

**SOLANO COUNTY**  
**Legislative Committee Meeting**

Committee  
Supervisor Linda J. Seifert (Chair)  
Supervisor Erin Hannigan

Staff  
Michelle Heppner

**May 6, 2012**  
**1:30 p.m.**

Solano County Administration Center  
Sixth Floor Conference Center, Room 6003  
675 Texas Street  
Fairfield, CA 94533

**AGENDA**

**I. Public Comment** (Items not on the agenda)

**II. Discussion of Federal Bills and consider making a recommendation (Ron Waterman)**

- Recap of President's FY 14 Budget Proposal
- Delta NHA hearing in Senate Energy & Natural Resources Committee
- Water Resources Development Act (WRDA) Update
- SCAAP – FY 14 Appropriations and recent BJA decision on reimbursement criteria
- DOT TIGER Grant Solicitation
- Congressional Update (Immigration and Marketplace Fairness Act)

**III. Report on State Budget and Legislation and consider making a recommendation for a position on legislation (Paul Yoder)**

Human Resources/Labor Relations

[AB 537](#) ([Bonta](#) D) Meyers-Milias-Brown Act: impasse procedures.  
Current Analysis: 04/23/2013 [Assembly Public Employees, Retirement And Social Security \(text 4/17/2013\)](#)

[AB 616](#) ([Bocanegra](#) D) Local public employee organizations: dispute: factfinding panel.  
Current Analysis: 04/23/2013 [Assembly Public Employees, Retirement And Social Security \(text 3/19/2013\)](#)

Parks/Public Safety

[AB 5](#) ([Ammiano](#) D) Homelessness.  
Current Analysis: 04/22/2013 [Assembly Judiciary \(text 4/8/2013\)](#)

[SB 443](#) ([Walters](#) R) Organized camps.  
Current Analysis: 04/29/2013 [Senate Appropriations \(text 4/16/2013\)](#)

Permits & Building

[SB 328](#) ([Knight](#) R) Counties: public works contracts.  
Current Analysis: 04/24/2013 [Senate Floor Analyses \(text 4/24/2013\)](#)

[SB 785](#) ([Wolk](#) D) Design-build.  
Current Analysis: 04/25/2013 [Senate Governance And Finance \(text 4/23/2013\)](#)

Transportation

[SB 791](#) ([Wyland](#) R) Motor vehicle fuel tax: rate adjustment.  
Current Analysis: 04/25/2013 [Senate Transportation And Housing \(text 4/4/2013\)](#)

**IV. Items from the Public**

**V. Adjourn**

AMENDED IN ASSEMBLY APRIL 17, 2013  
AMENDED IN ASSEMBLY MARCH 19, 2013  
california legislature—2013–14 regular session

**ASSEMBLY BILL**

**No. 537**

**Introduced by Assembly Member Bonta**

February 20, 2013

An act to amend ~~Section~~ *Sections 3505, 3505.1, 3505.2, and 3507* of, and to add *Section 3505.8* to, the Government Code, relating to public employment.

**legislative counsel's digest**

AB 537, as amended, Bonta. Meyers-Milias-Brown Act: impasse procedures.

The Meyers-Milias-Brown Act requires the governing body of a local public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost.

This bill would instead authorize the representatives of the public agency or the employee organization, if they fail to reach an agreement, to request mediation. The bill would require that the parties agree upon the appointment of a mediator mutually agreeable to the parties within

5 days of a request by one of the parties. *If the parties fail to agree on the selection of a mediator within 5 days, the bill would provide that either party may request the appointment of a mediator, as specified.*

By requiring a higher level of service by a local public agency, the bill would impose a state-mandated local program.

*The act requires that, in order to meet and confer in good faith, a public agency meet personally and confer promptly, and continue for a reasonable period of time, with the employee organization in order to exchange freely prior to the agency adopting a budget for the next fiscal year.*

*This bill would prohibit a public agency from conditioning the meeting and conferring on a limitation on the right of employees or an employee organization to communicate with officials of the agency.*

*The act requires, if an agreement is reached, that the parties prepare jointly a nonbinding written memorandum of understanding of the agreement that would then be presented to the governing body or its statutory representative for determination.*

*This bill would require that, if an agreement is reached, the parties would prepare a written memorandum of understanding, which would be binding upon execution or ratification, as specified.*

*Under existing law, a written agreement to submit to arbitration a specified controversy is valid, enforceable, and irrevocable, except if grounds exist for the revocation of the written agreement.*

*This bill would additionally provide that an arbitration agreement contained in a memorandum of understanding entered into under the Meyers-Milias-Brown Act is enforceable, as specified.*

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 these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1    SECTION 1. Section 3505 of the Government Code is amended
- 2    to read:
- 3    3505. (a) The governing body of a public agency, or ~~such the~~
- 4    boards, commissions, administrative officers or other
- 5    representatives as ~~may be~~ properly designated by law or by ~~such~~

1 a governing body, shall meet and confer in good faith regarding  
 2 wages, hours, and other terms and conditions of employment with  
 3 representatives of ~~such~~ those recognized employee organizations,  
 4 as defined in subdivision (b) of Section 3501, and shall consider  
 5 fully such presentations as are made by the employee organization  
 6 on behalf of its members prior to arriving at a determination of  
 7 policy or course of action.

8 ~~“Meet~~

9 (b) “Meet and confer in good faith” means that a public agency,  
 10 or such representatives as it may designate, and representatives of  
 11 recognized employee organizations, shall have the

mutual

12 obligation personally to meet and confer promptly upon request  
 13 by either party and continue for a reasonable period of time in  
 14 order to exchange freely information, opinions, and proposals, and  
 15 to endeavor to reach agreement on matters within the scope of  
 16 representation prior to the adoption by the public agency of its  
 17 final budget for the ensuing year. *A public agency shall not propose*  
 18 *as a condition of meeting and conferring a limitation on the right*  
 19 *of an employee organization or employees of the*

*agency to*

20 *communicate with officials of the agency.* The process should  
 21 include adequate time for the resolution of impasses where specific  
 22 procedures for such resolution are contained in local  
 rule,

23 regulation, or ordinance, or when such procedures are utilized by  
 24 mutual consent.

25 SEC. 2. Section 3505.1 of the Government Code is amended  
 26 to read:

27 3505.1. If agreement is reached by the *authorized*  
 28 *representatives of the public agency and a recognized employee*  
 29 *organization or recognized employee organizations, they shall*  
 30 *jointly prepare a written memorandum of ~~such~~ understanding,*  
 31 ~~*which shall not be binding, and present it to the governing body*~~  
 32 ~~*or its statutory representative for determination which shall be*~~  
 33 ~~*binding upon final execution by the authorized representatives or,*~~  
 34 ~~*if ratification is required by the recognized employee*~~  
 35 ~~*organization’s internal rules, upon ratification pursuant to those*~~  
 36 ~~*rules.*~~

37 SECTION 4.

38 SEC. 3. Section 3505.2 of the Government Code is amended  
 39 to read:

2 the public agency and the recognized employee organization fail  
3 to reach agreement, either the public agency or the recognized  
4 employee organization or recognized employee organizations may  
5 request mediation. Within five days of a request by one of the  
6 parties, the parties shall agree upon the appointment of a mediator  
7 mutually agreeable to the parties. *If the parties fail to agree on the  
8 selection of a mediator within five days, either party may request  
9 that the board appoint a mediator. The board shall, no later than  
10 five days after receipt of the request, appoint a  
mediator in*

11 *accordance with rules prescribed by the board.* Costs of mediation  
12 shall be divided one-half to the public agency and one-half to the  
13 recognized employee organization or recognized  
employee

14 organizations.

15 *SEC. 4. Section 3505.8 is added to the Government Code, to  
16 read:*

17 *3505.8. An arbitration agreement contained in a memorandum  
18 of understanding entered into under this chapter  
shall be*

19 *enforceable in an action brought pursuant to Title 9 (commencing  
20 with Section 1280) of Part 3 of the Code of Civil Procedure. An  
21 assertion that the arbitration claim is untimely or that the party  
22 seeking arbitration has failed to satisfy the procedural prerequisites  
23 to arbitration shall not be a basis for refusing to submit the dispute  
24 to arbitration. All procedural defenses shall be presented to the  
25 arbitrator for resolution. A court shall not refuse to  
order*

26 *arbitration because a party to the memorandum of understanding  
27 contends that the conduct in question arguably constitutes an  
28 unfair practice subject to the jurisdiction of the board.*

29 *SEC. 5. Section 3507 of the Government Code is amended to  
30 read:*

31 *3507. (a) A public agency may adopt reasonable rules and  
32 regulations after ~~consultation~~ meeting and conferring in good faith  
33 with representatives of a recognized employee organization or  
34 organizations for the administration of  
employer-employee*

35 *relations under this chapter. An impasse in these negotiations shall  
36 be resolved pursuant to the procedures of Sections 3505.4 to  
37 3505.7, inclusive.*

38 ~~The~~

39 *(b) The rules and regulations described in subdivision (a) may  
40 include provisions for all of the following:*

1 (1) Verifying that an organization does in fact  
2 represent  
3 employees of the public agency.  
4 (2) Verifying the official status of employee  
5 organization  
6 officers and representatives.  
7 (3) Recognition of employee organizations.  
8 (4) Exclusive recognition of employee organizations formally  
9 recognized pursuant to a vote of the employees of the agency or  
10 an appropriate unit thereof, subject to the right of an employee to  
11 represent himself or herself as provided in Section 3502.  
12 (5) Additional procedures for the resolution of disputes involving  
13 wages, hours and other terms and conditions of employment.  
14 (6) Access of employee organization officers and representatives  
15 to work locations.  
16 (7) Use of official bulletin boards and other means of  
17 communication by employee organizations.  
18 (8) Furnishing nonconfidential information pertaining to  
19 employment relations to employee organizations.  
20 (9) Any other matters that are necessary to carry out the purposes  
21 of this chapter.  
22 ~~(b)~~  
23 (c) Exclusive recognition of employee organizations formally  
24 recognized as majority representatives pursuant to a vote of the  
25 employees may be revoked by a majority vote of the employees  
26 only after a period of not less than 12 months following the date  
27 of recognition.  
28 ~~(e)~~  
29 (d) No public agency shall unreasonably withhold recognition  
30 of employee organizations.  
31 ~~(d)~~  
32 (e) Employees and employee organizations shall be able to  
33 challenge a rule or regulation of a public agency as a violation of  
34 this chapter. This subdivision shall not be construed to restrict or  
35 expand the board's jurisdiction or authority as set forth in  
36 subdivisions (a) to (c), inclusive, of Section 3509.  
37 ~~SEC. 2.~~  
38 SEC. 6. If the Commission on State Mandates determines that  
this act contains costs mandated by the state, reimbursement to  
local agencies and school districts for those costs shall be made

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY

Rob Bonta, Chair

AB 537 (Bonta) – As Amended: April 17, 2013

SUBJECT: Meyers-Milias-Brown Act: impasse procedures.

SUMMARY: Makes various changes to the Meyers-Milias-Brown Act (MMBA) governing local public employer and employee relations related to arbitration agreements, mediation, ground rules, contract ratification, and employee relations ordinances. Specifically, this bill:

- 1) Prohibits a public agency from establishing ground rules for the meet and confer process that limit the right of an employee or employee organization to communicate with officials of the public agency.
- 2) Requires that if an agreement is reached between the public agency and the recognized employee organization, an memorandum of understanding (MOU) will jointly be prepared and will become binding upon execution or ratification, as specified.
- 3) Authorizes either party to be able to request mediation if they fail to reach agreement, requires that the parties agree upon the appointment of a mediator within five days of the request, and specifies that if the parties fail to agree on the appointment of a mediator, either party may request the Public Employment Relations Board (PERB) appoint a mediator. PERB is required to appoint the mediator within five days of receiving the request.
- 4) Specifies that an arbitration agreement contained in a MOU is enforceable, as specified, prohibits assertions of failing to satisfy procedural requirements from being a basis for refusing to submit the dispute to arbitration, and prohibits a court from refusing to order arbitration because the issue could also constitute an unfair labor practice under the jurisdiction of PERB.
- 5) Requires a public agency to engage in the meet and confer process before adopting reasonable rules and regulations governing the administration of employer-employee relations and specifies that disputes arising under this provision will be resolved pursuant to the factfinding procedures of the MMBA.
- 6) Provides that if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW as established by the MMBA:

- 1) Contains various provisions intended to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.
- 2) Requires a public agency to meet and confer in good faith with the representatives of a recognized employee organization regarding wages, hours, and other terms and conditions of employment
- 3) Provides that if, after a reasonable amount of time, representatives of the public agency and the employee organization fail to reach agreement, the two parties may mutually agree on the appointment of a mediator and equally share the cost.
- 4) Provides that an agreement which the negotiators for a public agency and a recognized employee organization reach shall not be final and binding upon the parties to the negotiations until it is presented to the public agency's governing body or statutory representative for determination.

- 5) Authorizes an employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment of a mediator or entering into a mediation process. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date either party provided the other with written notice of a declaration of impasse.
- 6) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and, despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.
- 7) Authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA.
- 8) Delegates jurisdiction over the employer-employee relationship to PERB and charges PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

FISCAL EFFECT: Unknown.

COMMENTS: The following information was provided to the Committee by the author and the sponsors of the bill:

- 1) Collective bargaining is a process of negotiations between employers and a group of employees aimed at reaching agreements that regulate working conditions. This process includes the determination of how the parties will negotiate, which often includes the establishment of "ground rules" prior to engaging in the formal negotiation process. Such ground rules often include time and place and parties participating in the negotiations as well as procedures for caucuses, exchanging proposals, agreement or how to determine when the parties have reached impasse.

Over the last several years, some local government employers have attempted to frustrate and disrupt this bargaining process by insisting upon agreement of a 'ground rule' or the imposition of a 'negotiations or bargaining policy' that limits the right of an employee organization or the employees of the agency to communicate with officials of the public agency - effectively imposing a gag order on the employee representatives. This attempt to unduly constrict an employee organization's access to publicly elected officials in order to blunt full communication on the issues compromises a healthy collective bargaining relationship and upsets the goal of collectively reaching an agreement to the benefit of all parties to the negotiation.

The bill adds a provision to current law affirming an employee organization's right to communicate with officials of the public agency just as their management partners are permitted to do during the course of negotiations.

- 2) The statute currently provides that an agreement which the negotiators for a public agency and a recognized employee organization reach shall not be final and binding upon the parties to the negotiations until it is presented to the public agency's governing body or statutory representative for determination.

Unfortunately, too many governing bodies of public agencies reject a tentative agreement out-of-hand after the parties' negotiators have expended considerable time and resources to arrive at that agreement, and the employee organization has often already conducted a ratification vote among its members. Employee organizations report that this delays or thwarts the bargaining process; if the employee organization's members ratify the tentative agreement, the employee organization is bound to it, yet the public agency's governing body is free to reject it. This provision is consistent with the requirement that negotiators possess sufficient authority to bind their principals to an agreement.

This bill would specify that an agreement which the negotiators for a public agency and a recognized employee organization reach shall be final and binding upon the parties to the negotiations when the agreement is signed by both parties, or if the recognized employee organization's internal rules require ratification then upon such ratification.

- 3) Mediation is a form of alternative dispute resolution, a way of resolving disputes between two or more parties with concrete effects. Typically, a third party, the mediator assists the parties to negotiate a settlement. Mediators are often helpful in narrowing the issues of disagreement or helping to sort out the accuracy of data, labor market comparisons, fiscal statements, or other information which may assist the parties in reaching an agreement. Moreover, mediators are often helpful in framing bargaining approaches consistent with bargaining history and relevant public concerns.

Under current California law, mediation is mandatory if requested by either party with respect to employees governed by the Educational Employment Relations Act, the Dills Act, and the Higher Education Employer-Employee Relations Act.

Local public employees and their employers are often denied the assistance and expertise of a mediator who can help overcome the intransigence of either party. Given the current law requirement that both parties have to agree to proceed to mediation, the obstructionist party will continue to employ tactics to reject compromise or rush to impasse, blocking the other party's attempt to request mediation to resolve their differences.

By conforming the mediation provisions of the MMBA to the aforementioned employee relations acts, the parties will remain at the bargaining table with the assistance of a mediator up to the invocation of the impasse procedure of fact-finding or binding interest arbitration, if applicable. By amending the statute to require mediation if requested by either party, firefighter, social workers, and other local government employees will have available the assistance of third party mediators to help reach agreements, or at least avoid the indiscriminate imposition of last, best and final employer offers.

Likewise, employers would reap the benefits of access to a mediator to aid the parties in reaching agreement where the employee organization may fail to recognize that the labor market doesn't support the contract demands, their fiscal analysis is flawed, or other realities that may affect a successful settlement. An effective mediator tells the truth to the parties and asks them to consider the options, including the fallout from failure to reach agreement.

- 4) Arbitration agreements are a common feature of memoranda of understanding negotiated and entered into under MMBA. The Supreme Court has held that arbitration decisions issued under such agreements are binding and entitled to judicial enforcement. See *Taylor v. Crane*, 24 Cal.3d 442, 450-51 (1979). As currently drafted, however, the MMBA is silent as to the standards and procedures for enforcing arbitration agreements. This bill will clarify the law regarding arbitration agreements in three respects.

First, the bill will make it clear that the provisions of the California Arbitration Act, apply to the enforcement of arbitration agreements under the MMBA. While this generally has been assumed to be the true, some courts have viewed a writ of mandate as the appropriate vehicle for enforcing an arbitration agreement. By adding a specific reference to the California Arbitration Act, the bill will eliminate any confusion as to the appropriate procedure for compelling arbitration.

Second, the bill will make it clear that procedural defenses to an arbitration claim - such as the contention that the claim was untimely or that the party seeking arbitration failed to exhaust pre-arbitration remedies - will not be a basis for refusing to arbitrate and will be submitted to the arbitrator for resolution. This is a codification of the longstanding rule under federal law--the Labor Management Relations Act--as interpreted by the U.S. Supreme Court in *John Wiley & Sons v. Livingston*, 376 U.S. 543, 557 (1964). The intent of the rule is to strengthen arbitration and to prevent needless litigation over garden variety procedural defenses.

Third, the bill will make it clear that an agreement to arbitrate a dispute is enforceable, even where the conduct in question may also constitute an unfair labor practice that could be brought in an administrative proceeding before PERB. Again, this is consistent with federal labor law, which has long recognized that the arbitrator and the labor board may exercise concurrent jurisdictions in such situations.

- 5) Statute currently provides that a public agency may adopt reasonable rules and regulations governing the administration of employer-employee relations after "consultation" in good faith with the recognized employee

organization(s). Regrettably, the statute's existing term "consultation" has generated confusion and disagreement among public agencies and recognized employee organizations regarding the nature of a public agency's bargaining obligation.

Employee organizations have reported that some public agencies merely meet and discuss proposed rules and regulations with the recognized employee organization(s), and rush to implement the changes without having obtained much (or any) input from the recognized employee organization(s). Existing law must be clarified so that public agencies are required to a meet and confer obligation consistent with the stated purpose and intent of the MMBA, in which the parties have an opportunity for full communication regarding these matters.

Full communication is absolutely critically considering that the rules and regulations to be adopted will govern employer-employee relations. As such, it is particularly important that recognized employee organizations understand the public agencies' proposals and have the opportunity to present information, comments and counterproposals. This will increase the likelihood that the parties will have a mutual understanding regarding, and comply with, the rules and regulations in the future.

This bill would clarify that a public agency must meet and confer in good faith with recognized employee organization(s) before adopting reasonable rules and regulations governing the administration of employer-employee relations. The amendment also specifies that disputes arising under the section are subject to factfinding is consistent with the PERB precedent holding that the factfinding right is available when meet and confers result in impasse.

Opponents state, "Employment law attorneys whose clients are public agencies have explained that generally they encourage their clients to attempt mediation after impasse. However, since mediation is designed for the parties to reach agreement, requiring the parties to participate, rather than agree to participate, in an involuntary mediation is seldom successful. This mandate for mediation will only delay the labor negotiations process. Additionally, delaying the negotiations process will make it more difficult for agencies to prepare and plan their budgets."

Additionally, opponents state, "We support the use of mediation as an alternative means of dispute resolution. However, we believe that mediation is only effective if the parties participate voluntarily with the mutual goal of resolving outstanding disputes. The notion that one party can force the other to participate in mediation defeats the very intent of the mediation process, which will seriously compromise the effectiveness of any resulting mediation. As such, and contrary to the intent of the bill, mandated mediation will likely add to the length, complexity, and cost of labor disputes. Thus, the grounds upon which mediation can be requested should be left to the discretion of the local agency rules regarding employee labor negotiations, and the decision of whether to participate should be left to the discretion of the parties, subject to those rules."

"In addition, the five (5) day time limit to agree upon the appointment of a mediator is of great concern. The five day period seems unreasonably and unnecessarily short. The decision to agree upon a mediator who is trusted and respected by both parties is one that requires careful deliberation and consideration. Attempting to force a decision within five (5) days of the mediation request will only lead to additional delay, conflict, and expense on the part of both parties, if that short time period proves insufficient. If the employer and the employee representatives have not come to an agreement on matters related to terms and conditions of employment, it seems wise to give those same parties additional time to review and select a mediator."

"Furthermore, the mandatory mediation would constitute a state mandated cost. As such, the mediation costs incurred by local public agencies under AB 537 would add additional and unnecessary expense to our already burdened public agencies."

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

American Federation of State, County and Municipal Employees (Co-Sponsor)

California Professional Firefighters (Co-Sponsor)  
Service Employees International Union (Co-Sponsor)

Opposition

Association of California Water Districts  
Butte County Board of Supervisors  
California Association of Sanitation Agencies  
California State Association of Counties  
County of Sonoma Board of Supervisors  
El Dorado Irrigation District  
Lassen County Administrative Officer  
League of California Cities  
Rural County Representatives of California  
San Joaquin County Board of Supervisors

Analysis Prepared by: Karon Green / P.E., R. & S.S. / (916) 319-3957

AMENDED IN ASSEMBLY APRIL 25, 2013  
AMENDED IN ASSEMBLY MARCH 19, 2013  
california legislature—2013–14 regular session

**ASSEMBLY BILL**

**No. 616**

**Introduced by Assembly Member Bocanegra**

February 20, 2013

An act to amend ~~Sections 3505.4, 3507, 3507.1, 3507.3, 3507.5, and 3509~~ *Section 3505.4* of the Government Code, relating to local public employee organizations.

**legislative counsel's digest**

AB 616, as amended, Bocanegra. Local public employee organizations: dispute: factfinding panel.

Existing law requires the governing body of a *local* public agency, or those boards, commissions, administrative officers, or other representatives as may be properly designated by law or by a governing body, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Existing law ~~provides that~~ *authorizes* an employee organization ~~may~~ to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. Existing law authorizes an employee organization, if the dispute was not submitted to a mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either

party provided the other with a written notice of a declaration of impasse.

This bill would instead authorize an employee organization, if the dispute was not submitted to a mediation, to request in writing that the public agency submit the parties' differences to a factfinding panel not later than 60 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would provide that if either party disputes that a genuine impasse, as defined, has been reached, the issue of whether an impasse exists may be submitted to the Public Employment Relations Board for resolution before the dispute is submitted to a factfinding panel, as specified. The bill would also authorize each party to select a person to serve as its member of the factfinding panel.

~~Existing law authorizes a public agency to adopt reasonable rules and regulations for the administration of employer-employee relations, as specified, including provisions for verification that an organization does in fact represent employees of the organization, recognition of employee organizations, and exclusive recognition of employee organizations, as specified.~~

~~This bill would delete provisions that authorize a public agency to establish rules and regulations that provide for verification that an organization does in fact represent employees of the organization, recognition of employee organizations, and exclusive recognition of employee organizations.~~

~~Existing law authorizes a public agency to determine and process unit determinations and representation elections pursuant to rules it has adopted.~~

~~This bill would instead provide that the board, pursuant to rules and regulations it has adopted, shall determine and process unit determinations and representation elections. The bill would specify criteria that the board would be required to take into account in determining an appropriate unit.~~

~~Existing law authorizes a public agency to adopt reasonable rules and regulations providing for designation of management and confidential employees of the public agency and restricting those employees from representing any employee organization that represents other employees of the public agency on matters within the scope of representation.~~

~~This bill would instead authorize the board to adopt those rules and regulations.~~

~~This bill would also make other conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee:  
yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3505.4 of the Government Code  
is

2 amended to read:

3 3505.4. (a) The employee organization may request that the  
4 parties' differences be submitted to a factfinding panel not sooner  
5 than 30 days, but not more than 45 days, following the appointment  
6 or selection of a mediator pursuant to the parties' agreement to  
7 mediate or a mediation process required by a public agency's local  
8 rules. If the dispute was not submitted to mediation, an employee  
9 organization may request, in writing, that the public agency submit  
10 the parties' differences to a factfinding panel not later than 60 days  
11 following the date that either party provided the other with a written  
12 notice of a declaration of impasse. Within five days after receipt  
13 of the written request, each party shall select a person to serve as  
14 its member of the factfinding panel. The Public Employment  
15 Relations Board shall, within five days after the selection of panel  
16 members by the parties, select a chairperson of the factfinding  
17 panel.

