FINANCE STRATEGIES TO WEATHER THE STORM OF CHILDHOOD ASSAULT CLAIMS

NOVEMBER 3, 2025

SAN DIEGO, CA

SESSION ONE

Magnitude of the Fiscal Storm: Potential Effects and the Agencies Impacted

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Assembly Bill 218

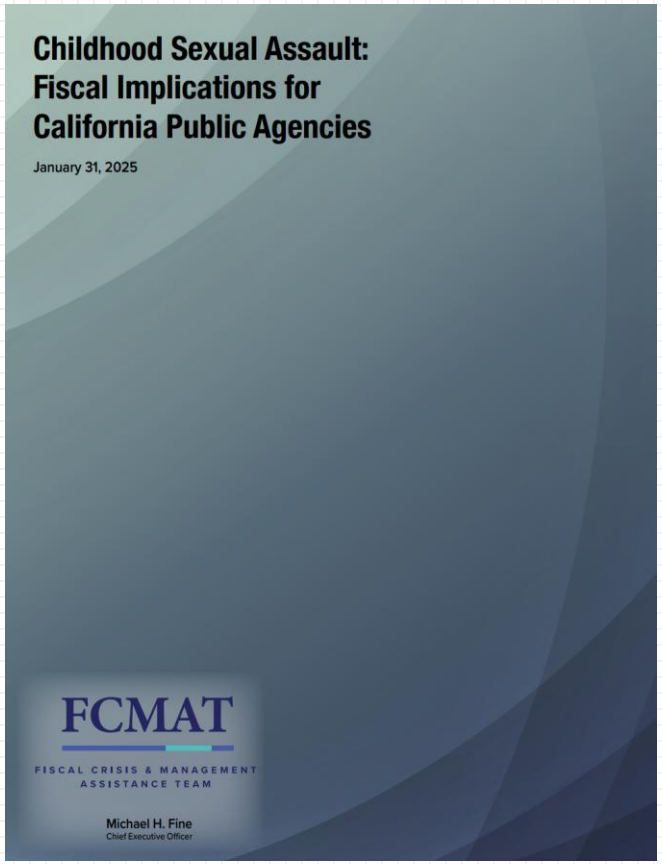
- Assembly Bill 218 (Chapter 861, Statutes of 2019) eliminated many claim prerequisites and increased or effectively eliminated the statute of limitation periods for claims of childhood sexual assault against public entities. It increased public agencies' liability exposure by:
  - Extending the statute of limitation periods for claims of childhood sexual assault.
  - Reviving certain claims for which the statute of limitations period had otherwise expired, if brought by December 31, 2022. The legislation retroactively increased the time limit for beginning an action to recover damages suffered as a result of childhood sexual assault to 22 years from the date the plaintiff attains the age of majority, or within five years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual assault, whichever is later.

Assembly Bill 452

- Assembly Bill 452 (Chapter 655, Statutes of 2023) eliminated timelines for the commencement of actions for the recovery of damages suffered as a result of childhood sexual assault.
  - Applies to any claim in which the assault occurred on or after January 1, 2024.

FCMAT Report on Fiscal Implications

- Budget Trailer Bill required the Fiscal Crisis and Management Assistance Team (FCMAT) to provide recommendations to the Legislature and the Department of Finance regarding new, existing, or strengthened funding and financing mechanisms to finance judgments or settlements arising from claims of childhood sexual assault against local agencies.
- The best estimate of the dollar value of claims brought to date is $2–$3 billion for local educational agencies. Other local public agencies' costs will exceed that value by a multiplier.



Local Impact

- Local impacts vary widely depending on whether the claim is insured, underinsured, or not insured.
- Whether faced with a claim or not, all public agencies are being affected by significant increases in liability insurance premiums, availability of insurance, exclusions or aggregates applied to insurance coverage, special assessments, or retroactive premiums.
- Public agencies' programs and services will be affected by the depletion/replenishing of reserves, coverage cost increases, self-insured retentions, and other claim costs that are competing for other funding priorities.

Local Impact (cont. 2 of 2)

- One of the 25 largest school districts had a jury judgment of $135 million for two of six victims; the jury apportioned 90% responsibility to the district. Ultimately, a post-award settlement of $45 million was agreed to in exchange for a lump sum payment. Insurance coverage was limited to $14 million, leaving $31 million plus legal fees to be paid by the district from reserves.
- One 350-student school district had an estimated greater than $20 million risk from three victims, with no effective insurance coverage. The district settled with each victim pre-trial for approximately $9 million in total. The district will pay a lump sum settlement from reserves in their general and capital projects funds, depleting unrestricted reserves by more than 50%.

FCMAT Report Recommendation Themes

- The report contains 22 recommendations across four themes.
  - **Data:** Knowing more about the volume and nature of the claims requires establishing a statewide data repository with common definitions and classifications.
  - **Financing:** Timing within the judicial process is important as it facilitates the mechanics of the funding options. Funding options are identified so that local educational agencies may pay their obligations and continue to instruct students and serve their community.
  - **Victims' Compensation Fund:** Provide an alternative to the time-consuming and complex judicial system for victims to seek redress.
  - **Prevention:** Assaults on children must stop, and we should do everything reasonable within our authority to prevent them.

FCMAT's Report Includes…

- A road map on how to finance indebtedness created by settlements and judgments resulting from uninsured or underinsured causes of action.
- Acknowledgment that public agency indebtedness is nuanced, and the report addresses challenges of time, judicial validation, and constitutional debt limits.
- Reviews the special constitutional protections afforded school districts and community colleges experiencing insolvency.

FCMAT's Report Does Not Include…

- A limit on the rights of childhood sexual assault survivors or their remedies from public agencies.
- Abandoning or otherwise discharging the obligations of those our judicial system holds responsible for injuries to children.
- Suggested amendments to the revival statute.
- Tort limits or recommendations for other far-reaching tort reforms.
- An ask of the state to appropriate funds.
  - Although some enhanced prevention measures could result in mandated cost reimbursement considerations.

Financing Recommendations

- Recommendations number 3 through number 6 are specific to timing within the judicial process:
  - Amend Government Code 970.6 to provide for the determination of unreasonable hardship by the local governing body using established standards.
  - Amend Government Code 970.6 to provide a sliding scale of time for repayment based on the judgment amount, plus interest.
  - Extend the payment due date to 150 days from when a judgment is entered by the court for judgments that are greater than 50% of the local agency's unrestricted reserves.
  - Clarify that a Code of Civil Procedure 860 validation proceeding may be brought by a public agency before tort action judgments are entered against the public agency.

Financing Recommendations (cont. 2 of 3)

- Recommendations number 7 through number 11 are specific to funding options:
  - Consider a limited exception to the prohibition on the use of lease financing proceeds for general operating purposes in Education Code (EC) 17456 for situations where an otherwise financially stable school district is faced with an extraordinary liability.
  - Extend state and local payment intercept mechanisms to public financings by local public agencies rather than limit the mechanisms to the California School Finance Authority.
  - Expand or direct an appropriate role for the state's Infrastructure and Economic Development Bank in financing childhood sexual assault settlements and judgments.

Financing Recommendations (cont. 3 of 3)

- Adopt an alternative receivership statute for school districts requesting emergency apportionments solely due to childhood sexual assault obligations.
- Extend the maximum repayment term of 20 years for emergency apportionments when the loan amount is significantly higher than the school district's ability to pay and based on analysis performed and disclosed during the process leading to an emergency apportionment.

Initial Legislative Response

- **Senate Bill 848 (Perez):** Addresses all the prevention recommendations. (Signed by the governor on October 7, as Chapter 460 / Statutes of 2025)
  - **Assembly Bill 1233 (Hoover):** Addresses one of the prevention recommendations (expansion of work history reporting and inquiry). (Abandoned)
- **Senate Bill 832 (Allen):** Addresses three of the financing recommendations (validation, repayment terms on emergency apportionments, intercept mechanisms). (Abandoned)
- **Senate Bill 577 (Laird):** Addresses one of the financing recommendations (validation) and two tort-related topics outside of the FCMAT recommendations. (Withdrawn from Assembly Floor, potential two-year bill.)

Initial Legislative Success

- Dramatically increased awareness of the magnitude of the issue facing public agencies.
  - Awareness is further increased as cases are adjudicated and claims paid.
- Senate Bill 848's provisions begin to close gaps in state policy by addressing local education agency safeguards to prevent offenses going forward. This is a moral imperative and also begins to address AB 452's elimination of the statute of limitations.
  - May model improved practices for other public agencies as well.
- Requirement for local education agencies to report AB 218-related claim costs and premiums using a unique identifier within their account structure.

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RATINGS

California Debt and Investment Advisory Commission

November 3, 2025

Agenda

1. Credit impact of AB 218
2. Positioning of CA local governments
3. Q&A

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Credit impact of AB 218

Potential credit impacts of AB 218

To date, no rating actions have been taken as a direct result of AB 218

→ Local governments are generally highly rated with growing economies and strong management

→ Reserve and liquidity levels are especially strong for CA school districts and cities relative to peers

→ Have the ability to issue judgment obligation bonds to pay settlement amounts over time

AB 218 settlements will remain an ongoing risk

→ AB 218 opened a 14-year window for plaintiffs and AB 452 ensures that future claims will be possible

→ Increased awareness makes childhood sexual assault cases likely to be an ongoing issue

→ Lack of state database and uneven disclosure practices increase uncertainty

May compound financial challenges already facing local governments

→ CA local governments are grappling with incremental population growth and low birthrates

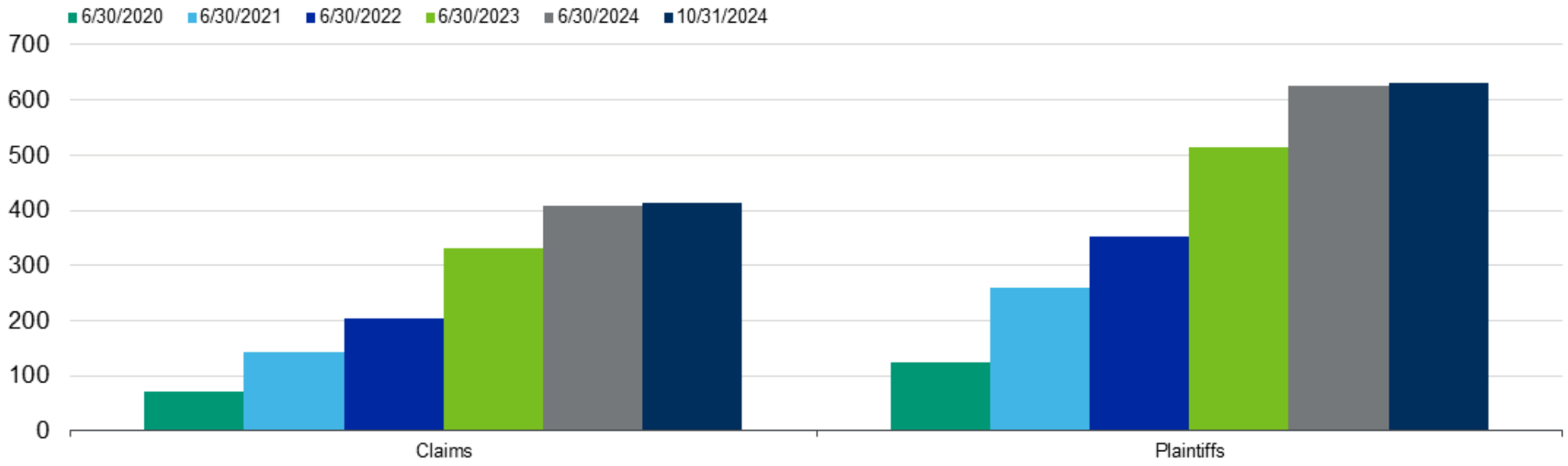
→ State aid and sales tax increases have also diminished

→ Settlements and insurance costs compete with other operating needs. Financings add to fixed costs.

