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State Senate

State Assembly

**Department of
Insurance**

California Democrats Achieve Supermajority

Senate District 29 in Southern California had enough late votes counted to call Democrat Josh Newman winner, as he was ahead by over 2,000 votes. He defeated Republican Assembly Member Ling Ling Chang in a very close race. This outcome gives the California Senate Democrats 27 seats, a supermajority threshold. The Assembly Democrats also gained a supermajority margin earlier this month.

With the new supermajorities, Democrats have ability to pass taxes, amend political spending laws, move constitutional amendments to the ballot or enact quick-implementing legislation without Republican support. There are two hurdles in the Democrats ability to achieve these things though: moderate members in their own party, and Governor Jerry Brown.

Moderate Democrats are those with more business-friendly ideals who have stopped bills put forward by their more liberal counterparts in the past. This includes four years ago when the Democrats had the last supermajority in both houses. As former Senate President Pro Tem Darrell Steinberg noted, "it's not a magic wand. You have differences within the caucus. It can be a bit overrated when it comes to passing a lot of two-thirds bills."

Then there is the Governor, who over the last few years has shown his fiscal conversancy. He has continually vetoed bills that contain fiscal stipulations that were not implemented in the budget process, leading to California's ability to set up and stock a rainy day fund. It is unlikely that his ways will change in the next two years.

On Monday, the Legislature will come back for their organizational meetings. This will include swearing in new members, reassigning offices, and some members will introduce legislation. After Monday the Legislature will again return in January to kick off the 2017-2018 session.

Governor Brown Names U.S. Congressman Xavier Becerra Next Attorney General

Governor Gerry Brown named U.S. Congressman Xavier Becerra (D-CA) to replace Attorney General Kamala D. Harris, who was elected to the U.S. Senate last month. The nomination,

Secretary of State Official Legislative Information

which is subject to confirmation by the California State Assembly and Senate, will be officially submitted after Attorney General Harris resigns.

While the election of President Donald Trump has alarmed California Democrats and thrown into question the state's liberal stances on issues like climate change and immigration, Brown's choice of a liberal stalwart like Becerra reaffirmed the state's future role as a pocket of resistance.

During the 2016 election campaign Becerra served as one of former Secretary of State Hillary Clinton's most prominent surrogates and campaigned for other congressional candidates, reflecting his role as chairman of the House Democratic Caucus. He also issued fiery denunciations of President-Elect Trump.

Given Becerra's political experience, name recognition and deep ties to the Democratic establishment, he would be in solid position to run to keep the attorney general job in 2018. He would need to defeat California Insurance Commissioner Dave Jones, a Democrat who has \$316,000 in a campaign account but is said to have a cool relationship with Governor Brown. San Bernardino County District Attorney Mike Ramos, a Republican who has been sharply critical of what he calls Sacramento's lenient approach to crime, has also declared a run.

Days before Brown announced Becerra's appointment, the Jones campaign issued a press release that read like a pre-emptive defense against whomever Brown chose. It noted that Jones had already won statewide office, has won the endorsements of local party officials and has established his fundraising prowess.

Becerra has served in the U.S. House of Representatives since 1992, most recently as the first Latino member of the Committee on Ways And Means, ranking member of the Ways and Means Subcommittee on Social Security, and chairman of the House Democratic Caucus. The congressman is a member of the Congressional Hispanic Caucus, which he chaired from 1997 to 1998, and the Executive Committee of the Congressional Asian Pacific American Caucus.

Prior to his election to Congress, Becerra served in the California State Assembly as representative for the 59th Assembly District in Los Angeles County from 1990 to 1992. He served as a deputy attorney general in the California Department of Justice, Office of the Attorney General from 1987 to 1990. The congressman began his legal career in 1984, advocating for and representing individuals with mental illness.

Becerra earned a Juris Doctor degree from Stanford Law School and a Bachelor of Arts degree in economics from Stanford University. He is the son of working-class parents and was the first in his family to graduate from college with a four-year degree. His mother was born in Jalisco, Mexico and immigrated to the United States after marrying his father. Becerra is married to Dr. Carolina Reyes. They are the proud parents of three daughters: Clarisa, Olivia and Natalia.

