

# LEGISLATIVE ROUND-UP

NEW EMPLOYMENT LAW AND LABOR RELATIONS BILLS IMPACTING CALIFORNIA PUBLIC AGENCIES IN 2012

The **Legislative Round-Up** is a compilation of bills, presented by subject, which were signed into law and have an impact on the employment and employment related issues of our clients. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), bills are going into effect on **January 1, 2012**, unless otherwise noted. Urgency legislation will be identified as such.

If you have any questions about your agency's obligations under the new or amended laws as outlined below, please contact our Los Angeles, San Francisco, Fresno or San Diego office and an attorney will be happy to answer your questions.

## LABOR RELATIONS

### AB 646 – New Advisory Factfinding Impasse Resolution Procedure.

Adds Sections 3505.5 and 3505.7 to, and repeals and adds Section 3505.4 of, the Government Code, relating to local public employee organizations.

The Meyers-Milias-Brown Act (MMBA) governs collective bargaining of local agency represented employees. The Public Employment Relations Board (PERB) generally has jurisdiction to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The MMBA requires the 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. 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. If the parties reach an impasse, the MMBA provides that a public agency may unilaterally implement its last, best, and final offer.

AB 646 authorizes the employee organization, if mediation does not result in settlement within 30 days of the mediator's appointment, to request that the matter be submitted to a factfinding panel. The factfinding panel consists of one member selected by each party as well as a chairperson selected by the PERB or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. AB 646 requires all political subdivisions of the state to comply with the panel's requests for information. The factfinding requirement does not apply to charter cities or charter counties who have charter impasse procedures that include binding arbitration.

AB 646 provides that if the dispute is not settled within 30 days, the factfinding panel makes findings of fact and recommends terms of settlement, for advisory purposes only. These findings and recommendations will be first issued to the parties, but the public agency must make them publicly available within 10 days after their receipt. AB 646 provides for the distribution of costs associated with the factfinding panel, as specified.

AB 646 prohibits a public agency, until after any applicable mediation and factfinding procedures have been exhausted, from immediately implementing its last, best, and final offer. Instead, unilateral implementation cannot occur until at least 10 days after the factfinders'

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## LEGISLATIVE ROUND-UP

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written findings and recommendations have been submitted to the parties and the agency has held a public hearing regarding the impasse.

**AB 195 – Discrimination or Intentionally Providing Inaccurate Information is a Refusal or Failure to Meet and Confer in Good Faith.**

*Adds Section 3506.5 to the Government Code, relating to local public employee organizations.*

The MMBA provides for the representation of local public employees by employee organizations and for the execution of memoranda of understanding between those organizations and local public agencies. The MMBA prohibits a public agency from intimidating, coercing, or discriminating against employee organizations. Public agencies must meet and confer in good faith.

AB 195 prohibits a public agency from imposing reprisals on or discriminating against employees because of their exercise of rights guaranteed by the MMBA, and specifies that knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the public employer constitutes a refusal or failure to meet and negotiate in good faith.

**SB 857 – Blocks PERB from Granting Strike Expenses/ Damages/ Costs.**

*Amends Sections 3509, 3514.5, 3541.3, 3563.3, 71639.1 and 71825 of the Government Code, and Section 99561 of the Public Utilities Code, relating to public employment.*

PERB has the power and duty to investigate an unfair practice charge and to determine whether the charge is justified and the appropriate remedy for the unfair practice.

SB 857 specifies that PERB has no authority, in an action to recover damages due to an unlawful strike, to award strike-preparation expenses as damages, or to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. It states that its provisions are declaratory of existing law and that it is not intended to modify existing law that authorizes a court to award damages for otherwise unlawful conduct committed during a strike.

**SB 609 – ALJ’s Decision on Recognition or Certification Deemed PERB’s Decision if PERB Fails to Act on Appeal Within 180 Days.**

*Adds Sections 3509.3, 3520.8, 3541.35, 3563.5, 71639.15 and 71825.05 to the Government Code, and adds Section 99561.4 to the Public Utilities Code, relating to public employment.*

PERB administers the MMBA, the Ralph C. Dills Act, the Higher Education Employer-Employee Relations Act, the Trial Court Employment Protection Relations Act, and the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act. PERB may decide contested matters relating to the recognition, certification, or decertification of public employee organizations. Existing law permits a party to appeal an administrative law judge’s proposed decision regarding a matter within the PERB’s jurisdiction.

SB 609 provides that if a decision by an administrative law judge regarding the recognition or certification of an employee organization in connection with the employment relations acts described above is appealed, the decision shall be deemed the final order of the board if the board does not act to supersede the decision on or before 180 days after the appeal is filed.

**DISCRIMINATION**

**AB 887 – No Discrimination on the Basis of Gender Identity or Gender Expression.**

*Amends Section 51 of the Civil Code; Sections 200, 210.2, 210.7, 220, 32228, 47605.6, 51007, 66260.6, 66260.7 and 66270 of the Education Code. Amends Sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12949, 12955, 12955.8, 12956.1 and 12956.2 of the Government Code. Amends Sections 676.10, 10140, 10140.2 and 12693.28 of the Insurance Code. Amends Section 3600 of the Labor Code. Amends Sections 186.21, 422.56, 422.85, 3053.4 and 11410 of the Penal Code, relating to gender.*

(1) Existing law contains various provisions that define sex as including gender and define gender as including a person’s gender identity and gender-relat-

ed appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

AB 887 makes technical changes to those provisions by refining the definition of gender to also mean a person's gender identity and gender expression and defines gender expression as meaning a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(2) Existing law contains various provisions that require equal rights and opportunities in various aspects, including employment, regardless of gender and prohibits discrimination based on specified characteristics, including sex and gender. Existing law also includes various statements of legislative intent and the policies of the state regarding the equal treatment and equal rights of people regardless of certain enumerated characteristics, including sex and gender.