18 (b) Notwithstanding subdivision (a), if either party disputes that  
19 a genuine impasse has been reached, the issue as to whether an  
20 impasse exists may be submitted to the Public  
Employment

21 Relations Board for resolution. If the board determines that an  
22 impasse existed as of the date of written notice of a declaration of  
23 impasse and that the impasse has persisted through the date of the  
24 employee organization's request for a factfinding panel, it shall,  
25 within five working days of the receipt of a request, notify the  
26 parties of its determination.

27 (c) Within five days after receipt of the written request pursuant  
28 to subdivision (a) or five days after receipt of the  
board's

29 determination that a genuine impasse has been reached and persists  
30 pursuant to subdivision (b), each party shall select a person to serve  
31 as its member of the factfinding panel. The board shall, within five  
32 days after the selection of panel members by the parties, select a  
33 chairperson of the factfinding panel.

1 (d) Within five days after the board selects a chairperson of the  
2 factfinding panel, the parties may mutually agree upon a person  
3 to serve as chairperson in lieu of the person selected by the board.

4 (e) The panel shall, within 10 days after its appointment, meet  
5 with the parties or their representatives, either jointly or separately,  
6 and may make inquiries and investigations, hold hearings, and  
7 take any other steps it deems appropriate. For the purpose of the  
8 hearings, investigations, and inquiries, the panel shall have the  
9 power to issue subpoenas requiring the attendance and testimony  
10 of witnesses and the production of evidence. Any state agency, as  
11 defined in Section 11000, the California State University, or any  
12 political subdivision of the state, including any board of education,  
13 shall furnish the panel, upon its request, with all records, papers,  
14 and information in its possession relating to any matter under  
15 investigation by or in issue before the panel.

16 (f) In arriving at their findings and recommendations, the  
17 factfinders shall consider, weigh, and be guided by all the following  
18 criteria:

19 (1) State and federal laws that are applicable to the employer.

20 (2) Local rules, regulations, or ordinances.

21 (3) Stipulations of the parties.

22 (4) The interests and welfare of the public and the financial  
23 ability of the public agency.

24 (5) Comparison of the wages, hours, and conditions of  
25 employment of the employees involved in the factfinding  
26 proceeding with the wages, hours, and conditions of employment  
27 of other employees performing similar services in comparable  
28 public agencies.

29 (6) The consumer price index for goods and services, commonly  
30 known as the cost of living.

31 (7) The overall compensation presently received by the  
32 employees, including direct wage compensation, vacations,  
33 holidays, and other excused time, insurance and pensions, medical  
34 and hospitalization benefits, the continuity and stability of  
35 employment, and all other benefits received.

36 (8) Any other facts, not confined to those specified in paragraphs  
37 (1) to (7), inclusive, that are normally or traditionally taken into  
38 consideration in making the findings and recommendations.

39 (g) The procedural right of an employee organization to request  
40 a factfinding panel cannot be waived.

1 (h) For purposes of this section, “impasse” means that the parties  
2 to a dispute over a matter within the scope of representation have  
3 reached a point in meeting and negotiating at which their difference  
4 in position is so substantial or prolonged that future meetings would  
5 be futile.

6 (i) Notwithstanding subdivisions (a) to (g), inclusive,  
7 the  
8 employee relations commissions established by, and in effect for,  
9 the County of Los Angeles and the City of Los Angeles pursuant  
10 to Section 3507 shall have the authority to maintain and amend  
11 existing rules and regulations providing for impasse resolution  
12 procedures and to issue determinations and orders as the employee  
13 relations commissions deem necessary, consistent with and  
14 pursuant to the policies of this chapter.

15 ~~SEC. 2.—Section 3507 of the Government Code is amended to~~  
16 ~~read:~~

17 ~~3507.—(a) A public agency may adopt reasonable rules and~~  
18 ~~regulations after consultation in good faith with representatives of~~  
19 ~~a recognized employee organization or organizations for the~~  
20 ~~administration of employer-employee relations under this chapter.~~

21 ~~The rules and regulations may include provisions for all of the~~  
22 ~~following:~~

23 ~~(1) Verifying the official status of employee organization~~  
24 ~~officers and representatives.~~

25 ~~(2) Additional procedures for the resolution of disputes involving~~  
26 ~~wages, hours and other terms and conditions of employment.~~

27 ~~(3) Access of employee organization officers and representatives~~  
28 ~~to work locations.~~

29 ~~(4) Use of official bulletin boards and other means of~~  
30 ~~communication by employee organizations.~~

31 ~~(5) Furnishing nonconfidential information pertaining to~~  
32 ~~employment relations to employee organizations.~~

33 ~~(6) Any other matters that are necessary to carry out the purposes~~  
34 ~~of this chapter.~~

35 ~~(b) Exclusive recognition of employee organizations formally~~  
36 ~~recognized as majority representatives pursuant to a vote of the~~  
37 ~~employees may be revoked by a majority vote of the employees~~  
38 ~~only after a period of not less than 12 months following the date~~  
39 ~~of recognition.~~

40 ~~(c) No public agency shall unreasonably withhold recognition~~  
41 ~~of employee organizations.~~

1 ~~(d) Employees and employee organizations shall be able to~~  
2 ~~challenge a rule or regulation of a public agency as a violation of~~  
3 ~~this chapter. This subdivision shall not be construed to restrict or~~  
4 ~~expand the board's jurisdiction or authority as set~~  
5 ~~forth in~~  
6 ~~subdivisions (a) and (b) of Section 3509.~~

7 ~~SEC. 3. Section 3507.1 of the Government Code is amended~~  
8 ~~to read:~~

9 ~~3507.1. (a) Unit determinations and representation elections~~  
10 ~~shall be determined and processed by the board in accordance with~~  
11 ~~the rules and regulations it has adopted in accordance with this~~  
12 ~~chapter, subject to subdivision (c) of Section 3509. In a~~  
13 ~~representation election, a majority of the votes cast by the~~  
14 ~~employees in the appropriate bargaining unit shall be required.~~

15 ~~(b) Notwithstanding subdivision (a) and rules adopted by the~~  
16 ~~board, a bargaining unit in effect as of the effective date of this~~  
17 ~~section shall continue in effect unless changed under the rules~~  
18 ~~adopted by the board pursuant to and consistent with the policies~~  
19 ~~of this chapter.~~

20 ~~(c) (1) In determining an appropriate unit, the board shall take~~  
21 ~~into consideration all of the following criteria:~~

22 ~~(A) The internal and occupational community of interest among~~  
23 ~~the employees, including, but not limited to, the extent to which~~  
24 ~~they perform functionally related services or work toward~~  
25 ~~established common goals.~~

26 ~~(B) The history of employee representation in state government~~  
27 ~~and in similar employment.~~

28 ~~(C) The extent to which the employees have common skills,~~  
29 ~~working conditions, job duties, or similar educational or training~~  
30 ~~requirements.~~

31 ~~(D) The extent to which the employees have common~~  
32 ~~supervision.~~

33 ~~(2) Notwithstanding subparagraph (1), or any other law, an~~  
34 ~~appropriate group of skilled crafts employees shall have the right~~  
35 ~~to be a separate unit of representation based upon occupation.~~  
36 ~~Skilled crafts employees shall include, but not necessarily be~~  
37 ~~limited to, those within employment categories such as carpenters,~~  
38 ~~plumbers, electricians, painters, and operating engineers.~~

39 ~~(3) There shall be a presumption that professional employees~~  
40 ~~and nonprofessional employees should not be included in the same~~  
41 ~~unit. However, the presumption shall be rebuttable, depending~~

1 upon what the evidence pertinent to the criteria set forth in this  
2 subdivision establishes.

3 (d) ~~A public agency shall grant exclusive or majority recognition  
4 to an employee organization based on a signed  
petition;~~

5 authorization cards, or union membership cards showing that a  
6 majority of the employees in an appropriate bargaining unit desire  
7 the representation, unless another labor organization has previously  
8 been lawfully recognized as exclusive or majority representative  
9 of all or part of the same unit. Exclusive or majority representation  
10 shall be determined by a neutral third party selected by the public  
11 agency and the employee organization who shall review the signed  
12 petition, authorization cards, or union membership cards to verify  
13 the exclusive or majority status of the employee organization. In  
14 the event the public agency and the employee organization cannot  
15 agree on a neutral third party, the California State Mediation and  
16 Conciliation Service shall be the neutral third party and shall verify  
17 the exclusive or majority status of the employee organization. In  
18 the event that the neutral third party determines, based on a signed  
19 petition, authorization cards, or union membership cards, that a  
20 second labor organization has the support of at least 30 percent of  
21 the employees in the unit in which recognition is sought, the neutral  
22 third party shall order an election to establish which  
labor  
23 organization, if any, has majority status.

24 SEC. 4. ~~Section 3507.3 of the Government Code is amended  
25 to read:~~

26 3507.3. ~~Professional employees shall not be denied the right  
27 to be represented separately from nonprofessional employees by  
28 a professional employee organization consisting of  
those~~

29 professional employees. In the event of a dispute  
on the  
30 appropriateness of a unit of representation for  
professional

31 employees, upon request of any of the parties, the dispute shall be  
32 submitted to the board for resolution, subject to subdivision (c) of  
33 Section 3509.

34 "Professional employees," for the purposes of this section, means  
35 employees engaged in work requiring specialized knowledge and  
36 skills attained through completion of a recognized  
course of

37 instruction, including, but not limited to, attorneys, physicians,  
38 registered nurses, engineers, architects, teachers, and the various  
39 types of physical, chemical, and biological scientists.

1 ~~SEC. 5.—Section 3507.5 of the Government Code is amended to~~  
2 ~~read:~~

3 ~~3507.5.—The board may adopt reasonable rules and regulations~~  
4 ~~providing for designation of the management and confidential~~  
5 ~~employees of the public agency and restricting those employees~~  
6 ~~from representing any employee organization that represents other~~  
7 ~~employees of the public agency on matters within the scope of~~  
8 ~~representation. Except as specifically provided otherwise in this~~  
9 ~~chapter, this section does not otherwise limit the right of employees~~  
10 ~~to be members of and to hold office in an employee organization.~~

11 ~~SEC. 6.—Section 3509 of the Government Code is amended to~~  
12 ~~read:~~

13 ~~3509.—(a) The powers and duties of the board described in~~  
14 ~~Section 3541.3 shall also apply, as appropriate, to this chapter and~~  
15 ~~shall include the authority as set forth in subdivisions (b) and (c).~~  
16 ~~Included among the appropriate powers of the board are the power~~  
17 ~~to determine appropriate units, to order elections, to conduct any~~  
18 ~~election the board orders, and to adopt rules to apply in these areas~~  
19 ~~in accordance with this chapter.~~

20 ~~(b)—A complaint alleging any violation of this chapter or of any~~  
21 ~~rules and regulations adopted by a public agency pursuant to~~  
22 ~~Section 3507 shall be processed as an unfair practice charge by~~  
23 ~~the board. The initial determination as to whether the charge of~~  
24 ~~unfair practice is justified and, if so, the appropriate remedy~~  
25 ~~necessary to effectuate the purposes of this chapter, shall be a~~  
26 ~~matter within the exclusive jurisdiction of the board, except that~~  
27 ~~in an action to recover damages due to an unlawful strike, the board~~  
28 ~~shall have no authority to award strike preparation expenses as~~  
29 ~~damages, and shall have no authority to award damages for costs,~~  
30 ~~expenses, or revenue losses incurred during, or as a consequence~~  
31 ~~of, an unlawful strike. The board shall apply and interpret unfair~~  
32 ~~labor practices consistent with existing judicial interpretations of~~  
33 ~~this chapter.~~

34 ~~(c)—Notwithstanding subdivisions (a) and (b), the employee~~  
35 ~~relations commissions established by, and in effect for, the County~~  
36 ~~of Los Angeles and the City of Los Angeles pursuant to Section~~  
37 ~~3507 shall have the exclusive power and responsibility to take~~  
38 ~~actions on recognition, unit determinations, elections, and all unfair~~  
39 ~~practices, and to issue determinations and orders as the employee~~

1 ~~relations—commissions—deem—necessary,—consistent—with—and~~  
2 ~~pursuant to the policies of this chapter.~~

3 ~~(d) Notwithstanding subdivisions (a) and (b), consistent with,~~  
4 ~~and pursuant to, Sections 3500 and 3505.4, superior courts shall~~  
5 ~~have exclusive jurisdiction over actions involving interest~~  
6 ~~arbitration, as governed by Title 9 (commencing with Section~~  
7 ~~4280) of Part 3 of the Code of Civil Procedure, when the action~~  
8 ~~involves an employee organization that represents firefighters, as~~  
9 ~~defined in Section 3251.~~

10 ~~(e) This section shall not apply to employees designated as~~  
11 ~~management employees under Section 3507.5.~~

12 ~~(f) The board shall not find it an unfair practice for an employee~~  
13 ~~organization to violate a rule or regulation adopted by a public~~  
14 ~~agency if that rule or regulation is itself in violation of this chapter.~~  
15 ~~This subdivision shall not be construed to restrict or expand the~~  
16 ~~board's jurisdiction or authority as set forth in subdivisions (a) and~~  
17 ~~(b).~~

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY

Rob Bonta, Chair

AB 616 (Bocanegra) – As Amended: March 19, 2013

SUBJECT: Local public employee organizations: dispute: factfinding panel.

SUMMARY: Makes changes to the Meyers-Milas-Brown Act (MMBA) with respect to impasse procedures and factfinding and the process for determining the appropriateness of a bargaining unit, placing that authority with the Public Employment Relations Board (PERB). Specifically, this bill:

- 1) Extends the period of time that an employee organization has to request fact finding in disputes not submitted to mediation from 30 days to 60 days following the date either party provided the other with written notice of a declaration of impasse.
- 2) Provides that if either party disputes that a genuine impasse has been reached, it may submit that dispute to PERB for resolution. If PERB determines that a genuine impasse exists, the parties' differences are subject to the remainder of the fact finding procedures of the MMBA.
- 3) Defines "impasse" for purposes of these provisions to mean that the parties to a dispute over a matter within the scope of collective bargaining have reached a point that future meetings to resolve the issue would be futile.
- 4) Allows the employee relations commissions for the County and City of Los Angeles to maintain and amend existing impasse rules and regulations as they deem necessary consistent with the policies contained in the MMBA.
- 5) Grants PERB the authority to make unit determinations in accordance with the rules and regulations it has adopted in accordance with the MMBA.
- 6) Specifies the criteria PERB is required to take into consideration when determining an appropriate unit.
- 7) Specifies that an appropriate group of skilled crafts employees has the right to be in a separate bargaining unit based on occupation.
- 8) Specifies that "skilled crafts employees" includes, but is not limited to, carpenters, plumbers, electricians, painters, and operating engineers.
- 9) Establishes a rebuttable presumption that professional and nonprofessional employees should not be included in the same bargaining unit.
- 10) Authorizes PERB, rather than the public agency, to adopt rules and regulations providing for the designation of management and confidential employees of the public agency and restricting those employees from representing any employee organization that represents other employees of the public agency on collective bargaining matters.

EXISTING LAW, as established by the MMBA:

- 9) Contains various provisions intended to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.
- 10) Provides that if, after a reasonable amount of time, representatives of the public agency and the employee organization fail to reach agreement, the two parties may mutually agree on the appointment of a mediator and equally share the cost.

- 11) Authorizes an employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment of a mediator or entering into a mediation process. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date either party provided the other with written notice of a declaration of impasse.
- 12) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and, despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.
- 13) Authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA. This includes provisions for verifying that an organization does in fact represent employees of the organization, recognition of employee organizations, and exclusive recognition of employee organizations.
- 14) Authorizes a public agency to adopt reasonable rules and regulations providing for the designation of management and confidential employees of the public agency and restricting those employees from representing any employee organization that represents other employees of the public agency on matters within the scope of representation.
- 15) Delegates jurisdiction over the employer-employee relationship to PERB and charges PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

FISCAL EFFECT: Unknown.

COMMENTS: According to the author, "Typically, local public agencies, such as cities and counties, delegate the responsibility for making such unit determinations to their chief executive officer or general manager. Although appropriate unit determinations are of critical importance in affording public employees the fullest freedom to exercise their right to join and be represented by employee organizations of their own choosing, current law allows a clearly interested party, the public employer, to decide which job classifications will be included in the unit and which will not."

"In contrast, the other major California labor-law statutes, such as the Educational Employment Relations Act (EERA), the State Employer-Employee Relations Act (Ralph M. Dills Act) and the Higher Education Employment Relations Act (HEERA), as well as the National Labor Relations Act (a source of guidance to interpreting the California statutes), unit determinations are made by an expert and impartial administrative agency, such as the Public Employment Relations Board (PERB) and the National Labor Relations Board (NLRB), respectively."

With respect to the impasse procedures, the author states, "...when a public employer and a public employee organization reach an impasse in collective bargaining and the dispute has not been submitted to voluntary mediation, the employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. PERB has interpreted this provision, in its regulations and its administrative rulings, to require the employee organization to make this request within 30 days of a declaration of impasse, without regard to whether the employer and union have in fact reached a genuine impasse in the negotiations. This loophole could allow a public employer to evade its duty to bargain in good faith by declaring impasse prematurely or in bad faith."

Opponents state, "On the issue of recognition of employee representative and unit determination and modification, we believe that counties and their employees know best how these matter should be decided. Local rules specify how a unit will be formed or modified and when and how a union will be recognized. We fail to see how PERB, a centralized body, is better positioned to make determinations about which employees belong together in a bargaining unit in counties as different as Alpine and San Diego. Further, we do not see how PERB could handle this increased workload without significant staff increases which seem unlikely to be provided in the current budget climate. Delays in making these decisions will lead to uncertainty and increased labor friction."

On the issue of extending the time from 30 to 60 days for the submission of differences to a factfinding panel, opponents believe this will do nothing more than lengthen the negotiating period to the benefit of the party interested in maintaining the status quo.

Opponents conclude, "Finally, the shift in AB 616 that allows PERB to designate management and confidential employees strips counties of their fundamental right to make personnel decisions. Management and confidential employees engage in work which makes them privy to the decision-making process of a county and the information management and confidential employees have access to can affect labor relations. For this reason it is crucial and inherent in the powers and duties of a county to retain the prerogative to designate which employees are management and confidential based on the work they perform locally."

**The Committee is informed that the author will be offering amendments in Committee that retain Section 1 of the bill dealing with impasse procedures and delete all other provisions of the bill.**

PRIOR LEGISLATION:

AB 1606 (Perea), Chapter 314, Statutes of 2012, authorized an employee organization to request that the parties' differences be submitted to a fact-finding panel not sooner than 30 days, but not more than 45 days, following the appointment of a mediator or entering into a mediation process. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date either party provided the other with written notice of a declaration of impasse.

AB 646 (Atkins), Chapter 680, Statutes of 2011, allowed local public employee organizations to request factfinding if a mediator is unable to reach a settlement within 30 days of appointment, defines certain responsibilities of the factfinding panel and interested parties, and made specified exemptions from these provisions.

AB 195 (Hernández), Chapter 271, Statutes of 2011, specified that a public agency is prohibited from, among other things, imposing reprisals on or discriminating against employees because of their exercise of rights guaranteed by the act, and specified that knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the public employer constituted a refusal or failure to meet and negotiate in good faith. The bill also declared that the provisions were intended to be technical and clarify of existing law.

AB 1156 (Nunez), Chapter 215, Statutes of 2003, clarified the role of PERB, relative to its jurisdiction in resolving disputes and enforcing the statutory duties and rights of local public agency employers and employees under the MMBA, to include the power to order elections, conduct any election it orders and adopt rules to apply in areas where a public agency has no rule. The bill also empowered employees of a local public agency and employee organization to challenge a rule or regulation of a public agency in violation of MMBA.

AB 1281 (Cedillo), Chapter 790, Statutes of 2001, required local agencies to recognize an employee organization as the exclusive representative of the employees in an appropriate unit based upon a signed petition, authorization cards, or union membership cards showing that a majority of the employees desire such recognition.

SB 739 (Solis), Chapter 901, Statutes of 2000, revised MMBA to transfer jurisdiction for the resolution of unfair labor practice charges and representation disputes to PERB.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition of California Utility Employees  
International Brotherhood of Electrical Workers

Opposition

California Association of Sanitation Agencies

California State Association of Counties  
County of Lassen  
County of Sonoma Board of Supervisors  
Butte County boards of Supervisors  
League of California Cities  
Rural County Representatives of California

Analysis Prepared by: Karon Green / P.E., R. & S.S. / (916) 319-3957

AMENDED IN ASSEMBLY APRIL 30, 2013  
AMENDED IN ASSEMBLY APRIL 8, 2013  
california legislature—2013–14 regular session

**ASSEMBLY BILL**

**No. 5**

**Introduced by Assembly Member Ammiano**

December 3, 2012

An act to add Part 2.2 (commencing with Section 53.1) to Division 1 of the Civil Code, and to amend Section 11135 of the Government Code, relating to homelessness.

**legislative counsel's digest**

AB 5, as amended, Ammiano. Homelessness.

Existing law provides that no person in the state shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would enact the Homeless Person's Bill of Rights and Fairness Act, which would provide that no person's rights, privileges, or access to public services may be denied or abridged because he or she is ~~homeless, has a low income, or suffers from a mental illness or physical disability~~ *homeless*. ~~The bill would provide that every person in the state, regardless of actual or perceived housing status, low income, sexual orientation, gender identity, citizenship, or immigration status, shall be free from specified forms of discrimination and shall be entitled to certain basic human rights, including the right to be free from~~

~~discrimination by law enforcement, in the workplace, and while seeking services.~~ The bill would provide that every *homeless* person has the right, ~~among others, to access public property, possess personal property, access public restrooms, clean water, educational supplies~~ *move freely, rest, eat, share, accept, or give food or water, and solicit donations in public spaces, as defined, and the right to lawful self-employment,* as specified, ~~emergency and non-emergency health care,~~ confidentiality of ~~medical~~ *specified* records, assistance of legal counsel in specified proceedings, and restitution, under specified circumstances. *By requiring a county to pay the cost of providing legal counsel, as specified, the bill would increase the duties of local agencies, thereby imposing a state-mandated local program.* The bill would provide immunity from employer ~~retaliation,~~ *retaliation* to a public employee who provides *specified* assistance to a homeless person. The bill would require local law enforcement agencies to make specified information available to the public and report to the Attorney General on an annual basis with regard to enforcement of local ordinances against homeless persons and compliance with the act, as specified, thereby imposing a state-mandated local program. The bill would provide for judicial relief and impose civil penalties for a violation of the act.

This bill would require the State Department of Public Health to fund the provision of health and hygiene centers, as specified, for use by homeless persons in designated areas.

This bill would provide that its provisions address a matter of statewide concern. The bill would provide that its provisions are severable.

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 these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Homeless Person's Bill of Rights and Fairness Act.

1 SEC. 2. The Legislature finds and declares all of the following:

2 (a) In the State of California, there has been a long history of  
3 discriminatory laws and ordinances that have disproportionately  
4 affected people with low incomes and who are without homes,  
5 including, but not limited to, all of the following:

6 (1) Jim Crow laws: After the Civil War, many states, especially  
7 in the south, passed laws denying African Americans basic human  
8 rights. In California, these laws also targeted Chinese immigrants.  
9 In San Francisco, Chinese residents were forced to live in one area  
10 of the city. The same segregation laws also prohibited interracial  
11 marriage between Chinese and non-Chinese persons.

12 (2) Ugly laws: In 1867, San Francisco was the first city in the  
13 country to pass a law making it illegal for people with “unsightly  
14 or disgusting” disabilities to appear in public. In many cities, these  
15 laws persisted until the 1970s.

16 (3) Anti-Okie laws: In 1937, California passed an Anti-Okie  
17 law that criminalized “bringing or assisting in bringing” extremely  
18 poor people into the state. The United States Supreme Court struck  
19 down the law in 1941, when it declared that these laws are in  
20 violation of the commerce clause, and therefore unconstitutional.

21 (4) Sundown town ordinances: Town policies and real estate  
22 covenants were aimed at preventing minorities, homeless persons,  
23 and other persons considered to be socially undesirable from  
24 remaining within city limits after sunset. Thousands of these towns  
25 existed prior to the federal Civil Rights Act of 1968, which made  
26 these ordinances and covenants illegal.

27 (5) Vagrancy laws: Vagrancy laws have been held  
28 to be  
29 discriminatory on their face because they criminalize a person’s  
30 status rather than a behavior. Nevertheless, these laws existed in  
31 California until the Legislature revised them in 1961.

