



MEETING AGENDA

Monday, June 19, 2017

Realtor House, 26529 Jefferson Ave, Murrieta

Presiding: Don Murray, Chair

2017 Strategic Initiatives

Budget & Tax Reform / Job Creation and Retention / Healthcare / Infrastructure & The Environment/ Public Safety

Call to Order, Roll Call & Introductions: 12:00 p.m.

Chair Report

Approval of Minutes

Action

Legislative Report #6

Action

1. [SB 96 Committee on Budget and Fiscal Review: State Government.](#)
2. [AB 1701 \(Thurmond\): Labor-related liabilities: original contractor.](#)
3. [AB 669 \(Berman\) Economic development: California Community Colleges Economic and Workforce Development Program.](#)
4. [AB 1085 \(Calderon\) Business entities: annual tax: minimum franchise tax: fees.](#)
5. [AB 380 \(Dababneh\) Electronic transactions: motor vehicle finance.](#)
6. [AB 1008 \(McCarty\) Employment discrimination: prior criminal history.](#)
7. [AB 1515 \(Daly\) Planning and zoning: housing.](#)
8. [AB 943 \(Santiago\) Land use regulations: local initiatives: voter approval.](#)
9. [AB 570 \(Gonzalez Fletcher\) Workers' compensation: permanent disability apportionment.](#)

Guest Speaker Jennings Imel, Executive Director, Western Region, U.S. Chamber of Commerce

Speaker and Chamber Announcements **Information**

Our lunch sponsor IE Commerce Business to Business **Thank You**

Adjourn – Next Meeting July 17, 2017

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 Murrieta Chamber of Commerce
 Lake Elsinore Valley Chamber of
 Commerce
 Wildomar Chamber of Commerce
 Menifee Valley Chamber of Commerce
 Perris Valley Chamber of Commerce

Commerce Bank of Temecula Valley
 California Apartment Association
 Southwest Healthcare Systems
 Temecula Valley Hospital
 EDC of Southwest California
 Paradise Chevrolet Cadillac
 The Murrieta Temecula Group

Southwest California Legislative Council

Lake Elsinore Chamber of Commerce
Menifee Valley Chamber of Commerce
Murrieta Chamber of Commerce
Perris Valley Chamber of Commerce
Temecula Valley Chamber of Commerce
Wildomar Chamber of Commerce

Meeting Minutes

Monday, May 22, 2017

2017 Chair: Don Murray

Legislative Consultant: Gene Wunderlich

Directors Attendance:

- | | |
|-------------------|--------------------|
| ✓ Adam Ruiz | ✓ Don Murray |
| ✓ Alex Braicovich | Eric Cross |
| ✓ Ali Mazarei | ✓ Gene Wunderlich |
| Andy Morris | ✓ Greg Morrison |
| Ben Benoit | ✓ Joan Sparkman |
| Brad Neet | ✓ John Kelliher |
| Carl Johnson | ✓ Judy Guglielmana |
| Darci Castillejos | Kassen Klein |
| ✓ Denee Burns | |
| Dennis Frank | |

Chamber Executives/Guest Attendance

- | | |
|---------------------|-------------------|
| • Alice Sullivan | • Deni Horne |
| • Darrell Connerton | • Eric McLeod |
| • Debbie Herrera | |
| • Erin Sasse | • Kimberly Niebla |
| • Glenn Miller | • Laura Turnbow |
| • Heather Perry | • Morris Myers |
| • Izzy Murguia | • Myke Munroe |
| • Jeff Bott | • Tom Stinson |
| • John Hunneman | • Walter Wilson |
| • Kimberly Adams | |

Approval of Minutes

Action

Motion to approve minutes seconded and carried.

Legislative Report #2 2017

Action

1. **AB 1576 (Levine) Taxation: Gender Discrimination: Pricing: Goods** This bill would amend the Gender Tax Repeal Act of 1995 to additionally prohibit a business from discriminating with respect to the price charged for the same, or substantially similar, goods because of the gender of the targeted user of the good. The bill would authorize specifically the Attorney General, a district attorney, or a city attorney to prosecute a civil action for preventive relief for a violation of this. **Motion to OPPOSE seconded and carried.**

2. **SB 567 (Lara) Taxation** Decouples state law from federal law in three areas: basis step-up on inherited property, deductibility of executive pay, and charitable remainder trusts. Proposes multiple tax increases on California employers, including requiring payment of capital gains on the inheritance of a family business as well as eliminating a deduction for corporations with regard to CEO compensation, when California already has the highest personal income tax and sales tax rates in the country, as well as one of the highest corporate tax rates, which will discourage job growth in California. **Motion to OPPOSE seconded and carried.**
3. **AB 841 (Weber) Pupil Nutrition: Food & Beverages: Advertising: Corporate Incentive Programs.** Limits businesses ability to partner with schools on projects and programs that are mutually beneficial. This bill would prohibit a school or school district from advertising food or beverages or the corporate brand of the food or beverages and would prohibit a school or school district from participating in a corporate incentive program that rewards pupils with free or discounted foods or beverages when the pupils reach certain academic goals or that provides funds to schools in exchange for consumer purchases of foods and beverages. **Motion to OPPOSE seconded and carried.**
4. **AB 245 (Gomez) Hazardous Waste: Facilities.** Imposes unnecessary and substantial new costs on hazardous waste permit applicants by requiring hazardous waste permit applicants to pay for a public hearing within 90 days of the submittal of a hazardous waste renewal application, notwithstanding the fact that current regulations and the California Environmental Quality Act already provide for multiple opportunities for public hearings. **Motion to OPPOSE seconded and carried.**
5. **AB 1005 (Calderon) Professions and vocations: Fine: Relief.** Recognizes challenges businesses face in implementing myriad business regulations by allowing a business to fix the violation before an administrative penalty is imposed. This bill requires non-healing arts entities within the Department of Consumer Affairs (DCA) to issue a fix-it ticket, with a 30-day cure period, before an administrative fine becomes effective for a Business and Professions Code violation. It also specifies if the licensee successfully abates the violation within the 30-day period, the licensee is not responsible for payment of the administrative fine. **Motion to SUPPORT seconded and carried.**
6. **SB 167 (Skinner) Housing Accountability Act.** Promotes accountability for decisions and approval of affordable housing developments by imposing additional requirements and penalties on local agencies when disapproving or conditionally approving in a manner that renders infeasible an affordable housing development project. **Motion to SUPPORT (with amendment) seconded and carried.**
7. **SB 540 (Roth) Workforce Housing Opportunity Zone.** SB 540 would authorize a city or county to establish a Workforce Housing Opportunity Zone (WHOZ) by preparing an environmental impact report (EIR) to identify and mitigate impacts from establishing a WHOZ and adopting a specific plan. A local government must approve a housing development within the WHOZ that meets specified criteria, and no project-level EIR or a negative environmental declaration would be required on a development within a WHOZ that meets specified criteria. **Motion to SUPPORT seconded and carried.**
8. **AB 1565 (Thurmond) Work Hours: Overtime Compensation: Executive, Administrative, or Professional Employees.** AB 1565 proposes to accelerate the salary increases by requiring all employers to pay an exempt employee a minimum of \$47,472 on January 1, 2018. AB 1565 does not distinguish between employers with 25 or fewer employees and employers with 26 or more employees, as SB 3 did when enacting the scheduled minimum wage increases. Rather, this significant increase is applicable to all employers. As set forth above, small employers would not reach this threshold until 2020. Under AB 1565, small business will face a \$3,792 increase per salaried employee in 2018 and employers with 26 or more employees will face an increase of \$1,723 per employee. There is no justification to increase costs on small and large employers by altering this schedule of increases for salaried employees already provided in SB 3. This proposed increase in exempt employee salaries, as well as completely changing the duties test for exempt employees, is on top of other significant mandates with which California-only employers are struggling, including (1) ongoing minimum wage increases; (2) agricultural overtime costs; (3) paid sick leave; (4) extended tax increases, and more. The cumulative impact of these

mandates has already overwhelmed some businesses. Imposing such a significant cost increase as proposed on AB 1565 will limit growth in California. **Motion to OPPOSE seconded and carried.**