Former Speaker John A. Pérez Announces Run for 34th Congressional District

Former California Speaker of the State Assembly John A. Pérez announced that he is running for the 34th Congressional District, which is being vacated by U.S. Congressman Xavier Becerra.

Pérez previously represented large swaths of the 34th Congressional district while serving in the State Assembly and is now a University of California (UC) Regent, where he fights for college affordability and serves as a voice on behalf of students and parents.

While in the State Assembly, Pérez authored legislation that created Covered California, the state's healthcare exchange stemming from the Affordable Care Act, as well as the Middle Class Scholarship Act, that dramatically reduced public university tuition costs.

Speaker Emeritus Pérez released the following statement announcing his run:

"In the aftermath of November's election nationwide, two facts are clearer than ever. The first is that we need to fight harder than ever to protect the progress we've made. The second is that California is the one place in the country where Democrats know how to win, and the one place in the country where government is working.

"I am proud to have played a role in enacting some of the most impactful legislation in the country to help poor and working class families, as well as the middle class on issues from college affordability to job training to public education, environmental justice, equality and more. I'm running for Congress to take these California values and our state's visionary approach to the national level.

"California needs leadership who will stand up against Donald Trump, but also leadership that will fight for the poor, the middle class, for job creation, and for a vision that can help us win all across the country. These are a few of the reasons why I'm running for Congress."

New Rules on Auto Collision Repair Labor Rate Survey Regulations

Insurance Commissioner Dave Jones issued new Auto Collision Repair Labor Rate Survey Regulations this week.

Over the past several years, the Department of Insurance has worked on regulations protecting consumers who have filed automobile collision repair claims with insurance companies. The regulations went through a formal public review process required by state law, which included taking and responding to public input on the regulations at public workshops, public hearings, and through written public comments. The regulations were drafted and revised with input from consumers, insurers, and repair shops.

Insurers limit payments for auto collision repairs based on labor rates derived from insurer created labor rate surveys which did not fairly measure labor rates. Consumers are left having to pay the difference between the actual labor cost of the repair and what the insurer was willing to pay based on its labor rate survey. The new regulation sets forth voluntary

standards for insurers to accurately and reliably survey auto body repair labor rates to ensure they are paying the reasonable and proper amount.

"Accurate and reliable labor rate surveys ensure that consumers are not left paying out-of-pocket for collision repairs, which should be covered by insurance, or worse, forced to leave the vehicle in disrepair creating a potential safety concern," said Commissioner Jones.

The Office of Administrative Law (OAL), which independently reviews all new regulations, approved the Commissioner's regulation yesterday. The regulation goes into effect by operation of law on January 1, 2017. However, these newly adopted regulations are part of the Fair Claims Settlement Practices Regulations, which contain a delayed compliance date in order to give insurers, who choose to use these voluntary regulations, additional time to comply. The earliest compliance date is February 28, 2017.

Federal Court Blocks Department of Labor Overtime Rules

Last week, a federal court in Texas issued a nationwide preliminary injunction blocking the U.S. Department of Labor (DOL) from enforcing the new federal overtime rule which was set to take effect on Thursday, December 1st.

The federal overtime rule more than doubled the current federal salary level that must be met before an employee can be classified as exempt from overtime under one of the so-called white-collar exemptions (which include executive, administrative and professional exemptions). The rule also required a minimum salary of \$913 per week, which is also higher than California's minimum salary threshold.

A group of states joined forces in September on a lawsuit challenging the overtime rule, and followed up with an October request to the federal court to stop the overtime rule before its December 1 effective date, claiming that the DOL overstepped its authority in enacting the rule.

In granting the preliminary order to stop the rule, the Texas court wrote that the states showed a "likelihood of success on the merits" of the lawsuit "because the Final Rule exceeds the Department's authority."