32 (b) Act of living ordinances, often known as “quality of life  
33 ordinances” and other similar ordinances, are the  
34 modern

35 reincarnations of laws of this kind. They are designed to force  
36 homeless people to flee local jurisdictions. These local ordinances  
37 result in de facto segregation as homeless people are forced out of  
38 specific jurisdictions or out of specific neighborhoods within  
39 jurisdictions. These practices tend to condemn large groups of  
40 inhabitants to dwell in segregated districts or under depressed  
living conditions that result in crowded, unsanitary, substandard,  
and unhealthful accommodations. Furthermore, these  
policies

1 result in criminalization of homeless persons who do not choose,  
2 or are unable, to migrate.

3 (c) Today, in the state, many people are denied the following:

4 (1) Housing due to their status of being homeless, living in a  
5 shelter, a vehicle, the street, or the public domain.

6 (2) Employment due to their current status of being homeless  
7 or living in a shelter or a vehicle on the street.

8 (3) Housing and employment as a result of not having a fixed  
9 or residential mailing address or having a post office box as a  
10 mailing address.

11 (4) Equal protection of the laws and due process by law  
12 enforcement and prosecuting agencies.

13 (5) The ability to make certain purchases or enter certain contests  
14 as a result of not having a fixed or residential mailing address or  
15 having a post office box as a mailing address.

16 (6) Access to safe, clean restrooms, water, and hygienic supplies  
17 necessary to maintain health, safety, and dignity, especially with  
18 the proliferation of closures of public restrooms.

19 (d) Homeless persons are unfairly targeted by law enforcement,  
20 often resulting in the violation of homeless persons' constitutional  
21 rights. Lacking the resources necessary to obtain adequate legal  
22 representation, homeless persons are often denied relief or damages  
23 through the courts.

24 (e) Homeless persons rarely have access to shelters, and when  
25 shelter is available, its conditions can be so poor as to jeopardize  
26 their health and physical and mental safety.

27 (f) Homeless persons are often forced to separate from loved  
28 ones, give up their personal property, abandon pets, and make  
29 other inhumane choices in order to access even minimal shelter.

30 (g) Lesbian, gay, bisexual, transgender, gender nonconforming,  
31 and queer individuals often are forced to accept inappropriate or  
32 unsafe accommodations to access publicly funded emergency  
33 shelters.

34 (h) Children in homeless families are denied the ability to  
35 continue receiving education in their preferred school if their  
36 family's shelter lies outside the boundaries of their former district.

37 (i) At the present time, many persons have been rendered  
38 homeless as a result of a deep and prolonged economic recession,  
39 a severe shortage of safe and affordable housing, a failed mental  
40 health system, and a shrinking social safety net.

1 (j) Section 1 of Article I of the California Constitution provides  
2 that “[a]ll people are by nature free and independent and have  
3 inalienable rights. Among these are enjoying and defending life  
4 and liberty, acquiring, possessing, and protecting property, and  
5 pursuing and obtaining safety, happiness, and privacy.”

6 (k) Subdivision (a) of Section 7 of Article I of the California  
7 Constitution provides, in part, that “[a] person may not be deprived  
8 of life, liberty, or property without due process of law or denied  
9 equal protection of the laws... .”

10 (l) Concordant with this fundamental belief, a person should  
11 not be subject to discrimination based on his or her housing status,  
12 income level, mental or physical disability, sexual orientation,  
13 gender identity, citizenship, or immigration status. Therefore, it is  
14 the intent of the Legislature in enacting this act to protect the rights  
15 of all Californians, regardless of their housing status, and to  
16 ameliorate the adverse effects of homelessness on *people who have*  
17 *no home and on our communities.*

18 (m) *It is the intent of the Legislature to enact legislation that*  
19 *would require all state agencies to use the same definition for*  
20 *“homeless persons or people” as follows:*

21 (1) *“Homeless” means those individuals or families who lack*  
22 *or are perceived to lack a fixed, regular, and adequate nighttime*  
23 *residence, or who have a primary nighttime residence in a shelter,*  
24 *on the street, in a vehicle, in an enclosure or structure that is not*  
25 *authorized or fit for human habitation.*

26 (2) *“Homeless” also means a person whose only residence is*  
27 *a residential hotel or who is residing anywhere without tenancy*  
28 *rights, and families with children staying in a residential hotel*  
29 *whether or not they have tenancy rights.*

30 (n) *It is the intent of the Legislature that publicly funded social*  
31 *and health care services be offered in a sufficient quantity to meet*  
32 *the population’s needs, without barriers, including geographical*

33 *barriers, such as making locations inconvenient or*  
*creating*

34 *screen-out barriers, or prohibiting access due to a*  
*person’s*

35 *inability to provide identification or criminal justice history, or*  
36 *disability, in order that persons are reasonably able to reach and*  
37 *use that service.*

38 ~~SEC. 3. (a) It is the intent of the Legislature to enact~~  
~~legislation~~

39 ~~that would, except when otherwise not permitted by federal law,~~

1 ensure that everyone in the state has the right to all  
of the

2 following:

3 (1) Access to income sufficient for survival, regardless  
of

4 employment status or criminal justice background, including, but  
5 not limited to, the right to receive funds through public welfare  
6 programs, private donations, collecting recyclable goods,  
or

7 soliciting donations in public spaces.

8 (2) Safe, decent, permanent, and affordable housing, as soon as  
9 possible, and the right to be free from further dislocation, unless  
10 and until safe, decent, permanent, and affordable  
housing is

11 available.

12 (3) Access to clean and safe facilities 24 hours a day, seven  
13 days a week, with clearly identifiable staff able to react to safety  
14 concerns, including, but not limited to, shelters and drop-in centers  
15 that meet basic health, hygiene, and dignity needs, including any  
16 special needs of lesbian, gay, bisexual, or transgender individuals,  
17 youths, families, or those with mental illness or  
physical

18 disabilities. This includes the right of all individuals to secure  
19 shelter without being required to state their gender or to share  
20 confidential health information protected by the federal Health  
21 Insurance Portability and Accountability Act of 1996 (Public Law  
22 104-191).

23 (4) As a child enrolled in a publicly funded school, be provided  
24 by his or her school with the supplies necessary to promote  
25 academic success, including, but not limited to,  
backpacks,

26 textbooks, notebooks, pencils, pens, and appropriate academic  
27 technology.

28 (5) Nonemergency health care and access to medical facilities  
29 that provide quality care for both physical and mental needs.

30 (6) Access to emergency services, including, but not limited to,  
31 emergency rooms at hospitals, shelters, drop-in  
centers,

32 rehabilitation centers, education, and special training, without the  
33 possibility of being denied based on race, color, sex, language,  
34 religion, political or other opinion, national or social origin, sexual  
35 orientation, gender identity, mental or physical disability, income  
36 level, housing status, citizenship, or immigration status.

37 (b) It is the intent of the Legislature to enact legislation that  
38 would require all state agencies to use the same definition for  
39 "homeless persons or people" as follows: "Homeless" means those  
40 individuals or families who lack a fixed, regular, and adequate

1 ~~nighttime residence or who have primary nighttime residence in~~  
2 ~~a shelter, on the street, in a vehicle, in an enclosure or structure~~  
3 ~~that is not authorized or fit for human habitation, substandard~~  
4 ~~apartments, dwellings, doubled up temporarily with friends or~~  
5 ~~families, or staying in transitional housing programs. “Homeless”~~  
6 ~~also means any person residing anywhere without tenancy rights,~~  
7 ~~and families with children staying in a residential hotel whether~~  
8 ~~or not they have tenancy rights.~~

9 ~~(c) It is the intent of the Legislature that publicly funded social~~  
10 ~~and health care services be offered in a sufficient quantity to meet~~  
11 ~~the population’s needs, without barriers, including geographical~~  
12 ~~barriers, such as making locations inconvenient or creating~~  
13 ~~screen-out barriers, or prohibiting access due to a person’s inability~~  
14 ~~to provide identification or criminal justice history, or disability,~~  
15 ~~in order that persons are reasonably able to reach and use that~~  
16 ~~service.~~

17 ~~SEC. 4.~~

18 *SEC. 3.* Part 2.2 (commencing with Section 53.1) is added to  
19 Division 1 of the Civil Code, to read:

20

21 **PART 2.2. HOMELESS PERSONS**

22

23 53.1. For purposes of this part, the following definitions shall  
24 apply:

25 (a) ~~“Access,” as applied to an existing facility, service, or public~~  
26 ~~space means the ability and permission to enter and make use of~~  
27 ~~the facility, service, or public space. Otherwise, “access” means~~  
28 ~~the offering or availability of a facility or service.~~

29 (b)

30 (a) “BID” means a business improvement district, as established  
31 under Chapter 2 (commencing with Section 36520) of Part 6 of  
32 Division 18 of, or Chapter 2 (commencing with Section 36620)  
33 of Part 7 of Division 18 of, the Streets and Highways Code, or any  
34 public-private partnership established under any municipal or  
35 county law authorized under Chapter 1 (commencing with Section  
36 36500) of Part 6 of Division 18 of, or Chapter 1 (commencing  
37 with Section 36600) of Part 7 of Division 18 of, the Streets and  
38 Highways Code, whether or not the phrase “business improvement  
39 district” is part of the public-private partnership’s name.

40 (c)

1 (b) “BID agent” means any person hired by a BID or any other  
2 public private partnership similar to a business—  
improvement

3 district.

4 (d) “Damages” means, but is not limited to, losses.

5 (e)

6 (c) “Harassment” means ~~any behavior that is meant to intimidate~~  
7 ~~or otherwise persuade an individual to alter his or her behavior,~~  
8 ~~whether or not otherwise lawful. a knowing and willful course of~~  
9 ~~conduct by law enforcement, public or private security personnel,~~  
10 ~~or a BID agent directed at a specific person that a reasonable~~  
11 ~~person would consider as seriously alarming, seriously annoying,~~  
12 ~~seriously tormenting, or seriously terrorizing a person.~~

13 (f)

14 (d) “Homeless persons” or “homeless people” means those  
15 individuals or families ~~lacking~~ *who lack or are perceived to lack*  
16 *a fixed, regular, and adequate nighttime residence, or ~~having~~ who*  
17 *have a primary nighttime residence in a shelter, on the street, in a*  
18 *vehicle, in an enclosure or structure that is not authorized or fit for*  
19 *human habitation, in a substandard apartment, dwelling, staying*  
20 *temporarily with friends or families, or staying in transitional*  
21 *housing programs or habitation. “Homeless” also means a person*  
22 *whose only residence is a residential hotel or who is residing*  
23 *anywhere without tenancy rights, and families with children staying*  
24 *in a residential hotel whether or not they have tenancy rights.*

25 (g) “Housing status” means ~~the status of having or not having~~  
26 ~~a fixed or regular residence, including the status of living outdoors,~~  
27 ~~in a vehicle, or in a homeless shelter, or similar temporary~~  
28 ~~residence or elsewhere in the public domain.~~

29 (h) “Lack of permanent mailing address” means ~~the absence of~~  
30 ~~an address fixed to a permanent home, and may include, but is not~~  
31 ~~limited to, post office boxes, addresses of friends or family~~  
32 ~~members, and shelter addresses.~~

33 (i) “Lawful representative” means ~~any person who has been~~  
34 ~~asked to advocate on behalf of a person or any class that a person~~  
35 ~~identifies with, including, but not limited to, a homeless person’s~~  
36 ~~retained attorney, a nonprofit organization that advocates on behalf~~  
37 ~~of homeless persons, or a prosecuting attorney upon the request~~  
38 ~~of a homeless person.~~

1 (j) ~~“Losses” means, but is not limited to, any deprivation of~~  
2 ~~constitutionally held rights as well as the loss of property or~~  
3 ~~physical and mental wellbeing.~~

4 (k) ~~“Low income” is defined as income at or lower than twice~~  
5 ~~the federal poverty level as established by the poverty guidelines~~  
6 ~~updated periodically in the Federal Register by the United States~~  
7 ~~Department of Health and Human Services under the authority of~~  
8 ~~Section 9902(2) of Title 42 of the United States Code.~~

9 (l) ~~“Public service” means any program or activity~~  
10 ~~that is~~  
11 ~~conducted, operated, or administered by the state, any state agency,~~  
12 ~~or local government agency, is funded directly by the state or any~~  
13 ~~local government, or received any financial assistance from the~~  
14 ~~state or any local government.~~

15 (m)  
16 (e) ~~“Public space” means any—space property that is~~  
17 ~~predominantly within the public domain or owned by any state or~~  
18 ~~local government entity or upon which there is an easement for~~  
19 ~~public use and that is held open to the public, including, but not~~  
20 ~~limited to, plazas, courtyards, parking lots, sidewalks, public~~  
21 ~~transportation, public buildings and parks. “Public space” may~~  
22 ~~also refer to those places that receive additional services through~~  
23 ~~BIDs or other, similar public-private partnerships. does not include~~  
24 ~~a private business establishment.~~

25 (n)  
26 (f) ~~“Rest” means the state of not moving, holding certain~~  
27 ~~postures that include, but are not limited to, sitting, standing,~~  
28 ~~leaning, kneeling, squatting, sleeping, or lying.~~

29 (o)  
30 (g) ~~“Soliciting donations” means asking for food, water, or~~  
31 ~~money, which includes panhandling.~~

32 53.2. (a) ~~The existence of homelessness requires that~~  
33 ~~fundamental rights that are amply protected in the home and in~~  
34 ~~private places be extended to the public domain to ensure the equal~~  
35 ~~rights of all Californians, homeless and housed. Every homeless~~  
36 ~~person in the state, regardless of actual or perceived housing status,~~  
37 ~~low income, sexual orientation, gender identity, citizenship, or~~  
38 ~~immigration status, state shall have the right to all of the following~~  
39 ~~basic human rights and legal and civil protections, except when~~  
40 ~~prohibited by federal law:~~

1 (1) The right to move freely in the same manner as any other  
2 person in public spaces, including, but not limited to, plazas,  
3 parking lots, public sidewalks, public parks, public transportation,  
4 public streets, and public buildings, in the same manner as any  
5 other person, and without discrimination *spaces without being*  
6 *subject to criminal or civil sanctions, harassment or arrest* by law  
7 enforcement, public or private security personnel, or BID agents  
8 *because he or she is homeless.*

9 (2) The right to rest and sleep in a public spaces *space in the*  
10 *same manner as any other person* without being subject to criminal  
11 or civil sanctions, harassment, or arrest by law enforcement, public  
12 or private security personnel, or BID agents *because he or she is*  
13 *homeless, as long as—such that rest does not*  
maliciously or  
14 substantially obstruct a passageway.

15 (3) ~~The right to set down or leave at rest personal property in~~  
16 ~~public spaces without being subject to criminal or civil sanctions,~~  
17 ~~harassment, or arrest by law enforcement, public or private security~~  
18 ~~personnel, or BID agents, as long as that personal property does~~  
19 ~~not maliciously or substantially obstruct a passageway, or the~~  
20 ~~possession or placement of that personal property does not deny~~  
21 ~~another of the right to property. This includes the right to restitution~~  
22 ~~for loss of property or personal effects and belongings if the~~  
23 ~~property or personal effects are confiscated, removed, damaged,~~  
24 ~~or destroyed by law enforcement, public or private—~~  
security  
25 ~~personnel, or BID agents in violation of this paragraph or any other~~  
26 ~~protections of property provided under state or federal law.~~

27 (4)  
28 (3) The right to *eat, share, accept, or give food or water* in public  
29 *spaces in the same manner as any other person* without being  
30 subject to criminal or civil sanctions, harassment, or arrest by law  
31 enforcement, public or private security personnel, or BID agents  
32 *because he or she is homeless.*

33 (4) *The right to solicit donations in public spaces in the same*  
34 *manner as any other person without being subject to criminal or*  
35 *civil sanctions, harassment, or arrest by law enforcement, public*  
36 *or private security personnel, or BID agents because he or she is*  
37 *homeless.*

38 (5) The right to the same protections that law enforcement  
39 agencies afford to the general public *any other person, including,*

1 but not limited to, the right to reasonable protection from assault,  
2 domestic violence, sexual assault, or robberies.

3 (6) The right to ~~sleep, sit, lie down, stand, eat, solicit donations,~~  
4 ~~or share food in a public place or in a vehicle~~ *rest* in a public place  
5 *space*, without being subject to criminal or civil  
sanctions,

6 *harassment*, or arrest by law enforcement, public or private security  
7 personnel, or BID agents, except that law enforcement may enforce  
8 existing local laws if all of the following are true: (1) the person's  
9 county of residence maintains 12 months per year of nonmedical  
10 assistance provided for in Section 17000 of the Welfare and  
11 Institutions Code for employable, able-bodied adults  
without

12 dependents who are compliant with program rules established by  
13 the county, including work requirements; (2) the locality is not a  
14 geographical area identified by the United States Department of  
15 Labor in accordance with Subpart A of Part 654 of Section 20 of  
16 the Code of Federal Regulations as an area of  
concentrated

17 unemployment or underemployment or an area of labor surplus;  
18 and (3) the public housing waiting list maintained by the county  
19 contains fewer than 50 persons.

20 (7) The right to ~~be self-employed~~ *engage in*  
*lawful*

21 *self-employment in the same manner as any other*  
*person*,

22 including, but not limited to, the right to seek self-employment in  
23 junk removal and recycling that requires the collection, possession,  
24 redemption, and storage of goods for reuse and recycling, without  
25 being subject to criminal or civil sanctions, harassment, or arrest  
26 by law enforcement, public or private security personnel, or BID  
27 agents *because he or she is homeless*.

28 (8) The right to pray, meditate, or practice religion in public  
29 spaces *in the same manner as any other person*, without being  
30 subject to criminal or civil sanctions, harassment, or arrest by law  
31 enforcement, public or private security personnel, or BID agents  
32 *because he or she is homeless*.

33 (9) The right to decline admittance to a public or private shelter  
34 or any other accommodation, including social services programs,  
35 for any reason he or she sees fit, without ~~facing~~ *being subject to*  
36 ~~criminal or civil sanctions, harassment, or arrest, or threats of these~~  
37 ~~actions~~, *arrest* from law enforcement, public or private security  
38 personnel, or BID agents.

39 (10) The right to occupy a motor vehicle, as defined in Section  
40 415 of the Vehicle Code, or recreational vehicle, as defined in

1 Section 18010 of the Health and Safety Code, either to rest, sleep,  
2 or use for the purposes of shelter, provided that the vehicle is  
3 legally parked on public property, without facing *being subject to*  
4 criminal or civil sanctions, harassment, or ~~arrest, or threats of these~~  
5 ~~actions, arrest~~ from law enforcement, public or private security  
6 personnel, or BID agents.

7 ~~(11) If the person is a child or youth, the right~~  
8 ~~to state~~  
9 ~~enforcement of the educational protections under the~~  
10 ~~federal~~

11 ~~McKinney Vento Act (42 U.S.C. Sec. 11432), particularly with~~  
12 ~~regard to Sections 11432(e)(3)(C)(ii)(I) and 11432(e)(3)(C)(ii)(II)~~  
13 ~~of Title 42 of the United States Code, which provide that a school~~  
14 ~~shall provide assistance to the parent or guardian of each homeless~~  
15 ~~child or youth (or, in the case of an unaccompanied youth, the~~  
16 ~~youth) to exercise the right to attend the parent's or guardian's (or~~  
17 ~~youth's) choice of school, and a school shall coordinate with the~~  
18 ~~local educational agency with jurisdiction for the school selected~~  
19 ~~by the parent or guardian (or youth), to provide transportation and~~  
20 ~~other necessary services.~~

21 ~~(12)~~

22 ~~(11) The right to be protected from disclosure confidentiality~~  
23 ~~of his or her records and information from by homeless shelters,~~  
24 ~~medical centers, schools, or any other publicly funded human~~  
25 ~~service provider to law enforcement agencies without appropriate~~  
26 ~~legal authority, and the right to confidentiality of personal records~~  
27 ~~and information in accordance with all limitations on disclosure~~  
28 ~~established by the federal Homeless Management Information~~

29 ~~Systems, the federal Health Insurance~~  
30 ~~Portability and~~

31 ~~Accountability Act of 1996 (Public Law 104-191), and the federal~~  
32 ~~Violence Against Women Act (Public Law 103-322), employers,~~  
33 ~~or landlords, except that the records or information~~  
34 ~~may be~~

35 ~~disclosed if the disclosure is based on appropriate legal authority.~~  
36 ~~Disclosure of an individual's records or information shall not be~~  
37 ~~allowed unless the individual received oral and written notice of~~  
38 ~~the legal authority to disclose this information and the individual's~~  
39 ~~right to opt out of having the records or information disclosed.~~

40 ~~(13) The right to confidentiality of personal records regarding~~  
41 ~~housing status, income level, mental illness, physical disability,~~  
42 ~~sexual orientation, gender identity, citizenship, or immigration~~  
43 ~~status, and to protection from disclosure of the information and~~  
44 ~~records to landlords and employers.~~

1 (14)

2 (12) (A) ~~If—~~*The right to assistance of counsel, if a county*  
3 *chooses to initiate judicial proceedings subject to Section 40508*  
4 *of the Vehicle Code, Section 853.6, 853.7, or 853.8 of the Penal*  
5 *Code, or any similar law authorizing arrest for failure to appear*  
6 *or pay bail of the amount listed on the notice to appear, the*  
7 *defendant shall be guaranteed the right to assistance of counsel*  
8 *under any law set forth in Section 53.5.* The accused shall be  
9 advised of this right to counsel before entering a plea, and any  
10 waiver of this right shall be explicit. If the district attorney's office  
11 or its agent is representing the state in any part of an infraction  
12 proceeding, the accused shall have the right to assistance of counsel  
13 with regard to that infraction.

14 (B) The county where the citation was issued shall pay the cost  
15 of providing counsel under this ~~section~~ *paragraph*.

16 (C) ~~A county shall not use penalties under Section 1214.1 of~~  
17 ~~the Penal Code or any other civil assessment scheme in the~~  
18 ~~prosecution of municipal infractions unless the defendant was the~~  
19 ~~driver of a vehicle.~~

20 (15) ~~The right to assistance of counsel in any civil or criminal~~  
21 ~~proceeding that may result in commitment to a public health~~  
22 ~~institution.~~

23 (16) ~~The right to be free from arbitrary arrest, detention, or~~  
24 ~~deportation, handed over to another law enforcement agency, or~~  
25 ~~deported, without guarantees necessary for his or her timely~~  
26 ~~defense.~~

27 (b)

28 (C) This ~~section~~ *paragraph* shall not be construed to eliminate  
29 any protection or right to representation available under Sections  
30 5365 and 6500 of the Welfare and Institutions Code *or any other*  
31 *provision of law*.

32 53.3. (a) A public employee shall not be retaliated against by  
33 his or her employer, for offering *available* public resources to a  
34 homeless person in order to protect that person from harm,  
35 including, but not limited to, ~~for~~ offering or providing food,  
36 blankets, first-aid supplies, or water.

37 (b) Any person or organization ~~or water~~ offering food *or water*  
38 *in a public spaces space* to any *homeless* person ~~pursuant to this~~  
39 ~~part~~ shall not be subject to criminal or civil sanctions, arrest, or

1 harassment by law enforcement, public or private  
security

2 personnel, or BID agents.

3 53.4. (a) Every local government and disadvantaged  
4 unincorporated community within the state shall have sufficient  
5 health and hygiene centers available 24 hours a day, seven days a  
6 week, for use by homeless people. These facilities may be part of  
7 the Neighborhood Health Center Program.

8 (b) For purposes of subdivision (a), the health and hygiene  
9 centers shall be funded by the State Department of Public Health  
10 through those county agencies that oversee public health programs,  
11 and, at a minimum, shall contain public bathroom and shower  
12 facilities.

13 (c) The State Department of Public Health shall distribute public  
14 bulletins and notices identifying the facilities to be used as health  
15 and hygiene centers.

16 (d) For purposes of this section, “disadvantaged unincorporated  
17 community” ~~means a fringe, island, or legacy community in which~~  
18 ~~the median household income is 80 percent less than the statewide~~  
19 ~~median household income shall be defined as in Section 65302.10~~  
20 ~~of the Government Code.~~

21 53.5. (a) To ensure equitable and cost-effective enforcement  
22 of the Homeless Person’s Bill of Rights and Fairness Act (Ch.     ,     ,  
23 Stats. 2013), every local law enforcement agency shall annually  
24 compile and review the number of citations, arrests, and other  
25 enforcement activities made pursuant to laws prohibiting the  
26 following:

27 (1) Obstructing a sidewalk, whether by a person or personal  
28 property.

29 (2) Loitering.

30 (3) Sitting.

31 (4) Lying down.

32 (5) Camping.

33 (6) Public lodging, including the prohibition specified in  
34 subdivision (e) of Section 647 of the Penal Code.

35 (7) Sleeping in a public place.

36 (8) Soliciting donations.