Guest Speaker/Presentation

Information

Cherise Manning, Temecula Valley Convention & Visitors Bureau: Visit Temecula Valley focuses on marketing, legacy projects, visitors center and public relations. Hotels, dining and the wineries all makeup tourism for the area, with over 7,000 employees and over 60 million in revenue.

Speaker and Chamber Announcements

Information

Senator Jeff Stone

Reported by Glenn Miller: Legislative Update

Assemblymember Melissa Melendez

Reported by Brandon Webb: Legislative Update

Assemblymember Marie Waldron

Reported Tom Stinson: Legislative Update

Temecula Chamber of Commerce

Reported by Alice Sullivan: Upcoming Events

Murrieta Chamber of Commerce

Reported by Kimberly Niebla: Upcoming Events

Adjournment: 2:00 pm

Next meeting Monday, June 19, 2017

SB 96, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2017~~–*State Government*.
Senate Bills 82 through 99, inclusive, and Senate Bills 101 through 122, inclusive,
are to be considered as vehicles for the 2017-18 Budget Trailer Bills.

Recommended action: **OPPOSE Section 1**

Presentation: Gene Wunderlich

Summary:

Democrats are pushing a late-blooming bill to significantly improve state Sen. Josh Newman's odds of surviving an effort by the state GOP and others to recall him from office.

Senate Bill 96, which became public Monday morning 6/5/2017, would add months to the existing timeline of certifying a recall election for the ballot. The measure would virtually assure that any recall election would be held at the regularly scheduled June 5, 2018 legislative primary election.

Regular election turnout historically is much higher than turnout for special elections, which helps Democrats.

Description:

(1) The California Constitution enables electors to initiate a recall of state officers by gathering sufficient signatures within a 160-day period. Upon certification by the Secretary of State that this requirement has been met, the California Constitution authorizes the Governor to call a recall election within 60 to 80 days or to consolidate it with a regularly scheduled election that is within 180 days of the certification of the signatures.

Existing law requires local elections officials to submit signatures gathered by proponents of a recall to the Secretary of State at least every 30 days. Existing law requires that signatures submitted at these intervals or after the deadline for submission of all signatures be verified according to specified procedures, including the use of a random sampling technique, and, as specified, the examination and verification of each signature filed.

This bill would instead require the Secretary of State to notify a county elections official that a petition received a sufficient number of signatures to initiate a recall election. After this notice has been provided, the bill would provide for a period of 30 business days in which voters who signed the petition may withdraw their signatures. No later than 10 days after that period ends, the bill would require county elections officials to report to the Secretary of State the total number of signatures that were withdrawn, and would require that this process continue until the Secretary of State determines that there is a sufficient number of verified signatures, not including withdrawn signatures, to initiate a recall election. If a sufficient number of verified signatures is ultimately obtained, the bill would require the Department of Finance, in consultation with affected elections officials and the Secretary of State, to estimate the costs of the recall election if it is held as a special election or as part of the next regularly scheduled election. The bill would prohibit the Secretary of State from certifying the sufficiency of the signatures until the Joint Legislative Budget Committee has had 30 days to review and comment on the Department of Finance's estimate of the costs of the recall election. Following that period, the bill would require the Department of Finance's estimate to be posted on the Secretary of State's Internet Web site, and would authorize the Department of Finance to direct the Controller to remit specified costs of conducting the recall election to affected counties. The bill would appropriate \$5,000,000 for this purpose.

Existing law requires local elections officials to submit signatures gathered by proponents of a recall to the Secretary of State at least every 30 days. Existing law requires that signatures submitted at these intervals or after the deadline for submission of all signatures be verified according to specified procedures, including the use of a random sampling technique, and, as specified, the examination and verification of each signature filed.

This bill would repeal the provisions that allow for the use of random sampling as a method of verifying signatures for a recall petition, thereby requiring the examination and verification of each signature filed.

The bill would state the Legislature's intent that these provisions apply retroactively.

(2) Existing law authorizes the Legislature to prescribe compensation for judges or courts of record.

(3) Existing law establishes, within the Labor and Workforce Development Agency, the Department of Industrial Relations, which is under the control of the Director of Industrial Relations, and establishes within the department the Division of Labor Standards Enforcement, which is under the control of the Labor Commissioner.

(4) Existing law requires farm labor contractors to be licensed by the commissioner, requires the licensee to deposit a surety bond with the commissioner, and requires a portion of the license fee be deposited into the Farmworker Remedial Account.

(5) Existing law prohibits a person from discharging or in any manner discriminating against an employee because the employee has done certain things, including making a complaint to the division.

(6) Existing law, for contracts entered into on or after April 1, 2015, requires that a contractor or subcontractor, to be eligible to bid on, be listed on a bid proposal for, or perform work on, any public work, register with the Department of Industrial Relations.

22 separate issues - many increasing regulatory oversight, increasing fines and/or penalties, and aimed primarily at businesses throughout the state.

Arguments in support:

A spokesman for Senate President Pro Tem Kevin de León, D-Los Angeles, defended the bill.

"Recalls are designed to be extraordinary events in response to extraordinary circumstances – and it's in the public's overwhelming interest to ensure the security, integrity and legitimacy of the qualification process," said Jonathan Underland. "It's one thing to exploit the recall process for partisan reasons – it's another to qualify a recall under blatantly false pretenses. These recall integrity reforms will ensure that recalls are done the right way and voters are provided accurate information."

Arguments in opposition:

Assembly Republican leader Chad Mayes of Yucca Valley said Democrats are trying to rig the election. "Dems know the gas tax is toxic & Newman will likely lose. They control everything & need to rig the system to protect their political power," he tweeted.

Carl DeMaio, a former San Diego councilman and talk radio host helping orchestrate the recall, said the move was likely illegal and he threatened a lawsuit if legislative Democrats and Gov. Jerry Brown move ahead with the measure.

"This is a craven attempt to take away a constitutional right from California citizens," he said. "The Democratic Party should be ashamed of itself. This is an illegal use of power and it can't stand."

Support: (Verified 6/12/17)

None specific on file.

Opposition: (Verified 6/12/17)

None specific on file.

Status:

Senate Floor votes: NO - Stone, Morrell YES - Roth

Assembly floor votes:

AB 1701, as amended, ~~Committee on Labor and Employment~~ *Thurmond*. ~~Employment: payment of wages.~~ *Labor-related liabilities: original contractor.*

Recommended action: **OPPOSE**

Presentation: Gene Wunderlich

Summary:

Holds a direct contractor jointly liable for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions owed to a wage claimant that is incurred by a subcontractor.