Claims for childhood sexual assault have escalated

Schools Excess Liability Fund data suggest pace of new claims may be slowing

Around half of the 412 claims have been settled



Source: Schools Excess Liability Fund 2024 annual report

Significant Settlements

Los Angeles County (Aa1 stable issuer rating)

→ Faces $4 billion in settlements for more than 6,800 initial claims; will now pay $828 million more

→ Plans to issue judgment obligation bonds to finance a portion of these settlements

Los Angeles Unified School District (Aa2 stable GOULT rating)

→ Issued $308 million in judgment obligation bonds (JOBs)

→ $500 million in authorized JOBs

→ Estimate total exposure around $650 million

City of Santa Monica (Aaa negative issuer rating)

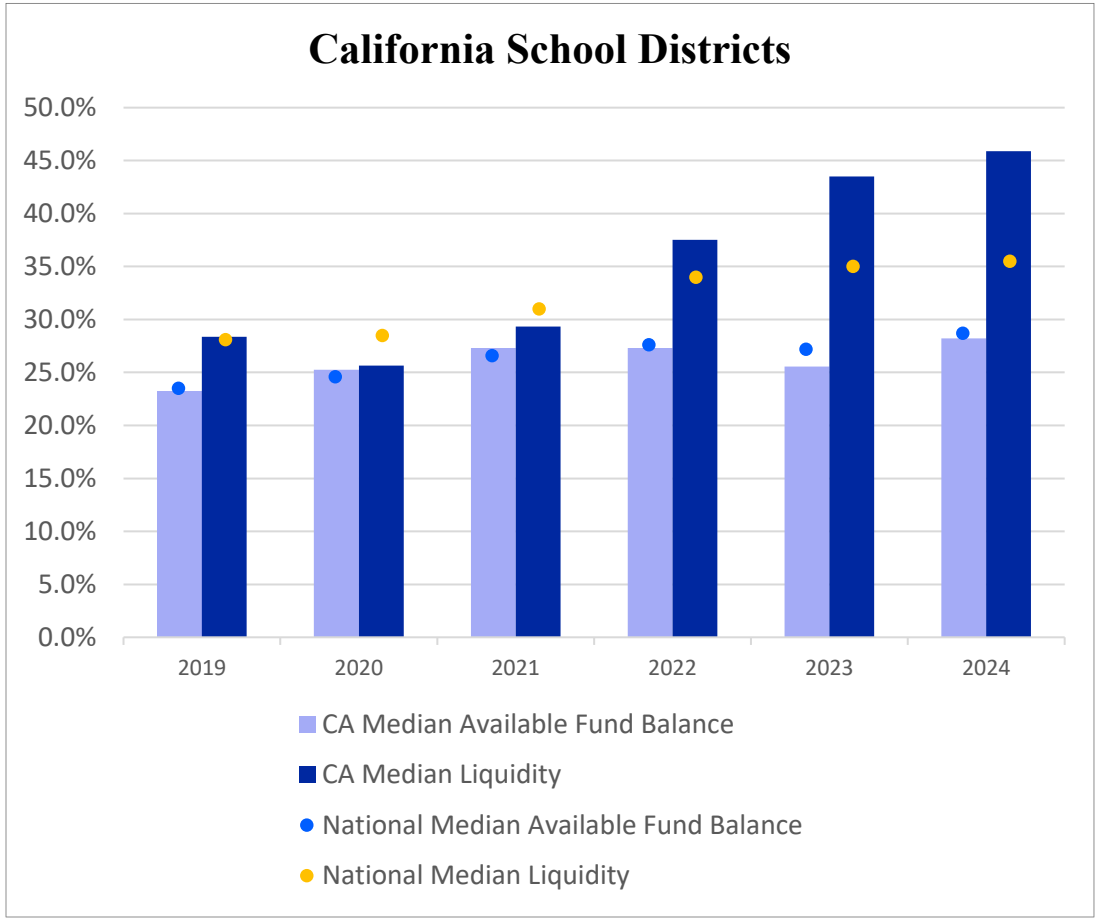
→ Has settled with 229 individuals for approximately $229 million

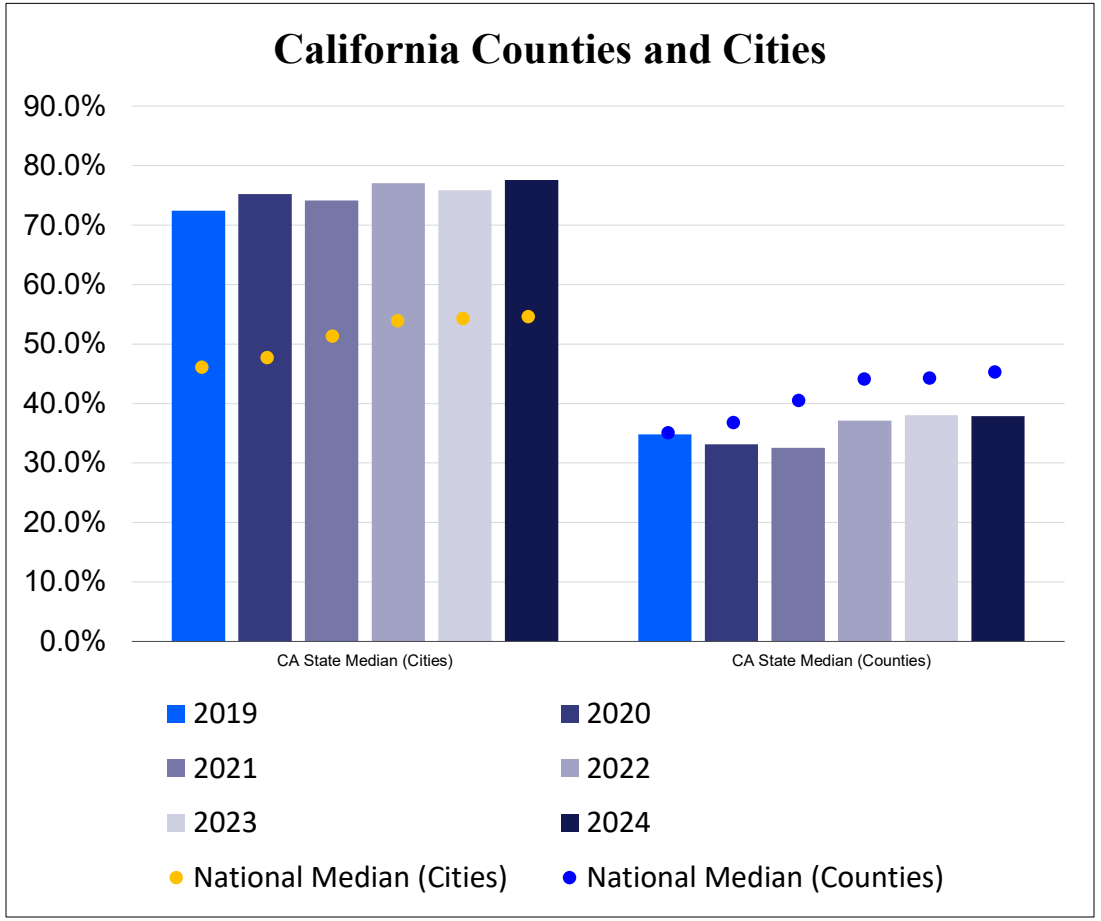
→ Has relied on liability self-insurance funds, general fund savings set aside from prior years, and $52 million in interfund borrowing to pay settlements. Faces around 180 additional claimants

→ Negative outlook incorporates overall budgetary stress; not solely AB 218 liabilities

Positioning of CA Local Governments

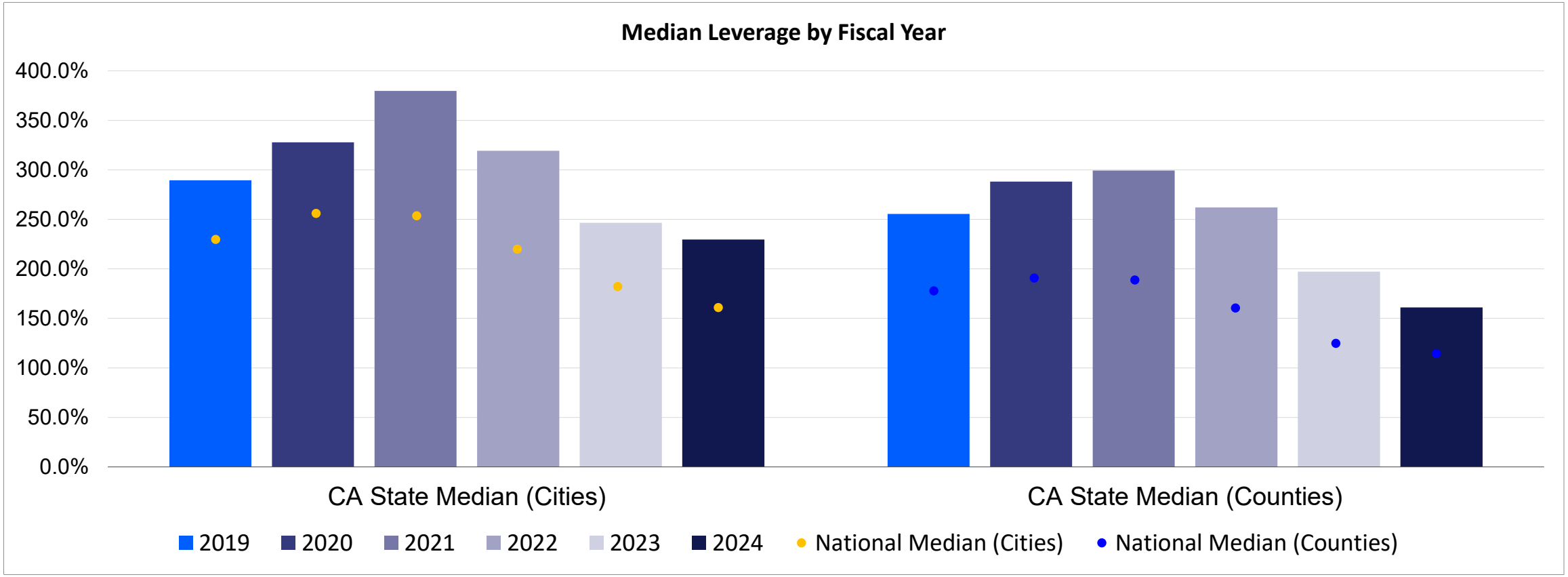
CA local governments will leverage reserves and liquidity to mitigate upcoming challenges





Source: Moody's Ratings and audited financial statements

Leverage ratios in CA exceed medians driven by pensions



Source: Audited financial statements and Moody's Ratings

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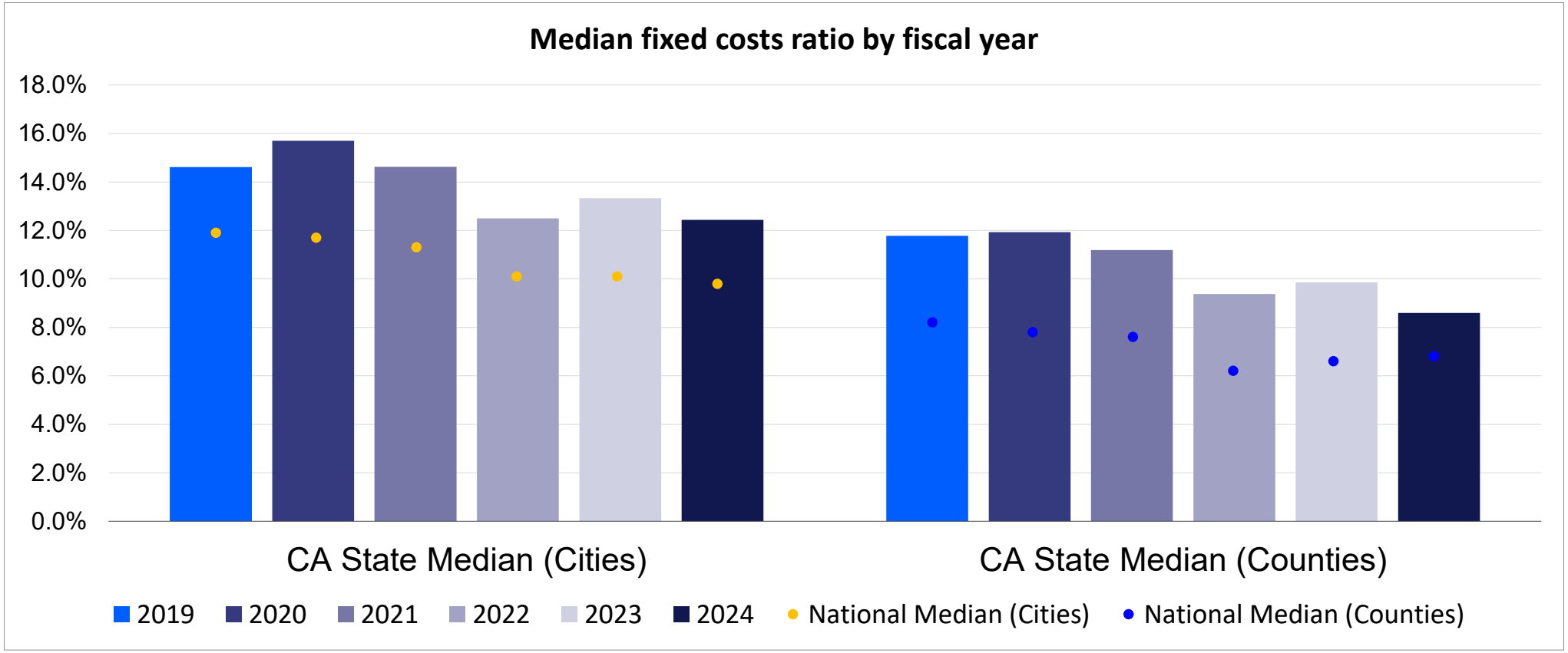
Fixed costs are also higher than peers but remain under 15%



Source: Audited financial statements and Moody's Ratings

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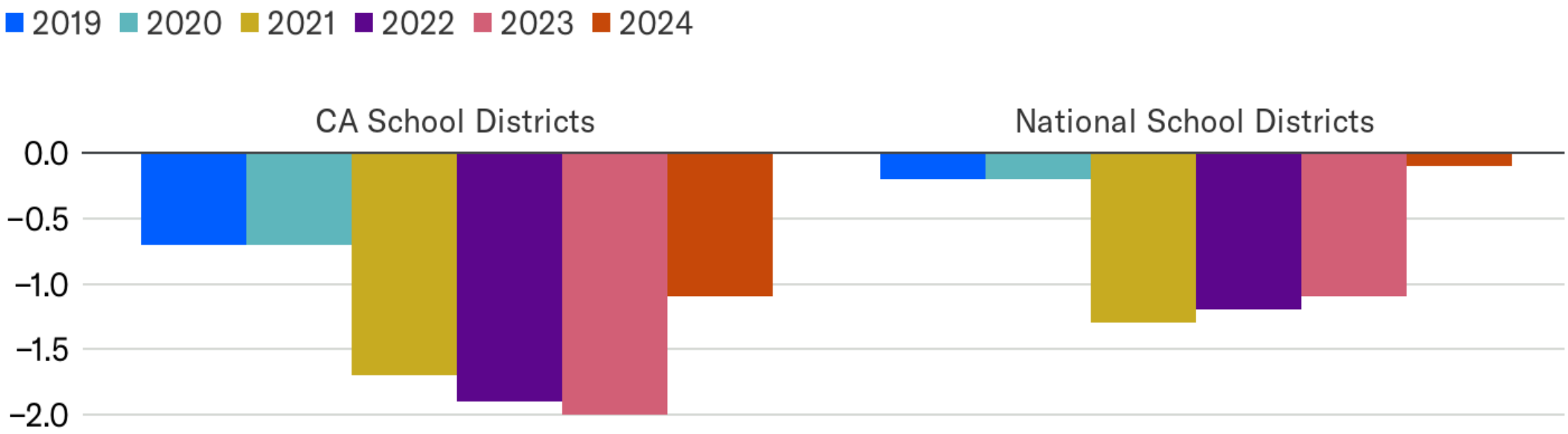
Most CA school districts face declining enrollment

