LCW LIEBERT CASSIDY WHITMORE

LEGISLATIVE ROUNDUP

Yearly news and developments in employment law and labor relations for California Public Agencies.

2017

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DISCRIMINATION, HARASSMENT AND RETALIATION

AB 46 – Clarifies that the Fair Pay Act Applies to Public Employers.

Labor Code section 1197.5 prohibits an employer from paying an employee a wage rate less than the rate paid to employees of the opposite sex, or to employees of a different race or ethnicity, who perform substantially similar work under similar working conditions. Nevertheless, wage differentials are permissible where payment is made pursuant to one or more of the following factors: a seniority system, a merit system, a system which measures earnings by quality or quantity of product, or a differential based on a bona fide factor other than sex, race, or ethnicity.

AB 46 clarifies that Labor Code section 1197.5's prohibition on sex, race, and ethnicity-based wage differentials applies to public employers. It also grants the Division of Labor Standards Enforcement (DLSE) authority to enforce this prohibition against public employers. This means a public employee has two or three years (depending on whether the violation is willful) to file a wage discrimination claim with the DLSE. And because an employee is not required to exhaust administrative remedies before filing in court, the employee may forego the DLSE altogether and file a wage discrimination complaint directly in superior court.

Because most public agencies have a merit or civil service system that sets uniform wage rates across each job classification, AB 46 likely will not have a substantial impact on public employers. Public agencies should, however, examine their current salary practices for non-merit system employees to identify any salary discrepancies based on an employee's gender, race, or ethnicity for job positions that perform substantially similar work. If such discrepancies are found, the employer should examine whether there are any permissible factors for the wage differential or look to remedy the issue to ensure compliance with this law.

(AB 46 amends Section 1197.5 of the Labor Code.)

AB 168 – Prohibits an Employer from Seeking an Applicant's Salary History Information.

AB 168 is another effort by the California Legislature to address gender-based pay inequities. According to the bill's sponsors, females are more likely to have a lower starting salary in their first job than males, and also are more likely to take extended time off from work during their career. The pay inequity that results from these conditions is perpetuated, said the bill's sponsors, by basing hiring and compensation decisions on an applicant's prior salary.

To break this cycle, AB 168 prohibits an employer from seeking, either directly or indirectly, information about a job applicant's salary (including compensation and benefits) in prior employment. The employer cannot include such a question on a job application nor ask one in a job interview. Additionally, the employer may not ask the applicant's former employer, references, or a background investigator for the applicant's past salary history information.

AB 168 also makes it illegal for an employer to rely on an applicant's past salary history when deciding whether to hire the applicant. Specifically, the bill says that past compensation cannot be a factor in the hiring decision. Thus, even if past salary is not the determinative factor, the mere fact that it was considered makes the hiring decision illegal.

AB 168 includes two important exceptions:

1. An employer may seek and use salary history that is disclosable under state and federal public records laws. Thus, if the applicant formerly held a position with a federal, state, or local government employer whose salary is public record, the prospective employer may ask about and consider the applicant's salary history with the public employer.

2. If the applicant voluntarily provides compensation history, an employer may use that information to determine what salary to offer the applicant, but may not use it to decide whether to hire the applicant.

AB 168 also requires an employer to provide an applicant, "upon reasonable request," the pay scale for the position sought. And, unlike other Labor Code sections prohibiting certain inquiries of applicants, a violation of AB 168's prohibitions is not a misdemeanor.

Employers should review their employment applications and interview procedures to ensure they do not ask about or consider an applicant's salary history from prior private employment. Employers may also want to look at using alternative methods to determine the salary placement of new employees that do not include the use of prior salary history. Employers are advised to work their legal counsel to determine compliance with this new law.

(AB 168 adds Section 432.3 to the Labor Code.)

AB 450 – Prohibits Employers from Voluntarily Consenting to Inspections by Federal Immigration Agents.

AB 450 places significant limitations on an employer's ability to cooperate with federal immigration authorities and imposes fines for violating those limitations. The bill prohibits an employer from giving voluntary consent for an immigration enforcement agent to enter nonpublic areas of the workplace, except as required by federal law or a judicial warrant. AB 450 also prohibits an employer from giving voluntary consent for an immigration enforcement agent to access, review, or obtain employee records, except as required by federal law or a subpoena or court order.

AB 450 requires employers to post a notice to employees when federal immigration authorities have given notice of an inspection of I-9 Employment Eligibility Verification forms, and to provide the inspection notice to individual employees or their authorized representative upon request. The bill also requires the employer to provide an affected employee and the employee's authorized representative with the written results of the inspection and written notice of the employer's and the employee's resulting obligations. Finally, AB 450 prohibits an employer from re-verifying a current employee's employment eligibility at a time or in a manner not required by federal law.

AB 450's prohibitions may be enforced by the Labor Commissioner or the state Attorney General. A first violation subjects the employer to a fine of $2,000 to $5,000; the fine for a second violation is $5,000 to $10,000.

While AB 450 does not otherwise limit an employer's obligation to comply with mandatory actions taken by federal immigration authorities, it is part of the Legislature's recent trend to prohibit employers from voluntarily participating with federal immigration authorities or taking related actions that go beyond what is otherwise required under federal law.

(AB 450 adds Sections 7285.1 through 7285.3 to the Government Code, and Sections 90.2 and 1019.2 to the Labor Code.)

AB 1008 – Extends "Ban the Box" to All Employers and Delays Review of Applicant's Criminal History until after Conditional Offer.

Since 2014, California's "Ban the Box" law has prohibited public employers from requesting or considering an applicant's criminal history until after it has determined the applicant meets the minimum qualifications for the job. The prohibition is subject to certain exceptions, such as applicants for jobs with a criminal justice agency or where a background check is required by law.