Description:

Under existing law,

1. An action may be brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.
2. Allows an action to be brought against an employer for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.
3. Holds a contractor and subcontractor jointly and severally liable for all amounts due, including underpaid wages and penalties, pursuant to a final order of the Labor Commissioner for a violation of the prevailing wage law.
4. States that a client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to secure valid workers' compensation coverage.

This bill would require a direct contractor, as defined, making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, specified debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. The bill would authorize civil actions to enforce this liability, as provided. The bill would provide that this remedy is in addition to any other remedy provided by law.

Arguments in support:

The author asserts, when a subcontractor skips town or files for bankruptcy before paying their employees the wages and benefits they are due, employees have few remedies available to them under existing law. This not only financially imperils a worker and his or her family, but in the case of unpaid contributions to union pension and welfare benefit trust funds, it also diminishes the important safety net these trusts are able to provide all their members.

The author continues that under current law, general contractors are able to look away from some of the disreputable labor practices of their subcontractors without a risk of financial liability. This allows general contractors to enjoy lower labor costs without any consequences. It can also perpetuate the underground economy.

The sponsor, California Conference of Carpenters, write, "General contractors have been traditionally held to answer for the defects in the delivery of a project caused by their subcontractor's errors. By making the general contractor answerable to employees when a subcontractor defaults, AB 1701 makes compliance with payment of wages and benefits part of the project the general contractor must deliver... The General Contractor is the single entity that has the most knowledge of every aspect of the project. They can, for instance, require subcontractors to disclose wage and fringe benefit data to monitor proper payment of wages and fringe benefits. A general contractor can also, like an awarding agency, retain monies owed to its subcontractor pending a review of whether they are complying with applicable law and collective bargaining agreements."

The Carpenters/Contractors Cooperation Committee (C/CCC) writes, "In all my time at the C/CCC, I have not encountered a situation where mechanic's liens have helped workers recover their wages, as this is a cumbersome complex process directed at the owner and not the general contractor, who is best suited to guarantee workers are paid correctly and laws are being complied on their project." C/CCC continues, "This bill is one more tool for enforcement agencies and private stakeholders to utilize as a way to keep the construction industry vibrant and

economically healthy. Every day our organization reaches out to non-union general contractors, including major players, to alert them of problematic non-union subcontractors with proven records of hundreds of thousands of dollars in wage theft, of criminal premium fraud and grand theft convictions, or repeat offenses, and these general contractors choose to look away and ignore this because they have no skin in the game. They figure it's not their problem, they can get the benefits of cheap labor without any consequences, even though it's taking place on their project where they are financially benefitting. As a result, they are complicit in fomenting the underground economy. When general contractors realize they will be held liable for their cheating subcontractors, they will take extra precautions to hire responsible subcontractors. This will benefit honest contractors, workers and their families, tax-payers and the public as a whole."

Arguments in opposition:

The California Building Industry Association (CBIA) writes, "The problem that this bill purports to remedy is a failure by the management of the carpenter's trust fund to collect contributions from their signatory contractors. But rather than resolving this issue by going after those parties, this bill goes after general contractors who have already paid those subcontractors, requiring them to double pay for those fringe benefits. A requirement that the general contractor must pay twice for the same service can hardly be called a benefit to the general contractor."

CBIA continues the law already provides trust funds and laborers with remedies, including mechanics liens and Labor Code section 2810.3. There has been no case made that these are inadequate to address the problem. Moreover, where the general contractor is a related entity to the property owner, this bill subjects the same parties to a kind of double jeopardy by adding a new private right of action to these other remedies along with lien rights against the general contractor without any of the due process protections inherent in these other remedies. Finally, although it is claimed that this measure is needed because a subcontractor may file bankruptcy, AB 1701 does not condition the general contractor's liability on that event or even a requirement that the trust funds exhaust their remedies in pursuing payment from the subcontractor first."

The Construction Employers' Association (CEA), writes, "This measure also creates a private right of civil action against general contractors for subcontractor delinquencies up to one year from the date of completion of the work. Under current law, liens must be filed either 90 days from the date of completion or 60 days from recordation of a notice of completion. Among other things, this increases the likelihood that project owners and contractors are able to withhold amounts due other parties in order to resolve the complaint. Pursuant to this measure, those amounts due will be long gone and there will be virtually no way for a general contractor to collect from a subcontractor, meaning all of the liability will fall directly on the general contractor, not the actual party who failed to pay the trust."

Support: (Verified 6/12/17)

California Conference of Carpenters
California-Nevada Conference of Operating
Engineers
Carpenters/Contractors Cooperation Committee
Northern California Carpenters Regional Council

State Building and Construction Trades Council,
AFL-CIO
Western States Drywall/Lathing Industry
Labor-Management Committee, Inc.

Opposition: (6/12/17)

California Association of Sheet Metal and Air Conditioning Contractors
California Building Industry Association
Construction Employers' Association

Status: Senate Committee on Judiciary, Labor & Industrial Relations

Senate Floor votes:

Assembly floor votes: NO - Melendez, Waldron, Mayes YES - Medina

NVR - Cervantes

[AB 669, as introduced, Berman. Economic development: California Community Colleges Economic and Workforce Development Program.](#)

Recommended action: **SUPPORT**
Presentation: Gene Wunderlich

Summary:

Extends Workforce Development. Helps improve alignment of the state's workforce needs and education resources by extending the Economic and Workforce Development program within the California Community College system which is set to expire in 2018. Extends to 2013.

Description:

Existing law establishes the EWDP, which is set to sunset of January 1, 2018. EWDP is administered through the CCC Chancellor's office which is required under current law to implement accountability measures and annually report specified information to the Governor and the Legislature. State law requires the CCC Board of Governors to assist economic and workforce regional development centers and consortia to improve linkages and career technical education pathways between high schools and CCCs in a manner that improves the quality of career exploration. CCCs and business partners form consortia to identify regional workforce needs and priorities, provide assistance to small businesses in the region, and train workers.

These partnerships enable CCCs to develop curricula that address the training needs of local industry. The 2016 EWDP Annual Report shows that CCCs play an integral role in helping California build its workforce despite budget cuts and stagnant economic growth. The report noted that during the reporting period, 48,027 students were served by the program, with 59,879 total people trained. An additional 1,628 people were hired by businesses served by EWD, and 19 new products and services were created by California businesses with the support of EWD.

Arguments in favor:

According to the author, "...by facilitating partnerships through grants, the EWD Program enables the creation of tools to better serve students and workers. However, this valuable program is set to expire on January 1, 2018."

"The California Community Colleges Economic and Workforce Development Program has developed an outstanding training program for us with exceptional instructors. The participants have been thrilled with it, and the graduates are performing well. The product of these training classes will be the next generation Lockheed Martin employee."

Steve Haydu
Manager of Labor Relations
Lockheed Martin
Palmdale, CA

Support: (Verified 6/12/17)

None on file

Opposition: (Verified 6/12/17)

None on file

Status: Senate Committee on Education

Senate Floor votes:

Assembly floor votes: YES - Cervantes, Mayes, Medina, Melendez, Waldron

Legislative Item #4	Tax Reform & Job Creation	Action
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AB 1085, as amended, Calderon. Business entities: annual tax: minimum franchise tax: fees.