Low birthrates and high housing costs drive losses that exceed national figures



Source: Moody's Ratings and CDE

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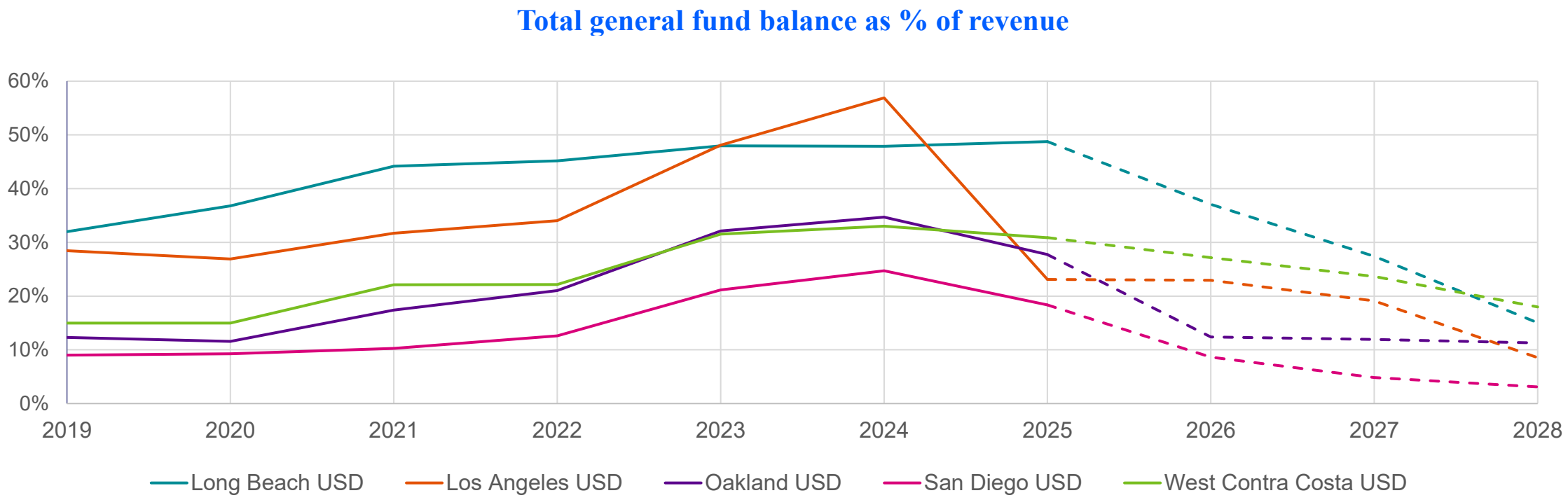
Large school districts in CA project declining balances

Forward projections allow time for budget adjustments



Source: Fiscal 2026 budgets and Moody's Ratings

California credits remain very sound

In the second quarter of 2025, downgrades exceeded upgrades nationally for the first time since 2020

→ 128 downgrades compared with 75 upgrades

→ Of the downgrades, 50 were linked to the downgrade of the US sovereign rating to Aa1 stable from Aaa negative

→ Local governments upgrades and downgrades were around a 50/50 split

→ Nationally, 38 school districts were downgraded versus 26 upgrades

CA followed trend but with greater stability for school districts

→ There were 8 downgrades versus 5 upgrades

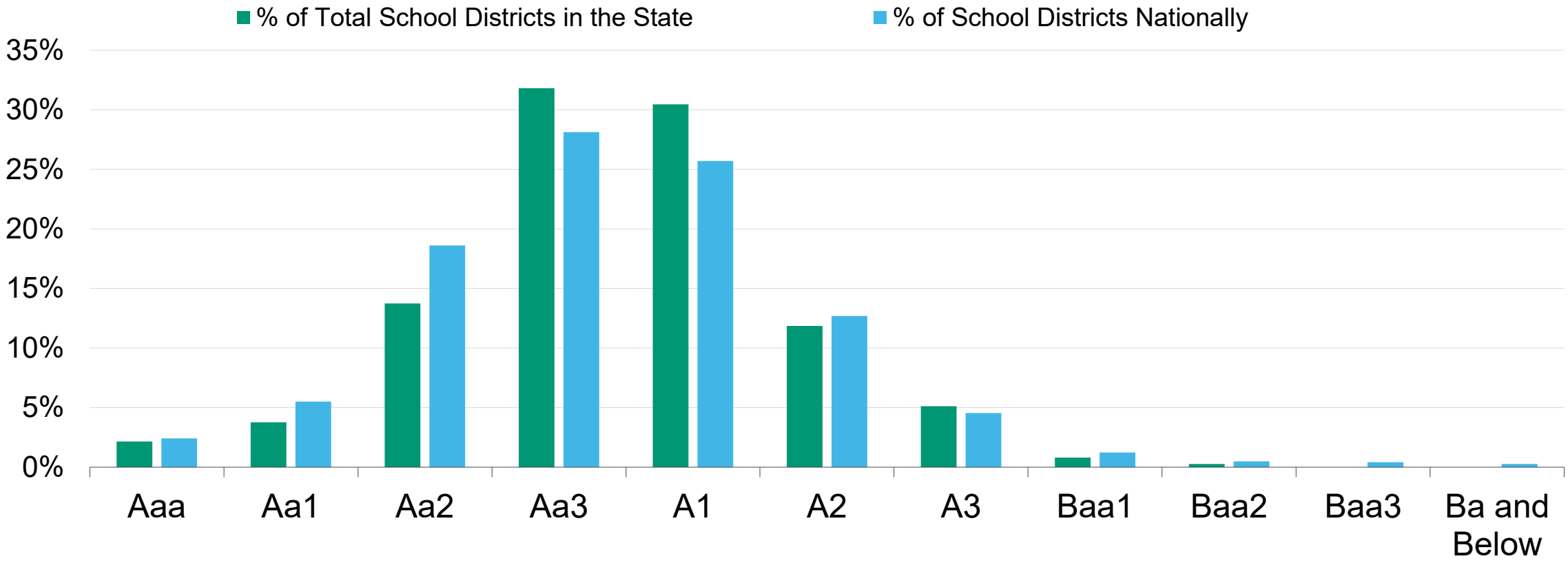
→ 4 of the downgrades were school districts

→ All of the 5 upgrades were school districts

Appendix

CA school districts remain highly rated

Slightly fewer in the highest rating categories



Source: Moody's Ratings

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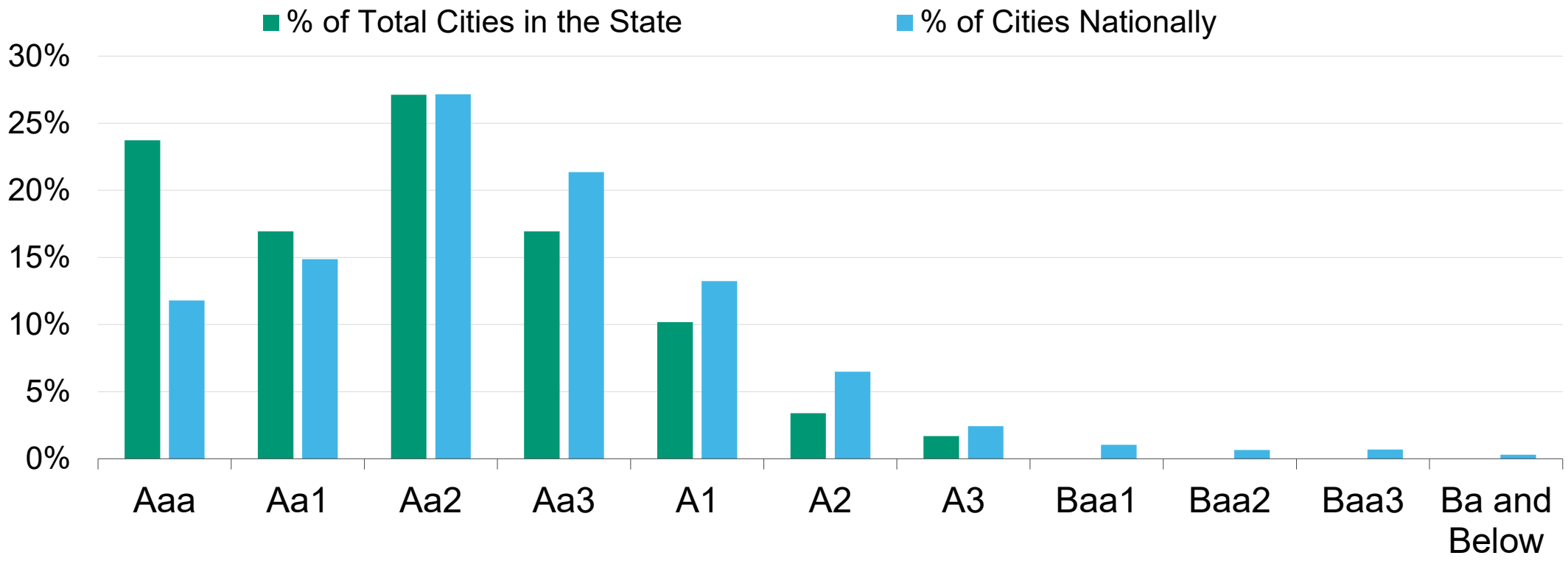
City ratings compare favorably with national distribution



sSource: Moody's Ratings

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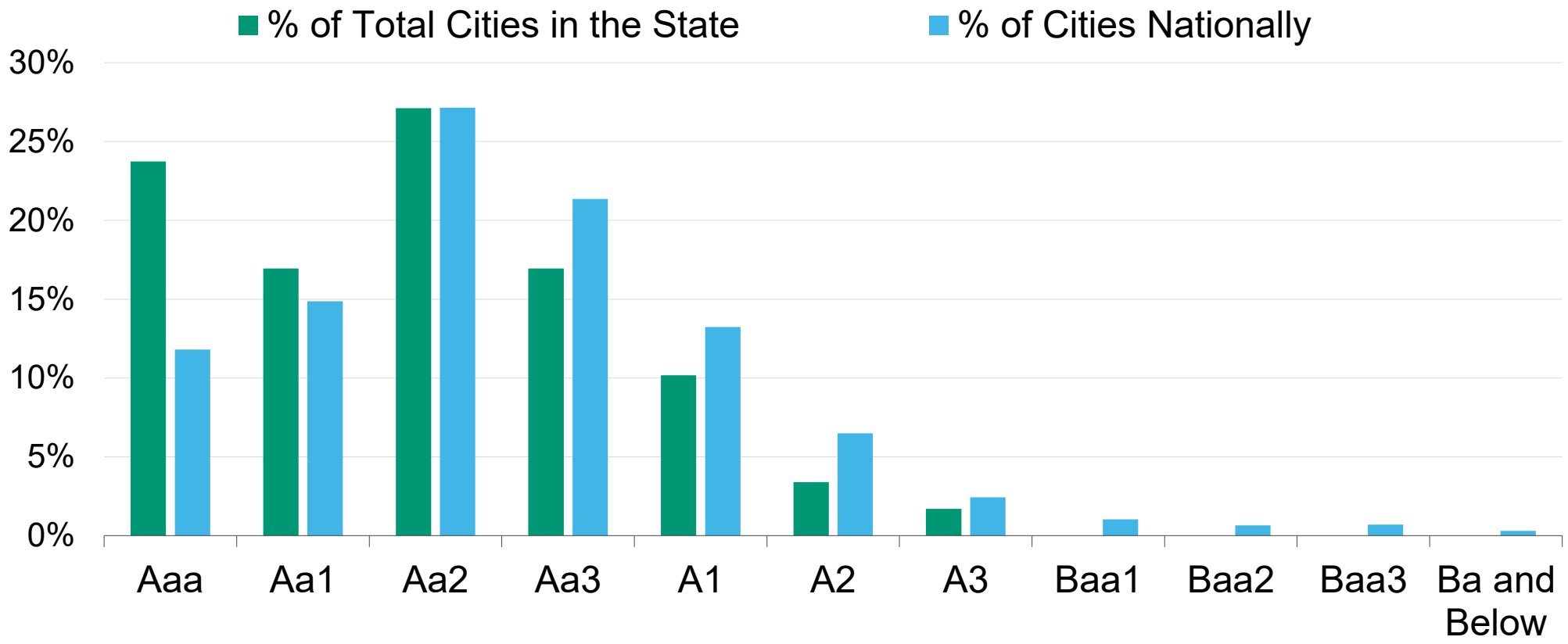
CA counties are also highly rated compared with national ratings



Source: Moody's Ratings

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Thank you

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QUESTIONS

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SESSION TWO

Insurance: Weakness in the Front Line of Fiscal Defense

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MICHAEL POTT
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Risk Financing: California Public Entities