AB 1008 extends "Ban the Box" to all California employers and adds additional limitations and processes. Most importantly, under AB 1008 an employer may not request or consider an applicant's criminal history until after a conditional offer of employment is made. The employer must then make an individualized assessment of whether the applicant's criminal history has a direct and adverse relationship to the specific job duties the applicant would perform. The employer must consider:

1. The nature and gravity of the offense,

2. How long ago the offense occurred and

3. The nature of the job.

If the conditional employment offer is withdrawn because of the applicant's criminal history, the employer must notify the applicant in writing, stating which convictions were relied on, attach a copy of the conviction report, and give the applicant five business days to respond before its withdrawal becomes final. Once the decision is final, the employer must send another written notice to the applicant.

All of the exceptions from the prior version of "Ban the Box" (Labor Code § 432.9) continue to apply under this new law. However, AB 1008 has now recodified these provisions from the Labor Code to the Government Code as part of the Fair Employment and Housing Act, granting the Department of Fair Employment and Housing (DFEH) authority to investigate and remedy violations.

Public agencies should update their hiring procedures to delay making a request for criminal history information until after a conditional employment offer has been made. They should also create a procedure for providing an applicant a notice and opportunity to respond in the event a conditional offer is withdrawn based on the applicant's criminal history.

(AB 1008 adds Section 12952 to the Government Code and repeals Section 432.9 of the Labor Code.)

SB 179 –Creates "Nonbinary" Gender Designation on State Identification Documents.

This bill creates the "Gender Recognition Act," which includes a comprehensive set of new or amended procedures related to the issuance of birth certificates, driver's licenses, and other court-issued documents related to an individual's gender identity to add the new gender designation of "nonbinary." "Nonbinary" is a gender designation for an individual who does not otherwise identify with the male or female gender. The implementation of these procedures varies between January 1, 2018, September 1, 2018 and January 1, 2019.

While these new laws do not mandate a public employer to take any specific action with respect to this new gender designation of "nonbinary," employers should begin examining any documentation or records currently kept to identify employees by gender to be modified to incorporate the new "nonbinary" gender designation. Although not expressly noted in this new legislation, an employer's failure to acknowledge an employee's "nonbinary" gender designation may create liability for gender identity discrimination under California's Fair Employment and Housing Act (FEHA).

(SB 179 amends, repeals, and adds Sections 1277 and 1278 of, and to add Section 1277.5 to, the Code of Civil Procedure, to amend Sections 103426 and 103440 of, and to amend, repeal, and add Sections 103425 and 103430 of, the Health and Safety Code, and to amend Section 13005 of, and to amend, repeal, and add Section 12800 of the Vehicle Code, relating to gender identity.)

SB 306 – Expands the Labor Commissioner's Authority to Investigate and Remedy Retaliation Claims and Makes Injunctive Relief Available During an Investigation.

Existing law allows a person who believes he or she has been discharged or discriminated against in violation of any law under the Labor Commissioner's jurisdiction to file a complaint with the Division of Labor Standards Enforcement (DLSE). SB 306 now allows the DLSE to initiate a discrimination investigation without a complaint being filed when the evidence in a proceeding before the Labor Commissioner reveals possible discrimination.

SB 306 authorizes the Labor Commissioner to petition a court for temporary injunctive relief when it has reasonable cause to believe an employer has retaliated or discriminated against an employee or applicant in violation of the laws under the Commissioner's jurisdiction. The bill also allows an employee who has filed a retaliation complaint with the DLSE or in court to seek temporary injunctive relief. In deciding the injunction petition, the court must consider the chilling effect the employer's alleged conduct may have on other employees seeking to assert their rights. If granted, the temporary restraining order stays in effect until the retaliation complaint has been adjudicated.

Finally, SB 306 gives the Labor Commissioner authority to issue a citation to a person responsible for a violation. The citation may order the person to take action necessary to remedy the violation, including rehiring or reinstatement, back pay with interest, and posting a notice. The bill also gives the person who receives the citation the right to an appeal hearing, resulting in a written decision that can be reviewed by a court.

SB 306 may have minimal impact on public employers because many provisions of the Labor Code do not apply to them. However, if a public employer is the subject of a retaliation complaint, it could have to participate in an injunction proceeding and may want an appeal hearing if a citation issues. These new procedures could impose substantial costs on a public employer.

(SB 306 amends Section 98.7 and adds Sections 98.74, 1102.61 and 1102.62 to the Labor Code.)

SB 396 –Anti-Harassment Training and Postings Must Include Gender Identity, Gender Expression, and Sexual Orientation.

Existing law requires employers with 50 or more employees to provide supervisors with at least two hours of training every two years on prevention of sexual harassment and abusive conduct (commonly referred to as "AB 1825 Supervisor Harassment training"). SB 396 requires such training to include harassment based on gender identity, gender expression, and sexual orientation. The bill also requires employers to post a poster from the DFEH on transgender rights, and adds "transgender and gender nonconforming individuals" to the Unemployment Insurance Code's definition of "individual with employment barriers."

Employers should update their AB 1825 training materials to add examples of harassment based on gender identity, gender expression, and sexual orientation. SB 396 does not require supervisors to be trained immediately on these issues but they must be included in the next regularly scheduled AB 1825 training.

(SB 396 amends Sections 12950 and 12950.1 of the Government Code and Sections 14005 and 14012 of the Unemployment Insurance Code.)

BENEFITS

SB 63 – Requires More Employers to Provide Unpaid Parental Leave.

