SWCLC
Southwest California Legislative Council

**MEETING AGENDA**
**Monday May 18, 2020**
Realtor House, 26529 Jefferson Ave, Murrieta

**Presiding: Adam Ruiz, Chair**

**2020 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**

**2020 Legislative Report #5** **Action**

1. **AB 1107 (Chu) *Unemployment benefits: temporary additional benefits.***
2. **AB 1551 (Arambula) *Property assessments: requirements and disclosures.***
3. **AB-2457 (Melendez) Worker status: penalties and enforcement.**

1. **Ab 2920 (Obernolte) Hazardous Waste: Transportation: Consolidated Manifesting Procedures**
4. **AB 2737 (C Garcia) Community emissions reduction programs.**
5. **AB-2826 (Low) Gender neutral retail departments.**
6. **AB-3054 (Salas) California Environmental Quality Act: judicial challenge: litigation transparency: identification of contributors.**
7. **SB-893 (Caballero) Workers' compensation: hospital employees.**
8. **SB-900 (Hill) Department of Industrial Relations: worker status: employees and independent contractors.**
9. **SB 1378 (Borgeas) California Environmental Quality Act: judicial challenge: litigation transparency: identification of contributor**
10. **SB 950 (Jackson) California Environmental Quality Act: Housing And Land Use**

**Lunch sponsor** **Your Kitchen** **Thank you**

**Speaker and Chamber Announcements** **Information**

**Adjourn – Next Meeting June 15**

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**Murrieta/Wildomar Chamber of Commerce**
**Lake Elsinore Valley Chamber of Commerce**
**Menifee Valley Chamber of Commerce**
**Southwest Healthcare Systems**
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**Lake Elsinore Chamber of Commerce**
**Menifee Valley Chamber of Commerce**
**Murrieta/Wildomar Chamber of Commerce**
**Temecula Valley Chamber of Commerce**

**Meeting Minutes**
**Monday, April 20, 2020**
2020 Chair: Adam Ruiz
Legislative Consultant: Gene Wunderlich

SWCLC April meeting held via Zoom. Action items voted as indicated below:

| **2020 Legislative Report #4** | **Action** |
|---|---|
| 1. Ab 828 (Ting) Temporary Moratorium On Foreclosures And Unlawful Detainer Actions: *Coronavirus* | **OPPOSE** |
| 2. Ab 1947 (Kalra) Employment Violation Complaints: Requirements: Time | **OPPOSE** |
| 3. Ab 2019 (Holden) Pupil Instruction: College And Career Access Pathways Partnerships: County Offices Of Education | **OPPOSE** |
| 4. Ab 2143 (Stone) Settlement Agreements: Employment Disputes | **SUPPORT** |
| 5. Ab 2570 (Stone) False Claims Act | **OPPOSE** |
| 6. Ab 2920 (Obernolte) Hazardous Waste: Transportation: Consolidated Manifesting Procedures | **SUPPORT** |
| 7. Sb 986 (Allen), Coastal Resources: New Development: Ghg Emissions | **OPPOSE** |
| 8. Sb 1084 (Umberg) Pharmacy: Dispensing: Controlled Substances | **OPPOSE** |
| 9. H.R.6467 - Coronavirus Community Relief Act | **Watch** |

**Guest speaker, Paul Nolta, Inland Empire SBDC provided an update on the availability of various CARES related SBA, Payroll Protection and PUA loans.**

**Legislative Item #1** **Action**

**AB 1107, as amended, Chu. ~~Workers' compensation.~~ *Unemployment benefits: temporary additional benefits.***

*(Coauthor: Assembly Member Reyes)*

**Recommended action: OPPOSE as amended April 22, 2020**
**Presentation: Gene Wunderlich**

**Summary:**

AB 1107 represents a massive Unemployment Insurance Compensation and Tax Increase. Would significantly raise employers' payroll taxes to fund a one hundred-and-thirty percent increase in unemployment payments just as California's businesses are struggling to survive this pandemic-caused shutdown. This bill has passed through the Assembly and 1 Senate committee prior to the gut & amend. Will now be reassigned to committee and go through the process again.

**Description**:

AB 1107, as amended, Chu. ~~Workers' compensation.~~ *Unemployment benefits: temporary additional benefits.*

***Under existing law**, Unemployment compensation benefits are based on wages paid in a base period that is calculated according to the month within which the benefit year begins. Existing law provides that a weekly Unemployment compensation benefit amount may be paid to an individual whose highest wages in the quarter of their base period exceeded $900, but a weekly benefit amount shall not exceed $450.*

***This bill** would, until March 1, 2021, instead provide that once the temporary federal Unemployment increase due to the COVID-19 outbreak has ceased, an individual's weekly benefit amount would be increased by $600, notwithstanding the weekly benefits cap.*

*Because this bill would expand the scope of payments from the Unemployment Disability Compensation Fund, which is continuously appropriated, it would make an appropriation.*

**Arguments in opposition:**

As California businesses explore nascent opportunities to re-open under already restrictive stages outlined by the Governor, some employers are finding it difficult to bring back workers who may be collecting more in unemployment benefits than they would at salary. According to a recent article in the San Francisco Chronicle:

> As employers plan to ramp up or reopen, some are realizing that low- to middle-wage workers might not want to be called back because they are making more money on unemployment than they did working, thanks to the extra $600 per week everyone on unemployment is getting from April through the end of July from the federal government under the Cares Act.