Because the federal overtime rule currently cannot be enforced, California employers should use the California salary test to determine whether an employee can be classified as exempt under the executive, administrative and professional exemptions. This test is no less than two times the state minimum wage for full-time employment — \$3,466.67 per month for 2016. In addition to the salary test, California employees must meet a strict duties test to be classified as exempt.

DWC Posts Proposed Changes to WCIS Regulations, EDI Guides for its 2nd 15-Day Comment Period

The Division of Workers' Compensation (DWC) posted proposed regulations further revising its Workers' Compensation Information System (WCIS) regulations and Electronic Data Interchange (EDI) Implementation Guides.

Following the Office of Administrative Law's publication of DWC's initial draft of these regulations, a public hearing was held March 28. A second draft of the regulations was released for a 15-day comment period, which ended on June 9.

Additional revisions to the regulations and to the EDI Implementation Guide for First and Subsequent Reports of Injury (FROI/SROI), Version 3.1, and the EDI Implementation Guide for Medical Bill Payment Records, Version 2.0, have been made in response to changes suggested by trading partners and other stakeholders, and a few additional changes were made to improve the quality and integrity of the data to be reported to WCIS following implementation of these changes.

Members of the public are invited to present written comments regarding the proposed modifications to dwcrules@dir.ca.gov until 5 p.m. on Thursday, December 15. The proposed changes can be found [here](#).

Zenefits Fined by Insurance Commissioner

The California Department of Insurance hit new tech company, Zenefits, with a \$7 million fine for violations that include allowing unlicensed employees to sell insurance in the state.

Zenefits was investigated by 17 insurance commissioners or regulatory agencies throughout the United States. This penalty is so far the largest throughout the nation and is also the largest in the California Department's history.

Zenefits, which is based in the Bay Area, was able to strike an agreement with California insurance regulators that allowed half of the fine to be suspended because of the company's own efforts to remedy the problems. This provision means Zenefits was obliged to pay only \$3.5 million of the \$7 million fine through the settlement along with \$166,000 in legal fees.

This isn't the only troubles Zenefits has faced. The company has also slashed 355 jobs this year in two major rounds of job cuts, including positions in locations outside of the Bay Area.

Zenefits offers cloud-based software to help companies manage their human resources activities. The company also underwrites insurance, which is what got the company in so much trouble. Earlier this year, an internal investigation by Zenefits determined that it had underwritten some insurance policies without the proper licenses.

Through the internal investigation, Zenefits also found that its co-founder, Parker Conrad, had crafted a browser extension that allowed its brokers to fake that they had completed a required 52-hour online training course that all insurance agents must take to become licensed in California. Conrad resigned as chief executive officer in February and was replaced by current CEO David Sacks.

“In California, we value innovation and new business models, including internet-based startups, but we also insist that consumer protection laws are followed. Zenefits is an example of an internet-based startup whose former leaders created a culture where important consumer protection laws were broken,” stated Commissioner Dave Jones. “Businesses and consumers should have confidence that anyone selling insurance to them in California is doing so in compliance with our consumer protection laws.”

CalExit Secession Plan

As Donald Trump’s presidency edges nearer, some Californians are looking for an exit strategy. A grass-roots group of secessionists, calling themselves Yes California, last week proposed such exit strategy: a November 2018 ballot measure that would ask registered voters if the California should become its own nation.

The group believes California pays more than its share of federal taxes, money the state could use to modernize and fix its infrastructure. The federal government collects about \$370 billion in taxes from Californians each year and spends roughly \$334 billion in the state.

The 2018 measure also would strike language from the California Constitution that states that California is “an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.” If approved by voters, it would establish a March 2019 statewide special election to ask voters again if they want California to become an independent country.

To qualify for the ballot, the group needs to gather more than 500,000 signatures, which can be expensive. During the run-up to the presidential election, some statewide ballot measure campaigns were paying signature gatherers more than \$5 per signature.

If the group beats the odds, qualifies for the ballot and voters pass the measure, it still faces an uphill battle to gain official approval.