AB 887 makes technical changes to those provisions by including gender, gender identity, and gender expression among the enumerated characteristics.

(3) Existing law prohibits public schools, including charter schools, from discriminating on the basis of specified characteristics, including gender, and specifies various statements of legislative intent and the policies of the state in that regard. Existing law also prohibits discrimination based on specified characteristics by any postsecondary educational institution that receives, or benefits from, state financial assistance.

AB 887 additionally includes gender identity and gender expression among those characteristics.

(4) Existing law requires an employer to allow an employee to appear or dress consistently with the employee's gender identity.

AB 887 additionally requires an employer to allow an employee to appear or dress consistently with the employee's gender expression.

(5) Existing law prohibits a personal relationship or personal connection from being deemed to exist between an employee who is injured or killed by a 3rd party in the course of the employee's employment and that 3rd party based only on a determination that the 3rd party injured or killed the employee solely because of the 3rd party's perception of the employee's race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation, for purposes of determining whether to grant or deny a workers' compensation claim.

AB 887 includes among those characteristics gender, gender identity, and gender expression.

(6) 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.

AB 887 provides 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.

### ***SB 559 – No Discrimination in Employment Based on Genetic Information.***

*Amends Section 51 of the Civil Code; Section 32228 of the Education Code. Amends Sections 11135, 12920, 12921, 12926, 12926.1, 12930, 12931, 12935, 12940, 12944, 12955, 12955.8, 12956.1, 12956.2 and 12993 of the Government Code, relating to civil rights.*

The California Fair Employment and Housing Act (FEHA) prohibits discrimination in housing and employment on specified bases. Existing law prohibits discrimination on specified bases against any person in any program or activity conducted, operated, or administered by the state or by any state agency, or that is funded directly by the state, or that receives any financial assistance from the state.

SB 559 further prohibits discrimination under the above-described provisions on the basis of genetic information.

## **PREGNANCY DISABILITY LEAVE**

### ***SB 299 – Employers Must Maintain and Pay for a Group Health Plan for Employees on Pregnancy Disability Leave.***

*Amends Section 12945 of the Government Code, relating to employment.*

Existing law prohibits employment discrimination based on sex or disability. Existing law prohibits an

employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work.

SB 299 prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes that leave.

***AB 592 – No Employer Interference With the Use of CFRA Rights; Employers Must Maintain and Pay for Health Insurance for Employees on Pregnancy Disability Leave.***

*Amends Sections 12945 and 12945.2 of the Government Code, relating to employment.*

The California Family Rights Act (CFRA) makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period (1) to bond with a child who was born to, adopted by, or placed for foster care with, the employee, (2) to care for the employee's parent, spouse, or child who has a serious health condition, as defined, or (3) because the employee has a serious health condition that renders him or her unable to perform the functions of the job.

Existing law makes it an unlawful employment practice, unless based upon a bona fide occupational qualification, for an employer to refuse to allow a female employee affected by pregnancy, childbirth, or related medical conditions to take leave on account of pregnancy for a reasonable period of time, not to exceed 4 months and thereafter return to work. Leave under these provisions is in addition to the leave provided under the CFRA. Additionally, existing law makes it an unlawful employment practice for an employer to refuse to provide reasonable accommodation for an employee for conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider.

AB 592 also makes it an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under the above provisions. AB 592 also requires an employer to maintain and pay for health coverage for an eligible female employee who takes pregnancy disability leave, at the level and under the conditions that coverage would have been

provided if the employee had continued in employment continuously for the duration of the leave. The employer may recover the premiums paid if the employee does not return from leave because of any reason other than the employee taking leave under the CFRA, or the continuation, recurrence, or onset of a health condition that entitles the employee to leave or other circumstance beyond the control of the employee.

## **HEALTH BENEFITS**

***AB 210 – All Group Health Insurance Policies Must Provide Coverage for Maternity Services.***

*Adds Section 10123.866 to the Insurance Code, relating to maternity services.*

Existing law provides for the regulation of health insurers by the Department of Insurance. Under existing law, a health insurer that provides maternity coverage may not restrict inpatient hospital benefits, as specified, and is required to provide notice of the maternity services coverage.

AB 210, **commencing July 1, 2012**, requires every group health insurance policy to provide coverage for maternity services for all insureds covered under the policy.

## **CREDIT REPORTS**

***AB 22 – Limits on the Categories of Jobs for Which an Employer Can Request a Consumer Report.***

*Amends Section 1785.20.5 of the Civil Code, and adds Chapter 3.6 (commencing with Section 1024.5) to Part 2 of Division 2 of the Labor Code, relating to employment.*

The federal Fair Credit Reporting Act (FCRA) and the state Consumer Credit Reporting Agencies Act specify the procedures that an employer is required to follow before requesting a report and if adverse action is taken based on the report. Existing federal law provides that, subject to certain exceptions, an employer may not procure a report or cause one to be procured for employment purposes, unless prior disclosure of the procurement is made to the con-

sumer and the consumer authorizes the procurement, as specified. Existing federal law further requires, subject to certain exceptions, an employer, before taking any adverse action based on the report, to provide the consumer with a copy of the report and a written description of certain rights of the consumer.

