AUXILIARY ORGANIZATIONS ASSOCIATION

2013 LEGISLATIVE & COMPLIANCE ANNUAL REPORT*

2014 Annual Conference

Legislative & Compliance Updates are 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 and with an Annual Report at the Association's Annual Conference.

*This Annual Report is cumulative of 2012 highlights, and new or continuing significant matters through December 31, 2013. The Annual Report may include issue-analysis and commentary that should not be construed as advice or as a position taken by the Auxiliary Organizations Association.

I. 2012 Highlights

CSU Bills

AB 2126 (Block) Board of Trustees' Regulatory Authority. In 1996, the CSU, as a public higher education entity with its own governing board was provided the authority to adopt its own regulations. This authority was set to expire on January 1, 2013 without subsequent legislation.

Under current law, the CSU has been able to streamline and shorten the timeline for implementing regulations and has removed duplicative processes of review. It has also benefited the State, eliminating the need for another state agency, the Office of Administrative Law to spend time and resources reviewing unfamiliar, specialized subject matter. CSU’s ability to act on new regulations immediately has been especially important for emergency and time-sensitive regulations. For example, CSU was able to immediately implement regulations relating to management employee furloughs and implement needed changes to support the new student transfer reform legislation in SB 1440.

AB 2126, as amended, was enacted. CSU regulatory authority is not permanent, but is extended to January 1, 2018 (9/7/12).

Other Bills

AB 340 (Furitani) Public Employees' Retirement Reform. AB 340 enacted a host of statutory reforms that will require CalPERS to amend most State employee retirement benefits, together with amending contracts with local governments and special districts, including participating auxiliary organizations, effective January 1, 2013. See SB 13 below for follow up measure(s).

CalPERS published a Circular Letter and Guide on this measure. Here are the links:


AB 970 (Fong) Systemwide Student Fees. This Bill established a prior notice and consultation regimen for the increase in mandatory student fees. In the case of the CSU, the Trustees are required to develop factors to be considered when adjusting such fees. This measure was enacted (9/27/12).

AB 1434 (Feuer) Child Abuse Reporting: Mandated Reporters. AB 1434 ("CANRA") makes all CSU and higher education employees mandated reporters as to any child abuse or neglect occurring on the campuses. While training would only be encouraged, all employees would have to sign a certification acknowledging their reporting responsibilities. This measure was enacted (9/24/12). See Executive Order 1083 for CSU implementation.
AB 2327 (Feuer) Charitable Organizations – Enhanced Enforcement. This measure revises enforcement provisions to provide that the Attorney General may issue a cease and desist order whenever she finds that any person or entity subject to the *Supervision of Trustees and Fundraisers for Charitable Purposes Act* has committed an act that would constitute a violation of, or is operating in violation of, any provision of that law.

The measure authorizes the Attorney General to impose a specified penalty on any person or entity for each act or omission that constitutes a violation of the *Act*, subject to certain procedures. It also authorizes the Attorney General, if the Attorney General had assessed a penalty against a person or entity pursuant to these provisions, to suspend the registration of that person or entity in accordance with certain procedures.

The measure authorizes a person or entity that the Attorney General has filed an action against pursuant to the *Act* to request a hearing to review that action in accordance with certain procedures. The bill authorizes the Attorney General to seek injunctive relief to enforce the provisions of the *Act*.

This measure prohibits any person from knowingly submitting for filing on behalf of any charitable organization any statement, report, financial statement, attachment, or other information to be filed with the Attorney General that contains information, a statement, or an omission that is false or misleading.

This measure requires a charitable organization, in any year that the balance sheet of that charitable organization shows that it holds restricted net assets, while reporting negative unrestricted net assets, to provide an explanation of its compliance with its charitable trust responsibilities and proof of directors’ and officers’ liability insurance coverage to the Attorney General's Registry of Charitable Trusts (RCT).

Enacted 9/24/12.

Note: The RCT Form RRF-1 is being revised to include an additional question and an associated worksheet. A further analysis of AB 2327 has been posted on the 2014 AOA Annual Conference Website.