SB 63 requires private employers with 20 or more employees within a 75 mile radius, and all public employers, to allow an employee who has worked at least 1,250 hours in the prior 12 months to take up to 12 weeks of unpaid parental leave to bond with a new child. The bill further requires the employer to maintain medical coverage for any employee on unpaid parental leave. And when both parents work for the same employer, the employer may allow both parents' leave to run concurrently.

To avoid conflicts with other leave laws, SB 63 leave is not available to employees who are covered by both the California Family Rights Act (CFRA) and

the federal Family and Medical Leave Act (FMLA), which applies to employers with 50 or more employees. SB 63 also authorizes the Department of Fair Employment and Housing (DFEH) to create a parental leave mediation pilot program, subject to funding by the Legislature.

Smaller public agencies whose employees are not subject to both CFRA and FMLA (20-49 employees) must incorporate these leave requirements into their personnel policies. Employers who have questions about compliance with SB 63 should seek advice from trusted employment counsel.

(SB 63 adds Section 12945.6 to the Government Code.)

PUBLIC SAFETY

AB 579 – Creates Statewide Firefighter Pre-Apprentice Program.

AB 579 requires the Department of Industrial Relations' Division of Apprenticeship Standards and the California Firefighter Joint Apprenticeship Committee (CAL-JAC) to develop a statewide firefighter pre-apprenticeship program to recruit candidates from underrepresented groups. CAL-JAC will deliver the pilot classes for the program using existing facilities and training models. CAL-JAC will then provide the program model to fire protection agencies, which can then use the model to establish local pre-apprenticeship programs. AB 579 was an urgency bill that took effect on September 28, 2017.

(AB 579 adds Section 13159.15 to the Health and Safety Code.)

AB 585 – Clarifies the Definition of a "Police Security Officer."

A sheriff's or police security officer is a public officer whose primary duty is security and protection of locations or facilities owned or operated by the officer's employing agency or any entity contracting with that agency for security services. AB 585 clarifies that a "police security officer" also includes a security officer who works in a police division within a city department that operates independently of that city's police department.

(AB 585 amends Section 831.4 of the Penal Code.)

AB 1339 – Expands Required Disclosure of Employment Information for Law Enforcement Agency Applicants.

Existing law requires an employer to provide employment information, upon proper request, to a law enforcement agency that is conducting a background investigation of a first-time applicant for a peace officer position under Government Code section 1031.1. AB 1339 expands this requirement to all applicants to a law enforcement agency, not just those applying for sworn officer positions.

Human Resources personnel should be made aware of this new requirement and be prepared to provide employment information, including job applications, performance evaluations, attendance records, disciplinary actions, and eligibility for rehire, when requested by an applicant to a law enforcement agency.

(AB 1339 amends Section 1031.1 of the Government Code.)

SB 324 – Allows Custodial Officers to Use Less than Lethal Firearms.

Custodial officers who work for a city or county correctional facility and are tasked with job duties related to the detention of prisoners are categorized as "public officers" and not "peace officers" under the Penal Code. Existing law prohibits custodial officers from carrying or possessing firearms in the performance of their duties. SB 324 gives a sheriff or police chief who oversees custodial officers the discretion to allow custodial officers to use a firearm that is a less lethal weapon, such as a pellet gun, in the performance of their duties. The sheriff or chief must provide training on the particular less lethal weapon and adopt a policy for use of such weapons.

(SB 324 amends Section 831 of the Penal Code.)

RETIREMENT

AB 1309 – Allows CalPERS to Assess Fees for Failing to Promptly Enroll Retired Annuitants and Report their Pay and Hours.

The Public Employees' Retirement Law allows a person receiving pension benefits from the California Public Employees Retirement System to work for an employer in the system provided certain conditions are met. AB 1309 allows CalPERS to assess a $200 fee per retired member per month when an employer:

1. Fails to enroll a retired annuitant in CalPERS' recordkeeping system within 30 days of hire or

2. Fails to report an annuitant's pay rate and hours worked within 30 days of the end of the pay period in which the annuitant worked.

The employer cannot pass the cost of any such fees on to the annuitant.

Employers who contract with CalPERS should review their employment procedures for annuitants to ensure that hiring, pay rate, and hours are promptly reported to CalPERS.

(AB 1309 amends Section 21220 of the Government Code.)

AB 1487 – Limits Out-Of-Class Appointments to 960 Hours per Fiscal Year.

AB 1487 prohibits a local agency or school district that contracts with CalPERS for retirement benefits from keeping an employee in an out-of-class appointment for more than 960 hours in a fiscal year. This limitation applies only to employees working out-of-class in a vacant position during recruitment for a permanent employee to fill the position; it does not apply to employees working out-of-class to fill in for an employee who is on temporary leave.

AB 1487 requires the employer to report the hours worked by the employee in the out-of-class appointment to CalPERS no later than 30 days after the end of the fiscal year. The compensation for the out-of-class appointment must be set in a collective bargaining agreement or publicly available pay schedule.

An employer who violates these requirements must pay a penalty of three times the amount of employee and employer contributions for the additional out-of-class pay for all hours worked out-of-class, not just those above 960 hours. The employer must also reimburse CalPERS for the administrative expenses of dealing with the violation.

Employers who contract with CalPERS should review their personnel policies and labor contracts to ensure that employees do not work out-of-class in a vacant position for more than 960 hours per fiscal year. As AB 1487 may have significant impacts on how public agencies handle out of class assignments, public agencies should consult with legal counsel on how best to comply with this new law.

(AB 1487 adds Section 20480 to the Government Code.)

SB 525 – Annual CalPERS "Housekeeping" Bill.