AB 1107 proposes to extend the timeframe past the June federal timeframe until March, 2021, sticking already overburdened employers and taxpayers with the tab.

**Support: (Verified 5/11/2020)**

None on file

**Opposition: (Verified 5/11/2020)**

None on file

**Status:** Senate Labor, Public Employment & Retirement

**Senate Floor votes:**

**Assembly floor votes:**

| **Legislative Item #2** | **Action** |
|---|---|

**AB 1551 (Arambula) ~~Property Assessed Clean Energy program.~~ *Property assessments: requirements and disclosures.***

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

**Summary:**

This bill intends to strengthen consumer protections and create further safeguards for homeowners who use PACE programs by prohibiting prepayment penalties, prohibiting PACE financing on a property subject to a reverse mortgage, and adding a requirement to provide a printed copy of the financing disclosure required by existing law.

**Description**:

**Existing law**, commonly known as the Property Assessed Clean Energy (PACE) program, authorizes public agency officials and property owners, as provided, to enter into voluntary contractual assessments, known as PACE assessments, to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.

**Existing law**, the California Financing Law (CFL), requires a program administrator who administers a PACE program on behalf of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program. *The Department of Business Oversight is responsible for the licensing and regulation of program administrators.*

**The CFL** prohibits a program administrator from executing an assessment contract, prohibits any work from commencing under a home improvement contract that is financed by that assessment contract, and prohibits the execution of that home improvement contract, unless the program administrator ensures that certain criteria related to that assessment contract are satisfied.

**This bill** would include within the criteria that an assessment contract is required to meet that the contract does not contain a penalty for early payment, and the property that will be subject to the assessment contact is not subject to a reverse mortgage, as defined.

***Existing law*** *requires a specific financing estimate and disclosure document to be completed and delivered to a property owner under certain circumstances before the property owner consummates a voluntary contractual assessment for purposes of financing the installation of distributed generation renewable energy sources or energy or water efficiency improvements, certain seismic safety improvements, electric vehicle*

*charging infrastructure improvements, wildfire safety improvements, or a special tax for community facilities, as specified. Existing law requires the disclosure form to be provided to the property owner as a printed copy unless the property owner agrees to an electronic copy.*

***This bill** would instead require the disclosure to be provided to the property owner as a printed copy in no smaller than 12-point type.*

**Existing law** requires a program administrator to provide an oral confirmation of the key terms of an assessment contract with the property owner on the call, or the property owner's authorized representative, and to retain a copy of a recording of that confirmation for a period of 5 years after the recording is made. Existing law requires that oral confirmation to contain specified information, including that at least one owner of the property has a copy of a specified financing estimate and disclosure form.

**The bill** would require a program administrator to include in that oral confirmation that the property owner may repay an amount owed pursuant to an assessment contract before the date that amount is due under the contract without early repayment penalty.

**Argument in support**

Supporters argue that, "Currently, a PACE assessment takes priority lien status over and above any other lien on the property, including any mortgage. Fannie Mae and Freddie Mac have policies that prohibit them from purchasing a mortgage with a lien that has priority over the mortgage. This means that in practice, all PACE assessments must be paid off prior to the refinance or sale of a property. Despite the fact that it is nearly impossible to sell or refinance a property without paying off a PACE assessment, there are PACE assessment contracts today that contain prepayment penalties of 5% of the balance of the debt.

To remedy this issue AB 1551 will prohibit a PACE assessment contract from containing a prepayment penalty, as well as include a new disclosure that will be distributed in hard copy form to potential PACE applicants. As a matter of public policy, a government sanctioned clean energy financing program should not contain a prepayment penalty which would drain a homeowner's equity in a sale and increase the costs of obtaining a lower interest rate on the mortgage by refinancing. Similarly, homeowners have a right to be fully informed of the relevant issues when participating in the PACE program."

**Support: (Verified 5/12/2020)**

California Association of Realtors
California Land Title Association
Consumer Attorneys of California
California Apartment Association
California Credit Union League
California Land Title Association
Consumer Attorneys of California
Consumer Federation of California
Los Angeles County Chief Executive Office

**Opposition: (Verified 5/12/2020)**

Ygrene Energy Fund

**Status:** Senate, awaiting assignment

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

**Legislative Item #3** **Action**

## AB-2457 (Melendez) Worker status: penalties and enforcement.

***(Coauthors: Assembly Members Choi and Lackey)***

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

**Summary:**

Provides some protection for employers by prohibiting them being subject to fines and penalties if an employee under the terms of AB 5 files for unemployment, including back unemployment, for the period in which they were an independent contractor, or if that employee had previously worked as an independent contractor prior to January 2020. It further prohibits the Department of labor from extending an audit to determine an employee's prior classification status.