Under existing state law, an employer may request a credit report for employment purposes so long as he or she provides prior written notice of the request to the person for whom the report is sought. Existing state law also requires that the written notice inform the person for whom the consumer credit report is sought that a report will be used and of the source of the report and contain space for the person to request a copy of the report. Existing state law further requires an employer, whenever he or she bases an adverse employment decision on information contained in a consumer credit report, to advise the person for whom the report was sought that an adverse action was taken based upon information contained in the report and provide the person with the name and address of the consumer credit agency making the report.

AB 22 prohibits an employer or prospective employer, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes unless the position of the person for whom the report is sought is (1) a position in the state Department of Justice, (2) a managerial position, as defined, (3) that of a sworn peace officer or other law enforcement position, (4) a position for which the information contained in the report is required by law to be disclosed or obtained, (5) a position that involves regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, (6) a position in which the person is or would be a named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf, (7) a position that involves access to confidential or proprietary information, as specified, or (8) a position that involves regular access to \$10,000 or more of cash, as specified.

AB 22 also requires the written notice informing the person for whom a consumer credit report is sought for employment purposes to also inform the person of the specific reason for obtaining the report, as specified.

## PUBLIC RECORDS

### ***SB 484 – Legislative Analyst's Office Can Inspect Health Care Services Contracts or Amendments.***

*Amends Section 6254.14 of the Government Code, relating to public records.*

The Public Records Act provides that records of the Department of Corrections and Rehabilitation that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or other portion of the negotiations, are not subject to disclosure until one year after the contract is fully executed, except that the portion of a contract that contains the rates of payment is not open to inspection until 3 years after a contract or amendment is fully executed. The entire contract or amendment is immediately open to inspection by the Joint Legislative Audit committee and the Bureau of State Audits.

The Act also exempts from disclosure records, the disclosure of which is exempted or prohibited under provisions of the Evidence Code, relating to privilege.

SB 484 includes the Legislative Analyst's Office among those entities authorized to inspect the entire contract or amendment. It specifies that this authorization applies notwithstanding a provision of the Evidence Code permitting an owner of a trade secret to invoke a privilege against disclosure of that secret.

### ***SB 445 – Public Library Patron Use Records Are Confidential.***

*Amends Section 6267 of the Government Code, relating to public records.*

The Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure. The Act provides that all registration and circulation records of any library which is in whole or in part supported by public funds are confidential and shall not be disclosed to any person.

SB 445 instead provides that patron use records of any library which is in whole or in part supported by public funds shall remain confidential and not be disclosed.

## PUBLIC MEETING LAW

### ***AB 23 – Clerk Must Announce Compensation the Members of Two Local Agency Legislative Bodies Will Receive if they Simultaneously or Subsequently Convene Meetings.***

*Adds Section 54952.3 to the Government Code, relating to local government.*

The Ralph M. Brown Act requires each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public and all persons be permitted to attend unless a closed session is authorized.

AB 23 authorizes a convened legislative body whose membership constitutes a quorum of any other legislative body to convene a meeting of the subsequent legislative body, simultaneously or in serial order, only if a clerk or member of the convened legislative body verbally announces the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body, and that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend.

## PUBLIC MEETING LAW/ LABOR RELATIONS

### ***AB 1344 – New Limits on Local Agency Executive Compensation; Reimbursement Requirement to be Included in All Local Agency Employment Contracts; Requirement that Agendas and Other Meeting Notices Be Posted on Local Agency’s Website; and No Consideration of Executive Compensation at Special Meetings.***

Amends Sections 9255 and 9260 of the Elections Code (regarding City Charters and is not discussed below), and amends Sections 34457, 34458, 54954.2, and 54956 of, adds Section 34458.5 to, adds Article 2.6 (commencing with Section 53243) to Chapter 2 of Part 1 of Division 2 of Title 5 of, and adds Chapter

10.1 (commencing with Section 3511.1) to Division 4 of Title 1 of, the Government Code, relating to local government.

(1) The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees. The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law requires all contracts of employment between an employee and a general law local agency employer to include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with a maximum of 18 months.

Effective January 1, 2012, AB 1344 additionally prohibits an employment contract for a local agency executive, as defined, from providing an automatic renewal of a contract that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits, as specified.

(2) Existing law sets forth the penalties for misuse of public resources or falsifying expense reporting, including, but not limited to, loss of reimbursement privileges, restitution to the local agency, civil penalties for misuse of public resources, and prosecution for misuse of public resources, including imprisonment, and disqualification from holding office, as specified.

On and after January 1, 2012, AB 1344 requires a contract executed or renewed between a local agency and an officer or employee of the local agency to include a provision that requires an officer or employee of a local agency who is convicted of a crime involving an abuse of his or her office or position, as defined, to fully reimburse the local agency for specified payments made by that local agency to the officer or employee. The bill would also require an officer or employee of the local agency, who is convicted of a crime involving an abuse of his or her office, to fully reimburse any such payments that are made by the local agency in the absence of a contractual obligation between the agency and the officer or employee.

(3) The Ralph M. Brown Act enables the legislative body of a local agency to call both regular and special meetings. The act requires the legislative body of a local agency to post an agenda containing a

brief general description of each item of business to be transacted or discussed at a regular meeting, in a location that is freely accessible to members of the public. The act also requires the presiding officer of the legislative body to deliver written notice to each member of the legislative body, and to each local newspaper of general circulation and radio or television station requesting notice in writing if the presiding officer of the legislative body calls a special meeting.