Recommended action: SUPPORT

Presentation: Gene Wunderlich

Summary:

Minimum Franchise Tax Payments. Provides options for a business to pay the minimum franchise tax to either by the 4th month of the year, in three equal installments over the year, or two equal installments.

Description:

EXISTING LAW:

1) Imposes a franchise tax on all corporations doing business in California equal to 8.84% of the taxable income attributable to California. A minimum franchise tax of \$800 is imposed on all corporations that are incorporated under the laws of California, qualified to transact intrastate business in California, or are doing business in California.

Taxpayers must pay the minimum franchise tax only if it is more than their regular franchise tax liability. According to the FTB, for taxable years beginning on or after January 1, 1997, only a taxpayer with a net income less than approximately \$9,040 pays the minimum franchise tax because the amount of measured tax owed would be less than \$800 ($\$9,039 \times 8.84\% = \799).

2) Provides exceptions with respect to imposition of the minimum franchise tax. For instance, credit unions and nonprofit organizations are not subject to the minimum franchise tax and a corporation is not subject to the minimum franchise tax for its first taxable year. However, even though a corporation is not subject to the minimum tax in its first taxable year, it will be subject to franchise tax in its first taxable year based on its taxable income.

3) Provides that limited partnerships, limited liability partnerships, and LLCs that are doing business in California, registered or qualified to do business in California, or formed in this state, are subject to annual tax in an amount equal to the minimum franchise tax, currently set at \$800. These entities (known as 'pass-through entities') are not subject to any tax based on taxable income. Rather, the items of income, gain, loss, deduction and credit are passed-through to the owners and reported on their respective income or franchise tax returns.

4) Provides that LLCs and certain small corporations, **solely owned by a deployed member of the United States (U.S.) Armed Forces**, are exempted until January 1, 2018, from the \$800 annual tax and minimum franchise tax.

Arguments in support:

The author has provided the following statement in support of this bill: California has long been heralded as a role model for the rest of the nation. From technological innovation to its vibrant entertainment industry, California leads the way in diverse economic opportunities and job creation. However, the effects of the most recent recession are still being felt throughout the State. While California's unemployment rate of 5.1% as of January 2017 has decreased over the past few years, it is still higher than the national unemployment rate of 4.7%.

In order to further reduce California's unemployment rate and create jobs for its citizens, **the State must provide long term solutions and incentives to businesses that wish to operate in California**. With one of the highest corporate taxes in the nation, California's position as a leader in economic opportunity and job creation is threatened. **By addressing the effects of high tax rates on companies, California can move in the right direction to spur economic growth and create jobs for its citizens**.

Fiscal effect:

According to the Assembly Appropriations Committee, moderate administrative costs to FTB in excess of \$150,000.

Background:

Minimum Tax: The minimum franchise tax, the annual tax, and annual fee, were enacted to ensure that all corporations and LLCs pay at least a minimum amount of tax for the privilege of doing business in this state, regardless of the businesses income or loss. Thus, the minimum tax is not an "income tax", but rather it is a tax on the right to exercise the powers granted to a corporation doing business in California. Even when a business earns no income, it still receives the benefits of its corporate status, including the limited liability protection under the laws of this state.

The creation of LLCs in particular extended the privileges of corporate power and limited liability without the more complicated tax status and governance requirements of a full AB 1085 Page 3 corporation. The corporate veil is critical to capital formation in businesses large and small, and provides protection to owners and creditors from liability in tort and insolvency situations. In exchange for protecting business owners and creditors, the state requires these entities to pay an annual minimum franchise tax of \$800. b) Cash-Flow Problems: Both startups and established companies may, at some point, face cash-flow problems.

A number of things can put a strain on a business' cash flow: customers can choose not to pay or pay late, cost of materials can skyrocket, unforeseen acts can delay production, and changes in interest rates can increase the costs of capital. Additionally, once a business realizes that it is unable to pay current debts, it may be difficult, if not impossible, to secure additional funding. It appears that this bill would provide LLCs and corporations with the ability to pay the tax over time, **allowing businesses to use cash on hand to pay other obligations**.

Regardless of the benefit that may be provided to struggling LLCs and corporations, **\$800 is a nominal amount, even for a small business**. Therefore, it is unclear to Committee staff if a payment plan for an \$800 obligation would help struggling businesses succeed.

Support: (Verified 6/12/17)

California Chamber of Commerce

Opposition: (Verified 6/12/17)

None on file

Status: Senate Committee on Rules

Senate Floor votes:

Assembly floor votes: YES - Cervantes, Mayes , Medina, Waldron NVR - Melendez

Legislative Item #5

Job Creation & Retention

Action

AB 380, as amended, Dababneh. Electronic transactions: motor vehicle finance.

Recommended action: SUPPORT

Presentation: Gene Wunderlich

Summary:

Electronic Contracts. Reduces waste and streamlines the car purchase/leasing process by allowing consumers to elect to utilize electronic contracts and signatures.

Description:

Allows motor vehicle sales and lease transactions to be conducted electronically. Specifically, this bill:

- 1) Removes the Automobile Sales Finance Act and California Vehicle Leasing Act from the exclusion clauses of the Uniform Electronic Transactions Act (Cal UETA).
- 2) Applies all Cal UETA requirements to motor vehicle sales and lease transactions.
- 3) Specifies that a car dealer may offer a buyer the choice to opt in to using an electronic sale or lease contract, instead of paper.
- 4) Specifies that the opt-in form must be signed in writing or electronically.
- 5) Specifies that the opt-in form must disclose that the buyer's choice to opt in to an electronic sales or lease contract is voluntary and that the buyer may stop and opt out of the electronic signing at any time during the process.
- 6) Specifies that the buyer's signature must be placed directly below the disclosures described in 5) above.
- 7) Specifies that the car dealer may not charge more or less for the purchase or lease of the car based on whether a buyer is opting to sign electronically.
- 8) Specifies that the opt-in consent form must be on a separate document and not part of the vehicle sale or lease contract.
- 9) Requires the car dealer to give the buyer an exact copy of the electronically signed contract at the time of sale or lease and before the vehicle is delivered to the buyer.
- 10) Requires that an electronic sale or lease contract must be signed at the car dealer's place of business.
- 11) Prohibits car dealers from using any electronic system that would allow a contract term to be changed after the contract has been signed electronically.

Arguments in support:

According to the author: This bill is intended to streamline the vehicle sales process for consumers and car dealerships by permitting consumers to choose to sign vehicle purchase and lease contracts electronically, if the car dealer offers this option. This measure is author-sponsored.

Electronic transactions: In 2000, E-SIGN was enacted to establish federal law governing electronic transactions. Generally speaking, Cal UETA (adopted in 1999) provides that the law should be construed to facilitate electronic transmissions and that any transaction not specifically exempted from Cal UETA may be conducted electronically, subject to specific rules including:

While Cal UETA prohibits the use of electronic contracts and signatures on automobile sales and lease contracts, federal law (E-SIGN) permits car sales to be conducted electronically. The author contends that all across the country the automotive financing industry and new car dealers have begun to move to electronic contracts as a way to modernize the car buying process, improve sales record retention, and help expedite the vehicle financing process.

