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California Links

State Senate

State Assembly

**Department of
Insurance**

Overview Of 2017 Legislative Session Bill Activity

For some perspective regarding the legislative activity from this year, the following attempts to capture.

Bills Signed Into Law by the Governor: 859

Bills Vetoed by the Governor: 118

Total Bills Acted Upon: 977

Signing Percentage: 88%

Veto Percentage: 12%

Of the 859 bills that the Governor signed this year, 567 were Assembly bills and 292 were Senate bills. Of the 567 Assembly bills signed into law, 85% were authored by Democrats and 15% were authored by Republicans. Of the 292 Senate bills signed into law, 86% were authored by Democrats and 14% were authored by Republicans. Committee bills signed into law were not allocated toward either political party.

Of the 118 bills that Governor Jerry Brown vetoed this year, 84 were Assembly bills and 34 were Senate bills. Of the 84 Assembly bills that were vetoed, 87% were authored by Democrats and 13% were authored by Republicans. Of the 34 Senate bills that were vetoed, 82% were authored by Democrats and 18% were authored by Republicans.

1,733 total bills were introduced in the Assembly in 2017 (1,687 by the February 2017 introduction deadline.) 37.5% got to the Governor's desk with 32.7% getting signed and 4.8% getting vetoed. 817 total bills were introduced in the Senate in 2017 (808 by the 2/17 introduction deadline.) 39.9% got to the Governor's desk with 35.7% getting signed and 4.2% getting vetoed.

October 15 Was Deadline For Governor To Sign Or Veto Legislation; Bill Actions Outlined

Secretary of State

Official Legislative Information

The following discusses the measures addressed by Governor Jerry Brown since the last *This Week in Sacramento* publication of last Friday.

AB 46 (Cooper, Dem-Elk Grove) Employee Wage Discrimination: Signed By Governor

Current law prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that one or more specific factors, reasonably applied, account for the entire wage differential. Under current law, an employer or other person who violates or causes a violation of that prohibition, or who reduces the wages of any employee in order to comply with that prohibition, is guilty of a misdemeanor. This bill defines “employer” for those purposes to include public and private employers.

In reality, this bill is about ensuring that the law applies to the Legislature itself. Last year, there was an awkward floor debate during the deliberation on AB 1676 (Campos), a bill which specified that prior salary cannot, by itself, justify any pay disparity. On the Senate Floor, Republicans raised questions about whether the bill applied to the Legislature itself, and even asked the author to amend the bill to specifically do so. Senate Democrats would not do so, which led to grumbling among many Democratic legislators about the Legislature’s willingness to impose certain requirements on businesses but not on itself. AB 46 is aimed directly at closing that perceived gap by ensuring that the California Equal Pay Act applies to legislative employees as well.

AB 313 (Gray, Dem-Merced) Water Rights Regulatory Authority Change: Vetoed By Governor

Current law authorizes the State Water Resources Control Board (SWRCB) to adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing, unless a written request for a hearing signed by, or on behalf of, the party served with the complaint is delivered to or received by mail by the Board within 20 days after receipt of the complaint. This bill, commencing July 1, 2018, establishes a Water Rights Division within the Office of Administrative Hearings.

According to the author, there is a common perception that in any water rights enforcement action, the deck is stacked in the Board’s favor. Consequently, it is of little use to challenge the SWRCB’s initial complaint. Those who feel that way do not see a distinction between the staff of the SWRCB, who issue the enforcement action, and the Board members themselves, who hear any challenges of the complaint.

In the Governor’s view, it would be difficult to recruit and retain qualified water lawyers to meet the rigid requirements of the bill. The bill creates a new division that would only conduct limited types of water right hearings, which may further complicate the process. The costs would be borne only by some water right holders but not others, regardless of who

benefits. The Governor will be directing the Environmental Protection Agency to evaluate the potential role for administrative law judges and provide a recommendation on improvements to the SWRCB's hearing process by January 1, 2018.

AB 447 (Gray, Dem-Merced) Medi-Cal Covered Continuous Glucose Monitors: Vetoed By Governor

The Medi-Cal program is, in part, governed by, and funded pursuant to, federal Medicaid program provisions. Current law provides for a schedule of covered benefits under the Medi-Cal program. This bill, to the extent that federal financial participation is available and any necessary federal approvals have been obtained, add continuous glucose monitors (CGM) and related supplies required for use with those monitors to the schedule of benefits under the Medi-Cal program for the treatment of diabetes mellitus type one and diabetes mellitus type two when medically necessary, subject to utilization controls.