AB 1344 requires the legislative body, or the presiding officer of the legislative body, to provide notice of each meeting, including special meetings, on the local agency's Internet Web site, if the local agency has one, as specified. In addition, this bill prohibits any legislative body from holding a special meeting regarding the salary, salary schedule, or other form of compensation for any local agency executive.

(4) AB 1344 expresses a legislative finding and declaration that, to ensure the statewide integrity of local government, the provisions of the act are an issue of statewide concern and that, therefore, all counties and cities, including charter counties, charter cities, and charter cities and counties, are subject to the provisions of the bill.

(5) 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.

AB 1344 provides 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.

## INDEPENDENT CONTRACTORS

### ***SB 459 – Penalties for Willful Misclassification of Independent Contractors.***

*Adds Sections 226.8 and 2753 to the Labor Code, relating to employment.*

Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship.

SB 459 prohibits willful misclassification of individ-

uals as independent contractors. It also prohibits charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation if those acts would have violated the law if the individuals had not been mischaracterized. SB 459 authorizes the Labor and Workforce Development Agency to assess specified civil penalties from, and would require the agency to take other specified disciplinary actions against, persons or employers violating these prohibitions. It also authorizes an individual to file a complaint to request the Labor Commissioner to issue a determination whether a person or employer has violated these prohibitions with regard to the individual filing the complaint. SB 459 authorizes the Labor Commissioner to assess civil and liquidated damages against a person or employer based on a determination that the person or employer has violated these prohibitions.

SB 459 provides that a person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for the individual, shall be jointly and severally liable with the employer if the individual is not found to be an independent contractor. SB 459 exempts from the provisions regarding joint and several liability a person who provides advice to his or her employer or an attorney who provides legal advice in the course of practicing law.

### ***AB 740 –State Agencies Must Discontinue Personal Service Contracts that are Disapproved by Action of the State Personnel Board and Serve Notice of Discontinuation on Vendors Within 15 Days.***

*Adds Section 19135 to the Government Code, relating to personal services contracts.*

Existing law authorizes state agencies to use personal services contracts if specified standards are satisfied, including, among other things, the contract does not cause the displacement of civil service employees and the contract is awarded through a publicized, competitive bidding process. The State Personnel Board is required to review a proposed contract upon the request of an employee organization for compliance with those standards.

AB 740 requires a state agency to immediately discontinue a contract disapproved by action of the board or its delegate unless ordered otherwise by the

board or its delegate. It prohibits the state agency from circumventing or disregarding the board's action by entering into another contract for the same or similar services or to continue the services that were the subject of the contract that was disapproved. AB 740 requires the state agency to serve notice of the discontinuation of the contract to the vendor within 15 days from the board's final action, and to serve a copy of the notice on the board and the employee organization that filed the contract challenge. It further provides that failure to serve this notice may be grounds for rejection of future contracts for the same or similar services.

## CONFLICTS OF INTEREST

### ***AB 182 – Extension of Pilot Program for Electronic Filing of Statements of Economic Interests.***

*Amends and repeals Section 87500.1 of the Government Code, relating to the Political Reform Act of 1974.*

The Political Reform Act of 1974 regulates conflicts of interest of public officials and requires that public officials file periodic statements of economic interests disclosing certain information regarding income, investments, and other financial data. Under the Act, specified local government agencies are permitted to participate in a pilot program whereby certain officials of those agencies may file their statements of economic interests electronically. Existing law provides that the pilot program shall be completed by January 1, 2012, and the provisions of law authorizing the electronic filing of statements of economic interests will be repealed on March 1, 2012.

AB 182 permits the pilot program to continue until December 31, 2012.



## COUNTY RETIREMENT LAW

### ***AB 89 – San Mateo County Safety Member Payment of Retirement Plan Contributions.***

*Amends Section 31485.10 of the Government Code, relating to county employees' retirement, and declaring the urgency thereof, took effect immediately on October 2, 2011.*

The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts to establish retirement systems in order to provide pension benefits to employees. It authorizes the Board of Supervisors of the County of San Mateo to provide any retirement benefits for some, but not all, general members or safety members of a county. The law authorizes a resolution adopted pursuant to these provisions to require members to pay all or part of the contributions by a member or employer, or both, that would have been required if specified provisions relating to the calculation of retirement benefits, as adopted by the board or governing body, had been in effect during the period of time designated in the resolution.

AB 89 authorizes a resolution adopted pursuant to the provisions described above to require safety members hired on and after the effective date of this measure to pay all or part of the contributions by a member or employer, or both. It requires in this instance that payment by a safety member would become part of the accumulated contributions of the safety member. AB 89 specifies, for those safety members who are represented by a bargaining unit, that the payment requirement and any changes to it would not be effective until approved in a memorandum of understanding executed by the board of supervisors and the employee representatives.

### ***AB 329 – Sacramento County Safety Member Pension Calculation.***

*Adds Section 31485.18 to the Government Code, relating to county employees' retirement, and declaring the urgency thereof, took effect immediately on June 13, 2011.*

The County Employees Retirement Law of 1937 (CERL) specifies the minimum ages and years of service that are required in order to become eligible for retirement. That law generally permits the board of supervisors of a county or the governing board of a

district, by resolution adopted by majority vote and pursuant to a memorandum of understanding, to make certain formulas for the calculation of benefits for its members based on their classification.