AGENDA

- Public entity risk financing – Joint Power Authorities (JPAs)
- Legislative overview since 2020; AB218 and AB452
- Insurance/Reinsurance landscape in California for public agencies
- Moving forward; Risk management and risk financing

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Joint Power Authorities- History

- A response to an acute insurance crisis in the early 1980's
- California law allows JPA's for needs/services among multiple public agencies (e.g. bridge authorities, special education services, etc.)
  - Risk financing JPA's began forming in the late 1970's and really took off in the 1980's during the insurance crisis
  - For the past 45+ years, nearly all public agencies in CA participate in a risk JPA
  - Tend to specialize by public service provided; cities, schools, special districts etc.
  - Many types of coverage: liability, property, workers' compensation, employee benefits

Joint Power Authorities- Structure

- A contract among members to provide for mutual risk sharing and financing of that risk
- It is **not** insurance
- Instead, it is self-insurance often supported by commercial insurance/reinsurance markets to enhance cost stability
- There is not an insurance policy issued. Instead, a Memorandum of Coverage is issued that sets forth the coverage that has been developed by the members. It is tailored to the needs of public agencies and the services they provide
- Each member pays a contribution to fund the risks assumed-actuarially determined
- JPAs are public entities and are **not for profit**

Legislative History

- AB 218: Became law January 1, 2020
- Revivor statute for victims of childhood sexual assault
  - 3-year window with no statute (2020-2022)
  - Moved the prior statute of limitations of age 26 to age 40 following that window
- One of 33 states that enacted a revivor statute during a similar period of time
- AB 452: Effective January 1, 2024, the legislature eliminated the statute of limitations for any sexual assault claims that occur after that date

Third Party Litigation Funding

- Private equity “invests” in lawsuits and funds them to conclusion
- This can take many forms – sometimes it is funding the lawsuit, other times it is advancing money to the plaintiff and/or defense attorney at an exorbitant interest rate
- No regulation
- Estimated to be over $15.2B in investments in the U.S. alone

Third Party Litigation Funding- Problems

- Allows outsiders to secretly use courtrooms as a trading floor
- Incentivizes the filing of non-meritorious litigation
- Allows funders to exercise undue control or influence over the litigation
- Contravenes legal ethics rules that are designed to ensure that lawyers act in the best interest of their clients
- Funders often paid before plaintiff
- National security risk

Claims Impacts of AB 218 and AB 452

- Defending claims that are decades old creates unique challenges
  - Availability of written evidence
  - Availability of witnesses; former employees, deceased employees
- Legal landscape
  - Very sensitive topic that is highly emotional
- Nuclear verdicts
  - $102M for two persons- Northern CA
  - $137M for two persons- Southern CA

Claims Impacts of AB 218 and AB 452 (cont. 2 of 2)

- The value of these claims is much different now than it was 20 or more years ago
- These same challenges will continue to exist in the future for claims with no statute of limitations
- These challenges lead to entities being forced to settle claims for much larger numbers than were seen in the past

New Costs to Public Entities- Retroactive

- Insurance archaeology
- Public entity — Self-insurance
- Pooled risk — JPA's (still largely self-insured)
  - Assessments
  - Capital reserves (recall rebate ability)
  - Irrespective of your own claim experience

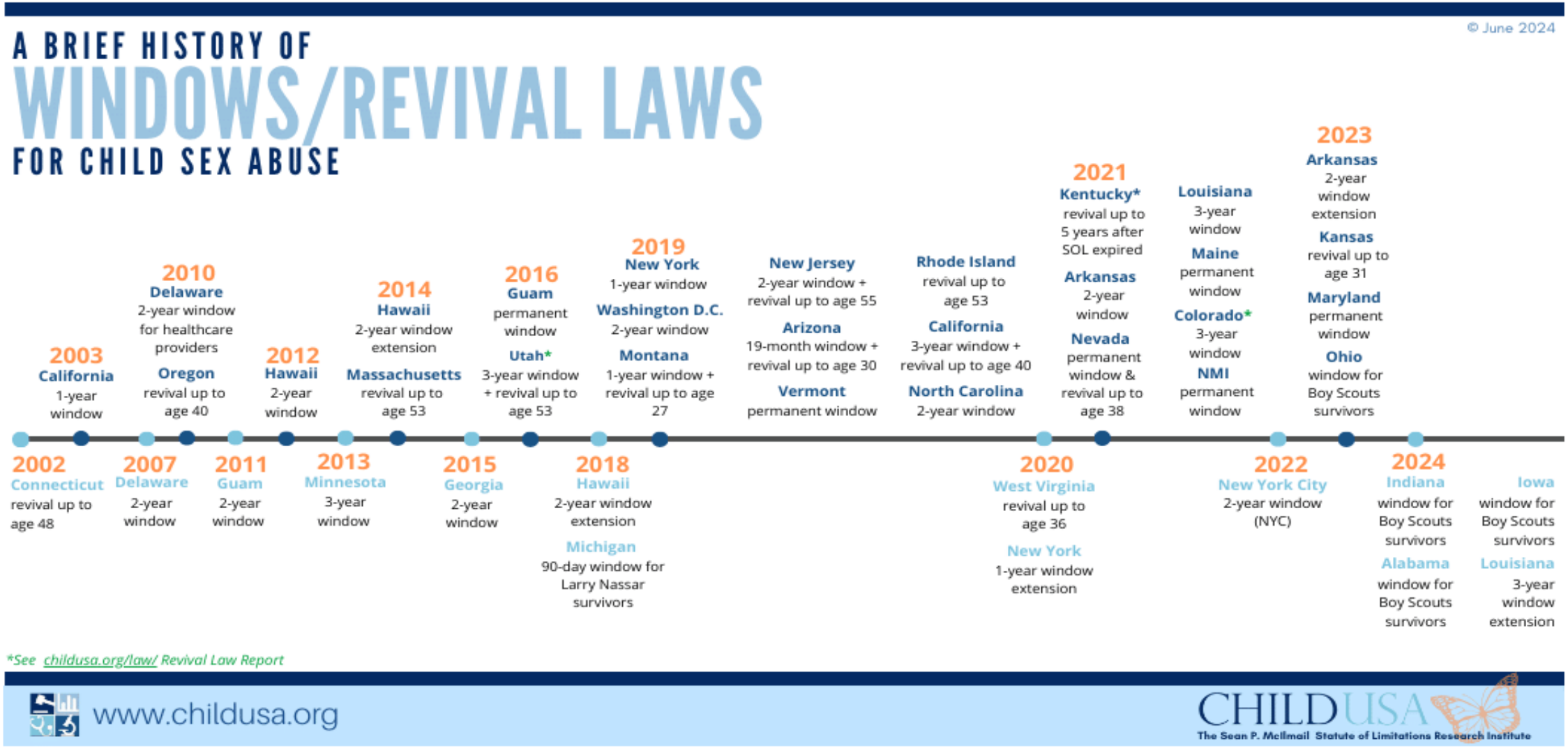
New Costs to Public Entities - Prospective

- Actuarial forecasts (and thus contributions) are seeing high double-digit inflationary trend year over year for the past 6+ years
- Commercial insurance/reinsurance is tracking the same
- “Insurability” is becoming a real question

Funding

- Historical insurance policies, assuming they can be identified and the company is still in business - See Policy Archeology
- JPA's for claims since the 1980's
- Both of these on a historical basis often provide limits insufficient for the size of today's settlements
  - Occurrence based coverage
- Public agency general fund
- Financing option post-verdict

33 States Have Enacted Statutes



Why Have Sexual Abuse Claims Increased Dramatically?

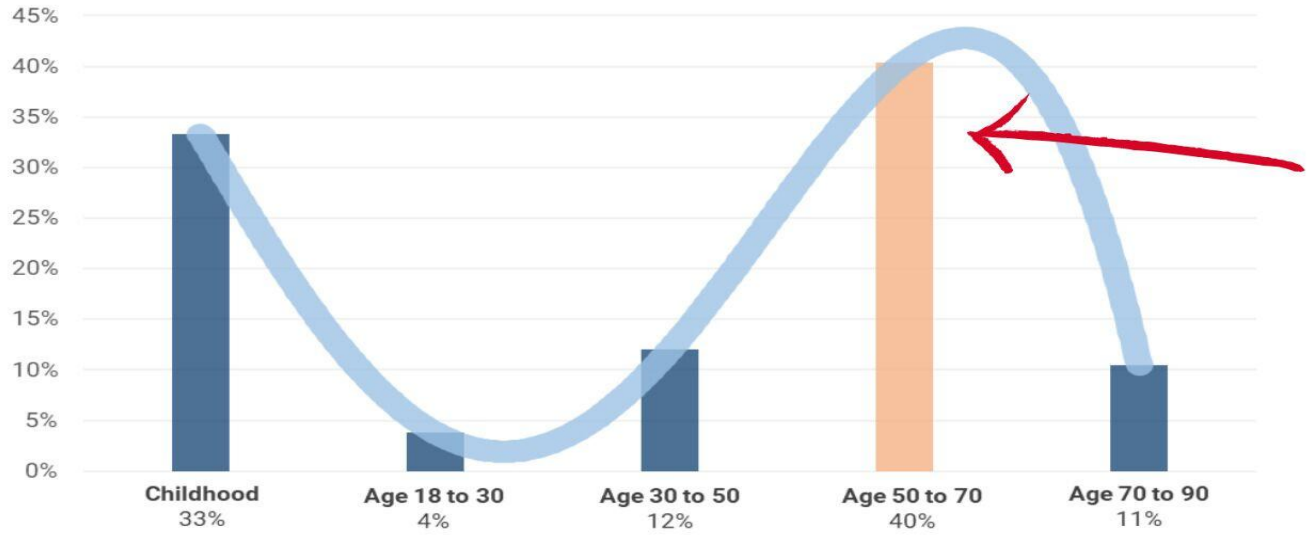
The National Trend to Expand the Statute of Limitations (SOL) and Create a Reviver Window

© CHILD USA
February 2022

DELAYED DISCLOSURE OF CHILD SEXUAL ABUSE

Delayed disclosure is the phenomenon common to survivors of child sex abuse where individuals wait for years, often well into adulthood, before telling anyone they were abused.

Age of First Disclosure of Survivors of Abuse in Boy Scouts of America



More survivors first disclosed between **age 50 and 70** compared to any other age group

Over half of survivors first disclosed at **age 50 or older**

Source: CHILD USA's Data on those abused in Boy Scouts of America

CHILD USA
The Sean P. McIlmail Statute of Limitations Research Institute

Alternative Risk Financing Options

LEAST RISK

Guaranteed Cost (No Deductible)	Dividend Plan	Retrospective Rated Program (Retro)	Small Deductible	Large Deductible (Incurred Loss)	Large Deductible (Paid Loss)	Group Captive	Single Parent Captive	Self-Insurance

MOST RISK

LESS CONTROL

MORE CONTROL

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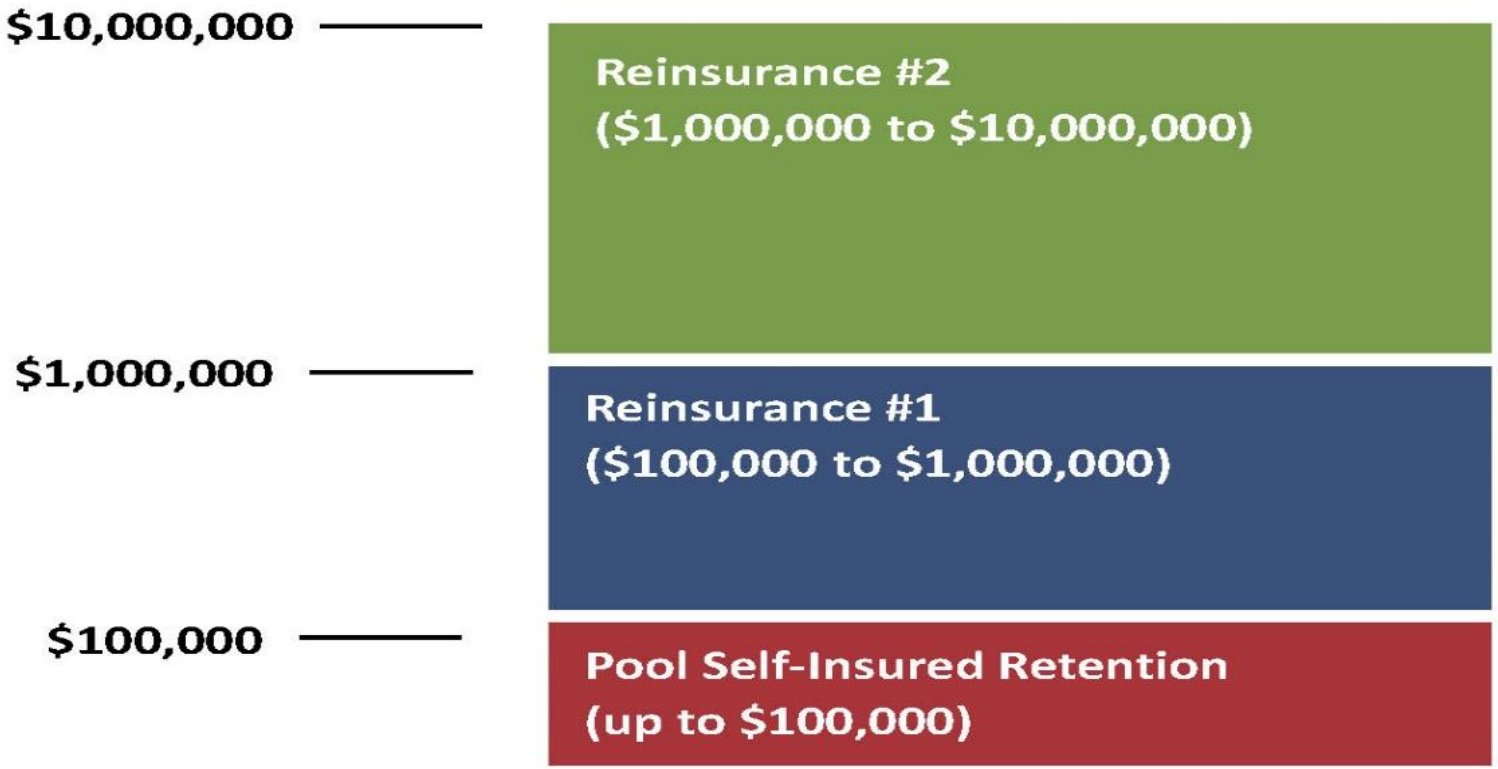
Alternative Risk Financing Relies on Insurance