According to the author, Medi-Cal's refusal to cover CGMs discriminates against the poor who are more likely to be diagnosed with diabetes and experience complications from this chronic disease. Medi-Cal now provides healthcare coverage for one in three Californians and 43% of the state's total diabetic population. Nearly every other health plan has chosen to cover CGMs, including Covered California, Medicare, and the Medicaid programs in 40 other states. The Governor maintains the Department of Healthcare Services has considerable administrative authority to make changes to benefits based upon new medical evidence and clinical guidelines. Therefore, these statutory changes are unnecessary.

AB 569 (Gonzalez-Fletcher, Dem-San Diego) Workplace Reproductive Health Decision Discrimination: Vetoed By Governor

This measure amends provisions of labor law prohibiting an employer from taking any adverse action against an employee or their dependent or family member for their reproductive health decisions, including the timing thereof, or the use of any drug, device, or medical service. The bill also specifies that any contract or agreement, express or implied, made by an employee to waive this benefit is null and void. The Fair Employment and Housing Act currently provides these protections to employees, thereby creating inconsistencies and confusion amongst employers with regard to interpretation and enforcement of these competing provisions. Legislation along these lines by the same author has been vetoed in the past.

According to the Governor, the California Fair Employment and Housing Act has long banned such adverse actions, except for religious institutions. He believes these types of claims should remain within the jurisdiction of the Department of Fair Employment and Housing.

AB 634 (Eggman, Dem-Stockton) Solar Panel Liability Insurance Requirement: Signed By Governor

This bill prohibits a homeowners association (HOA) from establishing a general policy prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use. An HOA is to require the owner and each successive owner to maintain a homeowner liability coverage policy at all times and provide it with the corresponding certificate of insurance annually. Insurers did secure an amendment that a homeowner liability coverage policy not need to have the HOA as a named additional insured under the policy with a right of notice of cancellation, in the event of a legal dispute involving installation, maintenance, or use of a solar energy system.

AB 978 (Limon, Dem-Santa Barbara) Employer Injury Prevention Manual Requirement: Vetoed By Governor

This bill requires an employer who receives a written request for a paper or electronic copy of the written injury prevention program (IPP) from a current employee, or his or her authorized representative, to comply with the request as soon as practicable, but no later than 10 business days from the date the employer receives the request. The bill requires the employer to provide the copy of the written IPP free of charge.

According to proponents, when IPPs are done properly, the risk of injury declines dramatically. However, too many employers do not adequately prioritize this responsibility. They argue that the risk of ignoring IPPs goes far beyond a simple citation, as the vast majority of injuries could have been preventable had prevention and the IPP requirements been taken more seriously. The California Chamber of Commerce raised concerns about the unlimited organizations with no affiliation with the employer to access the employer's internal documents. It appears that to some extent amendments were taken to require the employer to verify the source of the IPP information request, so that it is received by a relevant party.

The Governor's view is that this bill is unnecessary and duplicative of an existing regulatory proposal that is already underway at the Occupational Safety and Health Standards Board. The Board advisory committee process is better suited to determine how to properly implement requirements of this kind.

AB 1008 (McCarty, Dem-Sacramento) Job Candidate Prior Conviction History Inquiry Prohibition: Signed By Governor

This bill provides that it is an unlawful employment practice under the Fair Employment and Housing Act for an employer with five or more employees to include on any application for employment any question that seeks the disclosure of an applicant's conviction history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to

consider, distribute, or disseminate information related to prior arrests, diversions, and convictions.

The Chamber of Commerce successfully altered this measure by achieving amendments that change inquiry prohibition from “criminal history” to “conviction history,” and receiving authorization to conduct employee background checks. Eventually the author acquiesced that not being able to assess an employee’s criminal background on some level is just not safe for fellow employees and customers.

AB 1209 (Gonzalez-Fletcher, Dem-San Diego) Employee Gender Pay Differential Reporting: Vetoed By Governor

AB 1209 requires, on and after July 1, 2019, that an employer that is required to file a statement of information with the Secretary of State and that has 500 or more employees in California to collect information on gender wage differentials. The bill requires the employer to submit the information to the Secretary of State, by July 1, 2020, and biennially thereafter. The bill requires the Secretary of State to publish the information described above on its website.

The author argues that the annual average gender gap in California is at 85 cents on the dollar. California also has one of the largest wage gaps for African American women and Latinas, who only earn 64 and 54 cents, respectively, for every dollar a white man makes. The Chamber of Commerce has worked tirelessly to explain that the bill’s provisions lead to misperception, as there is no manner in which to differentiate those that have greater degrees of education or distinguish between the gender of a person that may be a corporate executive or administrative assistant.