AB 329 authorizes the Sacramento County Board of Supervisors, by resolution, adopted by majority vote, if authorized by a mutually agreed upon and negotiated memorandum of understanding with a bargaining unit that represents safety members, to require safety employees of that bargaining unit and unrepresented safety employees, first hired after approval of the resolution, to receive a specified pension calculation that applies to safety members and that computes final compensation based upon the average annual compensation earnable during a specified 3-year period.

### **SB 203 – Prohibits Limitations on the Rights of Alternate Retirement Board Members; Filing Vacancies on Boards of Investment.**

*Amends Sections 31520.1, 31520.2, 31520.3, 31520.4 and 31520.5 of, adds Section 31523.1, and repeals and adds Section 31523 of, the Government Code, relating to county retirement.*

(1) The County Employees Retirement Law of 1937 (CERL) specifies the membership composition for boards of retirement. The retirement board in specified counties is comprised of 9 members and an alternate member who is the candidate for the 7th member from the group of safety members, under specified provisions, who is not represented by a board member who received the highest number of votes for all candidates in that group, except as specified. The alternate member has, unless prohibited by a resolution or regulation of the board, the same rights, privileges, responsibilities, and access to closed sessions, as the 2nd, 3rd, 7th, and 8th member and the right to hold positions on committees of the board independent of the 2nd, 3rd, 7th, or 8th member, and to participate in the deliberations of the board or its committees, as specified.

SB 203 deletes the authority of the board to prohibit, by a resolution or regulation of the board, a member from having the same rights, privileges, responsibilities, and access to closed sessions as the 2nd, 3rd, 7th, or 8th member, or from holding positions on committees of the board, and participating in board or committee deliberations, as described above. SB 203 also authorizes the alternate 7th member to participate in the deliberations of the board on any of its

committees to which the alternate 7th member has been appointed regardless of whether the 2nd, 3rd, 7th, or 8th member is present. SB 203 requires the board to cause an election to be held at the earliest possible date to fill a vacancy for the duration of the current term, except as specified, if there is a vacancy in the 2nd, 3rd, 7th, 8th, or alternate 7th member position. It limits candidacy for the 7th member and alternate member positions, as specified. SB 203 requires the board of supervisors to forgo an election in specified circumstances when there is only one candidate.

(2) Existing law prescribes the manner of appointing an alternate retired member to the office of the 8th member of the board of retirement. If there is a vacancy with respect to the 8th member, existing law requires that the alternate retired member fill the vacancy until a successor qualifies. Existing law authorizes the alternate retired member to hold positions on committees of the board independent of the 8th member and to participate in the deliberations of the board or its committees regardless of whether the 8th member is present, unless prohibited by resolution or regulation of the board.

SB 203 instead requires the alternate retired member to fill the vacancy with respect to the 8th member for the remainder of the 8th member's term of office. It also requires the board of retirement to, by majority vote, appoint a replacement alternate member, in the same manner as prescribed for the initial appointment of an alternate retired member, who shall serve until the expiration of the current term of the current member. The alternate retired member would have the same rights, privileges, responsibilities, and access to closed sessions as the 8th member, except as specified. SB 203 deletes the authority of the board to prohibit the alternate retired member from holding positions on committees of the board or participating in the deliberations of the board or any of its committees to which the alternate retired member has been appointed, as described above.

(3) Existing law permits the board of supervisors in a county in which the assets of the retirement system exceed \$800,000,000 to establish a board of investments, to consist of 9 members of specified classifications, which is responsible for the investments of the retirement system. Existing law prescribes the terms for the members of the board of investments.

SB 203 prescribes a process for filling vacancies in specified positions on a board of investments, as described above.

SB 203 requires the board to cause an election to be held at the earliest possible date to fill those vacan-

cies, except as specified, with a replacement member to serve for the duration of the current term, unless the remaining portion is 6 months or less, in which case a single election would be authorized to be held to fill the position for the vacant term position and the succeeding term.

SB 203 requires the board of supervisors to forgo an election in specified circumstances when there is only one candidate. It also establishes the initial term of a person appointed as a 9th member.

**SB 373 – *Extends Duration of Contra Costa County Board’s Authority to Establish Different Retirement Benefits For Safety Employees and their Supervisors.***

*Amends Section 31484.9 of the Government Code, relating to county employees’ retirement.*

Until January 1, 2012, existing law authorizes the Contra Costa County Board of Supervisors to establish different retirement benefits for different bargaining units of safety employees represented by the Contra Costa County Deputy Sheriffs’ Association, and the unrepresented groups of safety employees in similar job classifications and the supervisors and managers of those employees pursuant to a resolution making those provisions applicable to that county.

SB 373 deletes the January 1, 2012, date thereby extending that authorization indefinitely.

**SB 637 – *Subpoena Power for Los Angeles County Board of Investment.***

*Amends Sections 31459.1 and 31535.1 of the Government Code, relating to county employees’ retirement.*

The County Employees Retirement Law of 1937 (CERL) prescribes the rights, benefits, and duties of members of the retirement systems established pursuant to its provisions. The law vests the management of these systems in a retirement board except in certain instances in which certain functions may be delegated to a board of investment. The law permits the retirement system of a county that exceeds a specified threshold of assets to form a board of investment which is responsible for all investments of the system. Existing law, applicable to Los Angeles County, authorizes a board of retirement to exercise the

power to issue subpoenas and subpoenas duces tecum, and to compensate persons subpoenaed for matters within the board’s jurisdiction.