SB 525 provides the following clean-up provisions to the Public Employees Retirement Law (PERL):

- Clarifies that "disability" and "incapacity for performance of duty" mean a disability that is expected to last at least 12 months or result in death;

- Clarifies that a local agency's election of one-year final compensation applies only to service credit accrued with that agency, not to any service credit an employee accrued at another agency

- Authorizes CalPERS members who should have been classified as members of CalSTRS to continue accruing CalPERS service credit or make a one-time election to transfer to CalSTRS

- Clarifies that employers must report special compensation separately from an employee's pay rate

(SB 525 amends Sections 20026, 20042, 20138, 20636, 20636.1, 21261, 21337, 21409, 21424, 21454, 21459, 21462, 21473. 21475.5, 21476.5, 21477, 21481, 75071, 75071.5, and 75571.5, adds Section 20309.7 to, and repeals Section 21228, of the Government Code.)

SB 671 – Clarifies Employer's Ability to Make Advance Contribution Payments under '37 Act County Retirement Systems (CERL).

The County Employees' Retirement Law ('37 Act or CERL) requires a county board of supervisors to annually appropriate the actuarially determined amount of the county's contributions to the retirement system for that fiscal year. The county may make an advance payment of all or part of that annual contribution within 30 days after the start of the fiscal year.

SB 671 clarifies that a county or district under a CERL retirement system may make an advance payment of contributions for an additional year or partial year beyond the current fiscal year, provided the payment is made within 30 days of the start of the county's or district's fiscal year. The bill also clarifies that districts in all CERL counties may make advance payments of their estimated annual contributions.

(SB 671 amends Section 31582 of the Government Code.)

MANDATED REPORTERS

AB 575 – Adds "Substance Use Disorder Counselor" to List of Mandated Reporters.

AB 575 adds "Substance Use Disorder Counselor" to the list of health practitioners required by law to serve as a mandated reporter of any elder and dependent adult abuse. A "Substance Use Disorder Counselor" is defined as a person providing counseling services in an alcoholism or drug abuse recovery and treatment program that is licensed, certified, or funded under Health & Safety Code sections 11760, et. seq.

Employers who employ substance abuse counselors should determine if they are covered under this new provision and provide appropriate training and notice to such employees in order to comply with their mandatory reporter requirements.

(AB 575 amends Section 15610.37 of the Welfare and Institutions Code.)

WORKERS' COMPENSATION

AB 44 – Adds Requirements for Victims of Domestic Terrorism.

AB 44 requires employers to provide immediate nurse case manager support to employees who are injured on the job by an act of domestic terrorism, but only when the Governor declares a state of emergency. Once the Governor does so, the employer must notify employees who have filed claims of their right to a nurse case manager. If a claim is filed after the declaration of emergency, the employer must provide notice within three days of filing.

(AB 44 adds Section 4600.05 to the Labor Code.)

LABOR RELATIONS

AB 119 – Requires Public Employers to Give Unions Access to New Employee Orientation and Provide Unions with Employees' Personal Contact Information.

AB 119, a trailer bill to the 2017-18 state budget, imposes two new requirements on public employers with regard to union access to employees:

1. The bill requires a public employer to give a union that currently represents its employees notice regarding a new employee orientation of new employees of that unit at least 10 days prior to the orientation unless there is an unforeseeable urgent need requiring a shorter notice period. If a union requests access to such new employee orientation, the "structure, time and manner" of such access are subject to negotiation before access to the orientation is provided. If the union and employer do not reach agreement within either 45 days of the first negotiation or 60 days from the initial request

to negotiate, either party may demand interest arbitration, whereby a third-party arbitrator will establish the terms of access to such new employee orientations with the cost of the arbitrator split between the parties. In lieu of a third-party arbitrator, the bill allows a city or county to choose to have a PERB staff member conduct the compulsory interest arbitration proceeding over orientation access, with such agency covering the full costs of the PERB staff member.

2. The bill also requires the employer to provide a union representing its employees with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and home address of new employees within 30 days of hire or the first pay period of the month after hire. The employer must provide each union with this information for all employees it represents at least every 120 days. Employees have the ability to opt out in writing of the disclosure of their home address, home telephone number, personal cellular telephone number and personal email address on file with the employer.

AB 119 grants the Public Employment Relations Board jurisdiction over alleged violations of these provisions.

AB 119 was an urgency statute that took effect on June 27, 2017. While many public agencies have already been addressing the requirements of AB 119, those agencies who have not yet implemented its provisions should seek legal counsel to ensure compliance with these provisions.

(AB 119 adds Sections 3555-3559 to the Government Code.)

SB 285 – Prohibits Public Employers from Deterring or Discouraging Union Membership.

SB 285 says that a "public employer shall not deter or discourage public employees from becoming or remaining members of an employee organization." According to the author, this bill closes a loophole in existing labor relations statutes that allowed public employers to use unfair tactics to convince or coerce employees to withdraw from union membership. SB 285 gives the Public Employment Relations Board jurisdiction over alleged violations of this prohibition.

It is difficult to determine from the statute's broad language what conduct would constitute deterring or discouraging union membership. What conduct is prohibited likely will be determined over time through litigation before PERB. In the meantime, employers should make sure managers and supervisors are aware of this new law and urge caution if the subject of union membership comes up in the workplace. Employers with questions about compliance with SB 285 should seek advice from trusted labor counsel.

(SB 285 adds Sections 3550-3552 to the Government Code.)

PUBLIC RECORDS ACT

AB 459 – Limits the Disclosure of Police Body Camera Recordings.