AB 2641 (Skinner) Nonprofit corporations: required filings. Existing law provides for the organization and governance of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations. Existing law requires these corporations to prepare and file articles of incorporation with the Secretary of State, and within 90 days of that filing, and biennially thereafter, as specified, to file a form prescribed by the secretary stating specified information regarding certain officers, office location, and agent for service of process, among other information. Existing law requires a charitable corporation, as defined, to also file periodic written reports with the Attorney General beginning within 4 months and 15 days following the close of the first calendar or fiscal year in which it initially receives property, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof.

This requires specified state agencies to provide updated and accurate information about their requirements, and to include such information on a nonexclusive basis via the Internet. As amended, enacted 9/21/12.

ACR 98 (Wagner) California Law Revision Commission: Continued Studies Authorized. A pair of study areas approved for the Law Revision Commission to study and make recommendations to the Legislature warrant tracking:

“(12) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.”

“(17) Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.”

This measure enacted 9/25/12.
**SB 960 (Rubio)** California State University: campus-based mandatory fees. This bill, as amended prohibits specified California State University campus-based mandatory fees from being reallocated without an affirmative vote of either the student body or a campus fee advisory committee that meets CSU-set criteria. Enacted 9/27/12.

A summary analysis of this bill has been posted on the AOA Documents Archive website.

**SB 1052 (Steinberg)** Open Education Resources Council. This bill provides for the development through a coordinating council of low-cost digital textbooks for 50 lower division courses, as specified, across the state's public postsecondary education segments, subject to state and/or private funding. As amended, enacted 9/27/12.

**SB 1341 (Wolk)** Corporation Tax Law: Charitable corporations: Exemptions: Revocation. Existing law provides that no exemption shall be allowed for a charitable corporation that fails to file required registration or periodic reports with the Attorney General. Existing law provides that after the Attorney General has notified the Franchise Tax Board in writing that a charitable corporation has failed to file required registration or periodic reports, the exemption will be disallowed and may only be reinstated when the registration or periodic reports are filed. Existing law further provides that a charitable corporation whose exemption is disallowed must pay the minimum tax, as provided, for any year or years its exemption was disallowed.

This bill requires the Franchise Tax Board to mail a notice to a charitable corporation that has not filed its required registration or periodic reports with the Attorney General, stating the intent of the Franchise Tax Board to revoke the exemption unless the charitable corporation files all past due and currently due documents, as provided, within a specified applicable period. This bill removes the requirement that a charitable corporation whose exemption is disallowed must pay the minimum tax for any year or years its exemption was disallowed. This bill allows a charitable corporation whose exemption has been revoked to reestablish its exemption by filing and paying specified applications, fees, returns, statements, and payments. As amended, enacted 10/1/12.

**SB 1539 (Corbett)** This bill requires the publisher, as defined, of a textbook, or an agent or employee of the publisher, to provide prescribed data about the textbook to prospective purchasers, including a list of the products, as defined, offered for sale by the publisher germane to the prospective purchaser's subject area of interest, the wholesale or retail price of the product, the estimated length of time the publisher intends to keep the product on the market, and, for each new edition of the product, a list of the substantial content differences between the new edition and the previous edition of the textbook. Enacted, as amended on 7/17/12.

### II. 2013 CSU Matters of Interest to Auxiliary Organizations:

The CSU did not initiate any legislative proposals this year.


### III. Other 2013 Bills

**Assembly Bills**

**AB 382 (Mullin)** Public Access to Alternative Investment Documents. This bill, as amended, adds prescribed documents dealing with alternative investments within the exceptions to the requirement for disclosure of documents related to public meetings under the Public Records Act. Enacted 9/23.
AB 386 (Levine) Online Education. This bill, as amended, would:

- Express legislative intent that by the beginning of the 2015-16 academic year, students enrolled at a CSU campus be provided an opportunity to enroll in online courses available at other CSU campuses.

- Authorize any student enrolled at a CSU campus who meets specified requirements to enroll, without formal admission, and without payment of additional tuition or fees, except as provided, in a course provided entirely online, as defined, by another CSU campus on a space-available basis. Notice to such students of certain information relating to online courses would be required.

- Require the trustees, on or before January 1, 2015, to establish an easily accessible online database of online courses available at all CSU campuses to provide CSU students with a streamlined process within the CSU to allow them to find and enroll in courses that will earn them credit toward graduation, general education, and major requirements.