**Description**:

AB 2457, as amended, Melendez. Worker status: ~~independent contractors: pharmacists.~~ *penalties and enforcement.*

***Existing law*** *establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law exempts specified occupations and business relationships from these provisions.*

***This bill*** *would prohibit an employer from being subject to a monetary fine or penalty for a violation of the above provisions with respect to an applicant who has applied for unemployment benefits and has previously acted as an independent contractor during the past 5 years. The bill would repeal this provision on January 1, 2026.*

***The Labor Code Private Attorneys General Act*** *of 2004 authorizes an aggrieved employee on behalf of the employee and other current or former employees to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency for the violation of certain provisions affecting employees. The act requires compliance with specified filing requirements by the aggrieved employee in order to bring the action, including providing notice to the agency and the employer with the specific provisions of the Labor Code alleged to have been violated, and the facts and theories that support the alleged violations.*

***This bill*** *would provide that the above act does not apply to an employee with respect to worker classification pursuant to a wage order if the employee has filed for unemployment insurance benefits and the employee's previous employer hired the employee as an independent contractor before January 1, 2020. The bill would repeal this provision on January 1, 2026.*

***Existing law*** *authorizes the Employment Development Department to administer the federal-state unemployment insurance program and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law establishes procedures for the filing, determination, and payment of benefit claims, and those benefits are payable from the Unemployment Fund. Existing law requires the department to promptly pay benefits if it finds the claimant is eligible and to promptly deny benefits if it finds the claimant is ineligible for benefits. Existing law requires the department to consider facts submitted by an employer in making this determination and also provides for the department to audit claims, as specified.*

***This bill*** *would provide that an audit triggered pursuant to the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) does not authorize the department or the Labor Commissioner, with respect to a claim for unemployment compensation benefits, to audit a previous determination of worker classification regarding an applicant's work for previous employers if the applicant has designated themselves as self-employed or as an independent contractor during the past 5 years. The bill would repeal this provision on January 1, 2026.*

~~Existing law, as established in the case of Dynamex Operations W. Inc. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of specified wage orders.~~

~~Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.~~

~~Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.~~

~~This bill would expand the above-described exemptions to also include individuals who are licensed pharmacists.~~

**Argument in support:**

If an individual who has previously worked as an independent contractor but is now subject to classification as an employee under the terms of AB 5, is laid off due to CV-19 and files for unemployment, the current employer is not liable to pay for unemployment benefits for the period prior to when the individual transitioned from independent contractor to employee, nor is a previous employer if the individual was also an independent contractor for that employer. Any audit of the individual's qualifications for unemployment or PAU under the terms of the CARES Act cannot be extended to an evaluation of whether the employee had previously been mischaracterized as an independent contractor if that individual had designated themselves as an independent contractor during the previous 5 years. These exemptions all sunset on January 1, 2026.

**Support: (Verified 5/12/2020)**

None on file

**Opposition: (Verified 5/12/2020)**

None on file

**Status:** Assembly L & E

**Legislative Item #4** **Action**

**AB 2737, as introduced, Cristina Garcia. Community emissions reduction programs.**

**Recommended action: OPPOSE**
**Presentation: Gene Wunderlich**

**Summary:**

The provisions of AB 2737 are already codified into the California Health & Safety Code and merely represents another encroachment on local control by requiring the new or revised source be 'mitigated' in some unspecified manner, imposes a new annual land use assessment plan, and consider the impact of land use decisions on their emission reduction program. CHSC & CEQA already mandate the proposed requirements.

A district encompassing a location selected pursuant to subdivision (c) of Section 44391.2 shall not do either of the following:

(a) Authorize a new major source that increases toxic air contaminants and criteria air pollutants above the levels included in the community emissions reduction plan for that location without requiring the major source to mitigate the increased emissions directly in the affected communities.

(b) Authorize revisions to an existing major source that increases toxic air contaminants and criteria air pollutants above the levels included in the community emissions reduction plan for that location without requiring the major source to mitigate the increased emissions directly in the affected communities.

"Disadvantaged community" means a community identified as disadvantaged pursuant to Section 39711.

**Background:**

**The California Global Warming Solutions Act of 2006** establishes the State Air Resources Board as the state agency responsible for monitoring and regulating sources emitting greenhouse gases. That act requires the state board to approve a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020 and to ensure that statewide greenhouse gas emissions are reduced to at least 40% below the 1990 level by 2030.

**Existing law** requires the state board, by October 1, 2018, to prepare and update, at least once every 5 years, a statewide strategy to reduce emissions of toxic air contaminants and criteria air pollutants in communities affected by a high cumulative exposure burden. Existing law requires the state board to select locations around the state for the preparation of community emissions reduction programs, and to provide grants to community-based organizations for technical assistance and to support community participation in the programs. Existing law requires an air quality management district or air pollution control district containing a selected location, within one year of the state board's selection, to adopt a community emissions reduction program.

**This bill** would prohibit a district that contains a selected location from authorizing a new major source, or revisions to an existing source, that increases toxic air contaminants and criteria air pollutants above the levels included in the community emissions reduction plan for that location without requiring the major source to mitigate the increased emissions directly in the affected communities. The bill would require the district to annually develop a localized land use assessment plan that considers the impacts of land use decisions on the community emissions reduction programs.

**The California Constitution** requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

**This bill** would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

## Argument in opposition:

From the California Health and Safety Code:

(1) An assessment and identification of communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants. The assessment shall prioritize disadvantaged communities and sensitive receptor locations based on one or more of the following: best available modeling information, existing air quality monitoring information, existing public health data based on consultation with the Office of Environmental Health Hazard Assessment, and the monitoring results obtained pursuant to Section 42705.5.

(2) A methodology for assessing and identifying the contributing sources or categories of sources, including, but not limited to, stationary and mobile sources, and an estimate of their relative contribution to elevated exposure to air pollution in impacted communities identified pursuant to paragraph (1).