AB 459 provides that the California Public Records Act does not require disclosure of a video or audio recording created during the commission or investigation of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of the victim. The agency in possession of the recording must, however, justify withholding the recording by showing that the interest in withholding the recording outweighs the interest in its disclosure. In balancing these interests, the public agency must consider:

1. The victim's constitutional privacy rights and

2. Whether potential harm to the victim can be mitigated by obscuring or distorting identifying characteristics without impairing the ability to see or hear the events captured on the recording.

AB 459 also requires public agencies to permit the victim or the victim's authorized representative to

obtain a copy of the recording. Disclosure to the victim or representative does not constitute a waiver of exemptions for any other member of the public.

(AB 459 adds Section 6254.4.5 to the Government Code.)

AB 1455 – Creates a CPRA Exemption for Local Agency Collective Bargaining Documents.

The California Public Records Act (CPRA) currently provides that documents related to collective bargaining between the state, including the university systems, and unions representing state and university employees are exempt from disclosure. AB 1455 extends that exemption to local public agencies whose labor relations are governed by the Meyers-Milias-Brown Act, Government Code section 3500 et. seq. (MMBA).

This bill was in direct response to CPRA requests for agency documents related to ongoing collective bargaining actions, decisions, strategies, etc. that were not expressly exempted from disclosure under the CPRA. AB 1455 now provides this express exemption for such documentation related to collective bargaining processes. Local public agencies covered under the MMBA should review their internal procedures for handling CPRA requests and update them to include withholding documents related to collective bargaining as an exemption to the CPRA in response to such requests.

(AB 1455 amends Section 6254 of the Government Code.)

PRIVACY

SB 31 – Prohibits Disclosure of Individual's Religious Affiliation to Federal Government.

SB 31 prohibits state and local agencies, and public employees, from providing or disclosing to the federal government any information that reveals a person's religious beliefs, practices, or affiliation. This prohibition applies only when the federal government wants the information so it can compile a database for law enforcement or immigration purposes.

SB 31 prohibits state and local law enforcement agencies from compiling personal information on religious affiliation, except as part of a targeted investigation or when necessary to provide religious accommodations. The bill does not, however, prohibit law enforcement agencies from compiling aggregate date about religious affiliation that cannot be used to identify particular individuals. SB 31 also prohibits law enforcement agencies from using any of their resources to help enforce any requirement that individuals register with the federal government based on religion, national origin, or ethnicity.

This urgency statute took effect on October 15, 2017. As a general matter, public agencies have no need for and do not collect information about individuals' religious affiliation. One exception, as SB 31 recognizes, is when a public employer receives a request to accommodate an employee's religious practices. In those cases, the agency must ensure that information related to the accommodation is not turned over to the federal government if it could be used to populate a database of individuals of a particular religion.

(SB 31 adds Section 8310.3 to the Government Code.)

POLITICAL REFORM ACT, ELECTIONS, AND ELECTED OFFICIALS

AB 187 – Increased Transparency in Local Elections.

The Political Reform Act of 1974 provides that if a campaign committee receives contributions totaling $2,000 or more in a calendar year, that committee is required to file a disclosure report each time it makes contributions or independent expenditures of $5,000 or more to support or oppose the qualification of a state ballot measure.

This bill requires a recipient campaign committee that makes contributions or independent expenditures of $5,000 or more to support or oppose the qualification of a single local initiative or referendum ballot measure to also file a campaign disclosure report. The bill requires recipient

committees to file disclosures within ten days of the expenditure.

(AB 187 amends Section 84204.5 of the Government Code)

AB 195 – Local Agencies Must Comply with New Election Ballot Requirements for Initiative Measures.

Current law requires that the ballots used when voting upon a proposed county, city, or district ordinance have printed on them a statement describing the nature of the proposed ordinance. This bill extends these requirements to any measure submitted to the voters that is proposed by a local governing body or submitted to the voters as an initiative or referendum measure. It also requires the statement describing the measure to be a true and impartial synopsis of the proposed measure.

(AB 195 amends Section 13119 of the Elections Code)

AB 551 – Expands the "Revolving Door Ban" to Public Agency Contractors.

The Political Reform Act prohibits local elected officials, county administrative officers, city managers, and special district general managers or chief administrators from lobbying their former agencies for one year after they leave office. The one-year ban does not apply when the individual appears before their former agency as an official or employee of another public agency. AB 551 narrows this exemption by applying the one-year lobbying ban to former agency officials or executives who lobby as an independent contractor on behalf of another public agency.

Local public agencies should inform elected officials or executives who are about to leave the agency that they cannot lobby the agency for one year after they leave office unless they do so on behalf of another public agency for which they are a board member, officer, or employee.

(AB 551 amends Section 87406.3 of the Government Code.)

AB 765 – Provides that Local Agency Ballot Initiatives Be Decided at a Statewide or Regular Election.

Currently, county, city, and special district ballot initiatives that are supported by the signatures of at least a certain percentage of eligible voters must be decided at a special election upon request of the initiative proponents. AB 765 requires that county initiatives be decided at the next statewide election and that city and special district initiatives be decided at the next regular election. The bill also allows the agency's governing body to call a special election on the initiative.

(AB 765 amends Sections 1405, 9111, 9118, 9212, 9215, and 9310 of, and repeals Sections 9116, 9214, and 9311, of the Elections Code.)

SB 45 – Prohibits Certain Types of "Mass Mailings."

The Political Reform Act prohibits sending a mass mailing of over 200 similar pieces of mail at public expense. The Fair Political Practices Commission has adopted regulations defining which mass mailings are prohibited and which are permissible.

SB 45 puts the content of the FPPC regulations into the Political Reform Act itself. The bill also prohibits a mass mailing from being sent within 60 days of an election by or on behalf of a candidate who will appear on the ballot.

