forum website, together with this Update.

SB 8 (Yee) Auxiliary Organizations Records Access. This bill is the third attempt to bring UC foundations and CSU auxiliary organizations under the California Public Records Act (PRA). A dramatic May 26 amended version emerged from the author’s negotiations with “interested parties” to create a separate records access statutory framework, and stop trying to shoehorn auxiliary organizations into the PRA.

This version was amended (on June 15, 23 and July 14), as predicted, and now includes community college auxiliary organizations. The Bill has now labeled the Richard McKee Transparency Act of 2011 after Richard McKee. McKee (a city college professor) was a famous (or infamous) activist-watchdog against many public agencies who tried to play loose with the Brown Act (open meeting law – not records access). Enacted (9/10). **Effective January 2012.**

SB 20 (Padilla) Food Labeling. This bill would conform state menu labeling requirements to federal requirements. Enacted (10/3). Effective January 2012.

SB 24 (Simitian) Personal Privacy: Security Breach Notification. Existing law requires any agency, and any person or business conducting business in California, that owns or licenses computerized data that includes personal information, as defined, to disclose in specified ways, any breach of the security of the system or data, as defined, following discovery or notification of the security breach, to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

This bill would require any agency, person, or business that is required to issue a security breach notification pursuant to existing law to fulfill certain additional requirements pertaining to the security breach notification, as specified. Enacted (8/31). Effective January 2012.

SB 201 (De Saulnier) Flexible Purpose Corporations. This bill allows a "flexible purpose corporations" both to seek profits and pursue public benefit goals, which "may include, but are not limited to, charitable and public purpose activities that could be carried out by a nonprofit public benefit corporation." Enacted (10/9). Effective January 2012.

SB 459 (Corbett) Independent Contractors. This bill would: prohibit willful misclassification of independent contractors; charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation, as where those acts would have violated the law if the individuals had not been mischaracterized; and would authorize the Labor and Workforce Development Agency to assess severe civil penalties from, and would require the agency to take other specified disciplinary actions against, persons or employers violating these prohibitions

This bill also provides that a person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for the individual shall be jointly and severally liable with the employer if the individual is not found to be an independent contractor. This bill would exempt from the provisions regarding joint and several liability a person who provides advice to his or her employer or an attorney who provides legal advice in the course of practicing law. Enacted (10/9). Effective January 2012.

SB 568 (Lowenthal) Recycling: polystyrene food containers. This bill would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container and would define related terms. The bill would provide that a food vendor that is a school district is not required to comply with the bill's requirements until July 1, 2015 under certain conditions. Passed Senate, in Assembly Appropriations Committee to Inactive File (9/20).

SB 602 (Yee) Reader Privacy Act. This bill, as amended several times, would enact the Reader Privacy Act, which would prohibit a commercial provider of a book service, as defined, from disclosing, or being compelled to disclose, any personal information relating to a user of the book service, subject to certain exceptions. Enacted (10/3). Effective January 2012.

IV. Federal Matters

Final Regulations Implementing Redesigned Form 990

The Department of Treasury has issued final regulations to implement the redesigned Form 990, *Return of Organization Exempt from Income Tax*. The final regulations are revised to allow for new threshold amounts for reporting compensation, to require reporting of compensation on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction.

The regulations also eliminate the advance ruling process for new organizations, change the public support computation period for publicly supported organizations to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting.

New Form for Miscellaneous Determination Requests

The IRS has released a new form that tax-exempt organizations will use to request certain determinations about their tax-exempt status. In addition to foundation status issues, organizations will use Form 8940, Request for Miscellaneous Determination, to obtain advance approval of certain activities and exemption from Form 990 filing requirements. Organizations applying for recognition of exemption and at the same time requesting advance approval of scholarship procedures or exception from filing Form 990 should include their request with their Form 1023, Application for Recognition of Exemption Under Section 501(c)(3), rather than file Form 8940.

The simple one-page form is accompanied by instructions that specify what information is required to support each of the nine types of requests that may be submitted. The IRS reminds organizations that a user fee must accompany most requests. For more information, see IRS.gov.

[Note: This new form and process has application to Section 509a reclassification requests.]