Existing consumer protections, such as the right to cancel, would be left intact: Cal UETA requires that if notice of a right to cancel has to be provided or sent to a consumer, then doing so is only permissible electronically if the consumer is allowed to exercise his or her right to cancel by electronic means as well. Under current law, consumers are given certain rights to cancel car sales contracts, and this bill would not change or limit those rights. In fact, it would keep consumers on the same playing field as car dealers by allowing consumers to cancel by electronic means if the car dealer had provided them notice of their right to cancel electronically.

This bill would also retain the other car purchase and lease consumer protections in current law, such as the right to a single contract document containing detailed and itemized costs for the purchase of the car and any additional products or services, and the federal law requirement to give the buyer the original Buyers Guide displayed on the vehicle or an accurate copy that contains all of the required disclosures and reflects the final warranty terms between the buyer and seller.

Arguments in opposition:

Concerns about electronic transactions in car buying: Opponents contend that allowing car sales to be conducted and signed electronically puts the consumer at a disadvantage in the bargaining process, because if the consumer never receives paper in their hand until the sale is over – or perhaps never receives paper at all because they only receive an emailed copy of the final contract – then two bad things happen:

- 1) **The consumer cannot leave the dealership with a written offer in hand** that they can review on their own and perhaps even use to comparison shop at other car dealerships; and
- 2) **The consumer does not have an opportunity to compare what they saw on a scrolling computer screen with a paper printout of the contract.** In a literal sense, opponents contend, consumers do not have the ability to see on paper in "black and white" what they are agreeing to before they are bound by the contract. However, this bill allows a consumer to stop the e-sign process and receive a hard copy of the offer that they can use to shop and compare at other dealerships, and this bill ensures that consumers receive a full copy (paper or electronic) of the contract they sign.

Support: (Verified 6/12/17)

*California New Car Dealers Association
Enterprise Holdings*

Opposition: (Verified 6/12/17)

*Consumer Federation of California
Consumers for Auto Reliability and Safety
Public Law Center*

Status: Senate Judiciary

Senate Floor votes:

Assembly floor votes: YES - Cervantes, Mayes, Medina, Melendez, Waldron

AB 1008, as amended, McCarty. Employment discrimination: prior criminal history.**Recommended action: OPPOSE****Presentation: Gene Wunderlich****Summary:**

Increased Litigation. Exposes employers to increased litigation under the Fair Employment and Housing Act for utilizing relevant criminal history of an applicant in its employment decisions to maintain safety in its workplace.

Description:**Existing law:**

- 1) Prohibits an employer, under the provisions of FEHA, from engaging in various defined forms of discriminatory employment practices. (Government Code Section 12940)
- 2) Prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or postural diversion program, except as specified. (Labor Code Section 432.7)
- 3) Prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment about a non-felony conviction for possession of marijuana that is two or more years old. (Labor Code Section 432.8)
- 4) Prohibits a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, except as specified, until the agency has determined the applicant meets the minimum employment qualifications for the position. (Labor Code Section 432.9)
- 5) Restricts the use, with some exceptions, of credit information for employment purposes. (Labor Code Section 1024.5)
- 6) Prohibits employers from requiring applicants to submit to polygraph, lie detector, or similar tests as a condition of employment. (Labor Code Section 432.2)

This bill: Prohibits an employer from inquiring about or considering a job applicant's criminal history prior to a conditional offer of employment, except as provided, and sets forth requirements for the consideration of criminal histories in employment decisions. Specifically, this bill:

- 1) Repeals Labor Code provisions that prohibit a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, except as specified, until the agency has determined the applicant meets the minimum employment qualifications for the position.
- 2) Provides it is an unlawful employment practice under the Fair Employment and Housing Act (FEHA) for an employer to: a) Include on any application for employment any question that seeks the disclosure of an applicant's criminal history; b) Inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer; and c) Consider, distribute, or disseminate specified information related to prior criminal convictions when conducting a conviction history background check, except as provided.
- 3) Requires an employer who intends to deny any applicant a position of employment solely or in part because of the applicant's prior conviction of a crime to make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment. Those topics include:
 - a) The nature and gravity of the offense or conduct.
 - b) The time that has passed since the offense or conduct and completion of the sentence.
 - c) The nature of the job held or sought.
- 4) Requires that, if an employer makes a preliminary determination based on that individualized assessment to deny the applicant employment, the employer must notify the applicant of the reasons for that preliminary decision.
- 5) Authorizes an applicant to respond to that notification within 10 days with information that challenges the accuracy of the information in the notification or that includes specified mitigation or rehabilitation evidence. Evidence of mitigation or rehabilitation may be established by any of the following:
 - a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime.
 - b) Evidence showing compliance with terms and conditions of probation or parole

- c) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
- 6) Requires an employer to **consider information submitted** by the applicant before making a final decision.
- 7) Requires an employer who has made a final decision to deny employment to the applicant to **notify the applicant in writing** of specified topics.
- 8) Exempts a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.
- 9) Exempts a position for which a state or local agency is otherwise required by law to conduct a conviction history background check, if an employer inquires, before a conditional offer is made, as to the conviction history of an applicant for only the particular crime that federal or state law prohibits the employer from hiring the applicant into that position.

Arguments in support:

The National Employment Law Project (NELP) writes, “**AB 1008 would prevent conviction history information from coloring an employer’s first impression of job applicants.**” Importantly, the bill does not prohibit employers from running a background check. Instead, AB 1008 would require employers to delay background checks until later in the job application process, after a candidate has the opportunity to explain his or her qualifications for the job. Delaying a background check ensures that the employer assesses the candidate without the stigma a conviction record overshadowing his or her personality, education, and accomplishments.”

NELP continues, “**Barriers to employment further reduce our public safety and economic health.**” Studies show that **employment is the single most important factor for reducing recidivism.** Moreover, the reduced output of goods and services resulting from the un- and underemployment of people with records is estimated to have cost the United States between \$78 and \$87 billion in 2014 gross domestic product (GDP)... While banning the box is not a silver bullet for eliminating harmful and unnecessary collateral consequences of a record, it’s an important step toward removing the debilitating stigma of a conviction record and expanding employment opportunities for those with conviction histories, which, in turn, enables those with records to move forward with their lives.”

Legal Services for Prisoners with Children writes, “By enacting AB 1008, California will join the growing number of states and localities where private employers are prohibited from inquiring into an applicant’s record at the start of the hiring process... Consistent with the 2013 guidance of the U.S. Equal Employment Opportunity Commission and the new California Fair Employment and Housing Council regulations, AB 1008 would also require an employer to conduct an individualized assessment, including consideration of whether the applicant’s conviction history has a direct relationship to specific duties of the job, and other reasonable factors to limit the severe discriminatory impact of employment background checks on people of color.”

Arguments in opposition:

The California Chamber of Commerce and other organizations write that they are concerned that **this measure jeopardizes the safety of the workplace and puts employers in an untenable liability predicament.** They argue that this measure “**places employers in a difficult position of making a subjective determination regarding an individual with whom they have likely just met, as to whether that individual poses a potential safety risk based upon any evidence of ‘mitigation.’**”

This places employers in an untenable legal predicament. **If the employer does not believe the applicant is qualified for the position based upon the criminal background, the employer faces costly litigation under the Fair Employment and Housing Act (FEHA) as an unlawful employment practice with the threat of significant damages including punitive damages.** Conversely, if the employer hires the applicant who has been convicted of a serious felony and the applicant commits a crime against another employee or member of the public, the employer faces the risk of liability for negligent hiring and retention.