Increasing Costs, Reduced Capacity

2025 Praesidium SML Carrier Survey: trends over the next three years.

59% Expect the SML market will continue to harden

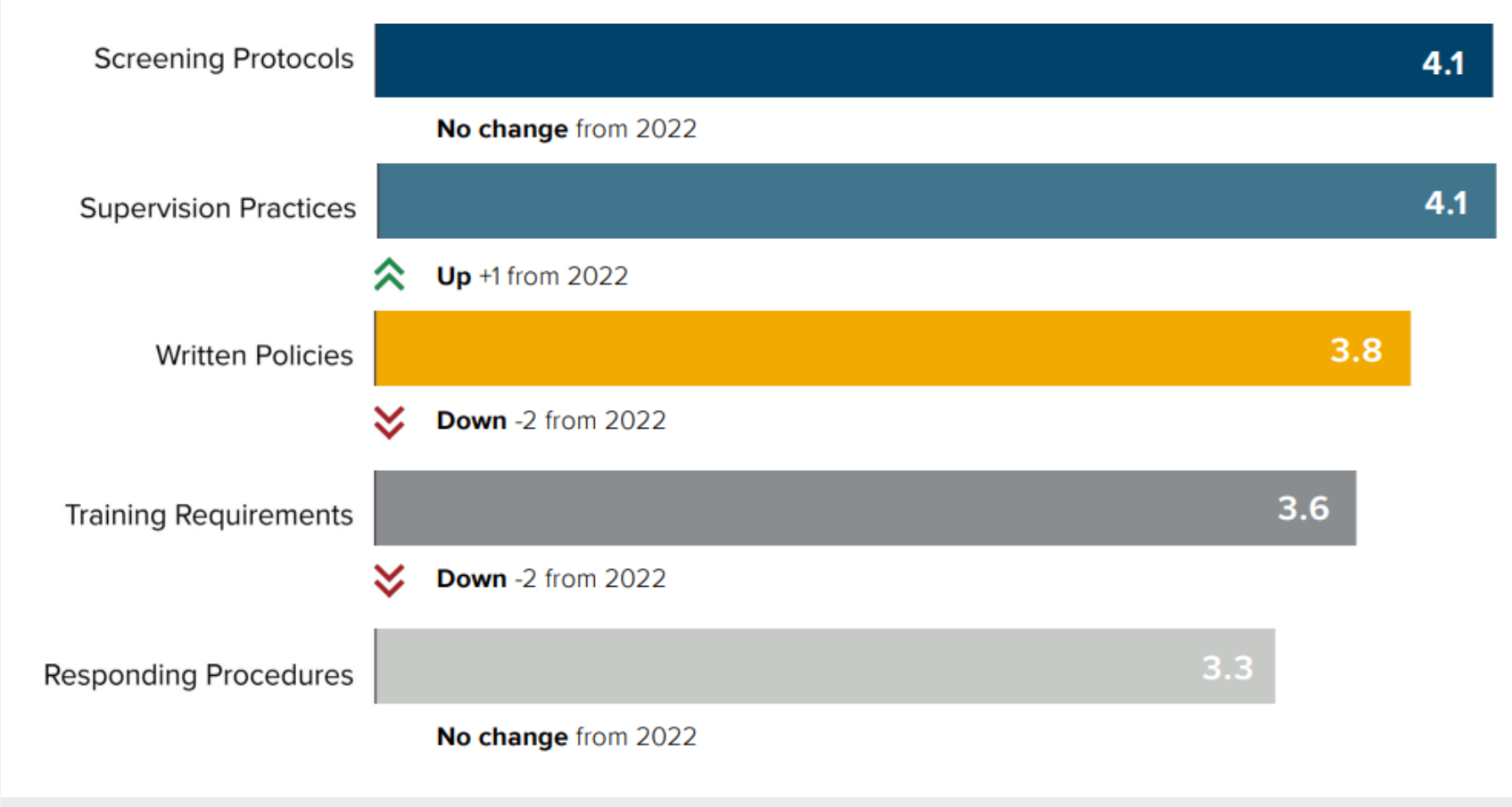
65% See limits of liability decreasing

71% Project underwriting expectations to increase

Praesidium, (2025, February) Insurance Carrier Benchmarking: Sexual Abuse and Molestation Liability. https://bit.ly/SMLBenchmarking24

Increasing Underwriting Expectations

2025 Praesidium SML Carrier Survey: carrier-ranked importance of risk mitigation efforts.

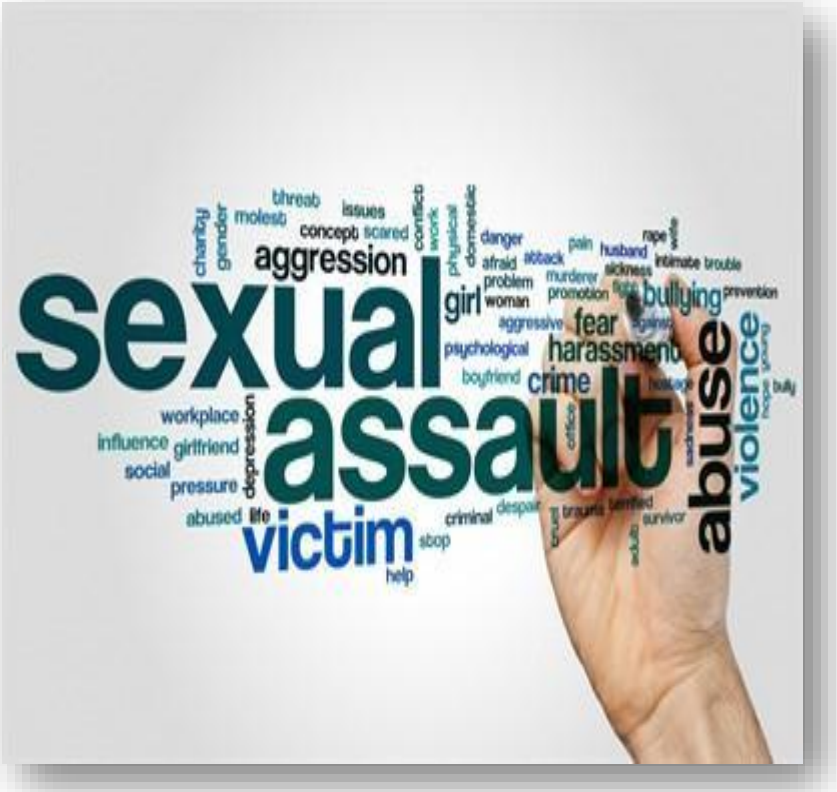


Praesidium, (2025, February) Insurance Carrier Benchmarking: Sexual Abuse and Molestation Liability. https://bit.ly/SMLBenchmarking24

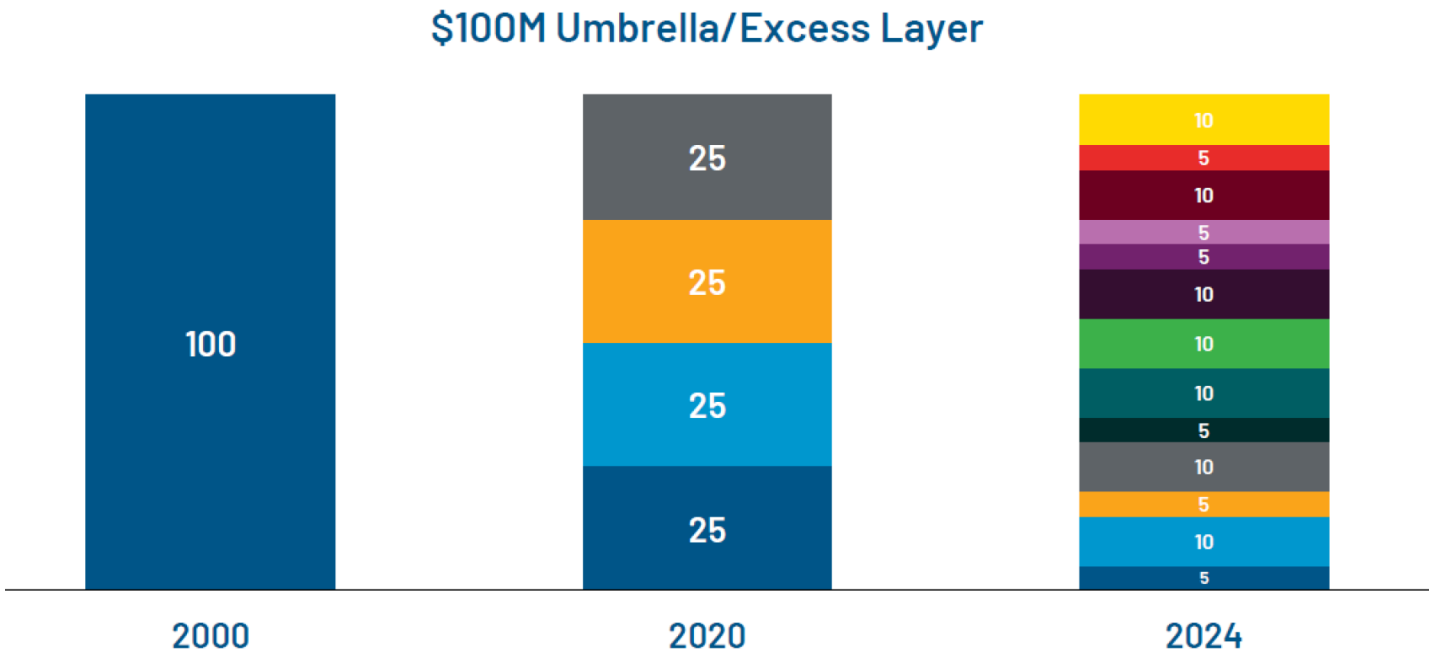
Emerging Risks

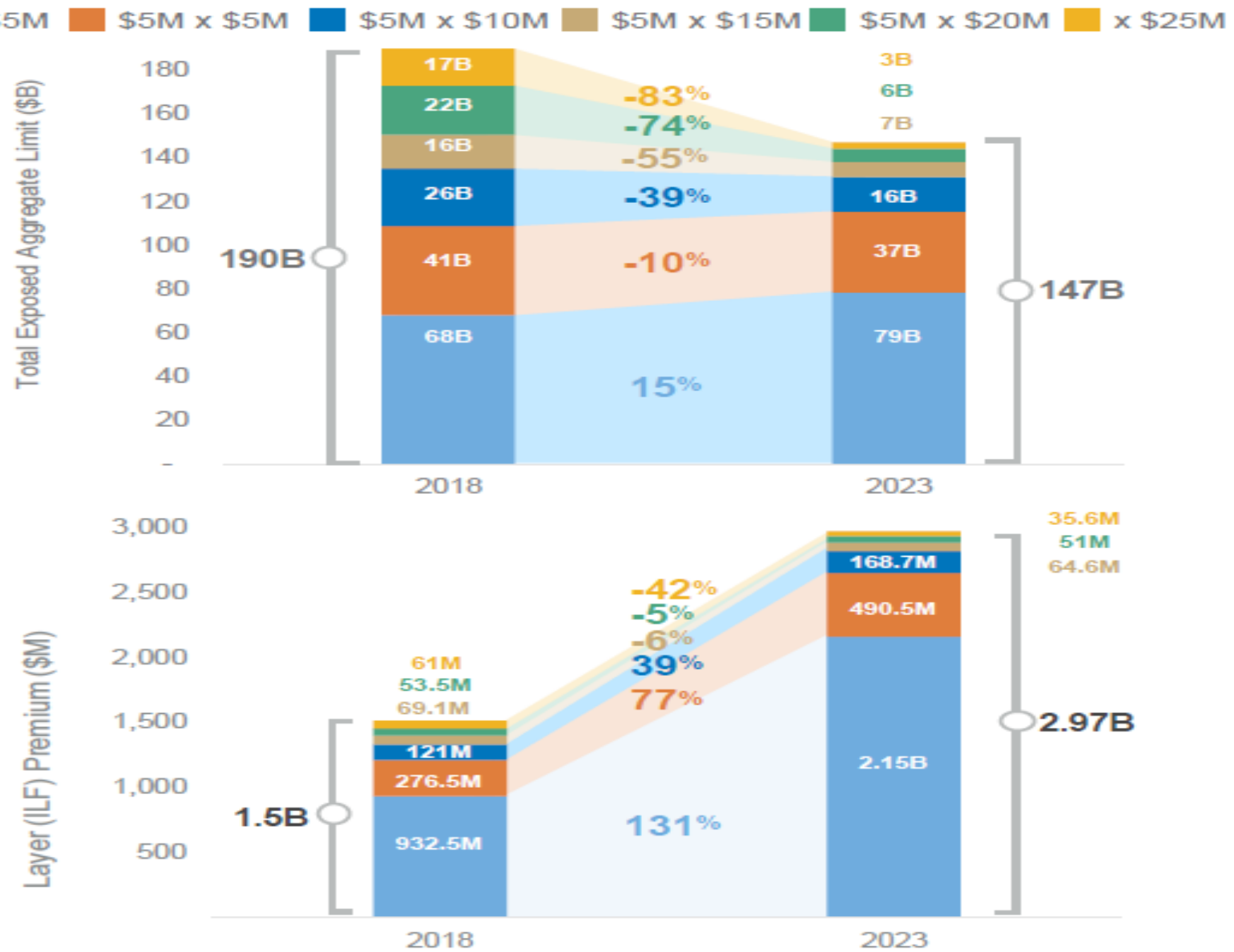
Insurance Industry Response

1. Retreat entirely
2. Claims made coverage
3. “Sunset Clauses”
4. Lower limits, higher deductibles & raise prices
5. Knowledge equals an exclusion
6. Aggregate limits matching claim limit
7. Per Victim Attachment
8. Mandatory Loss Control