The Governor states in his veto that while transparency is often the first step to addressing an identified problem, it is unclear that the bill as written, given its ambiguous wording, will provide data that will meaningfully contribute to efforts to close the gender wage gap. And, he is worried that this ambiguity could be exploited to encourage more litigation than pay equity.

AB 1665 (Garcia, Dem-Imperial) California Advanced Services Fund Broadband Expansion: Signed By Governor

Current law requires the Public Utilities Commission to develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies. This bill revises the goal of the program to provide that its goal is to approve funding by December 31, 2022 for infrastructure projects that provide broadband access to no less than 98% of California households in each consortia region.

According to the author, internet access should be treated as a right, not a luxury. It is a basic necessity to access education, healthcare, and economic opportunity. This bill ensures vulnerable communities across the state are not left behind.

AB 1701 (Thurmond, Dem-Richmond) General Contractor Liability for Subcontractor Unpaid Wages: Signed By Governor

This bill, for all contracts entered into on or after January 1, 2018, requires a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. The legislation authorizes the Labor Commissioner to bring an action to enforce the liability against a general contractor through either a civil action or the administrative process for disputing unpaid wages.

This bill does not require a worker or third party to exhaust his or her options before moving on to the general contractor, nor does this measure require the worker or third party to secure a judgment against the subcontractor in order to pursue a joint liability action. In addition, the bill does not provide the general contractor with legal standing to go after the subcontractor's bond for any wages the general contractor becomes responsible to pay. On behalf of the California Pool & Spa Association, Norwood Associates issued a letter to the Governor strongly urging his veto, in addition to actively lobbying against its approval by the Assembly and Senate.

SB 5 (De León, Dem-Los Angeles) Park & Water Bond Authorization: Signed By Governor

This measure, if approved by the voters, authorizes the issuance of bonds in an amount of \$4 billion to finance a drought, water, parks, climate, coastal protection, and outdoor access program. The bill, upon voter approval, reallocates \$100 million of the unissued prior water bonds.

Park and water bonds have been a primary source of state funding for the acquisition and improvement of parks, open space, and wildlife areas in California; and, for many water conservation, water recycling, flood management, and water supply needs. Past bond acts have funded a variety of state, regional, and local parks, recreation, conservation, and water-related projects. Bonds have also provided funding for state conservancies and for river restoration projects.

SB 649 (Hueso, Dem-San Diego) Wireless Telecommunications Build-Out: Vetoed By Governor

Current federal law recognizes the authority of a state or local government to manage public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by that government. Current federal law also provides that no state or local government has the authority to regulate the entry of, or the rates charged by, a commercial mobile service, but permits a state to regulate the other terms and conditions of commercial mobile services. This bill provides that a small cell is a permitted use, subject only to a permitting process adopted by a city or county.

According to the author, SB 649 recognizes the public policy benefit and increasingly high consumer demand for faster access to next-generation wireless networks – and establishes a reliable and standardized process for siting the physical infrastructure necessary to meet that demand. The Governor believes that the interest which localities have in managing rights of way requires a more balanced solution than the one achieved in this bill.

Employers Will Confront Numerous Bills When The Legislature Returns In January

Even though the 2017 legislative session recently concluded, the California business community needs to be aware of two-year bills that will be considered when the Legislature reconvenes on January 3, 2018. There are nearly 1,000 of these that are technically alive, at least until the constitutional deadline of January 31, 2017 to clear their house of origin. Only a small number of those measures are expected to move forward.

With another 2,500 bills likely to be introduced by the late February 2018 deadline for bill introductions for the 2018 Session, California businesses will once again have to engage at the State Capitol to support or oppose legislation that may promote or hurt the state's business climate. Considering those remaining two-year bills, the following is a discussion of some of the problematic bills that the business community may face when the Legislature reconvenes.

AB 5 (Gonzalez-Fletcher, Dem-San Diego) Existing Employee Job Opening Offer

This bill creates the Opportunity to Work Act and requires an employer with 10 or more employees to offer additional hours of work to an existing nonexempt employee before hiring an additional employee or subcontractor, requires an employer to post a notice of employee rights, and requires the employer to maintain certain documentation. It is pending in the Assembly Appropriations Committee.

AB 375 (Chau, Dem-San Francisco) Broadband Internet Provider Personal Information Restriction

This bill prohibits broadband internet access service providers from using, disclosing, or permitting access to customer proprietary information. It is pending on the Senate Floor.

AB 889 (Stone, Dem-Monterey) Civil Litigation Information Disclosure

This bill provides that in an action based upon the existence of a danger to the public health or safety information relating to the danger that was discovered during litigation cannot be kept secret pursuant to an agreement of the parties or a court order. It is pending on the Assembly Floor.