Under AB 1008, **employers are forced to choose one path of litigation over another,** which is an unfair predicament.” The California Chamber of Commerce and others continue, “AB 1008 also imposes several new procedural and notification requirements in the bill that could be amended to ease administration and make the hiring process more efficient.”

The California State Association of Counties (CSAC) and others write, “Unfortunately, this bill fails to ensure sufficient safeguards for vulnerable populations or protect public resources in the requirements related to hiring decisions.” CSAC and others continue, “Local agencies serve vulnerable populations, process sensitive information, and are entrusted with handling taxpayer dollars. Employees in the fields ranging from social work to hospital care to finances and budget undergo a background check in order to protect the needs of local residents who rely on those local services.... AB 1008 expands current hiring requirements related to background checks significantly, delays hiring schedules, and opens the door to liability and litigation.”

CSAC and others assert, “Many local agencies throughout the state have adopted hiring practices that promote and encourage the consideration of job applicants that have a prior criminal history. Unfortunately, **AB 1008 removes the discretion of local agencies to design an employment policy that works locally.** AB 1008 instead offers a **one-size-fits-all approach that adds layers of possible liability and litigation while posing greater risk for the public as well.**”

Support: (Verified 6/12/17)

*Alliance for Boys and Men of Color
American Civil Liberties Union of California American Friends Service Committee
Anti-Recidivism Coalition
Asian Americans Advancing Justice-California Black Women Organized for Political Action Building and Construction Trades Council of Alameda County
California Association of Local Conservation Corps
California Employment Lawyers Association
California Labor Federation, AFL-CIO
Center for Living and Learning City of Oakland
Consumer Attorneys of California
Contra Costa County Defenders Association
Councilmember Abel Guillen, City of Oakland
Councilmember Desley Brooks, City of Oakland
Critical Resistance Oakland Chapter
El/La Para TransLatinas Equal Justice Society
Essie Justice Group
Fathers & Families of San Joaquin
Filipino Bar Association of Northern California
Gary Farwell, Esq.
Greenlining Institute
Harm Reduction Services
Inland Empire Fair Chance Coalition
Legal Services for Prisoners with Children (cosponsor)
Los Angeles Black Worker Center
Mayor Eric Garcetti, City of Los Angeles*

*Motivating Individual Leadership for Public Advancement
National Association of Social Workers, CA Chapter
National Center for Youth Law
National Employment Law Project (cosponsor)
New Way of Life Reentry Project
Partnership for Working Families
PolicyLink
Prison Law Office
Prisoner Reentry Network
Project WHAT!
REDF
Richmond City Council Riverside
Temple Beth El
San Francisco District Attorney, George Gascon
San Francisco Office of Labor Standards Enforcement
San Francisco Public Defender
Silicon Valley De -Bug
Sin Barras
Solano County Office of the Alternate Public Defender
Stanford University Program in Public Policy
The W. Haywood Burns Institute
Time for Change Foundation
Western Center on Law and Poverty
Women's Foundation of California
Youth ALIVE!
Youth Justice Coalition*

Opposition: (Verified 6/12/17)

*Association of California Healthcare districts
BizFed, Los Angeles County Business Federation
California Association of Joint Powers Authorities
California Special Districts Association
California State Association of Counties
League of California Cities
Rural County Representatives of California
Air Conditioning Sheet Metal Association American Insurance Association
American Petroleum and Convenience Store Association
Associated General Contractors
California Ambulance Association*

*California Apartment Association
California Association for Health Services at Home
California Association of Sheet Metal and Air Conditioning Contractors
California Association of Winegrape Growers
California Attractions and Parks Association, Inc.
California Bankers Association
California Chamber of Commerce
California Chapters of American Fire Sprinkler Association
California Chapters of the National Electrical Contractors Association
California Community Banking Network*

California Credit Union League
 California Farm Bureau Federation
 California Framing Contractors Association
 California Hotel and Lodging Association
 California Legislative Conference of the Plumbing,
 Heating and Piping Industry
 California Mortgage Bankers Association
 California Professional Association of Specialty
 Contractors
 California Restaurant Association
 California Retailers Association
 California Special Districts Association
 Civil Justice Association of California
 Construction Employers Association

Independent Roofing Contractors of California, Inc.
 National Federation of Independent Business
 Northern California Allied Trades
 Official Police Garages of Los Angeles
 Plumbing-Heating-Cooling Contractors Association of
 California
 San Diego, Southern California, and Central
 California Chapters of Associated Builders and
 Contractors Securities Industry and Financial Markets
 Association Southern California Contractors
 Association United Contractors Wall and Ceiling
 Alliance Western Electrical Contractors Association
 Western Growers Association
 Wine Institute

Status: Senate Rules

Senate Floor votes:

Assembly floor votes: YES - Medina

NO - Cervantes, Mayes, Melendez, Waldron

Legislative Item #7	Infrastructure & Job Creation	Action
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[AB 1515, as amended, Daly. Planning and zoning: housing.](#)

Recommended action: SUPPORT

Presentation: Gene Wunderlich

Summary:

Stimulates Additional Housing Production. Encourages housing project approvals by specifying that a housing development is deemed consistent with local plans and ordinances if there is substantial evidence such that a reasonable person could conclude that the project is consistent.

Description:

Establishes, for purposes of the Housing Accountability Act (HAA), a reasonable person standard for deeming consistency, as specified, for a housing development project or emergency shelter. Specifically, this bill:

- 1) Specifies that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity, pursuant to the HAA.
- 2) Makes the following legislative findings and declarations:
 - a) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.
 - b) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.
 - c) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

- d) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.
- e) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only half of California's households are able to afford the cost of housing in their local regions.
- f) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.
- g) The majority of California renters, more than 3,000,000 households, pay more than 30% of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50% of their income toward rent.
- h) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.
- i) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.
- j) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.
- k) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.
- l) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

According to the author, this bill is intended to strengthen the provisions of the HAA and to provide the courts with clear standards for interpreting the Act in favor of building housing. The author contends that "the HAA fosters and respects responsible local control by providing that once a local government establishes its planning rules, housing projects that are consistent with those rules receive the reasonable certainty of not being denied or reduced in density unless there are significant health and safety impacts that cannot be mitigated.

The HAA's intent is to provide appropriate certainty to all stakeholders in the local approval process and prevent NIMBYism (Not In My Back yard) from successfully pressuring local officials to reject or downsize compliant housing projects. Unfortunately, NIMBY forces often mobilize anti-housing sentiment, and local governments then refuse to extend HAA's protections to projects that could reasonably be found to be consistent with the local planning rules. This creates far too much latitude for anti-housing and development sentiments to thwart reasonable and much needed housing."

The purpose of the HAA, also known as the "Anti-NIMBY Act", is to limit the ability of local agencies to reject or make infeasible housing developments without a thorough analysis of the economic, social, and environmental effects of the action. The HAA provides for a judicial remedy that allows a court to issue an order to compel a city to take action on a development project. An applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, may bring an action to enforce the HAA. In such a case, the local government bears the burden of proof that its decision has conformed to all of the requirements in the HAA, including, if applicable, any findings that the development was not consistent with general plan and zoning standards. Many provisions of the HAA are limited to lower-income housing developments. In 2011 the California Court of Appeal in *Honchariw v. County of Stanislaus* (200 Cal.App.4th 1066) held that specified provisions of the HAA apply to all housing projects, not just affordable projects. Consistency with general plan and zoning standards: Regardless of whether a housing development is affordable, in order to qualify for the HAA's protections a development must be consistent with the local government's general plan and zoning standards in effect at the time that the application is determined to be complete.