(3) An assessment of whether a district should update and implement the risk reduction audit and emissions reduction plan developed pursuant to Section 44391 for any facility to achieve emission reductions commensurate with its relative contribution, if the facility's emissions either cause or significantly contribute to a material impact on a sensitive receptor location or disadvantaged community, based on any data available for assessment pursuant to paragraph (1) of subdivision (b) or other relevant data.

(4) An assessment of the existing and available measures for reducing emissions from the contributing sources or categories of sources identified pursuant to paragraph (2), including, but not limited to, best available control technology, as defined in Section 40405, best available retrofit control technology, as defined in Section 40406, and best available control technology for toxic air contaminants, as defined in Section 39666.

(c) (1) Based on the assessment and identification pursuant to paragraph (1) of subdivision (b), the state board shall select, concurrent with the strategy, locations around the state for preparation of community emissions reduction programs. The state board shall select additional locations annually thereafter, as appropriate.

(2) Within one year of the state board's selection, the district encompassing any location selected pursuant to this subdivision shall adopt, in consultation with the state board, individuals, community-based organizations, affected sources, and local governmental bodies in the affected community, a community emissions reduction program to achieve emissions reductions for the location selected using cost-effective measures identified pursuant to paragraph (4) of subdivision (b).

(3) The community emissions reduction programs shall be consistent with the state strategy and include emissions reduction targets, specific reduction measures, a schedule for the implementation of measures, and an enforcement plan.

(4) The community emissions reduction programs shall be submitted to the state board for review and approval within 60 days of the receipt of the program. Programs that are rejected shall be resubmitted within 30 days. To the extent that a program, in whole or in part, is not approvable, the state board shall initiate a public process to discuss options for achievement of an approvable program. Concurrent with the public process to achieve an approvable program, the state board shall develop and implement the applicable mobile source elements in the draft program to commence achievement of emission reductions.

(5) The programs shall result in emissions reductions in the community, based on monitoring or other data.

(6) In implementing the program, the district and the state board shall be responsible for measures consistent with their respective authorities.

(7) A district encompassing a location selected pursuant to this subdivision shall prepare an annual report summarizing the results and actions taken to further reduce emissions pursuant to the community emissions reduction program.

(8) Compliance with the community emissions reduction program prepared pursuant to this section, including its implementation, shall be enforceable by the district and state board, as applicable.

(d) The state board shall provide grants to community-based organizations for technical assistance and to support community participation in the implementation of this section and Section 42705.5.

**Support: (Verified 5/12/2020)**

None on file

**Opposition: (Verified 5/12/2020)**

None on file

**Status:** Committee on Natural Resources

**Legislative Item #5** **Action**

**AB-2826 (Low) Gender neutral retail departments.(2019-2020)**

**Recommended action: OPPOSE**
**Presentation: Gene Wunderlich**

**Summary:**

AB 2826 would require retail stores with 500 or more employees to display ALL childcare items, including clothing, toys, and other children's items, to be displayed all together in a single area or face a $1,000 fine. This would force retail stores to realign major departments, would result in confusion for consumers, and additional costs for retail establishments.

Why not extend this to its (il)logical conclusion and include all items of clothing, toys and hardware traditionally marketed to men and women in a single space? Why even continue to separate items traditionally marketed to children and adults in divided spaces? Just throw everything in one big room and let consumers figure it out.

**Description**:

**Existing law**, the Unruh Civil Rights Act, specifies that all persons within the jurisdiction of the state are free and equal, and no matter their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind.

**This bill** would require a retail department store with 500 or more employees to maintain undivided areas of its sales floor where, if it sells childcare articles, children's clothing, or toys, all childcare items, all clothing for

children, or all toys, regardless of whether a particular item has traditionally been marketed for either girls or for boys, shall be displayed. Beginning on January 1, 2023, the bill would make a retail department store that fails to correct a violation of these provisions within 30 days of receiving written notice of the violation from the Attorney General liable for a civil penalty of $1,000, as provided.

**Support: (Verified 5/12/2020)**

None on file

**Opposition: (Verified 5/12/2020)**

None on file

**Status:** Assembly awaiting assignment

**Legislative Item #6** **Action**

**AB-3054 (Salas) California Environmental Quality Act: judicial challenge: litigation transparency: identification of contributors.(2019-2020)**

**SB 1378 (Borgeas) California Environmental Quality Act: judicial challenge: litigation transparency: identification of contributors –**

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

**Summary:**

Companion bills that would provide transparency to the CEQA litigation process by requiring a plaintiff or petitioner in an action under CEQA, to disclose the identity of any person or entity that contributes $1,000 or more toward the petitioners costs.

**Description**:

**The California Environmental Quality Act** requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. The act authorizes specified entities to file and maintain with a court an action or proceeding to attack, review, set aside, void, or annul an act of a public agency on grounds of noncompliance with the requirements of the act.

**This bill** would require a plaintiff or petitioner, in an action or proceeding brought pursuant to the act, to disclose the identity of a person or entity that contributes $1,000 or more, as specified, toward the plaintiff's or petitioner's costs of the action or proceeding.

**The bill** also would require the plaintiff or petitioner to identify any pecuniary or business interest related to the project or issues involved in the action or proceeding of those persons or entities.

**The bill** would authorize a court to, upon request of the plaintiff or petitioner, withhold public disclosure of a contributor if the court finds that the public interest in keeping that information confidential clearly outweighs the public interest in disclosure.

**The bill** would provide that a failure to comply with these requirements may be grounds for dismissal of the action or proceeding by the court.