Agency executives and elected officials should be reminded that public funds cannot be used to send mass mailings during an election.

(SB 45 adds Sections 89002 and 89003 to the Government Code.)

BUSINESS AND FACILITIES

AB 92 – Extends 5% Retention Cap on Public Works Projects for Another Five Years.

Prior legislation capping retentions proceeds withheld on public works projects to a maximum of five percent was set to expire on January 1, 2018. This bill extends the existing retention cap for another five years to January 1, 2023.

(AB 92 amends Sections 7201 and 10261 of the Public Contract Code)

AB 199 – Private Residential Project Built Pursuant to Agreement with Successor Agency to a Redevelopment Agency is Subject to Prevailing Wage Law.

Existing law exempts private residential projects built on private property from certain requirements for projects that are defined as "public works," including, among other requirements, the payment of prevailing wages, unless the project is built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority. This bill makes this exemption for private residential projects also inapplicable to a project built pursuant to an agreement with a successor agency to a redevelopment agency.

(AB 199 amends Section 1720 of the Labor Code)

AB 245 – Increases Penalties for Violation of Hazardous Waste Laws

Existing law permits the Department of Toxic Substances Control (Department), or an agency authorized to implement and enforce certain laws relating to hazardous materials (known as a unified program agency), to enforce the Hazardous Waste Control Law. Existing law also authorizes the Department or a unified program agency to issue an order that requires a violation to be corrected and imposes an administrative penalty when there is a violation of the laws regulating hazardous substances. Under existing law, a person who does not comply with the order is subject to a civil penalty of up to $25,000 for each day of noncompliance.

This bill increases these penalties to up to $70,000.

(AB 245 amends Sections 25188, 25189, and 25189.2 of the Health and Safety Code)

AB 262 – Aims to Address Climate Change Pollution in State Public Works Projects.

This bill requires the Department of General Services (DGS) to establish standards used in the bid process related to greenhouse gas (GHG) emissions when certain materials are used in state public works projects. This bill requires DGS, by January 1, 2019, to establish and publish, in the State Contracting Manual (SCM), a maximum acceptable global warming potential for certain materials. In addition, the bill requires a successful bidder to submit a current Environmental Product Declaration, developed in accordance with specified standards, prior to the installation of any certain materials.

(AB 262 amends and renumbers heading of Article 5 (commencing with Section 3400) of Chapter 3 of Part 1 of Division 2 of, and to add Article 5 (commencing with Section 3500) to Chapter 3 of Part 1 of Division 2 of, the Public Contract Code)

AB 297 – With a Liquor License, a Wine and Food Cultural Museum and Educational Center in Sonoma County May Now Sell or Furnish Alcoholic Beverages for Consumption.

The Alcoholic Beverage Control Act provides that with an on-sale general license, a wine and food cultural museum and educational center in Napa County may sell, furnish, or give alcoholic beverages for consumption on the licensed premises and have various off-sale privileges. This bill authorizes a similar on-sale general license for a wine and food cultural museum and educational center in Sonoma County.

(AB 297 amends Section 23396.2 of the Business and Professions Code)

AB 321 – Clarifies that Groundwater Sustainability Agencies Must Consider Interests of Farmers, Ranchers, and Dairy Professionals.

The Sustainable Groundwater Management Act currently requires groundwater sustainability agencies to consider the interests of all beneficial uses and users of groundwater, including agricultural users and domestic well owners. This bill clarifies that agricultural groundwater users include farmers, ranchers, and dairy professionals.

(AB 321 amends Section 10723.2 of the Water Code)

AB 464 - Makes Changes to LAFCO Statutes Governing Proposed Boundary Changes.

The Cortese-Knox-Hertzberg Local Government Reorganization Act establishes procedures for local government changes of organization, including city incorporations, disincorporations, city and special district consolidations, and annexations to a city or special district. Local agency formation commissions (LAFCOs) regulate boundary changes through the approval or denial of proposals by other public agencies. This bill makes changes to the statutes in LAFCO laws, which govern proposed changes of organization. First, this bill makes changes to existing law, which requires an application proposing a boundary change to include a description of services to recognize that services may already be provided to the area that would be affected by the boundary change. Second, this bill provides an additional reason that a special district may use to terminate annexation proceedings. Under this bill, in addition to justifying a termination request by financial or service concerns, an irrigation district that is providing electrical services outside their boundaries, pursuant to a service area agreement approved by the Public Utilities Commission may also adopt a resolution to terminate proceedings because the territory is already receiving electrical services.

(AB 464 amends Sections 56653 and 56857 of the Government Code)

AB 546 – Aims to Streamline Permit Process for Installation of Energy Storage Systems.

This bill requires cities, including charter cities, and counties to make all documentation and forms associated with permitting of advanced energy storage available on the city or county website, if it has one. Cities and counties with 200,000 or more residents will have to comply by September 30, 2018, while cities and counties with less than 200,000 residents have until January 31, 2019, to comply. This bill also requires cities and counties to allow for electronic submission of permit applications and associated documentation for advanced energy storage installations, including electronic signatures, unless the city or county determines that it is unable to accept an electronic signature on all forms, applications, and other documents and makes a finding that states the reasons for that inability.

(AB 546 adds Section 65850.8 to the Government Code)

AB 581 – For Grant Funding, Apprenticeship Programs Must Keep Record of Expenditures.

Existing law requires a contractor who employs apprentices on a public works project to contribute specific funds to the California Apprenticeship Council to fund grants to approved apprenticeship programs for the purpose of training apprentices and pay certain expenses of the Department of Industrial Relations.