- Require the CSU to have a uniform definition of online education for the purposes of measuring its effectiveness. The bill would require the trustees to establish a series of uniform definitions for online education on or before January 1, 2015, as specified.

- Require the Trustees to report performance data about online education to the Legislature on or before January 1, 2017, and every two years until 2021.

- Require the CSU Trustees to report to the Legislature, on or before January 1, 2015, on the feasibility of developing an accelerated bachelor’s degree completion program consisting of distance learning courses, aimed at students who started college but never obtained a degree.

Enacted on 9/26.

AB 459 (Mitchell) Nutritional Standards for Vending Machines on State Property. This bill increases the percentage of food and beverage items sold from vending machines on state property that must meet specified nutritional standards and requires state cafeterias and concessions to enhance nutritional standards. Specifically:

- Increases, from 35% to 50% by January 1, 2015, to 75% by January 1, 2016, and to 100% by January 1, 2017, the percentage of food items offered for sale in vending machines on state property that are required to meet “accepted nutritional guidelines” as defined in current law and modified in this bill.

- Increases, from 33% currently to 100% on or after January 1, 2016, the percentage of beverages offered in those vending machines that must meet accepted nutritional guidelines.

- Requires, beginning January 1, 2015 or upon expiration of an existing contract, that food sold at food concessions and cafeterias in state-owned or leased buildings at least meet food and nutrition guidelines for concessions as determined by specified federal agencies.

- Encourages vendors for concessions, cafeterias, and vending operations on state-owned and state-leased buildings to sell items grown, packaged, or produced in California and that meet sustainability guidelines as determined by specified federal agencies.

- Requires the Department of General Services (DGS), in assisting state agencies regarding environmentally preferable purchasing pursuant to current law, to provide information on federal guidelines to promote health, sustainable purchasing. Held in Assembly Appropriations Committee (5/24).
AB 479 (Donnelly) **Textbook Sales Tax Exemption.** This bill, as amended, would exempt from sales and use taxes the gross receipts from the sale in California of, and the storage, use, or other consumption of, a textbook, as defined, purchased by a student at an institution of higher education or sold by an entity whose primary purpose is to provide textbooks to students attending institutions of higher education, for use as a learning resource in any course of study at that institution. Held in Assembly R&T Committee (5/15).

AB 491 (Torres) **Corporation Bylaws Emergency Powers.** This bill authorizes corporations, including a nonprofit public benefit corporation (including incorporated auxiliary organizations), to take actions during an emergency, as defined, to conduct the corporations’ ordinary business operations and affairs, as specified, and provide that any action taken in good faith during an emergency under this authorization would bind these corporation and not be a basis to impose liability on a corporate director, officer, employee, or agent.

This bill authorizes a nonprofit corporation to adopt bylaws to further direct the operations of these corporations during an emergency, as specified. Enacted 9/11/13.

AB 832 (Weber) **Electronic Benefits Transfer Cards on Campus.** This bill requires all convenience stores and bookstores on any campus of the University of California, the California State University, and the California Community Colleges to accept the use of electronic benefits transfer cards. Before Assembly Human Services Committee (4/16).

**Senate Bills**

SB 13 (Beall) **Public Employees’ Retirement Benefits.** This bill, as amended by the Senate, corrects and/or clarifies PEPRA (AB 340) from last year (see AB 340 above).

Enacted on 10/4/13. An analysis of PEPRA is posted on the AOA Website.

CalPERS is fully engaged in the process of proposing and adopting PEPRA regulations. See CalPERS Website: [http://www.calpers.ca.gov/index.jsp?bc=/employer/program-services/pension-reform/home.xml](http://www.calpers.ca.gov/index.jsp?bc=/employer/program-services/pension-reform/home.xml) for the particulars on SB 13. There is an effort afoot by CalPERS to reorganize its regulations so that all pension reform provisions are located in one particular part of the regulations.

SB 259 (Hancock et al) **Student Employees under HEERA.** SB 259 would expand the definition of employees under the Higher Education Employer-Employee Relations Act to include student employees (including those employed by UC and CSU) whose employment is contingent upon their status as students. Held in Senate Appropriations Committee (5/23/13).

SB 265 (Lara) **Electronic Textbook Costs.** This is a placeholder bill that intends to ensure clear and consistent practices surrounding electronic textbooks for the state’s college and university students. Bill referred to the Senate Rules Committee (2/21/13).