**The bill** would also authorize a court to use the disclosed information to determine whether the financial burden of private enforcement supports the award of attorney's fees.

**Arguments in support:**

The California Environmental Quality Act (CEQA) (Division 13 (commencing with Section 21000) of the Public Resources Code) facilitates the maintenance of a quality environment for the people of the state through identification of significant effects on the environment caused by a proposed project, consideration of alternatives, and implementation of feasible mitigation measures to reduce those effects.

(2) CEQA is premised on transparency in decisionmaking through public dissemination of information about a proposed project's effect on the environment.

(3) CEQA empowers the public to challenge a project in court for failure to fully comply with CEQA's exhaustive disclosure and mitigation requirements.

(4) Various entities are increasingly using litigation pursuant to CEQA for competitive purposes to either frustrate a competitor's project or to extract concessions from a project proponent.

(5) Despite the focus on transparency and public disclosure in the decisionmaking process, shadow groups funded by unknown backers often threaten and bring litigation challenging proposed projects without being required to disclose who is funding the litigation or what financial interests those entities have related to the proposed project.

(6) Project opponents sometimes strategically use litigation to delay a project past its point of economic viability, thereby using litigation to stop projects that could not otherwise be stopped during the decisionmaking process.

(7) California Rules of Court require the disclosure of entities that fund the preparation and submission of amicus briefs to the court.

(8) The state and public have a compelling interest in the disclosure of the identities of entities that fund litigation under CEQA so they can better understand the identities of those organizations participating in the public decisionmaking process, determine whether the petitioner or plaintiff may be suing for competitive or other nonenvironmental purposes, and protect scarce judicial resources by deterring entities from using lawsuits for competitive or other nonenvironmental purposes.

(9) The courts have a compelling interest in disclosure to determine whether the plaintiff or petitioner is seeking to advance environmental, nonenvironmental, or a mix of environmental and nonenvironmental interests in filing an action pursuant to CEQA.

(b) It is the intent of the Legislature to require plaintiffs and petitioners bringing an action pursuant to CEQA to disclose those persons or entities who make contributions to fund the preparation of the petition and subsequent actions or proceedings and any financial interests they may have related to the proposed project.

**Support: (Verified 5/12/2020)**

None on file

**Opposition: (Verified 5/12/2020)**

None on file

**Status:** Environmental Natural Resources

**Legislative Item #7** **Action**

**SB-893 (Caballero & Skinner) Workers' compensation: hospital employees.(2019-2020)**

**Recommended action: OPPOSE**
**Presentation: Gene Wunderlich**

**Summary:**

SB 986, which would add a new onerous requirement on all new development in the Coastal Zone—including housing development—to "minimize" greenhouse gas emissions (GHG), no matter how infeasible or costly the burden. This obligation is on top of the stringent GHG reduction requirements placed on housing and other development under the California Environmental Quality Act (CEQA) and through the state's rigorously green building code.

While this specific bill is aimed directly at future development in the Coastal Zone subject to both CEQA with an overlay of Coastal Commission, requirements like this have a tendency to spread once adopted. Much as with attempted expansions of Coastal Commission to control inland waterways, and the recently defeated WOTUS rule seeking to expand the definition of navigable waterways, the concern is that if passed, this would set the stage for further encroachment into ALL development regardless of location.

**Description**:

**Existing law** establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law creates a rebuttable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of employment.

**This bill** would define "injury," for a hospital employee who provides direct patient care in an acute care hospital, to include infectious ~~diseases and~~ *diseases,* musculoskeletal ~~injuries.~~ *injuries, and respiratory diseases, as defined.* The bill would create rebuttable presumptions that these injuries that develop or manifest in a hospital employee who provides direct patient care in an acute care hospital arose out of and in the course of the employment.

**The bill** would extend these presumptions for specified time periods after the hospital employee's termination of employment. The bill would also make related findings and declarations.

**Arguments in opposition:**

In the case of a hospital employee who provides direct patient care in an acute care hospital, the term "injury" as used in this division includes an infectious disease when any part of the disease or infection develops or manifests itself during a period of the person's employment with the hospital.

The compensation that is awarded for an infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

An infectious disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall be presumed to arise out of and in the course of the employment. This presumption is rebuttable by other evidence, but, unless rebutted, the appeals board shall presume the infectious disease arose out of and in the course of the employment.

The bloodborne infectious disease presumption, tuberculosis presumption, and meningitis presumption shall be extended to a hospital employee pursuant to paragraph (1) following termination of employment for a period of three calendar months for each full year of employment, but not to exceed 60 months, beginning with the last date actually worked in the specified capacity.

**Support: (Verified 5/12/2020)**

None on file

**Opposition: (Verified 5/12/2020)**

None

**Status:** Senate Labor, Public Employment & Retirement

## Legislative Item #8 Action

**SB-900 Department of Industrial Relations: worker status: employees and independent contractors.(2019-2020)**

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

**Summary:**

Should the Legislature revise and recast the provisions of the 'ABC' employee test and expand the exemptions in the test to include interpreters, translators, family and marriage therapists, amateur athletic officials, and others?

**Description**:

***Existing* law** expressly authorizes the Department of Industrial Relations to assist and cooperate with the federal Wage and Hour Division and the federal Children's Bureau in enforcing of the federal Fair Labor Standards Act of 1938 within this state.