This bill requires an apprenticeship program, to be eligible to receive grant funds from the Council, to keep adequate records regarding the expenditure of those grant funds and make all records available to the Department of Industrial Relations so the Department can verify that grant funds were used solely for training apprentices. The bill also requires the Department to verify that grants made by the Council are used solely for training apprentices. The bill prohibits an apprenticeship program that is unable to demonstrate how grant funds are expended or an apprenticeship program that is found to be using grant funds for purposes other than training apprentices from being eligible to receive any future grant from the Council under these provisions and would authorize the Department to initiate the process to rescind the registration of the apprenticeship program.

(AB 581 amends Section 1777.5 of the Labor Code)

AB 718 – Aim to Implement Best Management Practices With Respect to Mosquito Reduction in Wetland Habitat Owned by Private Landowners.

This bill authorizes private landowners whose properties include wetland habitat located within the boundaries of a mosquito abatement and vector control district to enter into a memorandum of understanding with the district to implement best management practices with regard to mosquito reduction the managed wetland habitat. The bill also authorizes the Central Valley Joint Venture, in consultation with other agencies to periodically modify the best management practices in order to best fulfill certain purposes.

(AB 718 amends Section 1506 of the Fish and Game Code)

AB 733 – Authorizes Capital Projects That Combat Climate Change.

Under existing law, cities and counties may establish enhanced infrastructure financing districts to finance public capital facilities and other projects of communitywide significance. This bill authorizes these districts to also finance projects that enable communities to adapt to the impacts of climate change.

(AB 733 amends Sections 53398.50 and 53398.52 of the Government Code)

AB 851 - Extends the Sunset Date on Construction Manager At-Risk Contracting; Extends Construction Manager At-Risk Contracting Method to the City of San Diego; and Allows Santa Clara Valley Water District to use Design-Build Procurement Method on Certain Projects

This bill extends the sunset date on the authority of counties to use construction manager (CM) at-risk contracting. The existing sunset date of January 1, 2018 would be extended until January 1, 2023. This bill also adds skilled and trained workforce requirements to counties' authority to use CM at-risk. With certain exceptions relating to project labor agreements, the bill prohibits a CM at-risk entity from being prequalified, shortlisted, or awarded a contract unless the entity provides an enforceable commitment to the county that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance skilled and trained workforce requirements for public contracts.

In addition, this bill allows the City of San Diego to use CM at-risk contracting for the erection, construction, alteration, repair, or improvement of any building owned or leased by the city, provided the project exceeds $25 million.

This bill also allows the Santa Clara Valley Water District to use the design-build procurement method when contracting for certain construction improvements.

(AB amends Sections 20146 and 21162 of, adds Section 22162.5 to, and adds and repeals Section 20175 of, the Public Contract Code)

AB 1066 – Expands Definition of "Public Works" for Purposes of the Prevailing Wage Law to Also Include Tree Removal Work.

Under existing law, the term "public works" for purposes of the Prevailing Wage Law includes construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except as specified. This bill expands the meaning of the term "public works" to include specific types of tree removal work.

(AB 1066 amends Section 1720 of the Labor Code)

AB 1082 – Aims to Encourage Transportation Electrification.

This bill authorizes an electrical corporation to file with the California Public Utilities Commission (CPUC) a pilot program proposal for the installation of electric charging stations at K-12 school facilities and other educational institutions, including private schools and community colleges. The program

proposals must be filed by July 30, 2018. The bill requires the CPUC to review, modify, or decide whether to approve the program proposals filed by the electrical corporations by December 31, 2018.

(AB 1082 adds Section 740.13 to the Public Utilities Code)

AB 1127 – Increases Access to Diaper Changing Stations in Public Buildings and Venues.

This bill requires new construction or renovation of a public building owned by a state or a local agency which includes at least one restroom that is open to the public to provide at least one safe, sanitary, convenient, and publicly accessible baby diaper changing station. Each station must be maintained, repaired, and replaced as necessary to ensure safety and ease of use, and to be cleaned with the same frequency as the restroom in which it is located. This bill also requires public venues, including theaters, sports arenas, and libraries, to install and maintain at least one baby diaper changing station.

(AB 1127 adds Sections 15805 and 50535 to the Government Code, and adds Section 118506 to the Health and Safety Code)

AB 1145 – Requires Agencies to Reimburse Cable Operator for Costs of Undergrounding.

This bill adds cable television facilities and operators to existing statutes requiring local public agencies to reimburse utilities for the costs of undergrounding publicly-owned overhead electric or communications facilities when the agency initiates the conversion. Undergrounding is the process of replacing overhead lines that provide services such as electricity or communications with lines underground. Undergrounding is typically done for aesthetic or safety purposes, but also makes such lines less susceptible to damage from the elements. As a result, undergrounding reduces the cost of fixing damaged lines over time.

(AB 1145 amends Sections 700, 5896.2, 5896.5, 5896.9, 5896.10, and 5896.14 of the Streets and Highways Code)

AB 1218 – Extends Sunset on CEQA Exemptions for Bicycle Projects.

This bill extends the sunset from January 1, 2018 to January 1, 2021 for exemptions to CEQA related to bicycle transportation plans and projects that consists of the restriping of streets and highways for bicycle lanes in urbanized areas.

(AB 1218 amends Sections 21080.20 and 21080.20.5 of the Public Resources Code)

AB 1223 – Requires State Agencies that Maintain an Internet Website to Post Information Regarding Public Construction Contract Payments.

This bill requires state agencies that maintain an Internet website to post the following information about public construction contract payments valued at $25,000 or more on their websites within 10 days of payment:

1. The project for which the payment was made;
2. The name of the construction contractor or company paid;
3. The date the payment was made;
4. The payment application number or other identifying information; and
5. The amount of the payment.