37 (9) Soliciting donations at certain restricted locations, including  
38 citing people for panhandling under Section 22520.5 of the Vehicle  
39 Code.

40 (10) Bathing in public places.

1 (11) Sharing or receiving food.

2 (12) Inhabiting or sleeping in a vehicle.

3 (13) Violating public park closure laws.

4 (14) Crossing streets or highways at particular  
locations,

5 including subdivisions (c) and (d) of Section 21451 of, subdivision  
6 (d) of Section 21453 of, subdivision (b) of Section 21456 of,  
7 Section 21461.5 of, subdivision (b) of Section 21950 of, Section  
8 21954 of, Section 21955 of, and subdivision (a) of Section 21956  
9 of, the Vehicle Code.

10 (15) Trespassing, unless the trespassing charge is coupled with  
11 any misdemeanor or felony, except those misdemeanors that are  
12 included in Section 372 of, and subdivisions (h) to (j), inclusive,  
13 and subdivisions (l) and (m), of Section 602 of, the Penal Code.

14 (16) *Failing to appear, pay a fine, post bail, or comply with a*  
15 *condition of a court order, as described in Section 40508 of the*  
16 *Vehicle Code or Section 853.6, 853.7, or 853.8 of the Penal Code.*

17 ~~(16)~~

18 (17) Any other local or state law enforced against homeless  
19 persons and identified by the Attorney General's office, *or a city*  
20 ~~attorney's office, or any nonprofit organization whose work or~~  
21 ~~mission includes assistance to research about, or advocate for, poor~~  
22 ~~and homeless people~~ *office.*

23 (b) A local law enforcement agency shall make this information  
24 publicly available under the terms set forth in the California Public  
25 Records Act (Chapter 3.5 (commencing with Section 6250) of  
26 Division 7 of Title 1 of the Government Code).

27 (c) A local law enforcement agency shall report the information  
28 specified in this section to the Attorney General's office on an  
29 annual basis.

30 53.6. (a) Any person whose rights have been violated under  
31 this part may enforce those rights ~~and he or she, or his or her lawful~~  
32 ~~representative, may file a motion for relief in any trial or appellate~~  
33 ~~court with jurisdiction over the case as a matter of right. The court~~  
34 ~~shall act promptly on any motion for relief under this part~~ *in a civil*  
35 *action.*

36 (b) ~~Any civil action alleging a violation of this part may be~~  
37 ~~brought against any person, entity, public entity, or public~~  
38 ~~employee. The court may award punitive damages, if applicable,~~  
39 ~~appropriate injunctive and declaratory relief, restitution for loss~~  
40 ~~of property or personal effects and belongings, actual damages,~~

1 compensatory damages, ~~general damages, special~~  
damages,

2 exemplary damages, statutory damages of one thousand dollars  
3 (\$1,000) per violation, ~~if applicable~~, and reasonable attorneys' fees  
4 and costs to a prevailing plaintiff.

5 ~~SEC. 5.~~

6 *SEC. 4.* Section 11135 of the Government Code is amended  
7 to read:

8 11135. (a) No person in the State of California shall, on the  
9 basis of race, national origin, ethnic group identification, religion,  
10 age, sex, sexual orientation, color, housing status,  
genetic

11 information, or disability, be unlawfully denied full and equal  
12 access to the benefits of, or be unlawfully  
subjected to

13 discrimination under, any program or activity that is conducted,  
14 operated, or administered by the state or by any state agency, is  
15 funded directly by the state, or receives any financial assistance  
16 from the state. Notwithstanding Section 11000, this section applies  
17 to the California State University.

18 (b) With respect to discrimination on the basis of disability,  
19 programs and activities subject to subdivision (a) shall meet the  
20 protections and prohibitions contained in Section 202 of the federal  
21 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),  
22 and the federal rules and regulations adopted in implementation  
23 thereof, except that if the laws of this state prescribe stronger  
24 protections and prohibitions, the programs and activities subject  
25 to subdivision (a) shall be subject to the stronger protections and  
26 prohibitions.

27 (c) (1) As used in this section, "disability" means any mental  
28 or physical disability, as defined in Section 12926.

29 (2) The Legislature finds and declares that the amendments  
30 made to this act are declarative of existing law. The Legislature  
31 further finds and declares that in enacting Senate Bill 105 of the  
32 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),  
33 it was the intention of the Legislature to apply subdivision (d) to  
34 the California State University in the same  
manner that

35 subdivisions (a), (b), and (c) already applied to the California State  
36 University, notwithstanding Section 11000. In clarifying that the  
37 California State University is subject to paragraph  
(2) of

38 subdivision (d), it is not the intention of the Legislature to increase  
39 the cost of developing or procuring electronic and information  
40 technology. The California State University shall, however, in

1 determining the cost of developing or procuring electronic or  
2 information technology, consider whether technology that meets  
3 the standards applicable pursuant to paragraph (2) of subdivision  
4 (d) will reduce the long-term cost incurred by the California State  
5 University in providing access or accommodations to future users  
6 of this technology who are persons with disabilities, as required  
7 by existing law, including this section, Title II of the federal  
8 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
9 et seq.), and Section 504 of the Rehabilitation Act of 1973 (29  
10 U.S.C. Sec. 794).

11 (d) (1) The Legislature finds and declares that the ability to  
12 utilize electronic or information technology is often an essential  
13 function for successful employment in the current work world.

14 (2) In order to improve accessibility of existing technology, and  
15 therefore increase the successful employment of individuals with  
16 disabilities, particularly blind and visually impaired and deaf and  
17 hard-of-hearing persons, state governmental entities, in developing,  
18 procuring, maintaining, or using electronic or  
information

19 technology, either indirectly or through the use of state funds by  
20 other entities, shall comply with the accessibility requirements of  
21 Section 508 of the federal Rehabilitation Act of 1973, as amended  
22 (29 U.S.C. Sec. 794d), and regulations implementing that act as  
23 set forth in Part 1194 of Title 36 of the Federal  
Code of

24 Regulations.

25 (3) Any entity that contracts with a state or local entity subject  
26 to this section for the provision of electronic or information  
27 technology or for the provision of related services shall agree to  
28 respond to, and resolve any complaint regarding accessibility of  
29 its products or services that is brought to the attention of the entity.

30 (e) As used in this section, “sex” and “sexual orientation” have  
31 the same meanings as those terms are defined in subdivisions (q)  
32 and (r) of Section 12926.

33 (f) As used in this section, “race, national origin, ethnic group  
34 identification, religion, age, sex, sexual orientation, color,  
or

35 disability” includes a perception that a person has any of those  
36 characteristics or that the person is associated with a person who  
37 has, or is perceived to have, any of those characteristics.

38 (g) As used in this section, “genetic information” has the same  
39 definition as in paragraph (2) of subdivision (e) of Section 51 of  
40 the Civil Code.

1 (h) For purposes of this ~~section~~ *section*, “housing status” ~~has~~  
2 ~~the same meaning as that term is~~ *means status as a “homeless*  
3 *person” as defined in subdivision (g) of Section 53.1 of the Civil*  
4 Code.

5 ~~SEC. 6.~~

6 *SEC. 5.* The Legislature finds and declares that the need to  
7 address discriminatory practices is a matter of statewide concern  
8 and is not a municipal affair, as that term is used in Section 5 of  
9 Article XI of the California Constitution. Therefore, this act shall  
10 apply to all cities, including charter cities.

11 ~~SEC. 7.~~

12 *SEC. 6.* The provisions of this act are severable. If any  
13 provision of this act or its application is held invalid, that invalidity  
14 shall not affect other provisions or applications that can be given  
15 effect without the invalid provision or application.

16 ~~SEC. 8.~~

17 *SEC. 7.* If the Commission on State Mandates determines that  
18 this act contains costs mandated by the state, reimbursement to  
19 local agencies and school districts for those costs shall be made  
20 pursuant to Part 7 (commencing with Section 17500) of Division  
21 4 of Title 2 of the Government Code.

ASSEMBLY COMMITTEE ON JUDICIARY  
Bob Wieckowski, Chair  
AB 5 (Ammiano) – As Amended: April 8, 2013

As Proposed to be Amended

SUBJECT: HOMELESS PERSONS: BASIC RIGHTS

KEY ISSUE: SHOULD NEW RIGHTS FOR HOMELESS PERSONS BE ESTABLISHED, INCLUDING A PROHIBITION AGAINST DISCRIMINATION BY PUBLIC ENTITIES ON PUBLIC PROPERTY, RIGHTS TO CONFIDENTIALITY AND LEGAL COUNSEL, PROTECTIONS FOR THOSE WHO AID A HOMELESS PERSON, REQUIRED REPORTS REGARDING SPECIFIED LAW ENFORCEMENT ACTIVITIES AND ESTABLISHMENT OF AID CENTERS?

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

## SYNOPSIS

*This bill would enact the Homeless Person's Bill of Rights and Fairness Act. As originally introduced, the bill was met with significant criticism. It has since been substantially amended, and further narrowing amendments are proposed today. In the form before this Committee, the bill would establish certain protections against discrimination on the basis of homelessness by public entities with regard to persons on public property engaged in specified activities, such as resting, eating and praying. Further, the bill would prohibit penalties against persons who offer food or water to homeless persons, and would prohibit retaliation against public employees who offer appropriate assistance to a homeless person. The bill also ensures that homeless persons have rights to confidentiality in specified public records, and the right to decline public services without sanction or harassment. In addition, the bill would establish a far broader right to rest on public property, regardless of local prohibitions, unless the applicable county provided specified levels of public benefits. The bill also requires local governments to provide health and hygiene centers for use by homeless people, and requires law enforcement agencies to compile and report data regarding enforcement activities that homeless people allege are selectively enforced against them. Finally, the bill would provide a right to legal counsel when a local government brings specified criminal enforcement actions against a homeless person, and would provide a civil right of action for violations of the civil rights recognized in the bill. The bill would apply only to public officials and quasi-public entities such as Business Improvement Districts (BIDs) and security personnel, not to private business establishments.*

*Supporters argue that homelessness has increased as the result of increased poverty rates, in conjunction with diminished social spending, leading many local governments to respond by simply criminalizing the basic human activities of homeless people. Opponents representing local governments and business groups argue that the bill fails to strike an appropriate balance between promoting health and safety for all residents and respecting the local designation of resources. Opponents also contend that the bill would create costly mandates, blur the line between local jurisdiction authority, and undermine the local decision making process.*

SUMMARY: Recognizes specified rights for homeless people. Specifically, this bill:

- 1) Provides that every homeless person in the state shall have the right to move freely, rest, solicit donations, pray, meditate, or practice religion, and to eat, share, accept, or give food and water in public spaces without being subject to criminal or civil sanctions, harassment or arrest by law enforcement, public or private security personnel, or Business Improvement District (BID) agents because he or she is homeless.
- 2) Provides that every homeless person shall have the right to occupy a motor vehicle or recreational vehicle either to rest, sleep, or use for the purposes of shelter, provided that the vehicle is legally parked on public property, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or BID agents.
- 3) Provides that every homeless person shall have the right to the same protections that law enforcement agencies

afford to any other person.

- 4) Provides that law enforcement may enforce existing local laws regarding resting in a public place provided that specified human service criteria are met: the person's county of residence maintains 12 months per year of nonmedical assistance for employable, able-bodied adults who are compliant with program rules established by the county, including work requirements; the locality is not a geographical area as an area of concentrated unemployment or underemployment or an area of labor surplus; and the public housing waiting list maintained by the county contains fewer than 50 persons.
- 5) Provides that every homeless person has the right to engage in lawful self-employment, in the same manner as any other person, including, but not limited to, the right to seek self-employment in junk removal and recycling that requires the collection, possession, redemption, and storage of goods for reuse and recycling, without being subject to criminal or civil sanctions, harassment, or arrest.
- 6) Provides that every homeless person shall have the right to decline admittance to a public or private shelter or any other accommodation, including social services programs, for any reason he or she sees fit, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or BID agents.
- 7) Provides that every homeless person shall have the right to confidentiality of his or her records and information by homeless shelters, medical centers, schools, or any other publicly funded human service provider to law enforcement agencies, employers or landlords without appropriate legal authority.
- 8) Provides that every homeless person shall have the right to assistance of counsel if a county chooses to initiate judicial proceedings under laws that are often selectively enforced against homeless people.
- 9) Prohibits retaliation against public employees who offer available resources to a homeless person in order to protect that person from harm.
- 10) Prohibits the civil sanction, arrest, or harassment of any person or organization offering food or water in a public space to a homeless person.
- 11) Provides that every local government and disadvantaged unincorporated community within the state shall have sufficient health and hygiene centers available 24 hours a day, seven days a week, for use by homeless people.
- 12) Requires law enforcement agencies to annually compile and review the number of citations, arrests, and other enforcement activities under laws that are alleged to be selectively enforced against homeless people.
- 13) Requires local law enforcement agencies to make public the records of citations, arrests and other enforcement activities under laws that are alleged to be selectively enforced against homeless people, and to report these records to the Attorney General's office annually.
- 14) Provides that any person whose rights have been violated under this part may enforce that right in a civil action in which the court may award appropriate relief and damages, including restitution for loss of property or personal effects and belongings as well as reasonable attorneys' fees and costs to a prevailing plaintiff.
- 15) Provides that no person shall, on the basis of housing status, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state.

EXISTING LAW:

- 1) Provides that all persons are free and equal no matter what their sex, race, color religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation and are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments. (Civil Code section 51.)
- 2) Establishes that no person shall be discriminated under any state-funded program or activity on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability. (Government Code section 11135.)

COMMENTS: In support of the bill, the author states:

There is currently no unified state law that defines a statewide standard protecting basic civil rights of our most vulnerable Californians. Today, numerous laws infringe on poor people's ability to exist in public space, to acquire housing, employment, and basic services, and to equal protection under the law. The Homeless Person's Bill of Rights and Fairness Act is a response that can help alleviate poverty and homelessness while protecting people from discrimination and ensuring a right to privacy and personal property.

With poverty and unemployment reaching record numbers in California, our cities have begun enacting a wave of such laws, targeting mostly people without homes. These laws, commonly called "quality of life" or "anti-nuisance" ordinances, criminalize sleeping, sitting, and even food-sharing in public spaces. Just like the discriminatory laws from the past, they deny people their right to exist in local communities.

According to research published by the Western Regional Advocacy Project, the main "illegal offenses" that people without homes have been charged with as a result of these "nuisance" laws are:

- 83% harassed for sleeping, with 48% of these people cited and 30% arrested.
- 79% harassed for sitting or lying down, with 43% of these people cited and 26% arrested.
- 66% harassed for "loitering" or being present in a public space, with 40% of these people cited and 24% arrested.

This same study found that the majority of people without homes were scared to live on the streets and that they did not know of a safe place to sleep at night where they would not be arrested.

The solution to homelessness is not citations and jail time. A citation for sleeping or standing on the street, instead, contributes to a person's inability to establish financial solvency and good credit necessary to secure employment and a rental agreement. Citations, arrests and jail time do not solve homelessness, they just route crucial public dollars that could be spent on housing, to an already impacted court and corrections system, neither of which have the responsibility or resources to provide housing. Homelessness is a consequence of poverty and inability to afford housing and can only be curtailed by shifting our priorities to address these root causes.

AB 5 enacts law protecting people without homes from violations of their basic human rights and the people who serve them from penalties. It also resolves to reduce the impact of homelessness on communities and individuals by diverting investment from criminalization to stabilization efforts.

Supporters Argue That Homelessness Has Increased As the Result of Increased Poverty Rates In Conjunction With Diminished Social Spending, Leading Many Local Governments To Respond By Simply Criminalizing Homelessness. This bill is co-sponsored by the Western Center on Law and Poverty, JERICHO, and the Western Regional Advocacy Project which jointly state:

Homelessness is the most brutal and severe face of poverty, experienced daily by 160,000 men, women, and children in California. This represents 20% of the nation's homeless population. In recent years, there have been increases in the numbers people experiencing homelessness. Homelessness not only has grave human consequences, it also creates challenges for local governments, both rural and urban.

Families with children have been one of the fastest growing groups of homeless people, representing over 40% of the nation's homeless in 2009 according to the National Coalition for the Homeless. In California, child homelessness is high. The National Center on Family Homelessness has given California a rank of 49th worst in the number of homeless children and 48th worst in the percentage of children who are homeless. According to data collected by the McKinney-Vento Educational Programs more than 292,624 California children experience homelessness each year. Of the 2,200,000 children living in poverty in California, thirteen percent are homeless.

It should come as no surprise that homelessness is increasing among families with children, as poverty among families with children is also on the rise. According to the Public Policy Institute of California, after reaching a low of about 16% in 2001, the child poverty rate in California has been trending upward with nearly 1 in 4 children living in poverty in California (23.2%) in 2010. California is in the minority of states with an increase in child poverty over 5% per year for the last couple of years.

The consequences of poverty for people who lack housing are significant. Homeless families are twice as likely as middle-income families to report that their children have moderate or severe health problems such as asthma, dental problems, and emotional difficulties.

The health consequences of homelessness are not limited to children. On average, homeless adults have 8 to 9 concurrent medical illnesses, commonly suffering from skin conditions, respiratory infections, tooth decay, foot problems, vision disturbances, and trauma. Chronic diseases, such as hypertension, diabetes, and asthma, are prevalent among people without homes and are more difficult to manage. Sexually Transmitted Infections (STIs) are common among homeless girls and women, as a result of limited access to reproductive health services, prostitution, and survival sex (sex in exchange for food or temporary shelter). Homelessness contributes to hard-to-manage medical and psychiatric illnesses because people who don't have homes are more vulnerable to harm caused by crime and violence; prolonged standing; excessive outdoor exposure; and airborne infectious diseases due to overcrowding.

Without a home, people are less able to safely store or prepare food and so are more likely to succumb to food borne illnesses.

The human experience of homelessness is profound. Whether a child, adult or elder, the lack of privacy and social isolation experienced by people with no home can lead to significant bouts of depression and have long-lasting impacts on self-worth and emotional wellbeing. The prevalence of homelessness in the 21st century is a result of an inexcusable failure of our economic and political system that has led, not only, to violations of internationally recognized human rights but also impact the public health of entire communities.

Episodes of mass homelessness have occurred throughout U.S. history. However, in the middle of the twentieth century, following failed attempts to outrun vagrancy by passing laws criminalizing the existence of poverty, New Deal policies and post-World War II social welfare programs effectively reduced the numbers of homeless people in the United States. Certainly, marginally housed populations and severe urban poverty did continue to exist after these policies and programs were initiated, especially amongst elderly men living in skid rows and amongst people facing racist economic discrimination. Yet, few people were so deeply poor and had such limited options that they were forced to live on the streets.

Now, three decades after the first homeless shelters opened, with comparative investments in affordable housing the lowest since it began, there is an uptick in laws that make it illegal to be poor and homeless in public spaces.

The following facts documenting that decline are included in the Western Regional Advocacy Project report Without Housing:

- Between 1978 and 1983, HUD budget authority shrank from \$83 billion to little more than \$18 billion in 2004 constant dollars, and since then has never been more than \$32 billion except for in 2009 and 2010 because of Recovery Act funding.
- HUD Funding for new public housing units has been zero since 1996. Meanwhile, since 1995, 360,000 housing units have been lost. HUD estimates that approximately 100,000 units are sold or destroyed each year.
- Since 1995, 360,000 project-based units of Section 8 housing that have been lost and another 900,000 of these units have contract set to expire before 2014, accounting for the long wait lists for housing assistance. As a result, current funding for the voucher program meets the needs of only one-quarter of homeless families.
- From 1976-1985, a yearly average of almost 31,000 new Section 515 rural affordable housing units were built, from 1986-2005, the average yearly production was 8170, a 74 percent reduction and in 2011 only 763 units were built.

On top of the loss of public housing, affordable housing construction and Section 8 vouchers, rental markets have the lowest vacancy rates in a decade causing rental costs to remain high throughout the recession. According to the Urban Institute's 2011 Out of Reach report, on average in 2011 a household needs to earn \$18.46 an hour, working 40 hours a week, 52 weeks a year, to afford a two-bedroom home at the Fair Market Rent.

Perhaps most distressing about, and very much related to, the increase in homelessness and dramatic decrease in federal funding for affordable housing and support for low-income renters caught in this tight rental market is that the federal government is spending more on housing subsidies today than it ever has, but these subsidies overwhelmingly benefit wealthy home owners. Federal expenditures on home ownership mortgage deductions in 2012 were \$131 billion, while total funding in federal low-income housing assistance programs was under \$50 billion.

This bill is also co-sponsored by the East Bay Community Law Center, which states:

At EBCLC, we have worked extensively with homeless clients over the past 25 years. We have seen firsthand the trend toward criminalization of homelessness, and its ill effects. Our clients are charged with trespassing for standing on a public sidewalk, while nearby housed people are – unsurprisingly – not cited. AB 5 would prohibit that kind of selective enforcement. We have elderly and disabled homeless clients who endured criminal prosecution because they were sleeping under an out-of-the-way awning or overhang on a rainy night. AB 5 would limit enforcement of sleeping laws. We know homeless veterans who were cited for having their neatly packed belongings in public, or who had all their earthly belongings confiscated and destroyed. AB 5 would protect personal property and require restitution when belongings were illegally discarded. It is mind-boggling when we see homeless people turned away from treatment programs, housing, or jobs because they have arrest warrants for "quality of life" tickets. AB 5 would curtail the government resources spent on giving homeless people citations they cannot afford to pay for acts that should not be criminal to begin with, and will thereby reduce jail and court costs that our state can ill afford.

AB 5's provisions are in line with experts' nationally-recognized policy recommendations. Citing and jailing homeless people for being in public is bad public policy, according to the federal government, the U.S. Conference of Mayors, numerous studies and reports and the experiences of homeless people themselves. Studies have shown that businesses do not do better when cities criminalize homelessness. This is partly because criminalization does not house homeless people. In fact, criminalization can exacerbate homelessness, creating warrants and criminal records that can impede a homeless person's chance at getting housing, treatment, or employment.

This Bill Prevents Discrimination On The Basis Of Homelessness By Public Entities In Public Places. This bill prohibits the discrimination against homeless people by public entities and BID agents with respect to specified activities on public property. Specifically: homeless people would have the right to move freely, rest, solicit donations, pray, meditate, or

practice religion, and eat, share, accept, or give food and water in public spaces without being subject to criminal or civil sanctions, harassment or arrest by law enforcement, public or private security personnel, or BID agents because he or she is homeless.

Likewise, under this bill homeless people would have the right to occupy a motor vehicle or recreational vehicle either to rest, sleep, or use for the purposes of shelter, provided that the vehicle is legally parked on public property, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or BID agents. Homeless people would also have the right to engage in lawful self-employment, in the same manner as any other person, without being subject to criminal or civil sanctions, harassment, or arrest because the person is homeless. This bill also provides that homeless persons shall not be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state. Thus, enforcement actions by the specified entities on public property that have the purpose or effect of discriminating against a person because he or she is homeless would be prohibited by the bill.

Further, this bill provides that every homeless person shall have the right to the same protections that law enforcement agencies afford to any other person.

This Bill Would Establish A New Right For Homeless People To Rest In Public Spaces Unless A Local Government Provides Specified Levels Of Public Benefits. In addition to the equal-treatment provision noted above, this bill would establish a more absolute right to rest in public places, notwithstanding that an ordinance or enforcement action may treat homeless and non-homeless persons the same. Under the bill, it appears that local governments could not prohibit sleeping in public parks by enforcing nighttime closing rules unless the county provides a specified level of human services. That is, the bill provides that law enforcement may enforce existing local laws regarding resting in a public place if the person's county of residence maintains 12 months per year of nonmedical assistance for employable, able-bodied adults who are compliant with program rules established by the county, including work requirements; the locality is not a geographical area as an area of concentrated unemployment or underemployment or an area of labor surplus; and the public housing waiting list maintained by the county contains fewer than 50 persons.

This Bill Provides Homeless People The Right To Decline Public Services. According to supporters, homeless people are often forced to separate from loved ones, give up their personal property or pets in order to access public services, including shelters. This bill provides that every homeless person shall have the right to decline admittance to a public or private shelter or any other accommodation, including social services programs, for any reason he or she sees fit, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or BID agents.

This Bill Provides Homeless People The Right To Confidentiality Regarding Certain Public Records. The records and information of homeless people kept by homeless shelters, medical centers, schools, or any other publicly funded human service provider would be kept confidential and not be disclosed to law enforcement agencies, employers or landlords unless there is appropriate legal authority to disclose.

This Bill Provides Those Wronged A Remedy For Violation Of Their Rights. Specially, this bill provides that any person whose rights have been violated under this part may enforce that right in a civil action in which the court may award appropriate relief and damages, including restitution for loss of property or personal effects and belongings as well as reasonable attorneys' fees and costs to a prevailing plaintiff.

This Bill Provides The Right To Counsel In Certain Cases. If a county chooses to initiate judicial proceedings under laws that are allegedly enforced selectively against homeless people, this bill would give the homeless person a right to counsel in that proceeding, expanding the existing constitutional right to counsel in criminal cases involving felonies.