SB 637 extends the power to issue subpoenas and subpoenas duces tecum, and to compensate persons subpoenaed to the Board of Investment of the Los Angeles County Employees Retirement Association.

## **PERS RETIREMENT LAW**

**SB 294 – *PERS Board and Teachers’ Retirement Board Provide 5-Year Plans and Annual Report to Legislature.***

*Adds and repeals Section 22228 of the Education Code, and adds and repeals Section 20136 of the Government Code, relating to public employees’ retirement.*

The Public Employees’ Retirement Law (PERL) creates the Public Employees’ Retirement Fund, which is a trust fund created and administered solely for the benefit of the members and retired members of this system and their survivors and beneficiaries. The PERS Board has the exclusive control of the administration and investment of the retirement fund.

The Teachers’ Retirement Law establishes the State Teachers’ Retirement System in order to provide a financially sound plan for the retirement, with adequate retirement allowances, for teachers in public schools of the state, teachers in schools supported by the state, and other persons employed in connection with the schools. The plan and the system are administered by the Teachers’ Retirement Board.

SB 294 requires the Board of Administration of the Public Employees’ Retirement System and the Teachers’ Retirement Board to each provide a 5-year strategic plan, as specified, for emerging investment manager participation across all asset classes. SB 294 requires each of the boards to submit an annual report to the Legislature, until January 1, 2018, regarding the progress of the strategic plan. SB 294 requires the boards to define “emerging investment manager” for purposes of these provisions.

### **SB 322 – Prevents Members with Multiple Employers from Exceeding Limits on Annual Retirement Benefits.**

*Amends Section 21752 of the Government Code, relating to retirement.*

The Public Employees' Retirement Law (PERL) provides for the preservation of the purchasing power of benefits through a system of adjustments in benefits based on changes in living costs. Existing law also establishes provisions to ensure the federal tax-exempt status of the system and to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions. Existing federal law limits the amount a defined benefit plan may pay a participant annually, and requires that this limitation be adjusted annually by regulation to account for increases in the cost of living.

PERL provides that a member's annual retirement benefits, adjusted to the actuarial equivalent of a straight-life annuity if payable in a form other than a straight-life annuity or a qualified joint and survivor annuity, and determined without regard to any employee contributions or rollover contributions, otherwise payable to the member under PERL and under any other defined benefit plan maintained by the employer that is subject to that federal limit, shall not exceed, in the aggregate, the federal dollar limit.

SB 322 prohibits a member who receives benefits based on credited service with multiple employers from exceeding the limitations set forth in those provisions with regard to his or her annual retirement benefits.

### **AB 1247 – Annual PERS Reports to the Legislature.**

*Amends Section 20229 of the Government Code, relating to public employees' retirement.*

The Public Employees' Retirement Law (PERL) provides a defined benefit to members of the Public Employees' Retirement System (PERS) based on age at retirement, service credit, and final compensation, as those terms are defined. The management and control of PERS is vested in the Board of Administration of PERS, including the calculation of the contribution rates for specified state employees and state employers. Existing law requires the board to submit a report to the Legislature, the Governor, and the Treasurer describing the investment return assumptions, discount rates, and amortization periods

utilized by the board in the calculations of the contribution rates and to include recalculations of those rates based on specified adjustments of the investment return assumptions, amortization periods, and discount rates utilized by the board any time it calculates the contribution rates.

Existing law requires the Treasurer, within 30 days following receipt of the report, to provide each house of the Legislature, at a publicly noticed floor session, with an explanation of the role played by the investment return assumption and amortization period in the calculation of the contribution rates and the consequences for future state budgets if the investment return assumptions are not realized, to report whether the board's amortization period exceeds the estimated average remaining service periods of employees covered by the contributions, and to express his or her opinion of the reasonableness of the board's calculation of the contribution rates.

AB 1247 requires the Board of Administration of PERS to submit that report annually to the Legislature, the Governor, and the Chair of the California Actuarial Advisory Panel, limits the scope of the report to state employee retirement plans, and revises the adjustments of the investment return assumptions and discount rates utilized by the board any time it calculates the contribution rates. AB 1247 deletes the requirement that the Treasurer express his or her opinion of the reasonableness of the board's calculation of the contribution rates. AB 1247 requires the Chair of the California Actuarial Advisory Panel, or his or her designee, instead of the Treasurer, within 30 days following receipt of the report, to provide the Senate Committee on Public Employment and Retirement and the Assembly Committee on Public Employees, Retirement and Social Security, at a publicly noticed joint hearing, with an explanation of the role played by the investment return assumption and amortization period in the calculation of the contribution rates, a description of the consequences for future state budgets if the investment return assumptions are not realized, and a report on whether the board's amortization period exceeds the estimated average remaining service periods of employees covered by the contributions.

Existing law also requires the board, at any time it forecasts contribution rates, to submit a report to the Legislature with a revised calculation of the forecasted contribution rates utilizing a specified investment rate assumption.

AB 1247 deletes this reporting requirement of the board.