SB 265 (Block) **Student Trustees.** This bill changes the requirements for services as a student trustee on the CSU BOT. Specifically: 1. Changes the grade level requirement for serving on the CSU BOT from students who have at least junior standing to students with at least sophomore year standing; 2. Requires that the tuition fee be waived for student members of the CSU BOT for the duration of their terms of office. Enacted 8/27/13.

SCR 62 **Women on Corporate Boards.** This adopted measure encourages equitable and diverse gender representation on corporate boards, and urge that, within a 3-year period from January 2014 to December 2016, inclusive, every publicly held corporation in California with 9 or more director seats have a minimum of 3 women on its board, every publicly held corporation in California with 5 to 8 director seats have a minimum of 2 women on its board, and every publicly held corporation in California with fewer than 5 director seats have a minimum of one woman on its board.

Note: While this resolution does not apply to nonprofit corporations like AOA, it should be noted that nonprofits have long been in the forefront of accomplishing equitable and diverse gender representation on governing boards in the independent sector.
IV. Federal Matters

IRA Rollover Law Set to Expire December 31, 2013.
The IRA Charitable Rollover allows individuals 70½ and older to donate up to $100,000 from their IRAs and Roth IRAs to public charities, including colleges and universities, without having to count the distributions as taxable income. The IRA Charitable Rollover has increased giving to all public charities, including colleges and universities. The IRA Rollover expires on December 31 2013, at a time when colleges and universities are depending more and more on private support. [Source: NACUBO]

Internet Posting Requirements for Exempt Organization Federal Tax-Related Documents

IRS regulations include specific requirements for organizations that choose to post disclosable federal tax-related documents (e.g., 990s, 1023).

An exempt organization does not have to comply with requests for copies of its annual information returns or exemption application if it makes them widely available. However, making these documents widely available does not relieve the organization from making its documents available for public inspection.

The organization can make its application and annual information returns widely available by posting the application and annual information returns on the Internet. For the rules to follow so that the Internet posting will be considered widely available, see Regulations section 301.6104(d)-2(b).

If the organization has made its application for tax exemption and/or annual information returns widely available, it must inform any individual requesting a copy where the documents are available, including the website address on the Internet, if applicable. If the request is made in person, the notice must be provided immediately. If the request is made in writing, the notice must be provided within 7 days.

Also note: An organization that filed for exemption before July 15, 1987 is not required to provide the application for exemption (Form 1023), if that document was not available on that date.


Definition of Governmental Agency (Who fits as an “Instrumentality of the state?”)

Under the Internal Revenue Code (IRC), in order to maintain its “governmental plan” status, CalPERS is only allowed to contract for pension benefits with “public agency employers.” Easy criterion, right?

Over the years, the state law has been generously amended to allow a host of organizations to join the CalPERS retirement program, and some of whom CalPERS said needed to obtain DOL approval. In turn, DOL would merely respond by saying such organizations (including many auxiliary organizations) would make up a “de minimus” portion of the CalPERS total employer-membership (not necessarily that these organizations did in fact meet the definition of an “instrumentality of the state”).

Now the IRS has proposed new regulations to crack down on perceived abuse of the non-ERISA exemption for so called “governmental plans.”

What specifically is an employee retirement “governmental plan?”

The answer to that question may still be a long way off, but it appears the IRS is prepared to take a stab at it in a more definitive way. See: http://www.irs.gov/pub/irstege/reg_157714_06.pdf

There are implications for auxiliary organization asserting non-ERISA status as “instrumentalities of the State” for DC plans, as well as for auxiliary organizations now in the CalPERS retirement program, or those attempting to join.
CalPERS issued an April 20, 2012 Circular Letter to All Employers to provide background and analyze potential impacts. See:


Thus far, there’s been no indication about what will happen to employers who already participate in PERS who might not meet the IRS’s new definition of an agency or instrumentality of the state.

There’s an argument to be made that employers already in the system should be grandfathered in, regardless of the IRS’ new standards, but no one knows if that’s the way the IRS is leaning.

To appease the feds, CalPERS decided that it will implement the draft form of the IRS regulations when approving any new employer request to contract with CalPERS, even though the new standards are not yet legally required.