The East Bay Community Law Center argues:

In the vast majority of counties, District Attorneys do not send attorneys to traffic court to represent the state in infraction cases. Rather, if a citation is challenged, the citing officer testifies, and the defendant has the opportunity to do so as well - normally, neither party is represented. However, in some small number of counties or cases, the District Attorney is spending attorney resources prosecuting municipal infractions.

For the most part AB 5 does not change existing law about when defendants receive counsel. It does, however, provide that if a prosecuting attorney is present in court, the defendant should have an attorney as well. Counties would be able to avoid the cost of defense (and much of the prosecution cost) by prosecuting infraction cases without an attorney present for the state, as most counties already do. As a result, this provision of AB 5 could save money as well as balance the scales of people charged with crimes.

This Bill Prohibits Penalties Against Persons Who Offer Food Or Water And Prohibits Retaliation Against Public Officials Who Provide Aid. Specifically, this bill prohibits the civil sanction, arrest, or harassment of any person or organization offering food or water in a public space to a homeless person. Additionally, this bill prohibits retaliation against public employees who offer available resources to a homeless person in order to protect that person from harm.

This Bill Requires Local Governments To Provide Aid Centers For Homeless People. Supporters argue that people without a home are limited in their access to safe and responsible personal hygiene. This bill provides that every local government and disadvantaged unincorporated community within the state shall have sufficient health and hygiene centers available 24 hours a day, seven days a week, for use by homeless people.

In Order To Monitor Enforcement and Improve Law Enforcement Efficiency, This Bill Requires Recordkeeping Regarding Certain Law Enforcement Activities. This bill requires law enforcement agencies to annually compile and review of the number of citations, arrests, and other enforcement activities under laws that are allegedly enforced selectively against homeless people. Additionally, this bill requires local law enforcement agencies to make public the records of citations, arrests and other enforcement activities under laws that are often selectively enforced against homeless people and to report these records to the Attorney General's office annually.

The East Bay Community Law Center argues that tracking this information is vital to improved homeless policy in California because "we cannot address the problems of discriminatory enforcement—a problem well attested by anecdote, departmental statements of policy, and historical reason – without good information on enforcement practices. [And] we cannot adequately evaluate policies of criminalization without good information."

ARGUMENTS IN OPPOSITION: This bill is opposed by many local government agencies and business groups. Among others, the League of California Cities, California Downtown Association, and California Special District Associations jointly state:

We recognize the interconnectedness of safe, decent, and permanent housing when addressing other needs of California's homeless population, such as mental health or substance abuse treatment, and unemployment. However, any solution must strike a balance between promoting health and safety for all residents and respecting the local designation of resources. Unfortunately, AB 5 would create costly mandates, blur the line between local jurisdiction authority, and undermine the local decision making process. Specifically, AB 5 would:

- Increase costs for local law enforcement at a time when funding for public safety is scarce by requiring the annual compilation and reporting of statistics on violations related to obstructing a sidewalk, loitering, sitting, lying down, sleeping in public, soliciting donations, bathing in public places, sleeping in a vehicle, jaywalking, and trespassing.
- Usurp local authority by prohibiting the enforcement of existing local ordinances if the county does not maintain year-round nonmedical assistance and there are fewer than 50 people on the county's public housing waiting list. Special districts and cities do not have authority over county actions, and yet they would still have their local authority hindered based on the counties actions.

- Provide civil and criminal protections for local agency employees who make that agency's property and resources available for use or distribution to homeless persons without the consent of that local agency.
- Require every local government to have health and hygiene centers with access 24 hours a day, seven days a week to bathroom and shower facilities. This requirement also confuses the autonomy of cities and special districts regarding oversight and administration.
- Increase court costs and inhibit revenue collection by guaranteeing persons the right to counsel for failure to appear or pay bail, in addition to providing ample opportunities to file a lawsuit and recover money.

Despite our opposition to AB 5, we share some common ground with the intent of the bill. Local governments strive to assist those in need by offering housing, mental health counseling, and other services. As such, we believe that other legislation introduced this year would more appropriately create solutions for California's homeless. These include AB 639 (J. Perez), which would repurpose existing bond money authorized to assist veterans with housing and SB 391 (DeSaulnier), which would provide a reliable and steady source of affordable housing money.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Western Regional Advocacy Project, Co-Sponsor  
 Western Center on Law and Poverty, Co-Sponsor  
 JERICO: A Voice for Justice, Co-Sponsor  
 East Bay Community Law Center, Co-Sponsor  
 ACLU  
 Asian Law Alliance  
 Bernal Heights Neighborhood Center  
 Black Caucus of California Community Colleges  
 Building Opportunities for Self-Sufficiency  
 Caduceus Justice  
 California Alliance for Retired Americans  
 California Church Impact  
 California Coalition for Youth  
 California Communities United Institute  
 California Hunger Action Coalition  
 California Latinas for Reproductive Justice  
 California Nurses Association  
 California Partnership to End Domestic Violence  
 California Psychological Association  
 California Public Defenders Association  
 California Senior Legislature  
 Californians United for a Responsible Budget  
 Causa Justa: Just Cause  
 Cham Deliverance Ministry  
 City of Richmond  
 Coalition on Homelessness, San Francisco  
 Community Alliance  
 Community Food and Justice Coalition  
 Community Housing Partnership  
 Community Resource Center  
 Compass Family Services  
 Disability Rights Advocates  
 Drug Policy Alliance

End Hunger Action Coalition  
Episcopal Community Services, San Francisco  
General Assistance Advocacy Project  
Hamilton Family Center  
Healthy Communities, Inc.  
Homeless Action Center  
Homeless Emergency Services Providers Association, San Francisco  
Homeless Health Care Los Angeles  
Homeless Youth Alliance  
Hospitality House  
Hunger Action Los Angeles  
Hyde Street Community Services, Inc.  
LA Human Right to Housing Collective  
Labor/Community Strategy Center  
Larkin Street Youth Services  
Lawyers' Committee for Civil Rights of San Francisco Bay Area  
Los Angeles Anti-Eviction Campaign  
Los Angeles Community Action Network  
Los Angeles Poverty Department  
Mutual Housing California  
National Association of Social Workers  
National Coalition for the Homeless  
National Economic and Social Rights Initiative  
National Health Care for the Homeless Council  
National Law Center on Homelessness & Poverty  
Occupy Sacramento  
Paratransit, Inc.  
People Organized For Westside Renewal  
People Organized to Win Employment Rights  
Public Law Center  
Rhode Island Coalition for the Homeless  
Richmond Progressive Alliance  
Sacramento Homeless Organizing Committee  
Sacramento Housing Alliance  
Sacramento Loaves & Fishes  
Safe Ground Sacramento  
Saffron Strand, Inc.  
San Diego Hunger Coalition  
San Francisco Labor Council  
San Francisco Living Wage Coalition  
San Francisco Local Homeless Coordinating Board  
San Francisco Senior & Disability Action  
Sonoma County Task Force for the Homeless  
South Hayward Parish  
St. Anthony Foundation  
St. John's Well Child & Family Center  
St. Mary's Center  
Swords to Plowshares  
Tenderloin Neighborhood Development Corporation  
Topanga Peace Alliance  
Union de Vecinos  
United Council of Human Services, Mother Brown's Dining Room  
Venice Community Housing Corporation

Women Organized to Respond to Life-Threatening Diseases  
Women Organizing Resources, Knowledge & Services  
Women's Empowerment  
343+ Individuals

Support if Amended

The Arc California  
United Cerebral Palsy in California\_

Opposition

Air Conditioning Trade Association  
Association of California Cities – Orange County  
Building Owners and Managers Association of California  
California Chamber of Commerce  
California Apartment Association  
California Association of Joint Powers Authority  
California Business Properties Association  
California Downtown Association  
California Farm Bureau Federation  
California Grocers Association  
California Hotel & Lodging Association  
California Manufacturers and Technology Association  
California Park & Recreation Society  
California Police Chiefs Association  
California Special Districts Association  
California State Sheriffs' Association  
California Travel Association  
Central City East Association  
City of Bellflower  
City of Buena Park  
City of Concord  
City of Corona  
City of Cypress  
City of Lake Forrest  
City of Palmdale  
City of Menifee  
City of Signal Hill  
City of Thousand Oaks  
Civil Justice Association of California  
County of Lassen  
Desert Water Agency  
East Bay Rental Housing Association  
Historic Downtown Los Angeles Business Improvement District  
Hollister Downtown Association  
Hollywood Property Owners Alliance  
International Council of Shopping Centers  
League of California Cities  
Midtown Business Association  
NAIOP of California, the Commercial Real Estate Development Association  
National Federation of Independent Business - California  
NORCAL Rental Property Association  
Orange County Business Council  
Plumbing-Heating-Cooling Contractors Association of California

San Jose Downtown Association  
Save the American River Association  
South Park Community Benefit District  
The Apartment Association, California Southern Cities  
The River District  
Western Electrical Contractors Association

Analysis Prepared by: Kevin G. Baker and Kelsey Fischer / JUD. / (916) 319-2334

**SENATE BILL**

**No. 443**

**Introduced by Senator Walters**

February 21, 2013

An act to amend Section 18897 of, and to add Sections 18897.8 and 18897.9 to, the Health and Safety Code, relating to housing.

**legislative counsel's digest**

SB 443, as amended, Walters. Organized camps.

Existing law requires the Director of Public Health to establish rules and regulations establishing minimum standards for organized camps and regulating the operation of organized camps that the director determines are necessary to protect the health and safety of the campers.

Existing law establishes minimum standards for the operation, regulation, and enforcement of organized camps, as defined.

The bill would include “organized resident camp,” as defined, and “organized day camp,” as defined, within the definition of the term “organized camp.” The bill would require an “organized resident camp” and an “organized day camp” to provide written verification that the camp is accredited by the American Camp Association or the Boy Scouts of America or develop a written operating plan and file the plan with the local health officer at least 30 days prior to operation of the camp, would require submissions of an operating plan to the local health officer, would authorize the local health officer to assess related fees, and would require camps operated by a city or a county, or a city and county, to comply with applicable provisions. By imposing these additional requirements upon local health officers and cities and counties, this bill would impose a state-mandated local program.

This bill would require an organized day camp to have adequate staff to carry out the program, including, but not limited to, *compliance with specified staff training and supervision regulations* and a qualified program director present at all times during operation of the camp. The bill would exempt an organized day camp from certain construction and other standards generally applicable to organized resident camps.

This bill would require the department, in amending the rules and regulations pertaining to organized camps, to obtain the input and advice of prescribed organizations.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 18897 of the Health and Safety Code is  
2 amended to read:

3 18897. (a) “Organized camp” means an organized resident  
4 camp or an organized day camp.

5 (b) (1) “Organized resident camp” means a site with  
6 programs  
7 and facilities established for the primary purposes of providing an  
8 outdoor group living experience with social, spiritual, educational,  
9 or recreational objectives, for at least four consecutive overnight  
10 stays during one or more seasons of the year.

11 (2) “Organized resident camp” includes, but is not limited to,  
12 a camp accredited or operated by the American Camp Association,  
13 the YMCA, the Girl Scouts of the USA, the Boy Scouts of  
14 America, the Camp Fire USA, the Boys and Girls Clubs of  
15 and  
16 Conference Association.

17 (c) (1) “Organized day camp” means a program, which may  
or  
may not have a fixed site, that is established for the primary

1 purpose of providing outdoor group living experiences for children  
2 through 17 years of age, and that operates seasonally during times  
3 when school is not regularly in session. An organized day camp  
4 provides group-based recreation and expanded learning  
5 opportunities with social, spiritual, educational, or recreational  
6 objectives. An organized day camp may transport campers to parks,  
7 beaches, campsites, and other excursion locations for activities.  
8 An organized day camp may provide for up to three consecutive  
9 overnight stays.

10 (2) An organized day camp includes, but is not limited to, a  
11 camp that is a member of the American Camp Association, the  
12 Association for Environmental and Outdoor Education,  
13 the  
14 Christian Camp and Conference Association, the  
15 Western

16 Association of Independent Camps, the Boy Scouts of America,  
17 the YMCA, and other similar camping associations.

18 (d) The terms “organized resident camp” or “organized day  
19 camp” do not include sites or programs that are used by couples  
20 or groups for counseling, religious retreats, reunions, conferences,  
21 and special events, on an intermittent short-term basis of less than  
22 four consecutive overnight stays.

23 (e) The terms “organized resident camp” and “organized day  
24 camp” do not include a hotel, motel, tourist camp, trailer park,  
25 resort, hunting camp, auto court, or other program or facility  
26 subject to occupancy taxes, and do not include licensed child care  
27 facilities or home-finding agencies.

28 SEC. 2. Section 18897.8 is added to the Health and Safety  
29 Code, immediately following Section 18897.7, to read:

30 18897.8. (a) An organized resident camp or organized day  
31 camp shall provide written verification that the camp is accredited  
32 by the American Camp Association (ACA) or the Boy Scouts of  
33 America (BSA) or shall develop a written operating plan and file  
34 the plan with the local health officer at least 30 days prior to  
35 operation of the camp. The local health officer shall, within 30  
36 days, acknowledge receipt of the verification of the accreditation  
37 or the operating plan. A charge shall not be imposed for any camp  
38 accreditation acknowledgment. ~~The department~~ *local health officer*  
39 may charge a fee for the review of an operating plan, that shall not  
40 exceed the actual cost of plan review.

(1) Upon receipt of the local health officer’s acknowledgment,  
a camp shall post a copy of the acknowledgment in a conspicuous

1 location on the camp premises, and on the camp's Internet Web  
2 site.

3 (2) The local public health officer may inspect a camp and  
4 charge a fee for that purpose, not to exceed the actual cost of the  
5 visit. A summary and explanation of charges shall be given to the  
6 camp following the camp visit. If an inspection is not made,  
7 charges shall not be imposed on the camp other than for reviewing  
8 an operating plan, if applicable.

9 (3) A camp that has been cited for failing to  
meet legal  
10 requirements ~~shall have the right to~~ *may* appeal that citation to the  
11 local health department.

12 (b) If an organized resident camp or organized day camp  
13 constructs or operates educational facilities and programs that  
14 include ropes courses, challenge courses, climbing walls, repelling  
15 towers, zip lines, canopy tours, or other similar adventure  
16 challenges, the camp's written operating plan shall include all of  
17 the following:

18 (1) A provision ensuring that campers are kept separated from  
19 individuals who use these facilities on a day-use basis.

20 (2) A provision ensuring that oversight of activities is provided  
21 by camp staff.

22 (3) A provision that ensures that the construction and operating  
23 standards of those facilities and programs are in compliance with  
24 the standards established by the Director of Public Health pursuant  
25 to this part, or are in compliance with standards adopted by one  
26 or more of the following if the Director of Public Health determines  
27 that the following standards are substantially similar to the  
28 standards developed by the director under this part:

29 (A) The American Camp Association.

30 (B) The Association of Challenge Course Technology.

31 (C) Project COPE.

32 (D) An equivalent certification program.

33 (4) A written operating plan prepared pursuant to this  
34 subdivision shall be filed with the local health officer at least 30  
35 days prior to construction, and shall also be filed annually  
36 thereafter. A camp shall submit its plans and any associated fees  
37 to the local health officer by certified mail.

38 (c) An organized day camp shall have adequate staff to carry  
39 out the program, including, but not limited to, a qualified program  
40 director who has at least two seasons of administrative or

1 supervisory experience at an organized day camp or at a youth  
2 program. The program director shall be present at all times during  
3 operation of the organized day camp. *Additionally, an organized*  
4 *day camp and an organized residential camp shall meet the*  
5 *requirements of Section 30751 of Title 17 of the California Code*

6 *of Regulations.*

7 (d) An organized resident camp or an organized day camp  
8 operated by a city or a county, or a city and county, shall comply  
9 with the relevant provisions of this part.

10 (e) Except as set forth in this section, and Sections 18897 and  
11 18897.9, the construction and other standards set forth in this part  
12 are not applicable to an organized day camp.

13 SEC. 3. Section 18897.9 is added to the Health and Safety  
14 Code, immediately following Section 18897.8, to read:

15 18897.9. The State Department of Public Health, in adopting  
16 or amending the rules and regulations pertaining to organized  
17 resident camps and organized day camps under this part, shall  
18 make reasonable efforts to obtain the input and advice of  
19 organizations in the field. All costs incurred by the participating  
20 organizations shall be borne by the organizations themselves. The  
21 department shall implement this section in the most cost-effective  
22 manner deemed feasible.

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 a local agency or school district has the authority to levy service  
26 charges, fees, or assessments sufficient to pay for the program or  
27 level of service mandated by this act, within the meaning of Section  
28 17556 of the Government Code.

29 However, if the Commission on State Mandates determines that  
30 this act contains other costs mandated by the state, reimbursement  
31 to local agencies and school districts for those costs shall be made  
32 pursuant to Part 7 (commencing with Section 17500) of Division  
33 4 of Title 2 of the Government Code.

**Senate Appropriations Committee Fiscal Summary**  
**Senator Kevin de León, Chair**

**SB 443 (Walters) – Organized camps.**

**Amended:** April 16, 2013

**Policy Vote:** Health 9-0

**Urgency:** No

**Mandate:** Yes

**Hearing Date:** April 29, 2013

**Consultant:** Brendan McCarthy

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 443 would revise the definitions and regulatory requirements relating to organized camps.

**Fiscal Impact:**

- One-time costs of about \$130,000 for the adoption of regulations by the Department of Public Health (General Fund).
- Unknown ongoing costs for enforcement by local public health officers (local funds). Because local health officers have the statutory authority to levy fees, this bill does not impose a reimbursable state mandate.

**Background:** Current law defines an organized camp as a site with programs and facilities established for the purpose of providing outdoor experiences for five days or more. Current law requires the Department of Public Health to adopt regulations necessary to protect the health and safety of campers.

Under current law, the regulatory requirements on organized camps are enforced by local health officers.

**Proposed Law:** SB 443 would revise the definitions and regulatory requirements relating to organized camps.

Specifically, the bill would:

- Distinguish between organized resident camps and organized day camps and define those terms in statute;
- Require operators of either type of camp to develop a written operating plan and file that plan with the local health officer;
- Permit a local health officer to inspect an organized camp;
- Authorize local health officers to recover their costs through fees;
- Enact other requirements to protect the health and safety of campers.

**Related Legislation:**

- SB 1087 (Walters, Statutes of 2012) doubles the hours certain after school programs may operate.
- SB 737 (Walters, 2011) was substantially similar to this bill. That bill was vetoed by Governor Brown.

AMENDED IN SENATE APRIL 9, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 328**

**Introduced by Senator Knight**

February 19, 2013

An act to add *and repeal* Section 20146-~~to~~ of the Public Contract Code, relating to public works contracts.

**legislative counsel's digest**

SB 328, as amended, Knight. Counties: public works contracts. Existing law provides that if the estimated cost of construction of any county building or the cost of any painting, or repairs thereto exceeds a specified sum, the work shall be done by contract and that any such contract not let pursuant to specified provisions is void. Existing law requires a board of supervisors to award the contract to the lowest responsible bidder. Existing law also authorizes a county, with approval of the board of supervisors, to utilize an alternative procedure for bidding on construction projects in the county in excess of \$2,500,000 and to award the project using either the lowest responsible bidder or by best value, as specified.

This bill would authorize a county, *until January 1, 2021*, with approval of the board of supervisors, to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. The bill would provide that a construction manager at-risk contract may only be used for projects in the county in excess of \$1,000,000 and may be awarded using either the lowest responsible bidder or best value method, as defined. *This bill would require that subcontractors that were not listed by a construction manager at-risk entity as partners,*

*general partners, or association members in a partnership, limited partnership, or association in the entity’s construction manager at-risk bid submission, be awarded certain work by the construction manager at-risk entity in accordance with the process set forth by the county, as provided.*

*This bill would require a county that elects to use a construction manager at-risk contract to submit to the office of the State Controller a copy of the construction manager at-risk contract, and would require the office of the State Controller to make the copies of the contract available for public inspection on its Internet Web site.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~  
yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 20146 is added to the Public Contract  
2 Code, to read:

3 20146. (a) A county, with approval of the board of supervisors,  
4 may utilize construction manager at-risk construction contracts  
5 for the erection, construction, alteration, repair, or improvement  
6 of any building owned or leased by the county. A construction  
7 manager at-risk construction contract may only be used for projects  
8 in the county in excess of one million dollars (\$1,000,000) and  
9 may be awarded using either the lowest responsible bidder or best  
10 value

method.

11 (b) For purposes of this section, the following definitions apply:

12 (1) “Best value” means a value determined by objective criteria  
13 related to the experience of the entity and project personnel, project  
14 plan, financial strength of the entity, safety record of the entity,  
15 and

price.

16 (2) “Construction manager at-risk contract” means a  
17 competitively procured contract by a county with an individual,  
18 partnership, joint venture, corporation, or other recognized legal  
19 entity, that is appropriately licensed in this state and that guarantees  
20 the cost of a project and furnishes construction management  
21 services, including, but not limited to, preparation and coordination  
22 of bid packages, scheduling, cost control, value

engineering,  
23 evaluation, preconstruction services, and construction  
24 administration.



1 (c) *Subcontractors that were not listed by a construction*  
2 *manager at-risk entity as partners, general partners, or association*  
3 *members in a partnership, limited partnership, or association in*  
4 *the entity's construction manager at-risk bid submission shall be*  
5 *awarded by the construction manager at-risk entity in accordance*  
6 *with the process set forth by the county. All subcontractors bidding*  
7 *on contracts pursuant to this section shall be afforded the*  
8 *protections contained in Chapter 4 (commencing with Section*  
9 *4100) of Part 1. The construction manager at-risk entity shall do*  
10 *both of the following:*  
11 (1) *Provide public notice of the availability of work to be*  
12 *subcontracted in accordance with the publication requirements*  
13 *applicable to the competitive bidding process of the county.*  
14 (2) *Provide a fixed date and time on which the subcontracted*  
15 *work will be awarded in accordance with the procedure established*  
16 *pursuant to this section.*  
17 (d) *A county that elects to proceed under this section and uses*  
18 *a construction manager at-risk contract for a building project*  
19 *shall submit to the office of the State Controller, in electronic*  
20 *format, a copy of the construction manager at-risk contract. The*  
21 *office of the State Controller shall make the copies of contracts it*  
22 *receives pursuant to this subdivision available for public inspection*  
23 *on its Internet Web site.*  
24 (e) *This section shall remain in effect only until January 1, 2021,*  
25 *and as of that date is repealed, unless a later enacted statute, that*  
26 *is enacted before January 1, 2021, deletes or extends that date.*

**SENATE RULES COMMITTEE****SB 328**

Office of Senate Floor Analyses

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**THIRD READING**

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Bill No: SB 328  
Author: Knight (R)  
Amended: 4/9/13  
Vote: 21

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**SENATE GOVERNANCE & FINANCE COMMITTEE:** 6-0, 4/3/13

AYES: Wolk, Knight, Beall, DeSaulnier, Emmerson, Hernandez

NO VOTE RECORDED: Liu

**SENATE APPROPRIATIONS COMMITTEE:** Senate Rule 28.8**SUBJECT:** Counties: public works contracts**SOURCE:** County of San Bernardino

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**DIGEST:** This bill, until January 1, 2021, allows a county, with the board of supervisors' approval, to use construction manager at-risk construction contracts for erecting, constructing, altering, repairing, or improving buildings owned or leased by the county. This bill provides that a county may use a construction manager at-risk construction contract only for projects in the county in excess of \$1,000,000, and allows a county to award the construction manager at-risk construction contract using either the lowest responsible bidder or best value method.

**ANALYSIS:**

Existing law allows local officials to contract with private construction project management firms for professional management, and supervision services for construction projects. Construction project management firms provide expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost benefit analysis, claims review and negotiation, and general management and administration of a construction project. Local officials award contracts based on demonstrated competence and qualifications. Construction project management services can be used with any project delivery method.

This bill defines "best value" as a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

This bill defines "construction manager at-risk contract" as a competitively procured contract by a county with an individual, partnership, joint venture, corporation, or other recognized legal entity, that is appropriately licensed in this state and that guarantees the cost of a project and furnishes construction management services, including, preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

Subcontractors that are not listed by a construction manager at-risk entity, as specified, shall be awarded by the construction manager at-risk entity in accordance with the process set forth by the county. The construction manager at-risk shall do both of the following:

1. Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.
2. Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this bill.

This bill requires counties to submit a copy of every contract they enter into, subject to this bill's provisions, to the Controller's Office, in electronic format, to be posted on its Internet Web site. This bill sunsets counties' ability to use construction manager at-risk contracting on January 1, 2021.