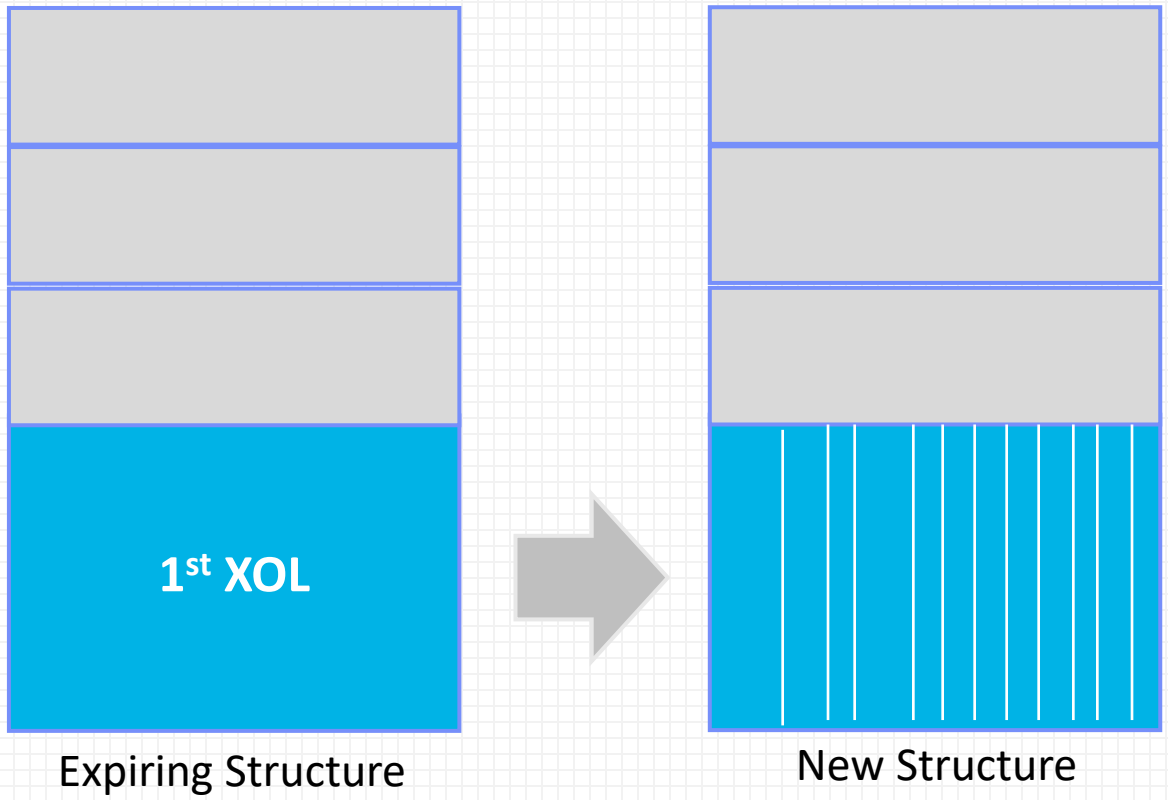
Social Inflation & Thermonuclear Verdicts Limits Compression




First $5M
$5M x $5M
$5M x $10M
$5M x $15M
$5M x $20M
x $25M
Total Exposed Aggregate Limit ($B)
180
160
140
120
100
80
60
40
20
-
17B
22B
16B
26B
41B
68B
190B
-83%
-74%
-55%
-39%
-10%
15%
3B
6B
7B
16B
37B
79B
147B
2018
2023
Layer (ILF) Premium ($M)
3,000
2,500
2,000
1,500
1,000
500
61M
53.5M
69.1M
121M
276.5M
932.5M
1.5B
-42%
-5%
-6%
39%
77%
131%
35.6M
51M
64.6M
168.7M
490.5M
2.15B
2.97B
2018
2023

Tower syndication / Quota Share

Syndication of one layer while expanding aggregate limit



- Syndication of layer introduced friendly competition
- 13 treaty markets support one contract
- Layer aggregate limits increased by 33%

Gallagher Re

$10,000,000 Primary Layer/ $32,000,000 Pool Aggregate

$8,000,000 xs $2,000,000 SIR / $28,800,000 Pool Aggregate
90% Placed via Syndicated Reinsurance Panel

WSRMP Co-participation 10.00%

- Berkley Reinsurance Company 3.75%
- MS Reinsurance 5.00%
- Peak Reinsurance Company 7.25%
- Greenlight Reinsurance Limited 7.25%
- Convex Insurance UK Limited 7.50%
- Amlin Syndicate 2001 6.25%
- Argenta Syndicate 2121 6.25%
- ARK Syndicate 4020 3.50%
- Atrium Syndicate 609 1.50%
- Canopius Syndicate 4444 5.75%
- Chaucer Syndicate 1084 15.00%
- Liberty Syndicate 4472 15.00%
- QBE Syndicate 566 5.00%
- Sirius International Syndicate 1945 1.00%

$5M/$5M SAM only placed at 90%

Self Insured Retention (SIR) $2M

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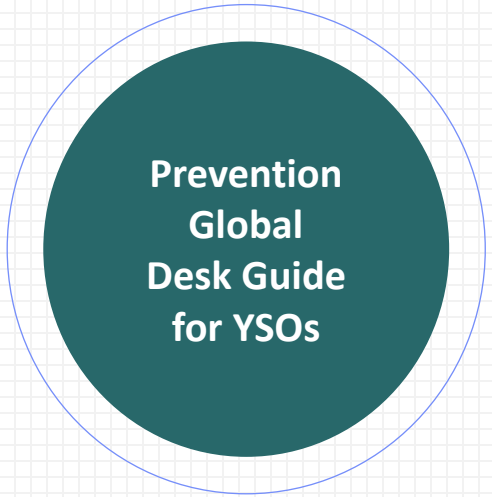
Availability of CSA Insurance Coverage

- The changes in the statute of limitations in California has had a deleterious effect on not only the pricing of this insurance, but constriction of available limits of insurance
  - Transportation (buses) $5,000,000 minimum and still available but very expensive
  - $1,000,000 limit for counselors is still available but very expensive
  - Many other parties with exposures for litigation are finding it difficult to buy more than $100,000 per occurrence / $3,000,00 aggregate limits
  - This is devastating for public sector risk that rely on thousands of contractors to provide necessary services.

Prevention is Possible.

New research indicates that *prevention efforts are paying off – over time.*



- The "Big 6" Youth Serving Organizations (YSOs)
- 20% decline in the prevalence of child sexual abuse

This is "a significant finding that indicates the capacity of all YSOs to better prevent CSA."

And… K-12 schools are lagging behind

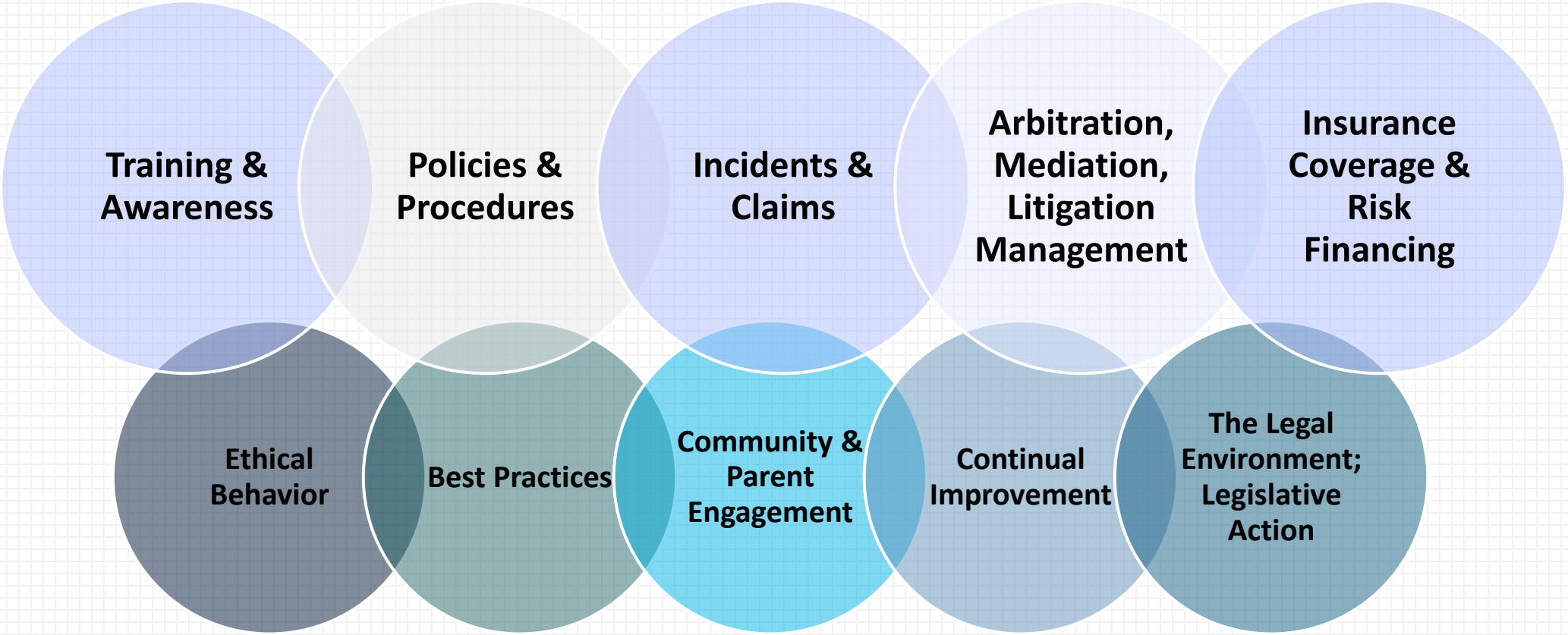
Assini-Meytin, L C., McPhail, I., Sun, Y., Mathews, B., Kaufman, K. L., & Letourneau, E. J. (2024). Child Sexual Abuse and Boundary Violating Behaviors in Youth Serving Organizations: National Prevalence and Distribution by Organizational Type. *Child Maltreatment.* https://doi.org/10.1177/10775595241290765.

RESOURCE Prevention Global Desk Guide: https://prevention.global/serving-youth

Transforming the Trend

Developing a broader understanding and approach. Together.

What can you start today?



https://www.ajg.com/us/transforming-the-trend-symposium-resources/

QUESTIONS

JOHN CHINO
Senior Vice President
Arthur J. Gallagher & Co.

DAVE GEORGE
Chief Executive Officer
Schools Excess
Liability Fund (SELF)

MICHAEL POTT
Chief Operating Officer
Public Risk Innovation, Solutions,
and Management (PRISM)

15-MINUTE

BREAK

SESSION THREE

Payment Strategies for Settling Claims and Paying Judgements

DONALD FIELD
Public Finance Partner
Orrick, Herrington & Sutcliffe LLP

MICHAEL FINE
Chief Executive Officer
Fiscal Crisis & Management Assistance Team (FCMAT)