**AB 1028 – 960-Hour Employees, Definition of School Member “Payrate”; Limits on School Employer Amortization; State Employee Contribution Rates as Part of State Budget; Trial Court Employee Furlough Credit; Political Reform Act Applies to PERS Board; Limits on Reinstatement from Retirement; Limits on Re-employment After Disability Retirement; Death Benefits in Case of No Beneficiary.**

*Amends Sections 20096.5, 20636.1, 20812, 20814, 20820, 20969.1, 21130, 21221, 21224, 21228, 21229, 21493, 21494, 21506 and 21507 of, and adds Section 21533.5, the Government Code, relating to public employees' retirement.*

(1) The Public Employees' Retirement Law (PERL) generally prohibits any person who has been retired under Public Employees' Retirement System (PERS) from being employed in any capacity unless he or she is first reinstated from retirement, except as authorized. PERL authorizes a retired person to serve without reinstatement from retirement or loss or interruption of benefits provided by PERS, upon appointment by the governing body of a contracting agency to a position deemed by the governing body to be of a limited duration and requiring specialized skills or during an emergency to prevent stoppage of public business. These appointments are prohibited from exceeding a total for all employers of 960 hours in any fiscal year.

AB 1028 requires that the appointment be an interim appointment to a vacant position during recruitment for a permanent appointment and deemed by the governing body to require specialized skills or during an emergency to prevent stoppage of public business. AB 1028 prohibits the compensation for the interim appointment from exceeding the maximum published pay schedule for the vacant position. It prohibits a governing body of a contracting agency from appointing a retired person under this provision more than once.

(2) PERL defines "payrate" for school members as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For other members, PERL specifically includes the amount deducted from a member's sala-

ry for participation in a deferred compensation plan, a retirement plan or money purchase pension plan under a specified provision of federal law, and participation in a flexible benefits program. AB 1028 modifies the definition of "payrate" for school members to include those amounts deducted from a school member's salary.

(3) PERL permits the Board of Administration of PERS to adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations for current and prior service for the purpose of determining employer contribution rates for contracting agencies and school employers. Existing law prohibits a contracting agency or a school employer from requesting a new amortization period more than once.

AB 1028 deletes the prohibition on a contracting agency or a school employer from requesting a new amortization period more than once.

(4) PERL requires the state's contribution to PERS to be adjusted from time to time in the annual Budget Act by requiring that the Governor's proposed budget include the contribution rates submitted by the actuary of the liability for benefits on account of state employees, and requiring that the Legislature adopt the actuary's contribution rates and authorize the appropriation in the Budget Act.

AB 1028 instead requires the Governor, as part of the proposed budget, to include contribution rates adopted by the board for the liability for benefits on account of state employees and requires the Legislature to adopt the board's contribution rates and authorize the appropriation in the Budget Act. AB 1028 also authorizes the board, in its discretion, to adopt new quarterly employer contribution rates for future contributions for the state plans to reflect changes in employee retirement contributions, benefits, or pension plan design contained in a memorandum of understanding, or similar changes for unrepresented employees, when those changes go into effect after the board has adopted its most recent annual employer contribution rates.

(5) PERL requires that, for all retirement purposes with regard to members employed by a trial court who are subject to mandatory furloughs, credit for service and compensation earnable be based on the amounts of service earnable that would have been credited had the employee not been subject to mandatory furloughs, as defined.

AB 1028 specifies, with regard to the provisions described above, that credit for service and compensation earnable shall also be based on the amount of compensation earnable.

(6) PERL sets forth the membership of the PERS Board, including 6 members elected under the supervision of the board, as specified. Under PERL, candidates for or incumbents of those 6 elected seats are required to file campaign statements with the Secretary of State no later than 2 days before the beginning of the ballot period, as determined by the board for the period ending 5 days before the beginning of the ballot period, and no later than January 10, for the period ending December 31. The Political Reform Act of 1974 expressly applies to candidates for elections to the board and to committees that are formed primarily to support or oppose those candidates. It requires those members to file semiannual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.

AB 1028 clarifies that the filing provisions under the Political Reform Act would apply.

(7) PERL similarly authorizes a retired person to serve without reinstatement from retirement or loss or interruption of benefits provided by PERS upon appointment by a school employer, by the Trustees of the California State University, the appointing power of a state agency, or public agency employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration.

AB 1028 clarifies that those appointments would be temporary or interim and that the skills must be specialized.

(8) PERL also authorizes a person retired for disability who has not attained the mandatory age for retirement applicable to persons in the employment in which he or she will be employed, and whom the board finds not disabled for that employment, to be employed by any employer without reinstatement from retirement in a position other than that from which he or she retired or a position in the same member classification.

AB 1028 prohibits a person employed under that provision from being concurrently employed under other specified provisions that allow for employment after retirement.

(9) PERL requires a death benefit to be paid to the estate of the decedent if the decedent had no effective beneficiary designation and there are no familial survivors, as specified, who are entitled to the benefit, if the estate is either probated or subject to probate. PERL also provides for the payment to a decedent's beneficiaries of any accrued and unpaid

monthly allowance payable to a person, any uncashed warrant, any balance of prepaid complementary health premiums, any prepaid complementary annuitant health plan premiums, lump-sum benefit, or any uncashed lump-sum death benefit.

AB 1028 authorizes those benefits to be paid to a public administrator upon receipt by PERS of a written certification of authority for summary administration when the estate's total value does not exceed \$30,000.

### ***AB 1042 – PERS Board to Fix Compensation of Chief Financial Officer.***

*Amends Section 20098 of the Government Code, relating to public employees' retirement.*

The PERS Board appoints and fixes the compensation of an executive officer, a general counsel, a chief actuary, a chief investment officer, and other investment officers and portfolio managers, as specified.

AB 1042 additionally requires the Board to appoint and fix the compensation of a chief financial officer.