In land use cases, courts tend to give a great deal of deference to local governments when determining whether a project is consistent with general plan and zoning standards. A consistency determination is

generally upheld unless the court determines the local government has acted arbitrarily, capriciously, or without evidentiary basis. For example, "[a]city's findings that [a] project is consistent with its general plan can be reversed only if [they are] based on evidence from which no reasonable person could have reached the same conclusion." (A Local & Regional Monitor v. City of Los Angeles (1993) 16 Cal.App.4th 630, 648, as cited by San Franciscans Upholding the Downtown Plan v. City & County of San Francisco (2002) 102 Cal.App.4th 656, 677) In other words, a local government's decision will be upheld unless no reasonable person could have made the same decision.

This bill would require courts to give less deference to a local government's consistency determination. It would change the standard of review by providing that a project is consistent if there is substantial evidence that would allow a reasonable person to find it consistent. As zoning and planning consistency is a threshold requirement for the HAA, this bill would potentially expand the number of housing developments that are afforded the protections of the HAA. Additionally, this bill could extend the consistency analysis beyond the question of consistency with a zoning ordinance or general plan element. The standard would apply if the jurisdiction rejected or conditioned a project on inconsistency with a local plan, program, policy, ordinance, standard, requirement, or other similar provision – in other words any local law, plan, or policy.

Arguments in support:

Supporters, including the bill's sponsor the California Building Industry Association, contend that the HAA has been amended over a dozen times and still does not effectively encourage the approval of projects. It is still too easy for NIMBYs to oppose projects and avoid the HAA based on highly debatable claims of inconsistency with local planning and ordinances.

In supporters' view, enacting this bill will better allow housing projects to be afforded the protections of the HAA, despite NIMBY objections and judges' inclination to defer to the judgement of the locality. The current standard of review is much narrower, and allows municipalities to find housing projects out of compliance with local ordinances for dubious reasons.

Arguments in Opposition:

The American Planning Association, California Chapter (APA), is concerned that this bill would essentially allow applicants to determine whether a project is consistent with planning and zoning. According to APA, the bill "takes away the local government's ability to decide that a project is inconsistent with its own plans based on substantial evidence. Under this bill, a project would have to be found consistent with local plans if there's any evidence or strained interpretation supporting a finding of consistency, regardless of circumstances to the contrary. Requiring a finding of inconsistency to be based on substantial evidence is a more fair process."

Support: (6/12/17)

California Building Industry Association (sponsor)
California Apartment Association
California Renters Legal Advocacy & Education Fund

North Bay Leadership Council
YIMBY Action

Opposition: (Verified 6/12/17)

American Planning Association, California Chapter

Status: Senate Governance & Finance, Transportation & Housing.

Senate Floor votes:

Assembly floor votes: YES - Cervantes, Mayes, Medina, Melendez

NO - Waldron

[AB 943, as amended, Santiago. Land use regulations: local initiatives: voter approval.](#)**Recommended action: SUPPORT****Presentation: Gene Wunderlich****Summary:**

Discourages no growth/development ordinances and promotes new housing construction by requiring that an ordinance to curb, delay, or deter growth or development in a city receive a 55% vote to become effective.

Description:**Existing law:**

- 1) Grants, pursuant to the California Constitution, authority to a city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Defines "major transit stop" to mean a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- 3) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.
- 4) Provides that the initiative is the power of electors to propose statutes and amendments to the Constitution and to adopt or reject them.
- 5) Provides that initiative powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide.
- 6) Requires a county or a city, when it receives an initiative petition that is signed by a specified number of voters, to do one of the following: a) Adopt the initiative without alteration; b) Submit the initiative to the voters, as specified; or, c) Order a report on the initiative, to be completed within 30 days, before deciding whether to adopt it or submit it to the voters.
- 7) Provides that if a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date.
- 8) Requires a local governing body that chooses to submit an initiative measure to the voters, rather than adopting the initiative without alteration, to call a special election for the voters to consider that initiative measure, if certain conditions are met.
- 9) Allows a county or city to adopt a charter by majority vote of its electors voting on the question. Specifies that the charter is effective when filed with the Secretary of State. Allows a charter to be amended, revised, or repealed in the same manner. Requires a charter, amendment, revision, or repeal thereof to be published in the official state statutes. Specifies that the provisions of a charter are the law of the state and have the force and effect of legislative enactments.
- 10) Allows the governing body or charter commission of a county or city to propose a charter or revision. Specifies that amendment or repeal may be proposed by initiative or by the governing body.
- 11) Specifies that an election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.
- 12) Specifies that if provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

This bill: Requires any ordinance proposed by the voters of a city, county, or city and county, submitted to the voters, that would reduce density or stop development or construction on any parcels located less than one mile from a major transit stop, to be approved by at least 55% of the votes cast on it at the election in order to take effect. Specifically, this bill:

- 1) Requires that if an ordinance or amendment of an ordinance proposed by the voters of a city or county, or city and county, or procedures adopted by a city, county, or city and county organized under a charter that would reduce density or stop development or construction on any parcels located less than one mile from a major transit stop, as defined, that the proposed ordinance or amendments shall be enacted only if it is approved by at least 55% of the votes cast on it at the election.
- 2) Provides that 1), above, does not apply in either of the following circumstances:

- a) The proposal and submission to the voters of an ordinance or amendment of an ordinance by the legislative body of the city, county, or city and county; or,
 - b) The adoption or amendment of a city, county, or city and county charter.
- 3) Requires the county counsel for the county or city and county in which the proposed ordinance or amendment of an ordinance would apply, or the city attorney of the city in which the proposed ordinance or amendment of an ordinance would apply, to determine whether the proposed ordinance or amendment of an ordinance would reduce density or stop development or construction on any parcels located less than one mile from a major transit stop within the city, county, or city and county.
 - 4) Finds and declares that the bill's provisions address a matter of statewide concern and shall therefore apply equally to all cities and counties, including charter cities and charter counties.
 - 5) Provides that reimbursement to local agencies shall be made if the Commission on State Mandates determines that this act contains costs mandated by the state.

Arguments in support:

Supporters believe that this bill will ensure that cities do not unfairly hinder the development of new housing projects within their boundaries, and that the approach in the bill will strike the appropriate balance of respecting local preferences and reducing the barriers to creating new housing.

According to the author, "A March 2015 report by the state's nonpartisan Legislative Analyst's Office concludes that the state would need to build millions more homes – including more than a million in Los Angeles County alone – to keep housing prices in line with the rest of the country. Those million construction starts would only just meet the population's demands for housing. An additional, compounded problem is that of housing for families.

A report in Governing magazine from November 2015 found that in California's largest urban areas, less than 5% of rental units being constructed consist of three or more bedrooms. "In many cities, vacancy rates have dropped dramatically due to the lack of new construction, making it difficult for individuals, students, seniors, and families to find a place to live close to their schools or jobs. In fact, according to CoStar Property Data Systems, the average vacancy rate statewide is 3.8%; a normal vacancy rate is considered to be 5-6%. "While many local governments are devoting large amounts of energy and attention to the issue of increasing housing production, there are others who have been unable to do so – due to either a lack of will by the local legislative body or by constituent groups within those localities.