**This bill** would recast those provisions and would delete the express authorization for the department to assist and cooperate with the bureau.

***Existing law*** *requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.*

***Existing law*** *exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the multifactor test previously established in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.*

***Existing law*** *exempts from the application of the ABC test certain licensed health care professionals performing professional or medical services provided to or by a prescribed health care entity.*

***This bill*** *would additionally exempt a licensed professional clinical counselor, licensed clinical social worker, or licensed marriage and family therapist performing professional or medical services provided to or by a prescribed health care entity.*

***This bill*** *would also exempt amateur athletic officials supervising an amateur sporting contest held by an amateur sports organization.*

***This bill*** *would also exempt a franchisee, as defined, if certain requirements are met.*

***Existing law*** *exempts from the application of the ABC test a contract for "professional services," as defined, if the hiring entity demonstrates that certain factors are satisfied.*

***This bill*** *would expand the definition of "professional services" to include prescribed security researchers, appraisers, and certified shorthand reporters.*

***Existing law*** *exempts from the application of the ABC test business relationships between a referral agency and a service provider, as defined, subject to certain conditions. Existing law defines a "referral agency," for purposes of this exemption, as a business that connects clients with service providers that provide various types of services, including tutoring. Existing law defines a "tutor," for this purpose, to include a person who develops and teaches their own curriculum.*

***This bill*** *would expand the definition of "referral agency" to include a business that connects clients with service providers that provide certified interpretation or translation services, as defined. The bill would expand the definition of "tutor" to also include a person who teaches curriculum that is proprietarily and privately developed or provides private instruction or supplemental academic enrichment services by using their own teaching methodology or techniques.*

***Existing law*** *exempts from the application of the ABC test a direct salesperson as described in provisions governing unemployment insurance if the conditions for exclusion from employment under that section are met. Those unemployment insurance provisions define "employment" for purposes of unemployment insurance, and exempt from that definition the services performed by specified persons, including real estate, cemetery, or direct sales salespersons, if certain conditions are met, including either specified licensure or performing demonstrations and sales presentations of consumer products in the home of the buyer, or sales to a buyer for resale by the buyer or others in the home or otherwise than from a retail or wholesale establishment, as prescribed.*

***This bill*** *would also exempt from the application of the ABC test a manufactured housing salesperson and correspondingly revise the unemployment insurance definition of "employment" to exclude a licensed manufactured housing salesperson. The bill would further revise the conditions for exclusion to also exempt persons performing demonstrations and sales of products in the home or business of the buyer. The bill would exclude from a retail or wholesale establishment, under these unemployment insurance provisions, a bus, van, or truck from which the individual seller sells specified products.*

*In addition to the above changes, this bill would repeal and reenact the ABC test and the existing exemptions as a new article of the Labor Code.*

**Arguments in support:**

"The California Association of Marriage and Family Therapists (CAMFT) and our 32,000 members applauds your proposal to restore business to business contracting contained in SB 900. This change will allow Marriage and Family Therapists (MFTs) to contract with health agencies to provide therapeutic services to patients. As a result, this change will help to increase access to behavioral health and substance use disorder treatment. Out-patient mental health care is a primary and typical setting where California residents seek their mental health treatment.

A well-established model within these practices is the independent contractor role of the provider. The AB 5 (Dynamex) change to the contractor/employee test has a direct and adverse effect on how marriage and family therapists (MFTs) administer treatments. This change has decreased specialty services and groups, reduced access to care, and significantly increased costs to the patients. MFTs do not work the typical 9-5, 40-hour week, similar to other types of professions. MFTs are typically working at multiple sites working within a specialty area (i.e., domestic violence groups), which can result in 5-hour time blocks per setting. The business-to business contracting model is a win-win for the employer, the contractor, and the patient for these types of arrangements. As the largest mental health provider type in the state, we strive to improve access to mental health care for all Californians. SB 900 to ease artificial barriers to care in a time when our communities need access more than ever.

**Arguments in opposition:**

"SB 900 (Hill) exempts from AB 5 several occupations such as clinical social workers, counselors, and marriage and family therapists, as well as creating loopholes for translators and interpreters and other jobs. These are all workers who are potentially on the frontlines of the COVID-19 crisis, working in health care settings and other public places. In addition, many of these workers are directly employed and are represented by unions. The ostensible "protection" in the bill regarding no exemption for those covered "currently or potentially governed by a collective bargaining agreement" does nothing to prevent employers from undermining and chipping away at union protections.

For one, misclassified workers, or potentially those exempted from AB 5, lose the right to organize. As a result, there is no potential to be covered by a CBA and those workers lose the right to organize to negotiate on their own behalf…. There are millions of workers risking their lives during this crisis, and before and after this crisis, to do their jobs. There are also millions of employers who follow the law and treat their workers with respect. These employers provide health benefits, good wages, and retirement security. Many provide more paid sick days than the law requires.

They have paid into the UI fund, purchased workers' compensation insurance, and done their part to support the public safety net. This proposal is fundamentally unfair to those companies since their competitors can use independent contracts and escape their obligations. This is the unfair playing field that AB 5 was intended to address. The rational response will be for these companies to join the race to the bottom and seek to shift their workforce into this new category."