### Comments

According to the Senate Governance and Finance Committee analysis, a method known as *construction manager at-risk* is another approach to public works construction and delivery which combines elements of the design-bid-build and design-build methods, and uses construction project management services. The construction manager at-risk method allows the owner of a project to retain a "construction manager," who provides pre-construction services during the design period and later becomes the general contractor during the construction process. The owner has separate contracts for design and construction services (the construction manager), similar to the design-bid-build method. The owner may establish the separate contracts at the same time, however, thereby allowing the design party and the construction manager to work together, similar to the design-build method. Before construction can begin on a project, the owner and construction manager must agree on either a fixed price or "guaranteed maximum price" for the project. The construction manager is responsible for delivering the project within the agreed upon price, thereby assuming the risk for cost-overruns. The California Administrative Office of the Courts, University of California, California State University System, school districts, and some cities have used the construction manager at-risk method for building construction projects.

Under the construction manager at-risk method, project delivery can occur in sequential or concurrent phases. Projects that have multiple components lend themselves to this method because the design and construction of different aspects of the project can occur at different times. In effect, the overall project can be broken into multiple components, which the construction manager must bid to subcontractors.

State law does not authorize counties to use the construction manager at-risk method for county construction projects.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 4/22/13)

County of San Bernardino (source)  
County of Stanislaus  
Rural County Representatives of California  
Urban Counties Caucus

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 785**

**Introduced by Senator Wolk**

February 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section 10186) to Chapter 1 of Part 2 of Division 2 of, to add Chapter 4 (commencing with Section 22160) to Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20209, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

**legislative counsel's digest**

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature to consolidate  
2 existing design-build statutes and eliminate inconsistencies in  
3 statutory language by adopting authority of general application to  
4 identified agencies and repealing superseded sections.

5 SEC. 2. Section 14661 of the Government Code is repealed.

6 SEC. 3. Section 14661.1 of the Government Code is repealed.

7 SEC. 4. Section 32132.5 of the Health and Safety Code is  
8 amended to read:

9 32132.5. (a) Notwithstanding Section 32132 or any other  
10 ~~provision of~~ law, upon approval by the board of directors of the  
11 Sonoma Valley Health Care District, the design-build procedure  
12 described in Article 6 (commencing with Section 10186) of Chapter  
13 1 of Part 2 of Division 2 of the Public Contract Code may be used  
14 to assign contracts for the construction of a  
building or

15 improvements directly related to construction of a hospital or health  
16 facility building at the Sonoma Valley Hospital.

17 (b) For purposes of this section, all references in Article 6  
18 (commencing with Section 10186) of Chapter 1 of Part 2 of  
19 Division 2 of the Public Contract Code to “county” and “governing  
20 body” shall mean the Sonoma Valley Health Care District.

21 (c) A hospital building project utilizing the design-build process  
22 authorized by subdivision (a) shall be reviewed and inspected in  
23 accordance with the standards and requirements of the Alfred E.  
24 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1  
25 (commencing with Section 129675) of Part 7 of Division 107).

26 SEC. 5. Article 6 (commencing with Section 10186) is added  
27 to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,  
28 to read:

1 Article 6. State Agency Design-Build Projects

2  
3 10186. (a) The Legislature finds and declares that  
4 the  
5 design-build method of project delivery, using a best  
6 value  
7 procurement methodology, has been authorized for  
8 various  
9 agencies that have reported benefits from such projects including  
10 reduced project costs, expedited project completion, and design  
11 features that are not achievable through the traditional  
12 design-bid-build method.

13 (b) It is the intent of the Legislature that the following occur:

14 (1) This article provides general authorization for certain state  
15 agencies to use design-build for projects, excluding projects on  
16 the state highway system.

17 (2) This article shall not be deemed to provide a preference for  
18 the design-build method over other procurement methodologies.

19 10187. For purposes of this article, the following definitions  
20 apply:

21 (a) “Best value” means a value determined by evaluation of  
22 ~~proposals with reference to specified criteria objectively applied,~~  
23 ~~including, but not limited to, price, quality of technical proposals,~~  
24 ~~qualifications of key personnel, and other criteria~~  
25 ~~deemed~~

26 ~~appropriate by the director. objective criteria related to price,~~  
27 ~~features, functions, life cycle costs, experience, and~~  
28 ~~past~~

29 *performance.* A best value determination may entail selection of  
30 the lowest priced technically acceptable proposals or selection of  
31 the best proposal for a fixed price established by the procuring  
32 agency, or it may consist of a tradeoff between price and other  
33 specified factors.

34 (b) “Construction subcontract” means each subcontract awarded  
35 by the design-build entity to a subcontractor that will perform work  
36 or labor or render service to the design-build entity in or about the  
37 construction of the work or improvement, or a subcontractor  
38 licensed by the State of California that, under subcontract to the  
design-build entity, specially fabricates and installs a portion of  
the work or improvement according to detailed drawings contained  
in the plans and specifications produced by the design-build team.

(c) “Department” means the Department of General Services  
and the Department of Corrections and Rehabilitation.

1 (d) “Design-build” means a project delivery process in which  
2 both the design and construction of a project are procured from a  
3 single entity.

4 (e) “Design-build entity” means a corporation, limited liability  
5 company, partnership, joint venture, or other legal entity that is  
6 able to provide appropriately licensed contracting, architectural,  
7 and engineering services as needed pursuant to a design-build  
8 contract.

9 (f) “Design-build team” means the design-build entity itself and  
10 the individuals and other entities identified by the design-build  
11 entity as members of its team. Members shall include the general  
12 contractor and, if utilized in the design of the project, all electrical,  
13 mechanical, and plumbing contractors.

14 (g) “Director” means, with respect to procurements undertaken  
15 by the Department of General Services, the Director of General  
16 Services or, with respect to procurements undertaken by  
the

17 Department of Corrections and Rehabilitation, the secretary of that  
18 department.

19 10188. (a) Notwithstanding any other law, the  
director,  
20 following notification to the State Public Works Board, may  
21 procure design-build contracts for public works projects in excess  
22 of one million dollars (\$1,000,000), awarding the contract using  
23 either the low bid or best value, provided that this article shall not  
24 apply to any projects on the state highway system.

25 (b) The director shall develop guidelines for a  
standard  
26 organizational conflict-of-interest policy, consistent with applicable  
27 law, regarding the ability of a person or entity, that performs  
28 services for the department relating to the solicitation  
of a  
29 design-build project, to submit a proposal as a design-build entity,  
30 or to join a design-build team. This conflict-of-interest policy shall  
31 apply to each department entering into design-build contracts  
32 authorized under this article.

33 10189. (a) For contracts for public works projects awarded  
on

34 or after the effective date of the regulations adopted  
by the

35 Department of Industrial Relations pursuant to subdivision (g) of  
36 Section 1771.5 of the Labor Code, the department shall reimburse  
37 the Department of Industrial Relations for its reasonable and  
38 directly related costs of performing prevailing wage monitoring  
39 and enforcement on public works projects pursuant to  
rates

40 established by the department as set forth in subdivision (h) of

1 Section 1771.5 of the Labor Code. All moneys collected pursuant  
2 to this subdivision shall be deposited in the State Public Works  
3 Enforcement Fund, created by Section 1771.3 of the Labor Code,  
4 and shall, subject to appropriation by the Legislature, be used only  
5 for enforcement of prevailing wage requirements on those projects.

6 (b) In lieu of reimbursing the Department of Industrial Relations  
7 for its reasonable and directly related costs of  
performing  
8 monitoring and enforcement on public works projects,  
the  
9 department may elect to continue operating an existing previously  
10 approved labor compliance program to monitor and  
enforce

11 prevailing wage requirements on the project if it has either not  
12 contracted with a third party to conduct its labor compliance  
13 program and requests and receives approval from the department  
14 to continue its existing program or it enters into a collective  
15 bargaining agreement that binds all of the contractors performing  
16 work on the project and that includes a mechanism for resolving  
17 disputes about the payment of wages.

18 10190. The director shall notify the State Public Works Board  
19 regarding the method to be used for selecting the design-build  
20 entity, prior to advertising the design-build project.

21 10191. The procurement process for the design-build projects  
22 shall progress as follows:

23 (a) (1) The director shall prepare a set of documents setting  
24 forth the scope and estimated price of the project. The documents  
25 may include, but need not be limited to, the size, type, and desired  
26 design character of the project, performance specifications covering  
27 the quality of materials, equipment, workmanship, preliminary  
28 plans or building layouts, or any other information  
deemed

29 necessary to describe adequately the department's needs. The  
30 performance specifications and any plans shall be prepared by a  
31 design professional who is duly licensed and  
registered in

32 California.

33 (2) The documents shall not include a design-build-operate  
34 contract for any project.

35 (b) Based on the documents prepared under subdivision (a), the  
36 director shall prepare and issue a request for qualifications in order  
37 to prequalify or short-list the design-build entities whose proposals  
38 shall be evaluated for final selection. The request for qualifications  
39 shall include, but need not be limited to, the following elements:

1 (1) Identification of the basic scope and needs of the project or  
2 contract, the expected cost range, the methodology that will be  
3 used by the department to evaluate proposals, the procedure for  
4 final selection of the design-build entity, and any other information  
5 deemed necessary by the director to inform interested parties of  
6 the contracting opportunity.

7 (2) (A) Significant factors that the department  
reasonably  
8 expects to consider in evaluating qualifications, including technical  
9 design and construction expertise, skilled labor force availability,  
10 and all other nonprice-related factors.

11 (B) For purposes of subparagraph (A), skilled labor  
force  
12 availability shall be deemed satisfied by the existence  
of an  
13 agreement with a registered apprenticeship program, approved by  
14 the California Apprenticeship Council, that has graduated at least  
15 one apprentice in each of the preceding five years. This graduation  
16 requirement shall not apply to programs providing apprenticeship  
17 training for any craft that was first deemed by the  
federal

18 Department of Labor and the Department of Industrial Relations  
19 to be an apprenticeable craft within the five years prior to the  
20 effective date of this article.

21 (3) A standard template request for statements of qualifications  
22 prepared by the department. In preparing the standard template,  
23 the department may consult with the construction industry, the  
24 building trades and surety industry, and other agencies interested  
25 in using the authorization provided by this article. The template  
26 shall require the following information:

27 (A) If the design-build entity is a privately held corporation,  
28 limited liability company, partnership, or joint venture, a listing  
29 of all of the shareholders, partners, or members known at the time  
30 of statement of qualification submission who will perform work  
31 on the project.

32 (B) Evidence that the members of the design-build team have  
33 completed, or demonstrated the experience, competency, capability,  
34 and capacity to complete projects of similar size,  
scope, or

35 complexity, and that proposed key personnel have  
sufficient  
36 experience and training to competently manage and complete the  
37 design and construction of the project, and a financial statement  
38 that ensures that the design-build entity has the  
capacity to

39 complete the project.

1 (C) The licenses, registration, and credentials required to design  
2 and construct the project, including, but not limited to, information  
3 on the revocation or suspension of any license, credential, or  
4 registration.

5 (D) Evidence that establishes that the design-build entity has  
6 the capacity to obtain all required payment and performance  
7 bonding, liability insurance, and errors and omissions insurance.

8 (E) Information concerning workers' compensation experience  
9 history and a worker safety program.

10 (F) If the proposed design-build entity is a corporation, limited  
11 liability company, partnership, joint venture, or other legal entity,  
12 a copy of the organizational documents or agreement committing  
13 to form the organization.

14 (G) An acceptable safety record. A proposer's safety record  
15 shall be deemed acceptable if its experience modification rate for  
16 the most recent three-year period is an average of 1.00 or less, and  
17 its average total recordable injury or illness rate and average lost  
18 work rate for the most recent three-year period does not exceed  
19 the applicable statistical standards for its business category or if  
20 the proposer is a party to an alternative dispute resolution system  
21 as provided for in Section 3201.5 of the Labor Code.

22 (4) (A) The information required under this subdivision shall  
23 be certified under penalty of perjury by the design-build entity and  
24 its general partners or joint venture members.

25 (B) Information required under this subdivision that is not  
26 otherwise a public record under the California Public Records Act  
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
28 Title 1 of the Government Code) shall not be open to public  
29 inspection.

30 (c) Based on the documents prepared as described in subdivision  
31 (a), the director shall prepare a request for proposals that invites  
32 prequalified or short-listed entities to submit competitive sealed  
33 proposals in the manner prescribed by the department. The request  
34 for proposals shall include, but need not be limited to, the following  
35 elements:

36 (1) Identification of the basic scope and needs of the project or  
37 contract, the estimated cost of the project, the methodology that  
38 will be used by the department to evaluate proposals, whether the  
39 contract will be awarded on the basis of low bid or best value, and

1 an (C) of the information registered, and essential the department design  
2 inform interested parties of the contracting opportunity.

3 (2) Significant factors that the department reasonably expects  
4 to consider in evaluating proposals, including, but not limited to,  
5 cost or price and all nonprice-related factors.

6 (3) The relative importance or the weight assigned to each of  
7 the factors identified in the request for proposals.

8 (4) Where a best value selection method is used, the department  
9 may reserve the right to request proposal revisions and hold  
10 discussions and negotiations with responsive proposers, in which  
11 case the department shall so specify in the request for proposals  
12 and shall publish separately or incorporate into the request for  
13 proposals applicable procedures to be observed by the department  
14 to ensure that any discussions or negotiations are conducted in  
15 good faith.

16 (d) For those projects utilizing low bid as the final selection  
17 method, the competitive bidding process shall result in lump-sum  
18 bids by the prequalified or short-listed design-build entities, and  
19 awards shall be made to the design-build entity that is the lowest  
20 responsible bidder.

21 (e) For those projects utilizing best value as a selection method,  
22 the design-build competition shall progress as follows:

23 (1) Competitive proposals shall be evaluated by using only the  
24 criteria and selection procedures specifically identified in the  
25 request for proposals.

26 (2) Pursuant to subdivision (c), the department may hold  
27 discussions or negotiations with responsive proposers using the  
28 process articulated in the department's request for proposals.

29 (3) When the evaluation is complete, the responsive proposers  
30 shall be ranked based on a determination of value provided,  
31 provided that no more than three proposers are required to be  
32 ranked.

33 (4) The award of the contract shall be made to the responsible  
34 design-build entity whose proposal is determined by the director  
35 to have offered the best value to the public.

36 (5) Notwithstanding any other provision of this code, upon  
37 issuance of a contract award, the director shall publicly announce  
38 its award, identifying the design-build entity to which the award  
39 is made, along with a written decision supporting its contract award  
40 and stating the basis of the award.

1 (6) The written decision supporting the director’s contract award,  
2 described in paragraph (5), and the contract file shall provide  
3 sufficient information to satisfy an external audit.

4 10192. (a) The design-build entity shall provide payment  
and  
5 performance bonds for the project in the form and in the amount  
6 required by the director, and issued by a California admitted surety.  
7 The amount of the payment bond shall not be less than the amount  
8 of the performance bond.

9 (b) The design-build contract shall require errors and omissions  
10 insurance coverage for the design elements of the project.

11 (c) The department shall develop a standard form of payment  
12 and performance bond for its design-build projects.

13 10193. (a) The department, in each design-build request for  
14 proposals, may identify specific types of subcontractors that must  
15 be included in the design-build entity statement of qualifications  
16 and proposal. All construction subcontractors that are identified  
17 in the proposal shall be afforded all the protections of Chapter 4  
18 (commencing with Section 4100) of Part 1.

19 (b) Following award of the design-build contract, the  
20 design-build entity shall proceed as follows in awarding  
21 construction subcontracts with a value exceeding one-half of 1  
22 percent of the contract price allocable to construction work:

23 (1) Provide public notice of availability of work to be  
24 subcontracted in accordance with the publication requirements  
25 applicable to the competitive bidding process of the department,  
26 including a fixed date and time on which qualifications statements,  
27 bids, or proposals will be due.

28 (2) Establish reasonable qualification criteria and standards.

29 (3) Award the subcontract either on a best value basis or to the  
30 lowest responsible bidder. The process may include prequalification  
31 or short-listing. The foregoing process does not apply to  
32 construction subcontractors listed in the original proposal.  
33 Subcontractors awarded construction subcontracts under this  
34 subdivision shall be afforded all the protections of Chapter 4  
35 (commencing with Section 4100) of Part 1.

36 ~~10194. (a) If the department elects to award a project pursuant~~  
37 ~~to this article, retention proceeds withheld by the department from~~  
38 ~~the design-build entity shall not exceed 5 percent, except as~~  
39 ~~otherwise specified in this section.~~

11 ~~(6) The written contract between the design-build entity and the~~  
 12 ~~subcontractor, and in a contract between a subcontractor and any~~  
 13 ~~subcontractor thereunder, the percentage of the retention proceeds~~  
 14 ~~withheld may not exceed the percentage specified in the contract~~  
 15 ~~between the department and the design-build entity.~~

16 ~~(2) This subdivision shall not apply if the design-build entity~~  
 17 ~~provides written notice to any subcontractor that is not a member~~  
 18 ~~of the design-build entity, prior to, or at the time the bid is~~  
 19 ~~requested from the subcontractor, that a bond may be required and~~  
 20 ~~the subcontractor subsequently is unable or refuses to furnish a~~  
 21 ~~bond to the design-build entity, then the design-build entity may~~  
 22 ~~withhold retention proceeds in excess of the percentage specified~~  
 23 ~~in the contract between the department and the design-build entity~~  
 24 ~~from any payment made by the design-build entity~~  
 25 ~~to the~~

26 ~~subcontractor.~~

27 ~~(3) Notwithstanding any other provision of this section, the~~  
 28 ~~retention proceeds withheld from any payment by a department~~  
 29 ~~from the original design-build entity, by the original design-build~~  
 30 ~~entity contractor from any subcontractor, and by a subcontractor~~  
 31 ~~from any subcontractor thereunder, may exceed 5 percent on~~  
 32 ~~specific projects where the director has made a finding prior to the~~  
 33 ~~proposal due date that the project is substantially complex and~~  
 34 ~~therefore requires a higher retention amount than 5 percent, and~~  
 35 ~~the department includes both this finding and the actual retention~~  
 36 ~~amount in the procurement documents.~~

37 *10194. (a) If the department elects to award a project pursuant*  
 38 *to this article, retention proceeds withheld by the department from*  
 39 *the design-build entity shall not exceed 5 percent if a performance*  
 40 *and payment bond, issued by an admitted surety insurer, is required*  
*in the solicitation of bids.*

*(b) In a contract between the design-build entity*  
*and a*  
*subcontractor, and in a contract between a subcontractor and any*  
*subcontractor thereunder, the percentage of the retention proceeds*  
*withheld may not exceed the percentage specified in the contract*  
*between the department and the design-build entity.*

*If the*  
*design-build entity provides written notice to any subcontractor*  
*that is not a member of the design-build entity, prior to or at the*  
*time the bid is requested, that a bond may be required and the*  
*subcontractor subsequently is unable or refuses to furnish a bond*  
*to the design-build entity, then the design build entity may withhold*

1 *retention proceeds in excess of the percentage specified in the*  
2 *contract between the department and the design-build entity from*  
3 *any payment made by the design-build entity to the subcontractor.*

4 ~~10194.~~

5 10195. Nothing in this article affects, expands, alters, or limits  
6 any rights or remedies otherwise available at law.

7 SEC. 6. Section 20133 of the Public Contract Code is repealed.

8 SEC. 7. Section 20175.2 of the Public Contract  
Code is

9 repealed.

10 SEC. 8. Section 20193 of the Public Contract Code is repealed.

11 SEC. 9. Section 20209 of the Public Contract Code is repealed.

12 SEC. 10. Section 20301.5 of the Public Contract Code is  
13 repealed.

14 SEC. 11. Article 22 (commencing with Section 20360) of  
15 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is  
16 repealed.

17 SEC. 12. Section 20688.6 of the Public Contract Code is  
18 repealed.

19 SEC. 13. Chapter 4 (commencing with Section 22160) is added  
20 to Part 3 of Division 2 of the Public Contract Code, to read:

21

22 **Chapter 4. Local Agency Design-Build Projects**

23

24 22160. (a) The Legislature finds and declares that the  
25 design-build method of project delivery, using a best value  
26 procurement methodology, has been authorized for various  
27 agencies that have reported benefits from such projects including  
28 reduced project costs, expedited project completion, and design  
29 features that are not achievable through the traditional  
30 design-bid-build method.

31 (b) It is the intent of the Legislature that the following occur:

32 (1) This article provides general authorization for local agencies  
33 to use design-build for projects, excluding projects on the state  
34 highway system.

35 (2) This article shall not be deemed to provide a preference for  
36 the design-build method over other procurement methodologies.

37 22161. For purposes of this article, the following definitions  
38 apply:

39 (a) "Best value" means a value determined by evaluation of  
40 ~~proposals with reference to specified criteria objectively applied;~~

1 including, but not limited to, price, quality of technical proposals,  
2 qualifications of key personnel, and other criteria  
deemed

3 appropriate by the local agency. *objective criteria related to price,*  
4 *features, functions, life cycle costs, experience, and*  
*past*

5 *performance.* A best value determination may entail selection of  
6 the lowest priced technically acceptable proposal or selection of  
7 the best proposal for a fixed price established by the procuring  
8 agency, or it may consist of a tradeoff between price and other  
9 specified factors.

10 (b) “Construction subcontract” means each subcontract awarded  
11 by the design-build entity to a subcontractor that will perform work  
12 or labor or render service to the design-build entity in or about the  
13 construction of the work or improvement, or a subcontractor  
14 licensed by the State of California that, under subcontract to the  
15 design-build entity, specially fabricates and installs a portion of  
16 the work or improvement according to detailed drawings contained  
17 in the plans and specifications produced by the design-build team.

18 (c) “Design-build” means a project delivery process in which  
19 both the design and construction of a project are procured from a  
20 single entity.

21 (d) “Design-build entity” means a corporation, limited liability  
22 company, partnership, joint venture, or other legal entity that is  
23 able to provide appropriately licensed contracting, architectural,  
24 and engineering services as needed pursuant to a design-build  
25 contract.

26 (e) “Design-build team” means the design-build entity itself  
27 and the individuals and other entities identified by the design-build  
28 entity as members of its team. Members shall include the general  
29 contractor and, if utilized in the design of the project, all electrical,  
30 mechanical, and plumbing contractors.

31 (f) “Local agency” means the following:

32 (1) A city, county, or city and county.

33 (2) A special district that operates wastewater facilities, solid  
34 waste management facilities, or water recycling facilities.

35 (3) Any transit district, included transit district,  
municipal

36 operator, included municipal operator, or transit  
development

37 board, as defined in Section 99210 of the Public Utilities Code, or  
38 a consolidated agency, as defined in Section 132353.1 of the Public  
39 Utilities Code, or any joint powers authority formed to provide  
40 transit service.

1 (g) (1) For a local agency defined in paragraph  
2 (1) of  
3 subdivision (f), “project” means the construction of a building  
4 and improvements directly related to the construction of a building,  
5 and county sanitation wastewater treatment facilities, but does  
6 not include the construction of other infrastructure, including, but  
7 not limited to, streets and highways, public rail transit, or water  
8 resources facilities and infrastructure. For a local agency defined  
9 in paragraph (1) of subdivision (f) that operates  
10 wastewater  
11 facilities, solid waste management facilities, or water recycling  
12 facilities, “project” also means the construction of regional and  
13 local wastewater treatment facilities, regional and local solid  
14 waste facilities, or regional and local water recycling facilities.

15 (2) For a local agency defined in paragraph (2) of subdivision  
16 (f), “project” means the construction of regional and  
17 local  
18 wastewater treatment facilities, regional and local solid waste  
19 facilities, or regional and local water recycling facilities.

20 (3) For a local agency defined in paragraph (3) of subdivision  
21 (f), “project” means a transit capital project.

22 22162. (a) Notwithstanding any other law, a local agency,  
23 with approval of its governing body, may procure design-build  
24 contracts for public works projects in excess of one million dollars  
25 (\$1,000,000), awarding the contract either the low bid or the best  
26 value, provided that this article shall not apply to any projects on  
27 the state highway system.

28 (b) The local agency shall develop guidelines for a standard  
29 organizational conflict-of-interest policy, consistent with applicable  
30 law, regarding the ability of a person or entity, that performs  
31 services for the local agency relating to the solicitation of a  
32 design-build project, to submit a proposal as a design-build entity,  
33 or to join a design-build team. This conflict-of-interest policy shall  
34 apply to each local agency entering into design-build contracts  
35 authorized under this article.

36 22163. (a) For contracts for public works projects awarded  
37 on  
38 or after the effective date of the regulations adopted  
39 by the  
40 Department of Industrial Relations pursuant to subdivision (g) of  
41 Section 1771.5 of the Labor Code, the local agency shall reimburse  
42 the department for its reasonable and directly related costs of  
43 performing prevailing wage monitoring and enforcement on public  
44 works projects pursuant to rates established by the department as  
45 set forth in subdivision (h) of Section 1771.5 of the Labor Code.