(AB 1223 adds Section 10261.7 to the Public Contract Code)

AB 1454 – Legislature Intends to Reestablish P3 Agreements for Transportation.

As of January 1, 2017, previously authorized public-private partnership (P3s) agreements for transportation projects are now prohibited by law. This bill states the intent of the Legislature to reestablish authority to engage in public-private partnership agreements for transportation projects in the future.

(AB 1454 is uncodified)

SB 302 - Creates a Special Statute for the Orange County Fire Authority.

This bill creates a special statute for the Orange County Fire Authority ("OCFA"). This bill requires that any structural fire fund property tax revenues to be transferred to OCFA for fire protection services be first approved by the board of supervisors of Orange County, the city councils of a majority of OCFA members cities, and the OCFA.

(SB 302 amends Section 99.02 of the Revenue and Taxation Code)

SB 418 – Eases Compliance with "Skilled and Trained Workforce" Requirements For Certain Occupations on Public Works Projects.

The law authorizes a public entity to require that a bidder, contractor, or other entity use a skilled and trained workforce to complete a public works project. This bill revises the existing definition of "skilled and trained workforce" to specify that on or after January 1, 2018, the 40, 50 and 60 percentage graduation rate of skilled journeypersons shall not apply to certain crafts, including: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer, or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(SB 418 amends Section 2601 of the Public Contract Code)

SB 427 – Clarifies Law Aimed at Eliminating Lead Exposure in Drinking Water.

This bill makes clarifying changes to help implement existing law that requires, by July 1, 2018, a public water system to identify and replace known lead service lines.

(SB 427 amends Section 116885 of, and adds Section 116890 to, the Health and Safety Code)

SB 448 – Aims to Create Transparency for Special Districts.

This bill requires the State Controller to annually publish a list of inactive special districts and establishes a process for local agency formation commissions to dissolve inactive special districts. The bill aims to create transparency regarding the existence of special districts and the taxes they charge and to guard against duplicative fees.

(SB 448 amends Sections 26909, 56073.1, and 56375 of, adds Sections 12463.4 and 56042 to, and adds Article 6 (commencing with Section 56879) to Chapter 5 of Part 3 of Division 3 of Title 5 of, the Government Code)

SB 450 – Requires Public Disclosures Prior to Issuance of Bonds.

This bill requires public agencies to obtain and disclose specified information in a public meeting prior to authorizing the issuance of certain bonds. The information to be disclosed includes: (1) the true interest rate of the bonds, (2) the finance charge of the bonds, (3) the amount of proceeds for sale of the bonds, and (4) the total payment amount calculated to the final maturity of the bonds.

(SB 450 add Section 5852.1 to the Government Code)

SB 496 – Limits Design Professionals Indemnity Obligations.

This bill changes the duty of design professionals to indemnify against liability for claims, including the duty and costs to defend. For contracts for design professional services entered into on or after January 1, 2018, the indemnity provided by the design professional to an indemnitee shall be limited to claims negligence, recklessness, or willful misconduct of the design professional. These limitations, however, do not apply to a design professional's indemnity obligations to a state agency. This bill also limits a design professional's indemnity obligation with respect to defense costs to the design professional's proportional share of fault.

(SB 496 amends Section 2782.8 of the Civil Code)

SB 549 – Requires Utility Companies to Notify the CPUC of Budget Redirections.

This bill requires an electrical or gas corporation to annually notify the California Public Utilities Commission (CPUC) of each time that capital or expense revenue earmarked by the CPUC for maintenance, safety, or reliability was redirected by the electrical or gas corporation to other purposes. The bill requires the CPUC to ensure that the notification is made available in a timely fashion to the Office of the Safety Advocate, Office of Ratepayer Advocates, and parties on the service list of any relevant proceeding.

(SB 549 adds Section 591 to the Public Utilities Code)

SB 564 – Enacts the Water Bill Savings Act.

This bill enacts the Water Bill Savings Act, which allows joint powers authorities to finance water conservation improvements to private property in the Bay Area and Los Angeles County, paid for by charges collected through water bills.

(SB 564 adds Section 6588.8 to, and repeals and amends Section 6586.7 of, the Government Code)

SB 614 – Changes Process for Public Transit Fare Evasion and Passenger Misconduct Violations.

This bill makes various changes to the civil administrative process used by public transportation agencies for fare evasion and other passenger misconduct violations. Among other things, the bill caps administrative penalties for certain fare violations and requires the penalties generated from fare violations to be deposited with the public transportation agency that issued the citation, as opposed to the general fund of the county in which the citation was issued.

(SB 614 amends Section 640 of the Penal Code, and amends Sections 99580 and 99581 of the Public Utilities Code)

SB 618 – Imposes Mandates on Load-Serving Entities.

This bill requires the integrated resource plans of all load-serving entities, defined as electrical corporations, to contribute to a diverse and balanced portfolio of electricity resources to ensure a reliable electricity supply, provide optimal integration of renewable energy in a cost-effective manner, and meet greenhouse gas emissions limits without shifting costs from one entity's customers to another.

(SB 618 adds Section 454.54 to the Public Utilities Code)

SB 667 – Aims to Implement Watershed Work in Urban Areas.

This bill provides that subject to an appropriation of funds by the Legislature, the Department of Water Resources shall establish a program to implement watershed-based riverine and riparian stewardship improvements by providing technical and financial assistance to projects that reduce flood risk, restore and enhance fish populations and habitat, improve water quality, achieve climate change benefits, and in general ensure resilient ecological function in urban areas.

(SB 667 adds Section 7049 to the Water Code)

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