**Support: (Verified 4/12/2020)**

Associated Builders and Contractors Northern California Chapter

Association of Independent Judicial Interpreters of California

California Association of Marriage and Family Therapists
California Manufactured Housing Institute
Calpace
Cornwell Quality Tools
Deposition Reporters Association of California (DRA)
Mac Tools
Matco Tools
National Association of Social Workers, California Chapter
Snap-On

**Opposition: (Verified 4/12/2020)**

California-Nevada Conference of Operating Engineers
California Alliance for Retired Americans
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association
California Federation of Teachers
California Labor Federation
California Nurses Association
California School Employees Association
California Teamsters Public Affairs Council
Engineers & Scientists of California, Local 20, Ifpte, Afl-cio
Professional & Technical Engineers, Local 21
SEIU California UAW Local 2865
Union of American Physicians and Dentists
Unite-here, Afl-cio
United Domestic Workers of America / Afscme, Afl-cio
United Food and Commercial Workers, Western States Council

**Status:** Senate Labor, Public Employment & Retirement

## Legislative Item 9 — Action

### SB 950 (Jackson) California Environmental Quality Act: Housing And Land Use

**Recommended action: OPPOSE**
**Presentation: Gene Wunderlich**

**Summary:**

Would expand the California Environmental Quality Act's existing requirements by adding costly new mandates that will burden local agencies, add substantial time and costs to the CEQA process and provide project opponents with new legal arguments to delay or block housing and other projects. The bill has been identified as one of the first JOB KILLERS by the CalChamber.

**Description**:

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

**This bill** would exempt from the requirements of CEQA emergency shelters, supportive housings, and transitional housings meeting certain requirements.

**CEQA** requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, proposed guidelines for the implementation of CEQA.

**The bill** would require the office, by an unspecified date, to prepare and develop, and the secretary to certify and adopt, revisions to the guidelines for the translation of certain notices and documents into non-English

languages. By requiring public agencies to translate notices and documents into non-English languages, this bill would impose a state-mandated local program.

**CEQA** establishes public comment periods for the lead agency to receive comments on a draft EIR for a project and requires the lead agency to respond to public comments received.

**This bill** would authorize the lead agency to post on its internet website, at least 30 days before a public hearing at which it may approve the project, its responses to public comments received. The bill would authorize the lead agency to set a deadline of 10 days before the final public hearing at which it may approve the project for the receipt of written comments and supporting evidence if certain conditions are met.

**CEQA** requires the courts to give an action or proceeding alleging noncompliance with CEQA preference over all other civil actions. CEQA establishes procedures applicable to an action or proceeding brought to challenge a public agency's action on the grounds of noncompliance with CEQA, including, among other procedures, the requirement that a petitioner bringing the action or proceeding is to request a hearing within 90 days from the date of filing of the petition and the requirement that the respondent public agency, not later than 20 days from the date of service of the petition, is to file with the court a notice setting forth the time and place at which all parties are to meet and attempt to settle the litigation.

**This bill** would additionally require the respondent public agency, not later than 20 days from the date of service of the petition, to file and serve a request for the court to schedule a case management conference, as provided. The bill would specify the subjects to be addressed in the case management conference, which include, among other subjects, the potential usefulness of settlement discussions, mediation, or arbitration. The bill would instead require the public agency, not later than 15 days from the date of service of the petition, to file with the court a notice setting forth the time and place at which all parties or their counsel are to meet to discuss various issues, including, among other issues, the potential usefulness of settlement discussions, mediation, or arbitration. The bill would require the public agency, not later than 20 days after the initial case management conference, to file and serve a notice of the time and place of a settlement meeting.

**CEQA** requires a petitioner, at the time of the filing of an action or proceeding pursuant to CEQA, to file a request that the respondent public agency prepare the record of proceedings related to the subject of the action or proceeding. CEQA provides the petitioner with the authority to elect to prepare the record of proceedings, instead of preparation by the public agency.

**This bill** would require the petitioner to file with the respondent public agency a notice either requesting the public agency to prepare the record of proceedings or notifying the public agency that it is electing to prepare the record of proceedings. The bill would authorize the public agency or real party in interest, within 5 business days of the service of the notice, to assume responsibility of preparing the record of proceedings, notwithstanding the petitioner's election. The bill would require the lead agency or real party in interest, if it makes this election, to bear the full costs in preparing and certifying the record of proceedings and to waive its rights to recover those costs from petitioner if it prevails in the action. The bill would require the parties to meet and confer regarding the preparation of the record of proceedings, as provided.

**CEQA** requires a petitioner bringing an action alleging noncompliance with CEQA to furnish a copy of the pleadings to the Attorney General.

This bill would require a petitioner, in the event of settlement of an action or proceeding involving the payment of money directly to a petitioner or petitioner's counsel other than reasonable attorney's fees and costs, to submit a report to the Attorney General describing the settlement and final disposition of the case within 7 days of the filing of a request for dismissal with the court. The bill would authorize the imposition of sanctions against a petitioner, upon motion by other parties in the action or by the Attorney General, if the petitioner refuses to file the report after being notified of its failure to comply with this requirement or if the petitioner repeatedly fails to comply with this requirement in connection with litigation brought by the petitioner. The bill would authorize the Attorney General to bring an action against the petitioner if the Attorney General determines that the petitioner has filed multiple actions under CEQA resulting in primarily monetary settlements that do not further the purposes of CEQA.

**CEQA** requires superior courts in counties with a population of more than 200,000 to designate one or more judges to develop expertise in CEQA and certain related laws so that those judges will be available to hear and quickly resolve actions or proceedings alleging noncompliance with CEQA.