KARMA PEMBA
Managing Director
RBC Capital Markets

Introduction to JOBs

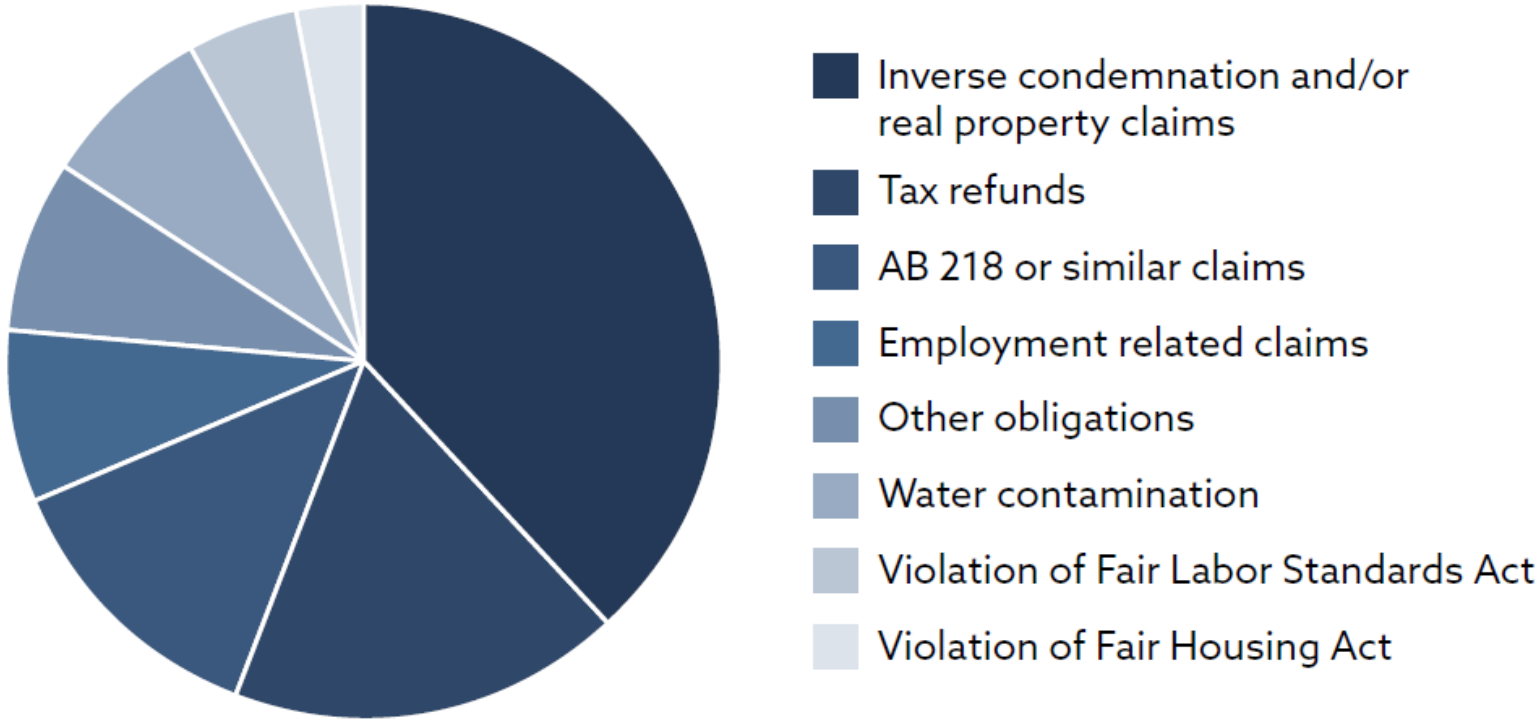
- Judgment obligation bonds ("JOBs") are bonds issued by a state or local government to pay involuntary liabilities arising out of tort or otherwise imposed by law
- JOBs are actively being discussed in the media and issued by local governments as a way to finance and amortize tort liabilities resulting from the application of California Assembly Bill Number 218 (Chapter 861, Statutes of 2019) (i.e., "AB 218") to claims arising out of childhood sexual assault
- The passage of AB 218 has resulted in a flood of litigation against local governments across California and many of them are turning to JOBs to lessen the resulting financial impacts on programs and services
- Thus, JOBs have been an increasingly popular and successful way for local governments to mitigate the financial impacts of large tort liabilities

Tool to Mitigate Financial Impacts of Involuntary Liabilities

- Historically, JOBs have been issued to finance many types of involuntary obligations, including monetary obligations arising out of inverse condemnation and real property related actions, water contamination claims, federal Fair Housing Act violations, dangerous conditions of public property, various tax refund obligations, and wrongful discharge actions

- Regardless of the type of involuntary liability, JOBs give local governments a tool to mitigate the financial impacts of involuntary liabilities

NATURE OF INVOLUNTARY OBLIGATIONS, 1992-2025



Source: California Debt and Investment Advisory Commission and emma.msrb.org

Fully Litigated Judgments vs Settlements

- For convenience, we will refer to judgments throughout this presentation
- However, in most cases, and with some nuances to legal theories, JOBs should have equal application involuntary monetary obligations under settlement agreements
- Early coordination between general/litigation counsel handling tort claims and bond counsel is critical to ensure litigation and JOB strategies are aligned

Why JOBs?

- Absent a finding of unreasonable hardship (which may permit a limited installment period for payment of the obligation plus interest), monetary judgments against local governments in California generally are payable in full upon the conclusion of litigation
- When tort claims or other involuntary obligations such as AB 218 claims, inverse condemnation claims, and the like, result in large liabilities, payment of such obligations in full upon conclusion of the related litigation may result in significant, negative impacts to a local government's budgetary resources and, therefore, to public programs and services
- Such impacts can be mitigated and managed by refunding such obligations through a JOB issuance and amortizing the liability over time

Discretion in Governing Board as to How to Fund an Obligation

- California courts consistently defer to the judgment of the governing body of a public agency with respect to the determination that a particular action is necessary to the full discharge of its duties
- California courts also have recognized the considerable discretion possessed by a local government in the exercise of its powers with respect to its budget, meaning that the policy decision is in the hands of the local government's governing board
- The policy decision is often whether to finance any monetary judgments over a term of years or to pay them from funds on hand in a single year, focusing on the impact that any sizable monetary judgment or judgments would have on current programs and services

Other Options to Pay Over Time

- There are other ways to not pay tort and other involuntary obligations immediately after the relevant judgment is entered
- Parties to litigation may settle tort claims and structure an agreement to make monetary payments over time
- California Government Code section 970.6 currently allows a court to order the payment of a judgment over ten equal annual installments with interest upon a finding of unreasonable hardship on a local government
- However, such terms may provide insufficient financial relief and may be less economical than the local government agreeing to a lump sum payment and refunding and amortizing the liability over time through a financing

Other Considerations

- Other assistance, like state emergency loans, may be available to some local governments facing large involuntary liabilities
- The viability of increasing/utilizing alternative revenues also should be considered
- In some circumstances, a local government may want to consider whether filing for bankruptcy protection is ***possible*** and ***appropriate*** – although these circumstances should be rare
- The local government should consider (and be fully informed about) all available options when deciding whether JOBs are appropriate
- Expert advice is critical to ensure all options are understood

JOBs Basics

- JOBs typically are structured as unsecured obligations payable from the general fund of the issuer
- JOBs are not full faith and credit general obligation bonds backed by the issuer's taxing power because the California Constitution's debt limitation requires that type of bonds if issued by the State, cities, counties or school districts ("Debt Limit Entities") be approved by two-thirds of the electorate
- Instead, California JOBs issued by Debt Limit Entities generally have been designed to be valid without voter approval under a judicially created exception to the Constitutional debt limitation, which exception generally is referred to as "obligations imposed by law"
- JOBs are considered to have the same legal character as the judgment obligations they refund (*i.e.*, refinance) and, therefore, are obligations imposed by law and are absolute and unconditional obligations, without any right of set-off or counterclaim

Constitutional Debt Limit

- The California Constitution restricts the power of Debt Limit Entities to incur certain debts without the approval of the electorate
- Article XVI, Section 18 of the California Constitution provides, in pertinent part:

  No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose.

- The courts, however, have recognized several exceptions to the constitutional debt limitation

Obligations Imposed by Law/Involuntary Liabilities

- In particular, the California Supreme Court has recognized that a local government's liability for involuntary tort claims are obligations of the government imposed by law
- The seminal case on this point is City of Long Beach v. Lisenby, 180 Cal. 52 (1919), in which the Court held that a predecessor to Article XVI, section 18, formerly Article XI, section 18, could "not defeat the asserted right of the city of Long Beach to provide for the payment" of a tort judgment "without regard to the state of its revenues for the year in which such liability arose, and without a vote of the people of said city"
- The Court reasoned that the Constitutional debt limitations were confined "to those forms of indebtedness and liability which may have been created by the voluntary action of the officials in charge of the affairs of such city and to have no application to cases of indebtedness or liability imposed by law or arising out of tort"

Authority to Issue Bonds under Refunding Law

- Under the California local agency refunding law (Articles 10 and 11 (commencing with section 53570) of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code), local governments, including school districts, cities and counties, are authorized to issue refunding notes or bonds for the purpose of refunding any evidence of indebtedness of the local government
- Therefore, local governments have the power to authorize and issue refunding notes and bonds to satisfy their financial obligations under involuntary tort judgments or other obligations imposed by law
- The issuance of notes or bonds to fund an existing debt that meets the involuntary liability exception to the constitutional debt limitation does not constitute a new or different liability, but merely changes the form by which that pre-existing liability is evidenced

Validation Action – Government Code Section 860

- Section 860, *et seq.*, of the California Code of Civil Procedure provides a procedure for establishing the validity of notes and bonds and related financing contracts
- Necessary to enable notes or bonds to be sold with the level of certainty regarding the validity of the notes or bonds required by the municipal bond market
- Because the "obligation imposed by law" exception is much less developed in the case law than other judicially created exceptions, each JOB issue by Debt Limit Entities in California has been validated
- Not all validation actions are as inclusive or as flexible as they could be (some leaving out future JOBs or costs of issuance or locking in semiannual interest payment dates, etc.)
- Expert advice is critical to ensure consideration of the feasible options

Sample Uncontested Validation Timeline

Event	Best Case	Worst Case
File validation action in the Superior Court	**Day 1**	**Day 4**
File application for order for publication of summons	Day 1	Day 5
Obtain order for publication of summons	Day 1	Day 15
Post summons in public places, mail summons (if applicable)	Day 2	Day 16
Begin publication in newspaper for three consecutive weeks	Day 10[1]	Day 19
Final publication in newspaper	Day 24[2]	Day 33[2]
Deadline for interested persons to respond	Day 41[2]	Day 50[2]
File Notice of Default	Day 42	Day 51
Obtain Clerk's Default	Day 43	Day 56
File application for entry of judgment	Day 44	Day 60
Obtain entry of judgment	Day 55-65	Day 75-80
Appeal period expires	Day 85-95	Day 105-110

[1] Even in the best case, publication likely will not start for approximately ten days after filing because the firm "last response date" must be included in the summons submitted to the court. Therefore, several additional days should be included to allow time to receive the order back from the judge and still meet the newspaper's printing deadline.

[2] "Publication" does not end until 21 days from the first publication, even though the final publication is 15 days later. Then the ten days is added to the 21 days, making the total notice period 31 days. Such notice cannot be shortened.

Possible Disadvantages of JOBs – Timing Issues

- The California local agency refunding law allows local governments to issue bonds for the purpose of refunding "bonds, warrants, notes, or other evidence of indebtedness" of the local government
- In short, a local government may issue notes or bonds under the California local agency refunding law to refund ***indebtedness***
- This prohibits (i) a reimbursement financing (*i.e.*, prohibits a local government from issuing JOBs to refinance a judgment the local government has previously paid as no indebtedness exists to refund after it is paid), and (ii) a local government from issuing JOBs prior to a judgment being entered against the local government

Possible Disadvantages of JOBs – Bargaining Position

- Agreeing to a lump sum payment and refunding and amortizing the liability over time through a financing can be beneficial for all parties because plaintiffs/claimants may be willing to accept a smaller amount in return for the prompt payment
- However, the availability of JOBs may be seen by some plaintiffs/claimants and their counsel as an additional source of funds to increase settlement offers rather than a fiscal tool for local governments
- Because JOBs as a source of funding for tort claims and other involuntary obligations have been widely discussed recently in the news media, local governments should expect the option to be known and understood when negotiating settlements

Possible Disadvantages of JOBs – Tax-Exempt JOBs

- Both tax-exempt and taxable JOBs have been issued
- In July 2016, final Treasury Regulations were released governing long-term tax-exempt JOBs, including clarification of the existing rules and adding a post-issuance ongoing compliance scheme that requires an issuer to review its annual available funds
- Tax rules also limit the amount of tax-exempt JOBs that may be issued, factoring in any reasonable reserves for the liability
- Consequently, some issuers may choose to issue taxable JOBs even if they are eligible to issue those obligations on a tax-exempt basis

JOB Structures

Fixed Rate Bonds

Variable Rate Bonds

Index Rate Bonds

Capital Appreciation Bonds

Swaps

How and to Whom Will JOBs be Sold?