AB 1356 (Eggman, Dem-Stockton) Personal Income Tax Increase

This bill, for taxable years beginning on or after January 1, 2019, imposes an additional taxation of one percent on income that exceeds \$1 million. The bill would deposit the revenues derived from this tax into the Higher Education Assistance Fund. It is pending in the Assembly

AB 1565 (Thurmond, Dem-Richmond) Employee Overtime Compensation Exemption

This bill exempts from overtime compensation an executive, administrative, or professional employee if the employee earns a monthly salary equivalent to either \$3,956 or an amount no less than twice the state minimum wage for fulltime employment, whichever amount is higher. It is pending on the Senate Floor.

AB 1576 (Levine, Dem-Marin) Product Price Gender Discrimination

This bill amends the Gender Tax Repeal Act of 1995 to additionally prohibit a business from discriminating with respect to the price charged for the same, or substantially similar, goods because of the gender of the targeted user of the good. It is pending on the Assembly Floor.

SB 66 (Wieckowski, Dem-Fremont) Punitive Damages Tax Deduction Repeal

This bill, for taxable years beginning on or after January 1, 2018, disallows a deduction for amounts paid or incurred for punitive damages. It is pending in the Assembly Revenue and Taxation Committee.

SB 562 (Lara, Dem-Bell Gardens) Single Payer Healthcare Mandate

This bill creates a comprehensive universal single-payer health care coverage and a healthcare cost control system for all residents of the state. The bill provides that the program covers a wide range of medical benefits and incorporates the healthcare benefits and standards of other existing federal and state provisions. The bill further states the intent of the Legislature to enact legislation that develops a revenue plan, taking into consideration anticipated federal revenue available for the program. It is pending in the Assembly Rules Committee.

SB 567 (Lara, Dem-Bell Gardens) Waters Edge Tax Election Repeal

Among the provisions of this measure, it repeals the waters' edge taxation election. By doing so, it requires all business entities conducting business in California to be subject to corporate tax payments for income earned from overseas affiliates. It is pending on the Senate Floor.

SB 772 (Leyva, Dem-Chino) Occupational Safety Standard Regulatory Impact Analysis Exemption

This bill exempts any occupational safety and health standard and order from the standardized regulatory impact analysis requirement. It is pending on the Assembly Floor.

While there are numerous other problematic bills pending, and certainly there will be even more once the 2018 bill introductions occur, these measures are some of the most onerous facing the business community next year.

Autonomous Vehicle Use Addressed By DMV

Last week, the California Department of Motor Vehicles released a revised version of proposed regulations that establishes a path for driverless testing and public use of autonomous vehicles (AV). The release of these regulations marks the start of a 15-day public comment period, which ends October 25, 2017.

The revised regulations will allow testing of AVs without a driver behind the steering wheel and public use of vehicles equipped with autonomous technology. Under California law, Vehicle Code 38750, the DMV is required to develop regulations that cover testing and public use of AVs. "We are excited to take the next step in furthering the development of this potentially life-saving technology in California," California Transportation Secretary Brian Kelly said.

The proposed regulations recognize that responsibility for motor vehicle safety resides at the federal level, and the National Highway Traffic Safety Administration (NHTSA) is vested with the authority to develop and enforce compliance with Federal Motor Vehicle Safety Standards (FMVSS). The regulations require manufacturers to certify to meeting federal safety standards as a prerequisite for both testing and deployment. In addition, manufacturers must also certify their vehicles are designed to operate in compliance with state traffic laws.

The Department received substantial feedback from manufacturers, consumer advocates, local government, insurance companies, and other stakeholders after it released a previous version of these regulations on March 10, 2017. The revised regulations reflect those comments as well as NHTSA's newly released guidance in this area. Changes to further clarify the regulations include: specifying information that must be included in local notifications on planned driverless testing, creating a template for disengagement reporting, and identifying

conditions that would trigger an amended driverless testing or deployment application to DMV.

Regulations to test AVs with a driver have been in place since 2014. To date, 42 companies hold permits to test autonomous technology on California roads. “The Department looks forward to seeing those companies and additional companies advance the technology under these new regulations,” DMV Director Jean Shiimoto said. “Today’s action continues the Department’s efforts to complete these regulations by the end of the year.”

Written comments may be submitted to LADRegulations@dmv.ca.gov until October 25, 2017. The proposed AV driverless testing and deployment regulations are available on the DMV Autonomous Vehicles webpage and available under the “trending” section on the DMV website.