**This bill** would require the Judicial Council, on or before July 1, 2021, to take certain actions related to the administration of justice under CEQA and to submit a report to the Legislature on its view regarding the administration of justice under CEQA, as provided. The bill would authorize a superior court in a county with a population of 200,000 or less, upon its own motion or upon motion by a party, to either order the transfer of the action or proceeding alleging noncompliance with CEQA to the superior court in a county with a population of more than 200,000 or to order the case be heard by a judge with expertise in CEQA assigned by the Judicial Council.

**Existing law** requires a court, upon motion by a party and a determination of certain facts, to order a plaintiff in a civil action, including an action challenging a project on the grounds of noncompliance with CEQA, challenging a housing development project that meets or exceeds requirements of low- or moderate-income housing to file an undertaking in an amount determined by the court.

**This bill** would instead require a court to require the filing of an undertaking in civil actions that challenge an affordable housing development project, as defined, which includes an emergency shelter.

**Existing law** requires a legislative body of a city or county or a district board, if an initiative petition is signed by a specified number of voters, to either adopt the ordinance set forth in the initiative petition, without alteration, at a regular meeting at which the certification of the petition is presented, or within 10 days after it is presented, or submit the ordinance proposed in the petition, without alteration, to the voters for approval.

**This bill** would require the legislative body of a city or county or district board to submit the ordinance proposed in an initiative petition to the voters for approval if the legislative body or district board determines that the approval of the proposed ordinance constitutes an approval of a project within the meaning of CEQA, had the proposed ordinance been proposed by the legislative body or district board rather than by initiative petition. By requiring the legislative body of a city or county or district board to submit those ordinances to the voters for approval, this bill would impose a state-mandated local program.

**The Planning and Zoning Law** requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced within certain time periods, as specified. The Subdivision Map Act requires an action or proceeding against a decision of a local agency taken pursuant to that act to be commenced within a certain time period, as specified. CEQA requires an action or proceeding challenging a decision of the lead agency on the grounds of noncompliance with CEQA to be commenced within certain time periods, as specified.

**This bill** would specify that tolling agreements entered into, as provided, are effective to toll the time periods in which an action or proceeding is to be commenced, as required by those 3 acts.

**Existing constitutional provisions** require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

**This bill** would make legislative findings to that effect.

**Arguments in support:**

Because its protections extend to all aspects of the environment, CEQA itself does not assign greater value to one broad category of environmental resources over others and creates no hierarchy of importance among categories of environmental resources. Even so, in recent years, California's various climate protection statutes do reflect a clear legislative priority focused on squarely addressing the harms associated with climate change, particularly as experienced within the state. Good land use planning, infrastructure design, and natural resource management therefore must account for, and squarely address, the effects of climate change and the need to adapt to them.

While California in the last 50 years has led the country in formulating effective, forward-looking environmental statutes and regulations, multiple societal forces have nevertheless contributed to the creation of current social and economic conditions that are regrettable in many ways. California today is a very unequal society, with younger people facing economic challenges and privations greater than those of any other generation coming of age after World War II. Despite the presence of great wealth within the state, the current lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California. The state's housing has become the most expensive in the nation. Among the consequences are discrimination against low-income and minority households, lack of housing to support economic growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. The housing supply and affordability crisis is 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.

**Arguments in opposition:**

The bill proposes to expand the California Environmental Quality Act's (CEQA) patchwork of existing requirements with costly new mandates that will burden local agencies, add substantial time and costs to the CEQA process and provide project opponents with new legal arguments to delay or block housing and other projects.

**Revises CEQA's Original Legislative Findings**

**SB 950** would expand CEQA's original Legislative findings to explicitly include the consideration of environmental justice to the mandated considerations of the CEQA process. This revision attempts to inject the issue of discriminatory land use policies into an environmental statute that was never intended to deal with this issue. CEQA requires project applicants to analyze all identifiable and tangible environmental impacts associated with proposed land use projects and to mitigate any potentially significant impacts to less than significant. Discriminatory land use policies should be addressed through planning and zoning policies rather than an environmental statute such as CEQA.

**Encourages More Lawsuits Against Moderate-Income Housing**

**SB 950** proposes to substantially amend California Code of Civil Procedure Section 529 by eliminating moderate-income housing projects from qualifying for bond protection.

Even during the best of times, these proposed changes would damage California's economy, substantially slow the state's housing production and negatively impact jobs all across the state. During these extraordinary times, substantially raising the costs, time and litigation risks associated with land use development in California will be a crushing blow to the state's efforts to bring more affordable housing online and rebound from the economic impacts of the COVID-19 pandemic.

**Support: (Verified 5/12/2020)**

None on file

**Opposition: (Verified 5/12/2020)**

CalChamber

**Status:** Senate Environmental Quality

SWCLC Southwest California Legislative Council

**2020 Meeting Schedule**
**w/ Guest speakers**

~~**1/27 Open – Capt. Tony Conrad, Murrieta PD**~~

~~**2/24 Open – Jennings Immel, U.S. Chamber of Commerce**~~

~~**3/16 Open – Anne Mayer, Executive Director, RCTC**~~

~~**4/20 Open**~~

**5/18 Open**

**6/15 Open**

**7/20 Open**

**8/17 Open**

**9/21 Open**

**10/19 Open**

**11/16 Closed**

**12/16 Dark**