- The two basic methods of sale for local government debt are negotiated sale and competitive sale, which involve different processes, players and roles, and present different sets of advantages and disadvantages
- The best choice for a given debt offering depends upon the facts and circumstances of the financing and the importance placed by the local government on the different inherent attributes of the choices
- Local governments also are constrained by debt management policies, some of which may require consideration and/or amendment to provide for the issuance of JOBs or consideration of a judgment obligation refunding program

Negotiated Sale Overview

- In a negotiated sale, the local government selects an underwriter to underwrite the bonds on terms to be negotiated between the local government and the underwriter
- The local government works with the underwriter, bond counsel and its municipal advisor to structure the transaction
- Negotiated sales allow the underwriter to work with potential investors before the actual offering date of the bonds to provide information and otherwise generate interest in the issue
- If the JOBs are financing socially sensitive obligations, as with AB 218, there can be a benefit to generating investor interest and seeking additional advice on disclosure and debt structure

Competitive Sale Overview

- In a competitive sale, the local government works with its municipal advisor and bond counsel to structure the transaction
- A notice of sale is published inviting bids for the bonds to participating municipal bond broker-dealers specifying the terms of the offering and detailing the basis for the award of the bonds (generally the lowest “true interest cost”)
- The bonds are sold to the winning bidder
- The winning bidder underwrites the bonds by purchasing the issue from the local government and reselling them to investors but otherwise does not play an active role in structuring the transaction

Bank Direct Purchase Overview

- One variation on the foregoing is a “bank direct purchase,” in which bonds are sold by the local government directly to a bank
- Depending on market conditions, banks may offer more favorable interest rates than what is available in the public market
- A bank direct purchase, which would not involve disclosure in a public offering, may offer a local government a less public sale of socially sensitive obligations
- Banks, however, traditionally offer shorter maturity dates than those obtainable in the public market – typically under 20 years, and it may be difficult to find a bank willing to purchase large sized bonds
- When issuing JOBs, a local government may benefit from seeking advice on whether its bond terms and size would be of interest to a bank

Market Expectations/Preferences Overview

- Table below provides the typical buyer base for traditional financings

Issue		Buyer Categories					
Maturity	Year	Individual Retail	Pro Retail / Separately Managed Accts. (SMAs)	Bond Funds	Insurance Companies	Relative- Value Buyers	Bank Portfolios
2026	1	■	■	■			
2027	2	■	■	■	■		
2028	3	■	■	■	■		
2029	4	■	■	■	■		
2030	5	■	■	■	■		
2031	6	■	■	■	■		
2032	7	■	■	■	■		
2033	8	■	■	■	■		
2034	9	■	■	■	■		
2035	10	■	■	■	■		
2036	11	■	■	■	■		
2037	12	■	■	■	■		
2038	13	■	■	■	■	■	
2039	14	■		■	■	■	
2040	15	■		■	■	■	
2041	16	■		■	■	■	
2042	17	■		■	■	■	
2043	18	■		■	■	■	■
2044	19	■			■	■	■
2045	20	■			■	■	■
2050[T]	25	■	■	■	■	■	■
Total							

- Taxable JOBs might see limited SMA participation
- Mostly Bond Funds, Insurance Companies, and some Relative-value buyers

Illustrative Pricing Differences & Considerations

- Assuming the municipality issues 10-year term tax-exempt financing

Scenario 1: GO Bonds Rating: Aa2	
Par Amount	$100,000,000
Net Debt Service	$115,402,964
True Interest Cost	2.34%
Repayment Ratio	1.15-to-1

Scenario 2: JOB Rating: Aa3	
Par Amount	$100,000,000
Net Debt Service	$116,143,594
True Interest Cost	2.45%
Repayment Ratio	1.16-to-1

Scenario 3: COP/LRB Rating: A1	
Par Amount	$100,000,000
Net Debt Service	$116,971,417
True Interest Cost	2.60%
Repayment Ratio	1.17-to-1

Tax-Exempt Bonds Generally for Capital Costs

- In most situations, tax-exempt bonds are used to finance capital costs
- The use of tax-exempt proceeds to pay judgments or legal liabilities generally is viewed as financing a working capital expenditure, instead of a capital one
- There are limited situations where tax-exempt bonds may be issued for working capital purposes

Short-term Working Capital Financings

- Issuers may be familiar with using tax-exempt short-term borrowings, such as TRANs, to finance current operating expenses on a short-term (that is, current year) basis
- Such use is premised on the issuer experiencing a cash deficit or shortfall in the current year's operations
- The tax focus is on the issuer's reasonable expectations as to the deficit, based on the funds the tax law treats as "available," in order to determine the size of the issuance

Extraordinary Working Capital Financings

- A subset of working capital expenditures that may be financed with tax-exempt JOBs is an ‘extraordinary’ item
- An ‘extraordinary’ working capital expenditure is an expenditure that is non-recurring and not customarily payable from current revenues
- The Treasury Regulations list, as an example of such expenditure, an extraordinary legal judgment in excess of reasonable insurance coverage or applicable reserves

Alternative Financing Structuring

- Some local agencies may be able to enter into a lease financing, which would not require a validation action, to finance involuntary obligations
  - A more established exception to the California Constitutional debt limit
  - Avoids the timing issues under the California local agency refunding law relating to refunding indebtedness
  - Not available to certain issuers
    - California Education Code Section 17456 limits the use of lease proceeds by school districts to capital outlay purposes
    - Other local agencies may have other limitations
  - One Primary Disadvantage
    - Lease exception requires a lease asset
    - Utilizing a lease option, therefore, ties up local agency assets that could otherwise be available for future capital financings

AB 218 JOB Challenges

- Reduce interference with the litigation process
  - allow litigation to proceed at its own pace
  - avoid any need to negotiate financing terms
  - mitigate effects of Government Code section 970.4, which requires judgements be paid, to the extent funds are available, in fiscal year in which it becomes final
  - preserve ability to refund under Refunding Law
- Improve efficiency of financing structure to make adaptable to multiple judgments or settlements over time
- Reduce number of public offerings

AB 218 Claims – Sample Financing Solution

STEP 1 Consolidated Validation Action

STEP 2 Interim Financing

STEP 3 Long-term Financing Takeout

Step 1 : Consolidated Validation Action

- File a validation action for JOBs to be issued to refund all prospective judgments
- The bond documents to be validated would include documents (1) relating to an interim financing mechanism (described in Step 2) as well as (2) the long-term public offering bond documents (described in Step 3)

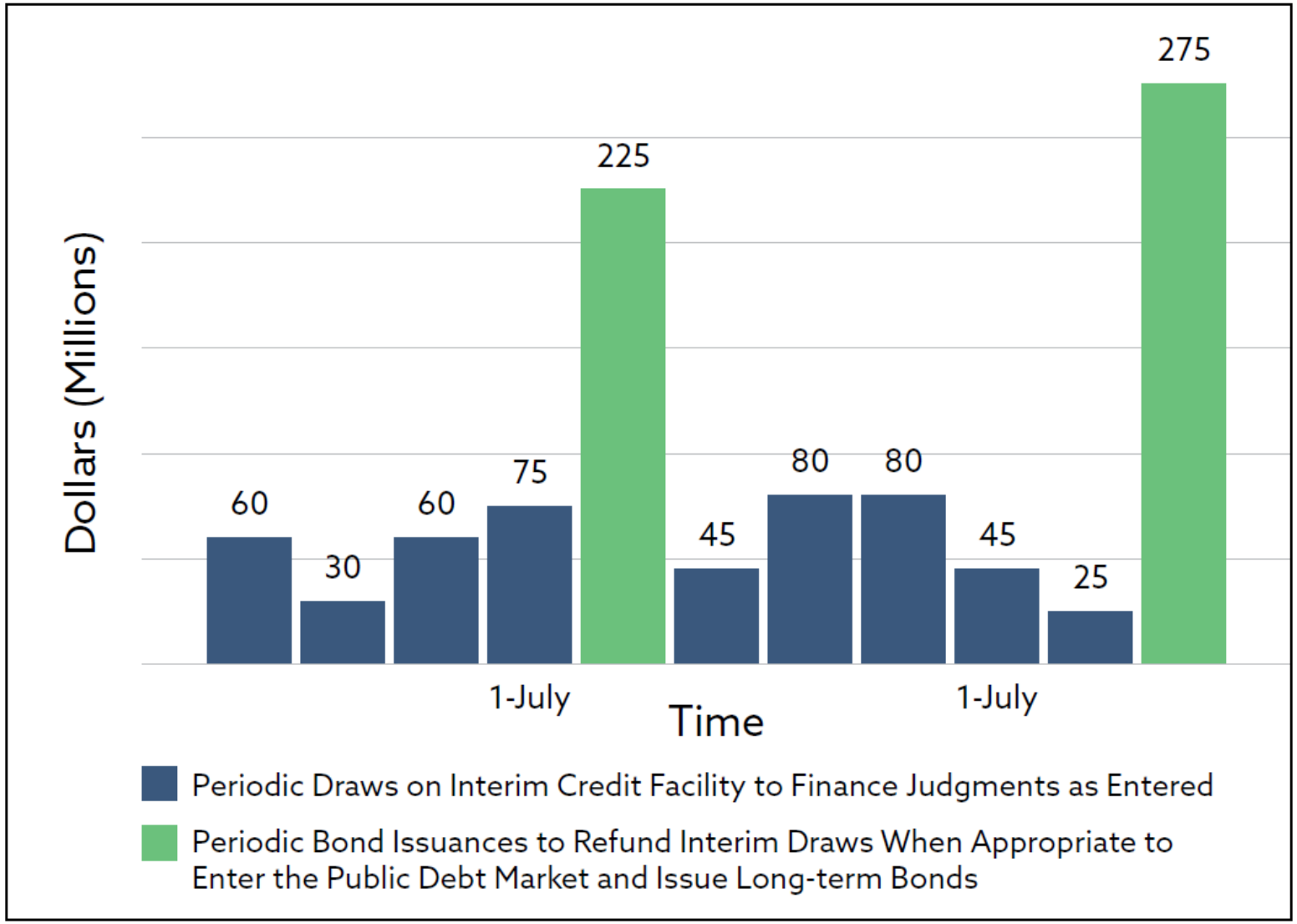
Step 2 : Interim Financing

- Pursuant to the Refunding Law, the local agency and a Bank enter into a Credit Facility pursuant to which the Bank agrees to advance funds to pay judgments up to a specified Credit Amount
- Credit Facility advances may only be used to pay judgments on cases covered by the validation action
- Credit Facility is an unsecured obligation of the local agency payable from all legally available revenues
- Local agency is obligated to appropriate funds to pay its Credit Facility obligations
- Interest paid under the Credit Facility can be tax-exempt or taxable, depending on qualification under the tax rules

Step 3 : Long-term Financing Takeout

- Prior to the end of the term of the Credit Facility, the local agency issues one or more series of tax-exempt or taxable JOBs (depending on qualification under tax rules) to refinance the Credit Facility
- JOBs are issued in a public offering pursuant to an Indenture approved in the validation proceeding
- Public offering to include a description of use of proceeds with disclosure about the AB 218 claims

USE OF INTERIM AND LONG-TERM FINANCING MECHANISMS



Necessary Coordination

- Early coordination with general/litigation counsel handling tort claims
  - Interplay of Refunding Law
  - Litigation Strategy
  - Timing Issues
- Validation action built around litigation strategy
- JOB financing plan developed with needed flexibility

Disclosure Considerations

- There are various disclosure obligations and annual audit considerations with respect to involuntary liability claims, including the recognition of probable liabilities for accounting purposes under Governmental Accounting Standards Board Statement No. 10 and No. 56
- The application of the various laws and rules is highly dependent on the facts and is beyond the scope of this presentation
- However, it is important for local governments to discuss these issues with experienced disclosure counsel and their independent auditor to ensure disclosure obligations are met

Conclusion

- JOBs give local governments a tool to mitigate the financial impacts of involuntary liabilities by amortizing payments on the monetary liability over time
- The various components of a judgment obligation refunding program and the approach taken for a section 860 *et seq.* validation proceeding will vary based on many factors, including the number and timing of the underlying tort cases or other involuntary obligations as well as the local government's litigation strategy
- The various options should be thoroughly discussed and considered with bond counsel promptly when litigation has been threatened or filed such that payment of claims is being considered, would require any express payment commitment, and particularly where substantial liability may result

QUESTIONS

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Mike Fine became Fiscal Crisis and Management Assistance Team (FCMAT) Chief Executive Officer on July 1, 2017. Before joining FCMAT in 2015, Mr. Fine served a combined 13 years as interim superintendent and deputy superintendent of business services and governmental relations at the Riverside Unified School District. Mr. Fine has experience as Assistant Superintendent at Newport-Mesa Unified School District and Financial Administrator in accounting and indirect budgets at Hughes Aircraft Company and General Dynamics Corporation.

Mr. Fine is a regular presenter at many state and national convenings, workshops and professional development programs. He has degrees in accounting and public administration. Mr. Fine has a long history in governmental relations, working closely with policy makers in Sacramento on behalf of California's K-12 students.

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Donald Field is a Public Finance Partner at Orrick, Herrington & Sutcliffe LLP and the Co-Chair of Orrick's School and Community College Finance/General Obligation Bonds Practice Group. He is also a member of Orrick's Leasing Practice Group, Assessment/Mello-Roos Practice Group and Revenue Practice Group.

As bond counsel, disclosure counsel, and underwriter's counsel, Mr. Field has extensive experience in the financing techniques used by school and community college districts, cities, and counties in California. His practice focuses on local governmental infrastructure financing, including general obligation bond, municipal lease, and land-secured financings, as well as tax and revenue anticipation note (TRAN), judgment and pension obligation, and other post-employment benefit (OPEB) obligation financings. Mr. Field serves as the lead attorney for California School Boards Association annual tax and revenue anticipation note pool.

Mr. Field was named one of the Top 25 Municipal Lawyers of 2011 in California by the Los Angeles and San Francisco Daily Journal. He is the principal author of *An Introduction to Judgment Obligation Bonds in California – Financing Tort and Other Involuntary Obligations*, published by Orrick in 2025, and the third edition of *The XYZs of California School District Debt Financing*, published by Orrick in 2005.

In recent years, Mr. Field has been in the forefront of establishing judgment obligation bond financing solutions for California school districts, cities and counties facing large tort liability obligations resulting from the enactment of California Assembly Bill Number 218 (Chapter 861, Statutes of 2019) ("AB 218"). These efforts have included working with several local governments on AB 218 judgment obligation bond programs. The programs have included single bond issuances for local governments with a few AB 218 cases that have settled contemporaneously. They have also involved multiple step programs involving interim and long-term financing mechanisms where multiple bond issuances are anticipated over several years due to the substantial number of cases and timing differences. Mr. Field also has assisted the Fiscal Crisis & Management Assistance Team (FCMAT) in developing legislative proposals to make such financing solutions more assessable to local governments. Such proposals were included in FCMAT's report to the Legislature, dated January 31, 2025, entitled *Childhood Sexual Assault: Fiscal Implications for California Public Agencies*.

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Managing Director
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Karma Pemba, is the co-head of California K-14 for RBC Capital Markets. Mr. Pemba, an 18-year veteran based in Los Angeles, has completed 200+ transaction totaling over $25 billion for K-14 issuers throughout the State.

His practice focuses on various financing needs for K-14 issuers, including general obligation bond, lease revenue bonds/COPs, TRANs, judgment obligation bonds, and workforce/student housing.

Mr. Pemba graduated with an M.B.A. from Fordham University and a B.B.A. from Baruch College and currently holds FINRA Series 7, 79, 52 and 63 licenses.

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