1 All moneys collected pursuant to this subdivision shall be deposited  
2 in the State Public Works Enforcement Fund, created by Section  
3 1771.3 of the Labor Code, and shall, subject to appropriation by  
4 the Legislature, be used only for enforcement of prevailing wage  
5 requirements on those projects.

6 (b) In lieu of reimbursing the Department of Industrial Relations  
7 for its reasonable and directly related costs of  
performing  
8 monitoring and enforcement on public works projects, the local  
9 agency may elect to continue operating an existing previously  
10 approved labor compliance program to monitor and  
enforce

11 prevailing wage requirements on the project if it has either not  
12 contracted with a third party to conduct its labor compliance  
13 program and requests and receives approval from the department  
14 to continue its existing program or it enters into a collective  
15 bargaining agreement that binds all of the contractors performing  
16 work on the project and that includes a mechanism for resolving  
17 disputes about the payment of wages.

18 22164. The procurement process for the design-build projects  
19 shall progress as follows:

20 (a) (1) The local agency shall prepare a set of documents setting  
21 forth the scope and estimated price of the project. The documents  
22 may include, but need not be limited to, the size, type, and desired  
23 design character of the project, performance specifications covering  
24 the quality of materials, equipment, workmanship, preliminary  
25 plans or building layouts, or any other information  
deemed

26 necessary to describe adequately the local agency's needs. The  
27 performance specifications and any plans shall be prepared by a  
28 design professional who is duly licensed and  
registered in

29 California.

30 (2) The documents shall not include a design-build-operate  
31 contract for any project.

32 (b) Based on the documents prepared under subdivision (a), the  
33 local agency shall prepare and issue a request for qualifications in  
34 order to prequalify or short-list the design-build entities whose  
35 proposals shall be evaluated for final selection. The request for  
36 qualifications shall include, but need not be limited to,  
the

37 following elements:

38 (1) Identification of the basic scope and needs of the project or  
39 contract, the expected cost range, the methodology that will be  
40 used by the local agency to evaluate proposals, the procedure for

1 final selection of the design-build entity, and any other information  
2 deemed necessary by the local agency to inform interested parties  
3 of the contracting opportunity.

4 (2) (A) Significant factors that the local agency reasonably  
5 expects to consider in evaluating qualifications, including technical  
6 design and construction expertise, skilled labor force availability,  
7 and all other nonprice-related factors.

8 (B) For purposes of subparagraph (A), skilled labor  
9 force  
10 availability shall be deemed satisfied by the existence  
11 of an

12 agreement with a registered apprenticeship program, approved by  
13 the California Apprenticeship Council, that has graduated at least  
14 one apprentice in each of the preceding five years. This graduation  
15 requirement shall not apply to programs providing apprenticeship  
16 training for any craft that was first deemed by the  
17 federal

18 Department of Labor and the Department of Industrial Relations  
19 to be an apprenticeable craft within the five years prior to the  
20 effective date of this article.

21 (3) A standard template request for statements of qualifications  
22 prepared by the local agency. In preparing the standard template,  
23 the local agency may consult with the construction industry, the  
24 building trades and surety industry, and other local  
25 agencies

26 interested in using the authorization provided by this article. The  
27 template shall require the following information:

28 (A) If the design-build entity is a privately held corporation,  
29 limited liability company, partnership, or joint venture, a listing  
30 of all of the shareholders, partners, or members known at the time  
31 of statement of qualification submission who will perform work  
32 on the project.

33 (B) Evidence that the members of the design-build team have  
34 completed, or demonstrated the experience, competency, capability,  
35 and capacity to complete projects of similar size,  
36 scope, or

37 complexity, and that proposed key personnel have  
38 sufficient  
39 experience and training to competently manage and complete the  
40 design and construction of the project, and a financial statement  
41 that ensures that the design-build entity has the  
42 capacity to

43 complete the project.

44 (C) The licenses, registration, and credentials required to design  
45 and construct the project, including, but not limited to, information  
46 on the revocation or suspension of any license, credential, or  
47 registration.

1 (D) Evidence that establishes that the design-build entity has  
2 the capacity to obtain all required payment and performance  
3 bonding, liability insurance, and errors and omissions insurance.

4 (E) Information concerning workers' compensation experience  
5 history and a worker safety program.

6 (F) If the proposed design-build entity is a corporation, limited  
7 liability company, partnership, joint venture, or other legal entity,  
8 a copy of the organizational documents or agreement committing  
9 to form the organization.

10 (G) An acceptable safety record. A proposer's safety record  
11 shall be deemed acceptable if its experience modification rate for  
12 the most recent three-year period is an average of 1.00 or less, and  
13 its average total recordable injury or illness rate and average lost  
14 work rate for the most recent three-year period does not exceed  
15 the applicable statistical standards for its business category or if  
16 the proposer is a party to an alternative dispute resolution system  
17 as provided for in Section 3201.5 of the Labor Code.

18 (4) (A) The information required under this subdivision shall  
19 be certified under penalty of perjury by the design-build entity and  
20 its general partners or joint venture members.

21 (B) Information required under this subdivision that is not  
22 otherwise a public record under the California Public Records Act  
23 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
24 Title 1 of the Government Code) shall not be open to public  
25 inspection.

26 (c) Based on the documents prepared as described in subdivision  
27 (a), the local agency shall prepare a request for proposals that  
28 invites prequalified or short-listed entities to submit competitive  
29 sealed proposals in the manner prescribed by the local agency.  
30 The request for proposals shall include, but need not be limited  
31 to, the following elements:

32 (1) Identification of the basic scope and needs of the project or  
33 contract, the estimated cost of the project, the methodology that  
34 will be used by the local agency to evaluate proposals, whether  
35 the contract will be awarded on the basis of low bid or best value,  
36 and any other information deemed necessary by the local agency  
37 to inform interested parties of the contracting opportunity.

38 (2) Significant factors that the local agency reasonably expects  
39 to consider in evaluating proposals, including, but not limited to,  
40 cost or price and all nonprice-related factors.

1 (3) The relative importance or the weight assigned to each of  
2 the factors identified in the request for proposals.

3 (4) Where a best value selection method is used, the local agency  
4 may reserve the right to request proposal revisions and hold  
5 discussions and negotiations with responsive proposers, in which  
6 case the local agency shall so specify in the request for proposals  
7 and shall publish separately or incorporate into the request for  
8 proposals applicable procedures to be observed by the local agency  
9 to ensure that any discussions or negotiations are conducted in  
10 good faith.

11 (d) For those projects utilizing low bid as the final selection  
12 method, the competitive bidding process shall result in lump-sum  
13 bids by the prequalified or short-listed design-build entities, and  
14 awards shall be made to the design-build entity that is the lowest  
15 responsible bidder.

16 (e) For those projects utilizing best value as a selection method,  
17 the design-build competition shall progress as follows:

18 (1) Competitive proposals shall be evaluated by using only the  
19 criteria and selection procedures specifically identified in the  
20 request for proposals.

21 (2) Pursuant to subdivision (c), the local agency may hold  
22 discussions or negotiations with responsive proposers using the  
23 process articulated in the local agency's request for proposals.

24 (3) When the evaluation is complete, the responsive proposers  
25 shall be ranked based on a determination of value provided,  
26 provided that no more than three proposers are required to be  
27 ranked.

28 (4) The award of the contract shall be made to the responsible  
29 design-build entity whose proposal is determined by the local  
30 agency to have offered the best value to the public.

31 (5) Notwithstanding any other provision of this code, upon  
32 issuance of a contract award, the local agency shall publicly  
33 announce its award, identifying the design-build entity to which  
34 the award is made, along with a written decision supporting its  
35 contract award and stating the basis of the award.

36 (6) The written decision supporting the local agency's contract  
37 award, described in paragraph (5), and the contract file shall  
38 provide sufficient information to satisfy an external audit.

39 22165. (a) The design-build entity shall provide payment and  
40 performance bonds for the project in the form and in the amount

1 required by the local agency, and issued by a California admitted  
2 surety. The amount of the payment bond shall not be less than the  
3 amount of the performance bond.

4 (b) The design-build contract shall require errors and omissions  
5 insurance coverage for the design elements of the project.

6 (c) The local agency shall develop a standard form of payment  
7 and performance bond for its design-build projects.

8 22166. (a) The local agency, in each design-build request for  
9 proposals, may identify specific types of subcontractors that must  
10 be included in the design-build entity statement of qualifications  
11 and proposal. All construction subcontractors that are identified  
12 in the proposal shall be afforded all the protections of Chapter 4  
13 (commencing with Section 4100) of Part 1.

14 (b) Following award of the design-build contract, the  
15 design-build entity shall proceed as follows in awarding  
16 construction subcontracts with a value exceeding one-half of 1  
17 percent of the contract price allocable to construction work:

18 (1) Provide public notice of availability of work to be  
19 subcontracted in accordance with the publication requirements  
20 applicable to the competitive bidding process of the local agency,  
21 including a fixed date and time on which qualifications statements,  
22 bids, or proposals will be due.

23 (2) Establish reasonable qualification criteria and standards.

24 (3) Award the subcontract either on a best value basis or to the  
25 lowest responsible bidder. The process may include prequalification  
26 or short-listing. The foregoing process does not apply to  
27 construction subcontractors listed in the original proposal.  
28 Subcontractors awarded construction subcontracts under this  
29 subdivision shall be afforded all the protections of Chapter 4  
30 (commencing with Section 4100) of Part 1.

31 ~~22167. (a) If the local agency elects to award a project pursuant~~  
32 ~~to this article, retention proceeds withheld by the local agency~~  
33 ~~from the design-build entity shall not exceed 5 percent, except as~~  
34 ~~otherwise specified in this section.~~

35 ~~(b) (1) In a contract between the design-build entity and the~~  
36 ~~subcontractor, and in a contract between a subcontractor and any~~  
37 ~~subcontractor thereunder, the percentage of the retention proceeds~~  
38 ~~withheld may not exceed the percentage specified in the contract~~  
39 ~~between the local agency and the design-build entity.~~

1 ~~(2) This subdivision shall not apply if the design-build entity~~  
2 ~~provides written notice to any subcontractor that is not a member~~  
3 ~~of the design-build entity, prior to, or at the time the bid is~~  
4 ~~requested from the subcontractor, that a bond may be required and~~  
5 ~~the subcontractor subsequently is unable or refuses to furnish a~~  
6 ~~bond to the design-build entity, then the design-build entity may~~  
7 ~~withhold retention proceeds in excess of the percentage specified~~  
8 ~~in the contract between the local agency and the design-build entity~~  
9 ~~from any payment made by the design-build entity~~  
to the

10 subcontractor.

11 ~~(3) Notwithstanding any other provision of this chapter, the~~  
12 ~~retention proceeds withheld from any payment by a local agency~~  
13 ~~from the original design-build entity, by the original design-build~~  
14 ~~entity contractor from any subcontractor, and by a subcontractor~~  
15 ~~from any subcontractor thereunder, may exceed 5 percent on~~  
16 ~~specific projects if the governing body of the public entity or~~  
17 ~~designee, including, but not limited to, a general manager or other~~  
18 ~~director of an appropriate department, has approved a finding~~  
19 ~~during a properly noticed and normally scheduled public hearing~~  
20 ~~and prior to the proposal due date that the project is substantially~~  
21 ~~complex and therefore requires a higher retention amount than 5~~  
22 ~~percent, and the local agency includes both this finding and the~~  
23 ~~actual retention amount in the procurement documents.~~

24 *22167. (a) If the local agency elects to award a*  
*project*  
25 *pursuant to this article, retention proceeds withheld by the local*  
26 *agency from the design-build entity shall not exceed 5 percent if*  
27 *a performance and payment bond, issued by an admitted surety*  
28 *insurer, is required in the solicitation of bids.*

29 *(b) In a contract between the design-build entity*  
*and a*  
30 *subcontractor, and in a contract between a subcontractor and any*  
31 *subcontractor thereunder, the percentage of the retention proceeds*  
32 *withheld may not exceed the percentage specified in the contract*  
33 *between the local agency and the design-build entity.*

*If the*  
34 *design-build entity provides written notice to any subcontractor*  
35 *that is not a member of the design-build entity, prior to or at the*  
36 *time the bid is requested, that a bond may be required and the*  
37 *subcontractor subsequently is unable or refuses to furnish a bond*  
38 *to the design-build entity, then the design-build entity may withhold*  
39 *retention proceeds in excess of the percentage specified in the*

1 *contract between the local agency and the design-build entity from*  
2 *any payment made by the design-build entity to the subcontractor.*

3 22168. Nothing in this article affects, expands, alters, or limits  
4 any rights or remedies otherwise available at law.

5 SEC. 14. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.

**SENATE GOVERNANCE & FINANCE COMMITTEE**  
**Senator Lois Wolk, Chair**

**BILL NO:** SB 785  
**AUTHOR:** Wolk  
**VERSION:** 4/23/13  
**CONSULTANT:** Weinberger

**HEARING:** 5/1/13  
**FISCAL:** Yes  
**TAX LEVY:** No

***DESIGN-BUILD CONTRACTING***

*Repeals state laws authorizing state and local government agencies to use design-build contracting and enacts new, uniform statutes governing agencies' design-build contracts.*

**Background and Existing Law**

The Local Agency Public Construction Act requires local officials to invite bids for construction projects and then award contracts to the lowest responsible bid-der. This ***design-bid-build*** method is the traditional, and most widely-used, approach to public works construction. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. Once project designs are complete, local officials invite bids from the construction community and award the contract to the lowest responsible bidder.

By contrast, state law also allows state and local officials to use the ***design-build*** method to procure both design and construction services from a single company before the development of complete plans and specifications. Under design-build, the owner contracts with a single entity – which can be a single firm, a consortium, or a joint venture – to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price.

All counties can use the design-build method to construct buildings and related improvements and wastewater treatment facilities that cost more than \$2.5 million (SB 416, Ashburn, 2007). Similarly, all cities can use the design-build method to construct buildings and related improvements worth more than \$1 million (AB 642, Wolk, 2008). A pilot program also permits cities, counties, and special districts to use the design-build method to construct 20 local wastewater treatment facilities, local solid waste facilities, or local water recycling facilities (AB 642, Wolk 2008).

The Legislature has also passed a number of bills authorizing some special districts to construct projects using the design-build method, including: the Santa Clara Valley Transportation Authority (AB 904, Alquist, 1999), specified transit operators (AB 958, Scott, 2000), the Santa Clara Valley Water District (AB 674, Dutra, 2001), the Orange County Sanitation District (SB 645, Correa, 2007), and the Sonoma Valley Health Care District (SB 1699, Wiggins, 2008).

State law allows the California Department of General Services (DGS) and the California Department of Corrections and Rehabilitation (CDCR) to use the design-build method to construct specified structures, including office facilities and prison facilities (SBX2 4, Cogdill, 2009).

To make the state laws authorizing design-build contracting more uniform and easier to use, some practitioners want the Legislature to consolidate the numerous design-build statutes into statutes that generally apply to state agencies and local governments.

## Proposed Law

Senate Bill 785 repeals statutes authorizing the Department of General Services (DGS), the Department of Corrections and Rehabilitation (CDCR), and local agencies to use the design-build procurement process and enacts new statutes authorizing DGS, CDCR and local agencies to utilize the design-build procurement process for specified public works projects.

Specifically:

SB 785 defines “design-build” as a project delivery process in which both the design and construction of a project are procured from a single entity.

The bill authorizes DGS, CDCR, cities and counties, transit districts, and special districts operating wastewater, water recycling, or solid waste management facilities to procure design-build public works contracts, in excess of \$1 million, using either a low bid or best value process. State highway system construction projects are excluded from the types of projects that may be constructed using the design-build method. The bill defines the specific types of projects that cities, counties, and special districts can build using the design-build method.

SB 785 defines “best value” as the value determined by evaluation of proposals according to objective criteria related to price, features, functions, life cycle costs, experience, and past performance. A best value determination may entail any of the following:

- Selection of the lowest priced technically acceptable proposals;
- Selection of the best proposal for a fixed price established by the procuring agency; or
- A tradeoff between price and other specified factors.

SB 785 defines “construction subcontract” as a subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in connection with the project, or a subcontractor that specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

The bill requires the awarding authority to develop guidelines for a standard organizational conflict-of-interest policy in connection with design-build projects.

SB 785 requires the awarding authority to reimburse the Department of Industrial Relations for its costs of performing prevailing wage monitoring and enforcement on public works projects. Alternatively, the awarding authority may continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project under specified circumstances.

SB 785 outlines a standardized design-build procurement process in which the awarding authority may prepare a list of qualified or short-listed entities, based on specified criteria. Once a list of qualified or short-listed entities is complete, the awarding authority may prepare a request for proposals (RFP) that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the awarding authority.

For projects utilizing low bid as the selection method, SB 785 requires that the competitive bidding process must involve lump-sum bids by the prequalified or short-listed design-build entities. Awards must be made to the design-build entity that is the lowest responsible bidder.

For those projects utilizing best value as a selection method, SB 785 requires that proposals must be evaluated using only the criteria and selection procedures specifically identified in the RFP. The awarding authority may reserve the right to request revisions and conduct negotiations with responsive proposers, if the authority specifies in the RFP how it will ensure that negotiations are conducted in good faith. The authority may hold discussions or negotiations with responsive proposers using the process specified in the RFP. Responsive proposers are ranked based on value provided. The contract must be awarded to the responsible design-build entity whose proposal is determined by the authority to have

offered the best value to the public. Upon issuance of a contract award, the awarding authority shall publicly announce its award, identifying the design-build entity to which the award is made, along with a written decision supporting its contract award and stating the basis of the award.

SB 785 requires the design-build entity to provide payment and performance bonds for the project in the form and in the amount required by the awarding authority. The amount of the payment bond shall not be less than the amount of the performance bond.

SB 785 provides that the retention proceeds withheld by the agency from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids. The bill also applies the 5% limit to contracts with subcontractors and specifies conditions under which the 5% limit can be exceeded.

The bill requires the design-build contract to provide errors and omissions insurance coverage for the design elements of the project.

SB 785 requires the awarding authority to develop a standard form of payment and performance bond for its design-build projects.

SB 785 specifies that agencies may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal.

The bill deletes existing laws requiring design-build reporting to the Legislative Analyst.

SB 785 provides that the provisions of the bill do not affect, expand, alter or limit any rights or remedies otherwise available at law.

#### **State Revenue Impact**

No estimate.

#### **Comments**

1. Purpose of the bill. In 2005, the Legislative Analyst's Office published a review of state and local design-build practices and recommended that the Legislature should adopt an inclusive, uniform design-build statute that applies to all public entities. The report noted that the 17 statutes that authorized design-build contracts contained different sunset dates, definitions, and project cost thresholds. The LAO suggested that a uniform statute would provide contractors and public officials with a consistent business environment within which to operate throughout the state. Since 2005, more than a dozen bills have made additional changes to the various design-build statutes. As suggested by the LAO, SB 785 rewrites design-build statutes to eliminate inconsistencies in existing law and consolidate state and local agencies' statutory authority to develop projects using design-build. By consolidating statutes and creating more uniform requirements, SB 785 makes the state laws governing the design-build method clearer, more flexible, and easier to use.

2. One more clarification. Although SB 785's revisions clarify some confusing design-build provisions in state law, a public employees' union notes that the bill fails to clarify a statute that was meant to require the Department of Transportation (Caltrans) to perform construction inspection and related services on state highway projects. The ambiguous statute was part of a negotiated agreement that was enacted by SBX2 4 (Cogdill, 2009), which authorized Caltrans to use design-build for up to ten state highway, bridge, or tunnel projects. A recent court decision suggests that current law makes Caltrans responsible for the performance of specified work but doesn't require Caltrans to actually perform the work. Some of SB 785's opponents suggest that any effort to make current design-build statutes clearer should include language clarifying the original legislative intent behind the Cogdill bill's guarantee that Caltrans would perform construction inspection services on state highway projects. *The Committee may wish to consider amending SB*

785 to clarify that state law doesn't allow Caltrans to outsource the performance of construction inspection and related services and requires that Caltrans employees must perform those services.

3. Cross-reference correction. State law allows the Sonoma Valley Health Care District, a local government formed under provisions of the Local Health Care District Law, to construct a hospital or health facility building using the design-build method (SB 1699, Wiggins, 2008). The Wiggins bill allowed the District to follow the counties' design-build statute. SB 785 amends current law to allow the District, instead, to use the design-build statutes that the bill enacts for state agencies. Because the District is a local government, not a state agency, *the Committee may wish to consider amending SB 785 to allow the Sonoma Valley Health Care District to use the new uniform design-build statutes for local governments.*

4. Substantive changes. While SB 785 largely replicates the state laws that already govern how state and local projects can be constructed using the design-build method, it makes some changes to current law. The bill makes three particularly substantive changes:

- Lowering, from \$2.5 million to \$1 million, the value of projects that counties can construct using design-build; and,
- Eliminating the sunset dates that would have automatically repealed some statutes authorizing the use of the design-build method.
- Eliminates the cap on the number of projects that the state can construct using the design-build method for specified types of projects.

5. Mandate. SB 785 requires that specified information provided by bidders in response to a request for qualifications must be certified under penalty of perjury. By creating a new crime, SB 785 also creates a new state-mandated program. But the bill disclaims the state's responsibility for reimbursing local governments for enforcing these new crimes. That's consistent with the California Constitution, which says that the state does not have to reimburse local governments for the costs of new crimes (Article XIII B, 6[a][2]).

6. Similar legislation. Legislation enacted last year extended, from 2014 to 2020, the sunset date on statutes authorizing K-12 and California Community College districts to utilize design-build contracts for the design and construction of education facilities (SB 1509, Simitian, 2012). Earlier this year, the Senate Governance & Finance Committee approved legislation authorizing counties to use the "construction manager at-risk" procurement methodology for building projects worth more than \$1 million (SB 328, Knight, 2013).

7. Double-referral. Because some of SB 785's provisions fall within the jurisdictions of the Senate Governmental Organization Committee and the Senate Governance & Finance Committee, the Senate Rules Committee ordered a double-referral. The Senate Governmental Organization Committee passed the bill at its April 9 hearing by a 10-0 vote.

### **Support and Opposition** (4/25/13)

Support: Associated General Contractors of California; California Special Districts Association; California State Association of Counties; California State Council of Laborers; County of San Bernardino; Design-Build Institute of America, Western Pacific Region; Infrastructure Delivery Council; Los Angeles County Board of Supervisors.

Opposition: Air Conditioning Trade Association; Associated Builders and Contractors of California; Plumbing-Heating-Cooling Contractors Association of California; Professional Engineers in California Government; Western Electrical Contractors Association.

**SENATE BILL**

**No. 791**

**Introduced by Senator Wyland**

February 22, 2013

~~An act to amend Section 14501 of the Public Resources Code, relating to beverage containers.~~ *An act to amend Section 7360 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

**legislative counsel's digest**

SB 791, as amended, Wyland. ~~Beverage containers: recycling.~~ *Motor vehicle fuel tax: rate adjustment.*

*Existing law, as of July 1, 2010, exempts the sale of, and the storage, use, or other consumption of, motor vehicle fuel from specified sales and use taxes and increases the excise tax on motor vehicle fuel, as provided. Existing law requires the State Board of Equalization to annually adjust the excise tax rate for the state's next fiscal year so that the revenues from the sales and use tax exemption and motor vehicle fuel excise tax increase are revenue neutral.*

*This bill would eliminate the requirement that the State Board of Equalization adjust the rate of the excise tax on motor vehicle fuel, and instead would require the Department of Finance to annually calculate that rate and report that calculated rate to the Joint Legislative Budget Committee. The rate for the state's next fiscal year would remain the same as the rate of the current fiscal year or would decrease, as provided. This bill would further state that the rate may increase upon a further act by the Legislature.*

*This bill would take effect immediately as a tax levy.*



1 (B) The Department of Finance shall report, on or before March  
2 1, 2014, and each March 1 thereafter, the rate calculated pursuant  
3 to subparagraph (A) to the Joint Legislative Budget Committee.

4 (i) If the Department of Finance finds that the calculated rate  
5 is equal to or less than the rate of the current fiscal year, the  
6 calculated rate shall be the rate that is effective during the state's  
7 next fiscal year.

8 (ii) If the Department of Finance finds that the calculated rate  
9 is greater than the rate of the current fiscal year, the rate effective  
10 for the state's next fiscal year shall continue to be the rate of the  
11 current fiscal year, unless the rate is increased by an act passed  
12 by not less than two-thirds of the membership of each house of the  
13 Legislature.

14 (iii) The Department of Finance shall notify the State Board of  
15 Equalization and the Controller of the rate that is effective during  
16 the state's next fiscal year.

17 (3) ~~In order to maintain revenue neutrality for each~~  
~~year,~~

18 ~~beginning~~ Beginning with the rate adjustment on or before March  
19 1, 2012, the adjustment under paragraph (2) shall also take into  
20 account the extent to which the actual amount of revenues derived  
21 pursuant to this subdivision and, as applicable, Section 7361.1,  
22 and the revenue loss attributable to the exemption provided by  
23 Section 6357.7 resulted in a net revenue gain or loss for the fiscal  
24 year ending prior to the rate adjustment date on or before March  
25 1.