While it debated internally about how to handle the IRS’ proposed regulations, PERS has put off making decisions on most employer requests to participate for at least the past eight months. In one instance, a county created a special transportation district, with all of its employees comprised of former county employees who participated in CalPERS. For six months CalPERS sat on the agency’s request to contract for pension benefits, and only in the nick of time was the agency able to secure a CalPERS contract and avoid having its legacy/classic members become subject to the new PEPRA formulas – which would have happened if CalPERS continued to refuse to contract until after the PEPRA’s January 1st effective date. It’s not clear whether any other employers got caught in this bind.

Beginning immediately, CalPERS staff will process employer requests to contract for benefits using new criteria to determine whether an employer is an agency or instrumentality of the state. Criteria includes factors such as whether the governing board is controlled by the State or a political subdivision; the members of the governing board are publicly nominated and elected; the State or a political subdivision have fiscal responsibility for the general debts and other liabilities of the entity; or the entity’s employees are treated like other public employees, such as civil service protections. The list of factors is lengthy, so if you’re interested in learning more, see Circular Letter 200-022-13 at:


IRS Final Report of Colleges and Universities Compliance Project

The IRS is wrapping up its multi-year colleges and universities project examining a number of compliance areas. Of particular interest to auxiliary organizations is the underreporting (or misreporting) of UBIT activity. A copy of this report is posted on the AOA Website (Document Archive, Legislative Reports).

IRS Form 990 for 2012 --Significant Changes

The IRS has published significant changes to the Form 990, Form 990-EZ, schedules and instructions for tax year 2012. These changes are summarized on the AOA Website.

V. CSU Matters

Revised Auxiliary Organization Model Operating Agreement

A revised model operating agreement for auxiliary organizations has been posted on the Chancellor’s Office, Contract Services & Procurement website. See: http://auxiliary.calstate.edu/?page_id=1195

It includes an expanded “Disposition of Assets” clause in Section 11 by the addition of an “alternate” disposition of an organization’s assets if there is an agreement breach or termination (or no renewal?). The alternative disposition is at the sole discretion of the CSU to trigger the alternative and to determine the successor auxiliary organization. Who was involved in any consultation on this clause?
Executive Orders

Executive Order 1089 – System-wide Policy Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and Procedures for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties. This is a consolidated policy and procedures framework. The definition of “Employee” in this new Executive Order does excludes auxiliary organization employees.

Executive Order 1087 -- California State University Risk Management Authority. This Executive Order reauthorizes the California State University to participate in the formation and membership of the Joint Powers entity known as the California State University Risk Management Authority (“CSURMA” or the “Entity”) formerly known as the California State University Risk Pool.

Executive Order 1083 -- Mandatory Reporting of Child Abuse and Neglect. This Executive Order is under review for possible amendments.

ISUAM Developments (http://www.calstate.edu/icsuam/)
Policy Number: xxxxx.xx [new Student Affairs Section TBD]
Policy Title: Administration of Student Organization Funds

Comment: Consultation Close Date: 1/17/14. See particularly Section 800 regarding disposition of net assets if organization “disbands.” Reference: http://www.calstate.edu/icsuam/sections/Student_Affairs/Student_Org_FUNDS_draft.shtml

Policy Number: 1401.00 (Consultation Close Date: April 12, 2013)
Policy Title: Campus Legal and Regulatory Compliance [Draft]

Comment: Will the application of this proposed policy extend to auxiliary organizations?

Policy Number: 5303.0
Policy Title: Commodities with Special Purchasing Requirements (Consultation Close Date: January 7, 2013).

Comment: See Section 202 concerning application of this policy to auxiliary organization vehicle acquisitions.

VI. Other Matters

CalPERS Adopts Board Core Competencies

Late last year the CalPERS Board of Administration adopted a comprehensive revised list of Board competencies. The List is based upon the results of an independent Board Governance Study, and covers Governance, Strategic and Communications competencies.

The revised Core Competencies List complements the Board’s Governance Policy and Statement Governing Principles that represent potential templates for auxiliary organization governing boards. See: http://www.calpers.ca.gov/index.jsp?bc=/about/board/policies.xml

Robert E. Griffin
Legislative & Compliance Advisor

January 3, 2014