In some areas, attempts have even been made to block future housing developments of various kinds. "A recent article in the Los Angeles Times noted that "in some ways, state lawmakers' hands are tied on boosting housing supply because cities and counties primarily control building and permitting." AB 943 attempts to loosen those binds on Legislators some by establishing a statewide concern for the development of housing. In doing so, the measure will limit the abilities of those at the local level to implement development moratoriums or to further stymie statewide efforts to lift Californians out of poverty and into better socio-economic circumstances. "There is precedent in California for a different vote threshold for local measures on issues where the state, as a whole, has developed a specified interest. These issue areas include education bonds, parcel taxes, and general taxes levied by school districts and special districts."

Arguments in Opposition:

Opponents argue that a better approach would be to consider directing such measures to be placed on a general election ballot where more voters have an opportunity to weigh in.

Support: (6/12/17)

California Apartment Association (sponsor) (prior version)
Anaheim Chamber of Commerce (prior version)
Building Owners and Managers Association of Greater Los Angeles (prior version)
California Association of REALTORS (prior version)
California Building Industry Association (prior version)

California Chamber of Commerce (prior version)
California Council for Affordable Housing
California Housing Consortium (prior version)
Engineering Contractors' Association (prior version)
Los Angeles County Business Federation (prior version)
Orange County Business Council (prior version)

Opposition: (Verified 6/12/17)

League of California Cities (unless amended) (prior version)
Southwest California Legislative Council

Status: Senate Governance & Finance, Elections & Constitutional Amendments

Senate Floor votes:

Assembly floor votes: YES - Cervantes, Mayes, Medina, Melendez

NVR - Waldron

Legislative Item #9

Job Creation & Retention

Action

[AB 570, as introduced, Gonzalez Fletcher. Workers' compensation: permanent disability apportionment.](#)

Recommended action: OPPOSE

Presentation: Gene Wunderlich

Summary:

Apportionment to Pre-existing Disability. Violates the fundamental agreement between worker and employers by requiring employers to compensate injured workers for disability that has not, with medical certainty, resulted from a workplace injury. Prohibits the use of pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth, in the calculation of permanent disability benefits for injuries occurring on or after January 1, 2018.

Description:

Existing workers' compensation law generally requires employers to secure payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. An employer is liable only for the percentage of the permanent disability directly caused by the injury arising out of, and occurring in the course of, employment.

Existing law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. Existing law requires the physician to make an apportionment determination by finding the approximate percentage of the permanent disability that was caused by the direct result of injury arising out of and occurring in the course of employment, and the approximate percentage of the permanent disability that was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.

This bill would prohibit apportionment, in the case of a physical injury occurring on or after January 1, 2018, from being based on pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth.

Arguments in support:

The purpose of the bill is to eliminate elements of what the author believes is gender bias in the workers' compensation system. According to the author, women can receive disproportionately low compensation amounts for work-related permanent disability because of the gender-specific conditions of pregnancy and childbirth. The author points to specific examples where the evaluating physician has pointed to pre-existing conditions that have involved pregnancy or childbirth in apportioning the causation of subsequent industrial injuries, and argues that this constitutes an inappropriate discrimination, since male injured workers can never have their disability apportioned in this manner.

Arguments in Opposition:

There is substantial disagreement as between supporters of this bill and opponents of this bill on whether or not there is a serious problem of gender-based unfairness in the workers' compensation system. Some supporters have asserted that "we see it every day" while some opponents assert that the wrongs

complained of simply do not occur in the workers' compensation courts. This issue has been presented to, and debated in, the Legislature in one form or another for at least eight years, and there is a paucity of concrete evidence, either academic or anecdotal, to show that there is pervasive discrimination based on gender, or other protected classes. Proponents cite several examples of cases where women are alleged to have suffered unfair treatment by the system. In these examples it is claimed that the evaluating physician has pointed to the offending apportionment factor. Despite requests for any information indicating that workers' compensation judges have accepted these apportionment factors, proponents have been unable to do so.

Unlike previous bills on this subject, AB 570 expressly adds language that brings in other medical conditions that are related to the genderbased condition. Thus, the bill appears to expressly prohibit apportionment not merely to pregnancy or childbirth, but to any other medical condition that pre-dates the industrial injury if that prior condition can be shown to have been related to a pregnancy or child birth. For example, if a pregnancy causes back problems, and those back problems persist as a chronic problem, the bill appears to preclude using that pre-existing condition as a basis to apportion a subsequent industrial back injury. Opponents are concerned about the scope of this provision, and the amount of litigation it would create. They also note the underlying principle that employers should pay for what the job caused, but not pre-existing conditions.

This bill would not change existing law as interpreted by the courts to date. This bill would, however, generate new litigation over questions of whether it is intended to change existing interpretations. At best, that additional litigation would add to employers' costs for workers' compensation. At worst, this bill could disturb the appropriate interpretation of existing law that is already taking shape in the courts.

"I am returning Assembly Bill 1643 without my signature.

On the issue of apportionment, this bill creates broad, gender-based exceptions to the rule that employers are liable only for the percentage of permanent disability directly caused by a workrelated injury. As written, the bill would prohibit apportionment to, and thus require employers to pay for, a permanent disability that actually resulted from pregnancy or menopause, or from osteoporosis or carpal tunnel syndrome where these are preexisting conditions or unrelated to work.

As I said last year, there is no place for gender discrimination in the workers' compensation system. Current law, however, already prohibits apportionment to risk factors, including gender, age, and family history. There is ample opportunity within the workers' compensation adjudicatory process for workers, their counsel, and others to raise any concerns or allegations of improper and impermissible gender discrimination in the medical evaluation or apportionment process.

California's workers' compensation system strives to treat all injured workers fairly and to ensure that all workers, regardless of gender, are adequately compensated for any permanent disability directly caused by work-related injuries. Rather than promoting equality, the statutory changes proposed by this measure would create new gender-based classifications and spur additional and costly litigation, undermining the successful reforms enacted in 2012 and the sustainability of the system."

Governor Jerry Brown (2016)

Support: (6/12/17)

CA Conference Board of the Amalgamated Transit Union
CA Conference of Machinists
California Applicants' Attorneys Association (CAAA) (sponsor)
California Federation of Teachers, AFT, AFL-CIO
Engineers & Scientists of CA, IFPTE Local 20, AFL-CIO

International Longshore and Warehouse Union
Los Angeles County Professional Peace Officers Association
Professional & Technical Engineers, IFPTE Local 21, AFL-CIO
The Teamsters UNITE-HERE, AFL-CIO
Utility Workers Union of America

Opposition: (Verified 6/12/17)

Opposition Acclamation Insurance Management Services (AIMS)
American Insurance Association

Association of California Healthcare Districts
Association of California Insurance Companies
California Association of Joint Powers Authorities

*California Chamber of Commerce
California Coalition on Workers' Compensation
California Grocers Association
California Manufacturers & Technology Association*

*California Special Districts Association
California State Association of Counties CSAC
Excess Insurance Authority
National Federation of Independent Business*

Status: Senate Rules

Senate Floor votes:

Assembly floor votes: YES - Cervantes, Medina

NO - Waldron

NVR - Melendez