26 ~~(4) The intent of paragraphs (2) and (3) is to ensure that the act~~  
27 ~~adding this subdivision and Section 6357.7 does not produce a net~~  
28 ~~revenue gain in state taxes.~~

29 SEC. 2. This act provides for a tax levy within the meaning of  
30 Article IV of the Constitution and shall go into immediate effect.

31 SECTION 1. Section 14501 of the Public Resources Code is  
32 amended to read:

33 14501. The Legislature finds and declares as follows:

34 (a) ~~Experience in this state and others demonstrates that financial~~  
35 ~~incentives and convenient return systems ensure the efficient and~~  
36 ~~large-scale recycling of beverage containers. Accordingly, it is the~~  
37 ~~intent of the Legislature to encourage increased, and~~  
~~more~~

38 ~~convenient, beverage container redemption opportunities for all~~  
39 ~~consumers. These redemption opportunities shall consist of dealer~~  
40 ~~and other shopping center locations, independent and industry~~



1 ~~(i) Nothing in this division shall be interpreted as affecting the~~  
2 ~~current business practices of scrap dealers or recycling centers,~~  
3 ~~except that, to the extent they function as a recycling center or~~  
4 ~~processor, they shall do so in accordance with this division.~~

5 ~~(j) The program established by this division will contribute~~  
6 ~~significantly to the reduction of the beverage container component~~  
7 ~~of litter in this state.~~

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**SENATE TRANSPORTATION & HOUSING COMMITTEE**

**SENATOR MARK DESAULNIER, CHAIRMAN**

**BILL NO: SB 791**  
**AUTHOR: WYLAND**  
**VERSION: 4/4/13**  
**FISCAL: YES**

**Analysis by: Carrie Cornwell**

**Hearing date: April 30, 2013**

**SUBJECT:**

Gasoline excise tax: rate adjustments

**DESCRIPTION:**

This bill requires that increases in the gasoline excise tax attributable to price increases would require a two-thirds vote of each house of the Legislature, but decreases would occur as an administrative action.

**ANALYSIS:**

The state imposes a sales tax of 7.25 percent on taxable goods, of which the state portion is 5 percent and the local portion is 2.25 percent. In addition, local jurisdictions impose their own optional, voter-approved sales taxes, which vary from jurisdiction to jurisdiction, but on average equal 0.86 percent.

*State gasoline taxes*

Existing law imposes an 18-cent per gallon excise tax on each gallon of gasoline sold in the state of California. State law, known as the "gas tax swap," eliminated the sales tax on gasoline and instead imposes an additional excise tax that the Board of Equalization (BOE) adjusts annually to equal the amount of sales tax that the state would charge on gasoline sales if they were still subject to the state portion of the sales tax. Currently, the total amount of excise tax one pays on a gallon of gasoline is 36 cents per gallon, and on July 1 of this year it will be 39.5 cents.

**This bill:**

1. Deletes the duty of BOE to adjust annually the excise tax on gasoline.
2. Requires instead that by March 1 each year the Department of Finance calculate the gasoline excise tax rate that would be required to equal the revenue loss attributable to exempting gasoline from state sales tax. If this calculated rate is less than or equal to the current rate, then that rate shall take effect automatically on July 1. If this calculated rate exceeds the current rate, then the increased rate will only take effect if included in a bill passed by two-thirds vote of both house of the Legislature, otherwise the rate will remain unchanged
3. Takes effect immediately as a tax levy.

**COMMENTS:**

1. Purpose. The author notes that while BOE has historically collected gas tax revenue, the Legislature sets the tax rates California motorists pay. By allowing BOE to singlehandedly raise or lower the excise tax on gasoline, the Legislature is left out on the conversation of an issue that affects almost every California family. In order to provide for greater constituent input and transparency into this important question that affects all areas of our economy, as well as provide Legislators the opportunity to weigh in on increases in the excise tax on gasoline, it is only proper that the Legislature be the final deciders on increases in the excise tax.

2. Background. Legislators crafted the gas tax swap of 2010 to remove transportation from the state's General Fund and thus to assure stable state-level revenue streams for transportation. To achieve these ends, the gas tax swap eliminated the state sales tax on gasoline and replaced it with an increase in the gasoline excise tax designed to generate an equivalent amount of revenue. To ensure continuing revenue neutrality in the swap, each year BOE must adjust the gasoline excise tax such that over time the new excise tax generates the same revenue as the old sales tax on gasoline would have generated.

This bill undoes major portions of the 2010 gas tax swap, specifically deleting the duty of BOE to adjust the rate of the excise tax – a per gallon charge – to reflect what the sales tax – a percentage of price charge – would be. Instead the bill allows a portion of the taxes on gasoline to shrink based on ministerial action but requires at least two-thirds of the members of each house of the Legislature and the Governor's signature in order to increase the tax rate to maintain the historic revenue levels.

3. The will of the voters. These historic revenues began in 2000, when the Legislature dedicated the state sales tax on gasoline to transportation. California included this dedication in its constitution when the people approved Proposition 42 in 2002. The gas tax swap remained true to Proposition 42 but used a tax available only for transportation purposes to provide the associated revenue stream. One could argue that this bill, by undoing the portion of the gas tax swap that guarantees the associated revenues stream, undoes the people's intent in Proposition 42, which was to dedicate additional revenue to transportation.
4. Transportation funding loss. Article XIX of the California Constitution dedicates excise tax revenues to the research, planning, construction, improvement, maintenance, and operation of public streets and highways and mass transit guideways. Because this bill would make it very difficult to adjust rates to reflect price increases in gasoline, but rates would decrease automatically, it would very likely ratchet transportation revenues protected by Article XIX down over time. Opponents note that while it may seem appealing at first to make it more difficult to collect the revenues that would have accrued to transportation if the sales tax on gasoline was still in effect, the bill will only aggravate the funding shortfall that the California Transportation Commission estimates to be in the billions of dollars annually.
5. Lower taxes, lower prices? Decreasing the taxes a seller of a good pays on that good does not necessarily result in a decreased retail price to consumers. This is particularly true for gasoline for which worldwide demand and the world price of crude oil are the most significant influences on the price. That is why, despite persistent decreases in demand in California, the price of gasoline has increased significantly in recent years. It is unlikely, therefore, that this bill would result in price decreases, and in any case, the bill makes no requirement on sellers that they pass any resulting tax reductions through to consumers.
6. Diesel not in. California historically imposed both sales tax and an 18-cent per gallon excise tax on each gallon of diesel sold in the state. The gas tax swap legislation reduced this excise tax to 13 cents per gallon and imposed an additional 1.75 percent sales tax beginning on July 1, 2010, and then varies this additional sales tax on diesel as follows:
  - 1.87 percent for the 2011-12 fiscal year;
  - 2.17 percent for the 2012-13 fiscal year;
  - 1.94 percent for the 2013-14 fiscal year.

The gas tax swap requires BOE to adjust the diesel excise tax annually to ensure that the total amount of tax collected does not vary from what it would have been if the 18-cent excise tax and the sales tax rate had been left in place. It is unclear why this bill changes the adjustment process for gasoline but not for diesel.

7. Double-referral. The Rules Committee referred this bill to both the Transportation and Housing Committee and to the Governance and Finance Committee. Therefore, if this bill passes this committee, it will be referred to the Committee on Governance and Finance.

**POSITIONS:** (Communicated to the committee before noon on Wednesday, April 24, 2013.)

**SUPPORT:** None received.

**OPPOSED:** Associated General Contractors  
California State Association of Counties  
League of California Cities  
Rural County Representatives of California  
Transportation California  
Urban Counties Caucus

**Matrix of Solano County 2013 Bills**  
**Wednesday, May 01, 2013**

BILL ID/Topic	Location	Summary	Position	CSAC Position	LCC Position
<a href="#">AB 5</a> <a href="#">Ammiano</a> D  Homelessness.	4/30/2013-A. APPR. 4/30/2013-Read second time and amended.  <i>Agenda</i>	<b>Would enact the Homeless Person's Bill of Rights and Fairness Act, which would provide that no person's rights, privileges, or access to public services may be denied or abridged because he or she is homeless . The bill would provide that every homeless person has the right , among others, to move freely, rest, eat, share, accept, or give food or water, and solicit donations in public spaces, as defined, and the right to lawful self-employment , as specified, confidentiality of specified records, assistance of legal counsel in specified proceedings, and restitution, under specified circumstances. This bill contains other related provisions and other existing laws.</b> <b>Last Amended on 4/30/2013</b>		Watch	Oppose
<a href="#">AB 25</a> <a href="#">Campos</a> D  Employment: social media.	4/24/2013-A. APPR. 4/24/2013-From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (April 24). Re-referred to Com. on APPR.  Heard	Current law prohibits a private employer from requiring or requesting an employee or applicant for employment to disclose a username or password for the purpose of accessing personal social media, to access personal social media in the presence of the employer, or to divulge any personal social media. This bill would apply the provisions described above to public employers. The bill would state that its provisions address a matter of statewide interest and apply to public employers generally, including charter cities and counties.  Last Amended on 3/14/2013	Concerns		Watch
<a href="#">AB 142</a> <a href="#">Perea</a> D  Water resources: infrastructure.	4/30/2013-A. APPR. 4/30/2013-Do pass as amended and be re-referred to the Committee on Appropriations.  Heard	Current law establishes the Department of Water Resources in the Natural Resources Agency, and, among other things, empowers the department to conduct investigations of all or any portion of any stream, stream system, lake, or other body of water. This bill would require the Department of Water Resources to initiate and complete a comprehensive study of California's state and local water supply infrastructure needs and provide a report to the Legislature by July 1, 2014, that summarizes those findings.  Last Amended on 4/23/2013	Support	Pending	Watch
<a href="#">AB 182</a> <a href="#">Buchanan</a> D  Bonds: school districts and community college districts.	4/18/2013-S. ED. 4/18/2013-Referred to Coms. on ED. and GOV. & F.  Heard	Would require the ratio of total debt service to principal for each school bond series to not exceed 4 to one. The bill would require each capital appreciation bond maturing more than 10 years after its date of issuance to be subject to mandatory tender for purchase or redemption before its fixed maturity date, as specified, beginning no later than the 10th anniversary of the date the capital appreciation bond was issued. This bill contains other related provisions and other existing laws.  Last Amended on 4/2/2013	Support	Watch	
<a href="#">AB 194</a> <a href="#">Campos</a> D  Open meetings: protections for public criticism: penalties for violations.	2/7/2013-A. L. GOV. 4/18/2013-In committee: Set, first hearing. Hearing canceled at the request of author.  Heard	Would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. This bill would authorize a district attorney or any interested person to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void, as specified. This bill contains other related provisions and other existing laws.	Oppose	Oppose	Watch
<a href="#">AB 197</a> <a href="#">Stone</a> D  CalWORKs eligibility: asset limits: vehicles.	4/17/2013-A. APPR. SUSPENSE FILE 4/17/2013-In committee: Set, first hearing. Referred to APPR. suspense file.  Heard	Would delete existing requirements for assessing the value of a motor vehicle for purposes of eligibility for public aid, including the CalWORKs program. The bill would exclude the value of a licensed motor vehicle from consideration when determining or redetermining eligibility for aid. By increasing the duties of counties administering the CalWORKs program, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.	Support in Concept	Support	

BILL ID/Topic	Location	Summary	Position	CSAC Position	LCC Position
<a href="#">AB 218</a> <a href="#">Dickinson D</a>  Employment applications: criminal history.	5/1/2013-A. APPR. SUSPENSE FILE 5/1/2013-Action From APPR.: To APPR. SUSPENSE FILE.  Heard  5/1/2013 9 a.m. - State Capitol, Room 4202 ASSEMBLY APPROPRIATIONS, GATTO, Chair	Would prohibit a state or local agency from asking an applicant 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. This bill would include specified findings and declarations of the Legislature in support of this policy. This bill contains other related provisions and other existing laws.  Last Amended on 4/10/2013	Oppose	Oppose	Watch
<a href="#">AB 531</a> <a href="#">Frazier D</a>  Driver's licenses: veteran designation.	4/17/2013-A. APPR. SUSPENSE FILE 4/17/2013-In committee: Set, first hearing. Referred to APPR. suspense file.  Heard	Would , commencing January 1, 2015, require the application for a driver's license or identification card to also allow a person to present to the department of Motor Vehicles, in a manner determined by the department, a Certificate of Release or Discharge from Active Duty, as specified, and to request the driver's license or identification card be printed with the word "VETERAN." The bill would require the department to allow an applicant to present a verification from the county veterans service officer that the person has received that form. The department would be required to print the word "VETERAN" on the face of a driver's license or identification card issued to a person who makes that request and presents that form to the department. This bill contains other related provisions and other existing laws.  Last Amended on 3/20/2013	Support	Watch	Watch
<a href="#">AB 537</a> <a href="#">Bonta D</a>  Meyers-Milias-Brown Act: impasse procedures.	4/24/2013-A. APPR. 4/24/2013-From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 24). Re-referred to Com. on APPR.  <i>Agenda</i>	<b>Would authorize the representatives of the public agency or the employee organization, if they fail to reach an agreement, to request mediation. The bill would require that the parties agree upon the appointment of a mediator mutually agreeable to the parties within 5 days of a request by one of the parties. If the parties fail to agree on the selection of a mediator within 5 days, the bill would provide that either party may request the appointment of a mediator, as specified. By requiring a higher level of service by a local public agency, the bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.</b>  Last Amended on 4/17/2013			
<a href="#">AB 616</a> <a href="#">Bocanegra D</a>  Local public employee organizations: dispute: factfinding panel.	4/29/2013-A. APPR. 4/29/2013-Re-referred to Com. on APPR.  <i>Agenda</i>	Would instead authorize an employee organization, if a dispute was not submitted to a mediation, to request in writing that the public agency submit the parties' differences to a factfinding panel not later than 60 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would provide that if either party disputes that a genuine impasse, as defined, has been reached, the issue of whether an impasse exists may be submitted to the Public Employment Relations Board for resolution before the dispute is submitted to a factfinding panel.  Last Amended on 4/25/2013			
<a href="#">AB 639</a> <a href="#">John A. Pérez D</a>  Veterans Housing and Homeless Prevention Act of 2014.	4/30/2013-A. APPR. 4/30/2013-Action From V. A.: Do pass.To APPR..  Heard	Would authorize the issuance of bonds in the amount of \$600,000,000, as specified, for expenditure by the Department of Housing and Community Development for purposes of the construction, rehabilitation, and preservation of multifamily housing for veterans, in collaboration with the Department of Veterans Affairs. The bill would authorize the Legislature to amend the provisions of this act, by majority vote, under specified criteria. The bill would impose a specified reporting requirement on the California Housing Finance Agency. This bill contains other related provisions.	Support	Pending	Support in Concept

BILL ID/Topic	Location	Summary	Position	CSAC Position	LCC Position
<a href="#">AB 720</a> <a href="#">Skinner</a> D  Inmates: health care enrollment.	4/17/2013-A. APPR. 4/17/2013-From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (April 16). Re-referred to Com. on APPR.  Heard  5/1/2013 9 a.m. - State Capitol, Room 4202 ASSEMBLY APPROPRIATIONS, GATTO, Chair	Would require counties to designate an individual or agency, as specified, to enroll certain individuals held in county jail , as specified, consistent with federal requirements . The bill would provide that individuals who are currently enrolled in the Medi-Cal program in the county where they reside and who would become ineligible for benefits because of detention before or after conviction shall have their benefits suspended and shall retain enrollment in that program . The bill would require the individual or agency designated by the county, as specified, to supply appropriate information regarding the California Health Benefit Exchange to those individuals detained in a county jail who are not eligible for Medi-Cal benefits and who do not have health care coverage , 30 days before their scheduled release. The bill would state findings and declarations of the Legislature regarding the above. This bill contains other related provisions and other existing laws. Last Amended on 4/11/2013	Watch	Support	
<a href="#">AB 741</a> <a href="#">Brown</a> D  Local government finance: tax equity allocation formula: qualifying cities.	3/11/2013-A. L. GOV. 3/11/2013-Referred to Com. on L. GOV.  Heard	Would, commencing with the 2012-13 fiscal year and each fiscal year thereafter, increase the allocation of property tax revenues under a new TEA formula, as specified, for qualifying cities, as defined. This bill contains other related provisions and other existing laws.	Oppose	Oppose	Watch
<a href="#">AB 935</a> <a href="#">Frazier</a> D  San Francisco Bay Area Water Emergency Transportation Authority: terms of board members.	4/29/2013-A. APPR. 4/29/2013-Re-referred to Com. on APPR.  Heard  5/1/2013 9 a.m. - State Capitol, Room 4202 ASSEMBLY APPROPRIATIONS, GATTO, Chair	Would expand the number of members appointed by the Senate Committee on Rules and the Speaker of the Assembly to 2 members each. The bill would require that the initial terms of the additional members appointed by the Senate Committee on Rules and the Speaker of the Assembly pursuant to its provisions shall be 2 years and 6 years, respectively. The bill would require that one of the 3 members appointed by the Governor be a bona fide labor representative and that another member be a resident of the City and County of San Francisco selected from a list of 3 nominees provided by the San Francisco County Transportation Authority. This bill contains other related provisions and other existing laws. Last Amended on 4/25/2013	Support		Watch
<a href="#">SB 42</a> <a href="#">Wolk</a> D  The California Clean, Secure Water Supply and Delta Recovery Act of 2014.	1/10/2013-S. N.R. & W. 1/10/2013-Referred to Com. on N.R. & W.  Heard	Current law creates the Safe, Clean, and Reliable Drinking Water Supply Act of 2012, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$11,140,000,000 pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. Current law provides for the submission of the bond act to the voters at the November 4, 2014, statewide general election. This bill would repeal these provisions. This bill contains other related provisions and other current laws.	Support		
<a href="#">SB 122</a> <a href="#">Lieu</a> D  Vessels: abandonment: abatement.	4/22/2013-S. APPR. SUSPENSE FILE 4/22/2013-Placed on APPR. suspense file.  Heard	Existing law makes it an infraction punishable by a maximum \$3,000 fine, and until January 1, 2014, a minimum \$1,000 fine for a person to abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property, except for the urgent and immediate concern for the safety of those aboard the vessel. This bill would delete the January 1, 2014, repeal date of certain above-described provisions and delete alternative provisions that were to become operative on January 1, 2014, which would have reduced the minimum fine to \$500 and eliminated the exception for a surrendered vessel.	Support		Watch

BILL ID/Topic	Location	Summary	Position	CSAC Position	LCC Position
<a href="#">SB 191</a> <a href="#">Padilla</a> D Emergency medical services.	5/1/2013-S. PUB. S. 4/30/2013-Action From PUB. S.: Do pass. Heard	Existing law, until January 1, 2014, authorizes county boards of supervisors to elect to levy an additional penalty, for deposit into the EMS Fund, in the amount of \$2 for every \$10 upon fines, penalties, and forfeitures collected for criminal offenses. Existing law, until January 1, 2014, requires 15% of the funds collected pursuant to that provision be used to provide funding for pediatric trauma centers. This bill would extend the operative date of these provisions indefinitely. The bill would also make a technical, nonsubstantive change to these provisions.	Support	Support	Support
<a href="#">SB 199</a> <a href="#">De León</a> D Probation: community corrections.	2/21/2013-S. PUB. S. 4/23/2013-Hearing postponed by committee. Heard	Would add a rank-and-file deputy sheriff or a rank-and-file police officer, and a rank-and-file probation officer or a deputy probation officer, each to be appointed by a local labor organization, to the membership of a Community Corrections Partnership. The bill would require the vote of the rank-and-file deputy sheriff or rank-and-file police officer, and the rank-and-file probation officer or a deputy probation officer, on the local plan.	Oppose	Oppose	Support
<a href="#">SB 283</a> <a href="#">Hancock</a> D CalWORKs and CalFresh eligibility.	4/29/2013-S. APPR. SUSPENSE FILE 4/29/2013-Placed on APPR. suspense file. Heard	Would authorize CalWORKs benefits to be paid to an individual who is convicted in state or federal court after December 31, 1997, of any offense classified as a felony that has as an element the possession, use, or distribution of a controlled substance. If the person is on supervised release, he or she would be ineligible for CalWORKs benefits during any period of revocation of that supervised release. This bill contains other related provisions and other existing laws.	Support	Support	
<a href="#">SB 296</a> <a href="#">Correa</a> D County veterans service officers.	4/29/2013-S. APPR. 4/27/2013-Action: Set for hearing. Next hearing on 5/6/2013. Heard 5/6/2013 11 a.m. - John L. Burton Hearing Room (4203) SENATE APPROPRIATIONS, DE LEÓN, Chair	Current law requires funds to be disbursed each fiscal year on a pro rata basis to counties that have established and maintained a county veterans service officer in accordance with the staffing level and workload of each county veterans service officer, under a specified formula. This bill would appropriate the sum of \$9,000,000 from the General Fund to the Department of Veterans Affairs for the disbursement to counties to fund the activities of county veterans service officers and veterans service organizations , as specified. Last Amended on 4/1/2013	Support	Support	
<a href="#">SB 328</a> <a href="#">Knight</a> R Counties: public works contracts.	4/29/2013-A. DESK 4/29/2013-In Assembly. Read first time. Held at Desk. <i>Agenda</i>	<b>Would authorize a county, until January 1, 2021, with approval of the board of supervisors, to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. The bill would provide that a construction manager at-risk contract may only be used for projects in the county in excess of \$1,000,000 and may be awarded using either the lowest responsible bidder or best value method, as defined. This bill contains other related provisions.</b> Last Amended on 4/9/2013			
<a href="#">SB 443</a> <a href="#">Walters</a> R Organized camps.	4/29/2013-S. APPR. SUSPENSE FILE 4/29/2013-Placed on APPR. suspense file. <i>Agenda</i>	Would include "organized resident camp," as defined, and "organized day camp," as defined, within the definition of the term "organized camp." By imposing additional requirements upon local health officers and cities and counties, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws. Last Amended on 4/16/2013		Pending	Watch

BILL ID/Topic	Location	Summary	Position	CSAC Position	LCC Position
<a href="#">SB 480</a> <a href="#">Yee D</a> CalWORKs, Medi-Cal, and CalFresh: suspension of benefits.	3/11/2013-S. HUM. S. 4/9/2013-Hearing postponed by Committee. (Refers to 4/9/2013 hearing) Heard	This bill, commencing the later of January 1, 2015, or the date that any necessary federal approvals are obtained, would require that a person who is an inmate of a public institution be suspended as a member of the CalWORKs assistance unit for the duration of his or her incarceration, but would return the person to the assistance unit without reapplying, if he or she is still eligible for CalWORKs benefits upon release. This bill contains other related provisions and other existing laws.	Support & Co-Sponsor	Support	
<a href="#">SB 735</a> <a href="#">Wolk D</a> Sacramento-San Joaquin Delta Reform Act of 2009: multispecies conservation plans.	4/24/2013-S. APPR. 4/26/2013-Set for hearing May 6. Heard 5/6/2013 11 a.m. - John L. Burton Hearing Room (4203) SENATE APPROPRIATIONS, DE LEÓN, Chair	Would require the Delta Stewardship Council, the Department of Fish and Wildlife, the Counties of Contra Costa, Sacramento, and Solano, the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency, and the San Joaquin Council of Governments to enter into a memorandum of understanding regarding multispecies conservation plans, as defined, that describes, among other things, how the parties would ensure that multispecies conservation plans that have been adopted or are under development are consistent with the Delta Plan. By imposing this requirement on local public agencies, the bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws. Last Amended on 4/24/2013	Support	Pending	Watch
<a href="#">SB 785</a> <a href="#">Wolk D</a> Design-build.	4/23/2013-S. G. & F. 4/23/2013-From committee with author's amendments. Read second time and amended. Re-referred to Com. on GOV. & F. Agenda 5/1/2013 9:30 a.m. - Room 112 SENATE GOVERNANCE AND FINANCE, WOLK, Chair	Current law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws. This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. This bill contains other related provisions and other existing laws. Last Amended on 4/23/2013			
<a href="#">SB 791</a> <a href="#">Wyland R</a> Motor vehicle fuel tax: rate adjustment.	4/11/2013-S. T. & H. 4/29/2013-Set, first hearing. Hearing canceled at the request of author. Agenda	Would eliminate the requirement that the State Board of Equalization adjust the rate of the excise tax on motor vehicle fuel, and instead would require the Department of Finance to annually calculate that rate and report that calculated rate to the Joint Legislative Budget Committee. The rate for the state's next fiscal year would remain the same as the rate of the current fiscal year or would decrease, as provided. This bill would further state that the rate may increase upon a further act by the Legislature. This bill contains other related provisions. Last Amended on 4/4/2013		Oppose	Oppose

Total Tracking Forms: 26