

FISCAL REPORT

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AB 218 and Its Fiscal Impact on Schools



BY DAVE GEORGE, SELF

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[Editor's Note: From time to time, we publish guest articles that we think inform readers on timely and relevant issues for schools. This guest article by Schools Excess Liability Fund (SELF) provides information on the impact of Assembly Bill (AB) 218 for local educational agencies (LEAs), focusing exclusively on fiscal considerations for insurance management. We recognize that we are dealing with very sensitive subject matter that has a profound impact on victims, and in no way do we desire to diminish their pain, but rather hope to inform those responsible for ensuring coverage. While insurance is an important topic, it is no substitute for proper recruiting, hiring, training, and supervision of those responsible for the safety of every child in their care. Dave George is the Chief Executive Officer for the Schools Excess Liability Fund.]

As you may or may not already be aware, AB 218 was signed by Governor Gavin Newsom in mid-October and becomes law on January 1, 2020, allowing lawsuits from any time in the past against schools by victims of sexual assault. This article does not seek to minimize or trivialize the trauma associated with inappropriate sexual conduct, but rather share how AB 218 creates a ticking time bomb for LEAs. School insurance professionals and other education stakeholders across California have worked to educate our state leadership on the potential effects of this law on public education, as LEAs around the state will be pushed to fiscal distress. Insurance premiums were estimated assuming policies would not incur costs of future sex-assault claims once the statute of limitations had passed. Now insurers need to recalculate their reserves based on the new law. For example, one school insurer alone increased their claims reserve by \$100M when New York passed a similar law last year; California will likely be far worse.

Here are some things to know now and to prepare for in your 2020–21 and subsequent budget cycles.

AB 218: What Does the Bill Do?

AB 218 is a broad, retroactive reform of California civil law as it relates to childhood sexual assault. It allows lawsuits to be filed against your LEA and your employees (and former employees) by a person up to the age of 40, for acts of sexual assault that occurred prior to age 18—meaning students you may have had up to 22 years ago. This is a permanent part of the law. It further includes what is called “reviver” language that allows

lawsuits against schools to come forward, regardless of the age of the victim. The window of this “reviver” period is three years. Therefore, LEAs can receive a lawsuit beginning January 1, 2020 through December 31, 2022 for allegations occurring from any point in the past, by a person of any age.

What is a JPA?

California law allows public agencies to come together for a mutual purpose and form a joint powers authority (JPA), which itself is also a public entity. Insurance protection is a common use of this tool, as a JPA is how public school districts in California commonly procure their insurance, including employee benefits, workers compensation, and property and liability insurance. There are many JPAs in California for public schools, but regardless of what entity it is, a JPA is the legal structure for how we all work. The JPA is NOT insurance; it is a cooperative, or joint purchasing pool, of insurance for public entities. Each of your districts makes a contribution annually to your JPA; think of it as your insurance premium. Public entities, in fact, largely insure each other on a statewide basis by sharing in each other’s risk, also known as “self-insurance.” The public sector has been using this mechanism of self-insurance as far back as the 1970s. Through a combination of self-insurance, purchased coverage, and excess insurance, LEAs attempt to protect their ongoing viability for current and future students. SELF has protected school districts in California since 1986 by providing excess liability coverage through a JPA.

AB 218 Implications for Your District

If you are involved in your district’s insurance program, you know that property and liability insurance costs have increased over the past few years. Property coverage saw the most dramatic increase this past year due to multiple years of wildfire activity in California, but liability coverage costs have grown substantially as well. AB 218 will add very significant cost pressure on top of this. Litigation, jury awards, and settlements against public agencies in California have risen dramatically in the past few years. The addition of AB 218 to California law will compound this in two ways.

First, recalling that you largely insure each other as public entities, those dollars are collected annually and are actuarially determined. Just as pension contribution rates are rising for California State Teachers’ Retirement System and California Public Employees’ Retirement System, so will estimated liability costs for lawsuits, and thus contribution rates for insurance will rise. Second, while JPAs self-insure, they also procure traditional insurance/reinsurance to protect against volatility in claims. Insurance and reinsurance markets in the U.S. and globally are raising their rates significantly in response. But more than just raising rates, they are weighing their own risk with California public entities and, in some cases, choosing to discontinue doing business with us or limiting the amount of insurance they are willing to offer to public entities. This ultimately puts more of the risk and cost back to you and will encroach on your General Fund.

What to Expect Now

Your General Fund contributions to Fund 67 for liability premiums will be rising significantly and potentially exponentially for the foreseeable future. This is not just because prospective costs will be rising, but retrospective costs as well. Because this legislation is retroactive to all years in the past, you may receive lawsuits from any year. The only way to pay for these prior years is with further contributions from LEAs and reliance on old insurance policies that may have been in place.

You will want to report any lawsuit immediately to your current insurance partner JPA, which we know you already have systems in place to do. But understand you may receive litigation from years you had a different insurance arrangement. You will want to document your insurance coverage history as far back as you are able so you understand what coverage you had, the policy limits, and whether there are any years in which a commercial insurer you had a policy with may no longer be in business. At SELF, we are assisting our members with their coverage history with us as far back as 1986, but some litigation will pre-date that. Many of your JPAs are doing the same.

Going Forward

Look to your current JPA for help and guidance. JPAs have been your insurance experts for well over three decades so that you can focus on what you are experts in: educating California's students. I can speak for all of us in the school insurance business in saying that we are here to serve schools. While our news will be focused on increasing costs in the coming years, know that we are committed to help guide you through the impacts of these changes in law on your insurance. We will continue to keep you updated as we know more and, to give as much advance notice as possible, so you can plan your insurance costs each budget year.