IRS Identifies Organizations that Have Lost Tax-Exempt Status - Special Steps Announced to Help Revoked Groups

The Internal Revenue Service recently has released a listing of approximately 275,000 organizations that under the law have automatically lost their tax-exempt status because they have not filed annual reports as legally required for the past three years. If an organization appears on the list of auto-revoked organizations it is because IRS records indicate the organization has a filing requirement and has not filed the required returns or notices for 2007, 2008 and 2009.

The IRS has issued guidance on how organizations can apply for reinstatement of their tax-exempt status, including retroactive reinstatement. In addition, the IRS announced transition relief for certain smaller tax-exempt groups – those with annual gross receipts of \$50,000 or less for 2010 and eligible to file Form 990-N, the e-Postcard. The relief allows eligible revoked groups to gain retroactive tax-exempt status and pay a reduced application fee of \$100 rather than the typical \$400 fee. More information, including FAQs and a Fact Sheet, can be found on the IRS website:

<http://www.irs.gov/charities/article/0,,id=239696,00.html>

New Reporting Requirements – IRS Form 1099

The recently enacted health care reform law will expand the reporting requirements for Form 1099-MISC business and nonprofits must file annually for individuals and partnerships to whom they paid a total of \$600 or more in the calendar year for rents, services, and financial transactions. The new law, which will take effect in 2012, will broaden the requirement for filing a Form 1099-MISC to include all corporations (except tax-exempt organizations) from whom a business or nonprofit has purchased \$600 or more in goods, as well as rents, services, and financial transactions.

Significant concerns have been raised by the nonprofit and business community about the time and cost involved in complying with these regulations. There are several proposals pending in Congress that would modify or repeal the new rules, and President Obama has called the new requirements "burdensome," and has pledged to work with Congressional leaders to find an appropriate fix.

Congressional Action: The Senate has passed an FAA Reauthorization bill (S. 223) that contains an amendment to fully repeal the 1099 reporting requirements. The cost of the measure is offset by redirecting \$44 billion in unobligated discretionary spending.

The House Ways and Means Committee has approved two pieces of legislation (H.R. 4) and (H.R. 705) that would also fully repeal the new rules. The full House is expected to take up repeal legislation in March.

Legislation in the 112th Congress:

- Small Business Paperwork Mandate Elimination Act of 2011 (H.R. 4) - introduced by Rep. Dan Lungren (R-CA) - would repeal the new requirements without offsets (245 House co-sponsors).
- Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (H.R. 705) - introduced by Ways and Means Chairman Dave Camp (R-MI) - would repeal the new requirements enacted by health care reform, as well as new requirements imposed on landlords by the small business lending law. The measure, estimated to cost \$24 billion, is offset with modifications to the limitations on amounts required for repayment of advance premium assistance tax credits for health insurance.

- Small Business Paperwork Mandate Elimination Act of 2011 (S.72) - introduced by Senate Finance Committee Chairman Max Baucus (D-MT) and Senate Majority Leader Harry Reid (D-NV) - would repeal the new requirements without offsets.
- (S.18) - introduced by Senators Mike Johanns (R-NE) and Joe Manchin (D-WV) - repeal the new requirements and offset the cost by \$39 billion in spending rescissions. The legislation has 52 co-sponsors, including 12 Democrats.

Employer-provided Cell Phones Removed from Listed Property

As part of legislation including \$12 billion in tax relief aimed at helping small businesses, Congress passed legislation removing employer-provided cell phones from the definition of listed property. The House by a vote of 237-187 has passed H.R. 5297, the Small Business Lending Funding Act, as approved by the Senate on September 16. President Obama signed the measure into law.

The effective date of this provision is January 1, 2010.

In response to the outpouring of employer opposition (including colleges and universities) to taxability and complicated recordkeeping requirements related to personal use of employer-provided cell phones, this year Treasury and IRS were very vocal in pushing Congress to simplify this issue by removing cellular phones and similar telecommunications devices (smart phones) from the definition of listed property, which the bill does.

The text of footnote #90 provides insight into Congressional intent to enable Treasury to allow the non-taxability of cell phones under two exceptions in the tax code:

The provision does not affect Treasury's authority to determine the appropriate characterization of cell phones as a working condition fringe benefit under section 132(d) or that the personal use of such devices that are provided primarily for business purposes may constitute a *de minimus* fringe benefit, the value of which is so small as to make accounting for it administratively impracticable, under section 132(e).

It is unclear if and when IRS will provide guidance following enactment of the legislation to assist employers with the many questions they have related to moving forward on these issues. NACUBO is working to provide additional information with options and strategies for institutions that may be making adjustments to policies and practices in light of the new law.