Experts say the strongest legal avenue for California to become its own nation is through an amendment to the U.S. Constitution, which would require approval by two-thirds of Congress and three-quarters of the states in the country. While the Constitution doesn’t specifically address secession, an amendment granting California’s independence would act as the supreme law of the land.

Yes California’s alternative strategy is to appeal to the United Nations to recognize California as its own country. Experts state, though, that this wouldn’t hold up in court and other countries might hesitate to embrace California as an independent nation anyway if it hadn’t resolved issues of currency and military with Washington.

Autopilot or Driver Assist?

In September, the Department of Motor Vehicles (DMV) announced a proposal that would effectively prohibit Tesla from using the term “Autopilot” to market its vehicles. Tesla uses

the word “Autopilot” to describe its driver-assist technology, which, when enabled, automatically steers, brakes and passes other vehicles.

Consumer Watchdog argues that Tesla is misleading consumers by exaggerating Autopilot’s capabilities. The organization states that the DMV needs to enact a regulation protecting consumers from misleading advertising that leaves the dangerous, and sometimes fatal, impression that a car is more capable of driving itself than is actually the case.

A letter that the Consumer Watchdog group wrote to the DMV cites the death of a Tesla driver last May, who was using Autopilot when his car crashed into a big rig. The group also put out a video highlighting what the group calls Tesla exaggerations.

The rule the DMV is considering would apply to all carmakers, not exclusively to Tesla. Under the proposal, words including “self-driving” and “auto-pilot” would be banned along with anything “likely to induce a reasonably prudent person to believe a vehicle is autonomous.” This proposal is part of a much larger package of rules and regulations drafted by the DMV and is currently considering public and expert comments on all the proposals.

Because the entire package of proposals will not be in effect until at least a year, Consumer Watchdog is urging the DMV to take the autopilot portion out and address the marketing issues immediately.

Tesla shows no sign of backing down from the use of the Autopilot name and continues to add to its capabilities, with a major software upgrade expected before the end of the year. The company insists that, while crashes are inevitable, statistics show that semi-autonomous driving is safer than driving with no robotic assistance. Thus far, the May crash is the only reported fatality involving Autopilot.

Auto Safety Agency Wants Apps to Lock While Driving

The National Highway Traffic Safety Administration wants smartphone makers to lock out most apps when the phone is being used by someone driving a car.

The voluntary guidelines unveiled Wednesday are designed to reduce crashes caused by drivers distracted by phones. The Administration also wants automakers to make infotainment systems (broadcast material that is intended to entertain and inform) easy to pair with smartphones.

Drivers could still make calls but the phones and automaker systems would lock out the ability to enter text, meaning no text messaging, searching on the internet or posting. Internet browsing, video not related to driving, text from books, and photos also would be locked out. Navigation systems would be permitted, but with guidelines on how to avoid driver distraction.

Fatal crashes caused by distracted drivers are on the rise, which is contributing to a spike in traffic deaths during the past two years. The National Highway Traffic Safety Administration states that 3,477, or about 10 percent, of the more than 35,000 traffic fatalities last year

involved distracted drivers. That is up 8.8 percent over 2014. Traffic deaths spiked 10.4 percent in the first six months of this year and rose 7.2 percent last year, after years of declines.

Many automakers already are moving this direction, with many offering Apple CarPlay and Android Auto that pair smartphones to car touch screens and allow limited use of the phone apps. The National Highway Traffic Safety Administration wants phone makers to develop technology that can determine if someone is driving a car and then disable most of the apps. But that technology does not exist currently. In its absence, the agency wants phones to have a “driver mode” that would be activated by the smartphone user.

General Motors has the Apple and Android pairing system in about 40 models worldwide. Already, it prevents use of many phone functions that could cause distraction. The system won't allow drivers to type a text message, but does allow text by voice.

The National Highway Traffic Safety Administration will take public comment for 60 days before deciding whether to put the guidelines in place. Unlike a federal government rule, auto and cellphone makers don't have to obey the guidelines.