V. CSU Matters

Executive Order 1059. Policy for Appropriate Utilization of Campus Auxiliary Organizations

Effective June 6, 2001, this EO "augments" several existing EOs (698, 731, 732, 751, 849 and 1000, and supersedes EO 1052 and directive FS 2010-03, by:

- Restating campus auxiliary organization oversight responsibilities;
- Detailing the utilization authorization process, including function reviews;
- Establishing an "ownership" regime for assigning program/activity responsibility; and
- Setting further funds administration standards and guidance.

ISUAM Sponsored Programs Administration – Audit Monitoring & Resolution

Policy setting system-wide framework for compliance assessment and audit that demonstrates institution complies with federal, state, institutional and other sponsor regulations and policies. August 2009, No.11000.008.000. See: <http://www.calstate.edu/FinancialServices/CodedMemos/2009/FS2009-08-A-att.pdf>

VI. Miscellaneous Matters

Proposed Government Accounting Standards Set to Burden Public Employers

The Governmental Accounting Standards Board (GASB) has proposed changes to its accounting standards for governmental plans and public employers. The proposals will significantly change pension accounting and financial reporting for state and local governments including schools, at a time when liabilities and public pensions are under increased scrutiny.

GASB sets standards for accounting and financial reporting, and is concerned with pension obligations and attribution of expenses. Once its proposed changes are accepted, they become industry standards that government agencies are generally required to follow.

Employers are required to report information related to pension expenses on their financial statements. CalPERS regularly prepares detailed information regarding pension plan funding as part of its rate setting process. Currently, expense and funding data are closely aligned. Because of this, CalPERS actuarial staff can easily provide data to assist employers with their financial reporting obligations. The GASB proposal will change this, creating extra work and expense for employers.

Employers' costs will increase. It is likely employers will have to engage an independent actuary or CalPERS for the work necessary to meet the extensive new reporting requirements. Today, CalPERS actuarial data regarding plan funding can be used by employers to assist in their financial reporting requirements. Going forward, that may not be the case. Because the proposed rules are different from the funding methods used by CalPERS to set rates, CalPERS has serious concerns about its ability to conduct this work for employers in the timeframe set out by GASB.

Under the current GASB proposal, some employers would need to implement the requirements in their financial statements beginning with Fiscal Year 2012-13. If government employers are not prepared for the change, it could result in the employer being non-compliant with GASB accounting standards. This could jeopardize employers' ability to issue bonds.

Employers will be required to report on their financial balance sheet their net pension liability, i.e., the unfunded liability for the pension benefits promised to current employees, retirees, and their beneficiaries.

Reported pension expenses and liabilities are likely to increase at first under the proposed rules, and the pension expense will be highly volatile from year to year. This will increase the difficulty in planning and budgeting during these tough economic times. More info:

www.gasb.org/jsp/GASB/Page/GASBHomePage&cid=1175804792590

(Source: CalPERS Fact Sheet)

Are Collegiate Foundation Donations Really That Private?

A recent court ruling in Pennsylvania cast considerable doubt on the extent to which a foundation of a state university can withhold donor records (at least in that state). The facts of the case are somewhat bazaar, but the foundation's local newspaper prevailed in court to get release of redacted donor information. Details of the case have been posted on the AOA Forum webpage, *Legislation and Compliance*.

Public Pension Reforms Afoot? Between the Governor's "12 Point Public Pension Reform Plan, the Legislative Analysts' Office, and CalPERS there are plenty of indications that at least some steps are ahead to change current defined benefit levels for new hires. Areas of possible action include:

- A hybrid combination defined benefit (at a lower formula) and 401(k) style investment plan;
- More retirement plan cost sharing between employees and the employer where contributions would increase for both when pension fund needs more money due to shortfalls;
- More health care plan cost sharing by new employees;
- Greater benefit plan flexibility; and
- Allow "service prospective-only" benefit improvements.

Public Retirement Seminar

The *Public Agency Coalition and Public Retirement Journal* will host the 21st Annual Public Retirement Seminar on February 22, 2012 in Lakewood, CA. This is a great venue for networking with CalPERS staff, and getting the latest information on policy and legislation affecting auxiliary organizations belonging to the CalPERS retirement and/or health insurance program. For more information contact Robert Griffin, or go to publicretirementjournal.org.

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