## **WAGE AND HOUR LAW**

### ***AB 469 – Labor Commissioner Can Require Employers to Pay Restitution; Misdemeanor Penalties if Employer Violates Specified Wage Statutes or Orders; Statute of Limitations for Collection Actions Extended from One to Three Years.***

*Amends Sections 98, 226, 240, 243, 1174 and 1197.1 of, and adds Sections 200.5, 1194.3, 1197.2, 1206 and 2810.5 to, the Labor Code, relating to employment.*

(1) Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages.

AB 469 provides that in addition to being subject to a civil penalty, any employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to paying restitution of wages to the employee.

AB 469 makes it a misdemeanor if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order of the Labor Commissioner for wages due.

(2) Existing law provides that an action by the Division of Labor Standards Enforcement within the Department of Industrial Relations for collection of a statutory penalty or fee must be commenced within one year after the penalty or fee became final.

AB 469 extends the period within which the division may commence a collection action, as defined, from one year to 3 years.

### ***AB 240 – Employees Can Recover Liquidated Damages on Minimum Wage Claims Before the Labor Commissioner.***

*Amends Sections 98 and 1194.2 of the Labor Code, relating to employment.*

The Labor Commissioner, who is the Chief of the Division of Labor Standards Enforcement, may investigate employee complaints and provide a hearing in any action to recover wages, penalties, and other demands for compensation properly before the commission or the division and to determine all matters arising under his or her jurisdiction. Under existing law, an employee may recover liquidated damages in a court action alleging payment of less than the state minimum wage.

AB 240 permits an employee to recover liquidated damages as to a Labor Commissioner complaint alleging payment of less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute.



## **PUBLIC CONTRACTS**

### ***AB 766 – Non-Redacted Copies of Payroll Records for Each Contractor and Subcontractor Must be Provided to Specified Agencies.***

*Amends Section 1776 of the Labor Code, relating to public works.*

Existing law requires each contractor and subcontractor on a public works project to keep payroll records regarding his or her employees, and requires that these records contain information specified by the Division of Labor Standards Enforcement. Existing law requires certain personal identification information, as specified, to be removed when certified payroll records are made available for inspection to the public or to a public agency.

AB 766 requires non-redacted copies of certified payroll records to be provided, upon request, to any agency included in, and for the purposes of, the Joint Enforcement Strike Force on the Underground Economy, or to any law enforcement agency, but would require any copies of records or certified payroll made available for inspection and furnished upon request to the public by these agencies to be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

AB 766 also provides that an employer is not liable in a civil action for any reasonable act or omission taken in good faith in compliance with these requirements.

## **PUBLIC WORKS CONTRACTS**

### ***AB 551 – Increases Penalty For Failing to Pay General Prevailing Rate; Debarment.***

*Amends Sections 1775, 1776 and 1777.1 of the Labor Code, relating to public contracts.*

Existing law generally requires that not less than the general prevailing rate of per diem wages, as specified, be paid to workers employed on a public work, as defined. Existing law requires a contractor or subcontractor to submit, to the state or political subdivision on whose behalf a public work is being performed, a penalty of not more than \$50 per calendar

day, and not less than \$10 per calendar day except in certain cases of a good faith mistake, as provided and determined by the Labor Commissioner, for violations of these prevailing wage provisions.

AB 551 increases that maximum penalty to \$200 for each calendar day and would increase the minimum penalty except in certain cases of a good faith mistake to no less than \$40 for each calendar day. AB 551 also increases the penalty assessed to contractors and subcontractors with prior violations from \$20 to \$80, and from \$30 to \$120 for willful violations.

Existing law requires each contractor and subcontractor performing work on a public work to keep accurate payroll records regarding his or her employees. Existing law requires that these records contain the information specified by the Division of Labor Standards Enforcement, and provides that a contractor or subcontractor has 10 days in which to comply after receipt of a written notice requesting the records, or is subject to forfeiting a penalty of \$25 for each calendar day for each worker until strict compliance is effectuated.

AB 551 increases the amount of that penalty to \$100 for each calendar day for each worker. Under existing law, whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be in violation of certain provisions of law relating to payment of prevailing wages, with intent to defraud, or in willful violation of those provisions of law, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible to bid on or to receive a public works contract for specified periods of time.

AB 551 revises that provision to instead make a contractor or subcontractor on a public works project that is found to have committed 2 or more separate willful violations within a 3-year period ineligible for a period of up to 3 years to either bid on or be awarded a contract or perform work as a subcontractor of a public works project. AB 551 also requires, whenever a contractor or subcontractor performing work on a public works project has failed to provide a timely response to a request by the Division of Apprenticeship Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records, the Labor Commissioner to notify the contractor or subcontractor that he or she will be subject to debarment if the certified payroll records are not produced within 30 days after receipt of the written notice, and would make the contractor or subcontractor ineligible to bid on or be awarded a contract or perform

work as a subcontractor on a public works project for a period of not less than one year and no more than three years, except as specified.

Existing law also requires the Labor Commissioner, not less than semiannually, to publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project.

AB 551 instead requires the Labor Commissioner to publish the list described above on the commissioner's Web site, to notify the Contractors' State License Board when the list is updated, and to at least annually notify awarding bodies of the availability of the list of debarred contractors, as specified.

### **SB 922 – Use of Project Labor Agreements for Construction Projects.**

*An act to add Chapter 2.8 (commencing with Section 2500) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.*

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities.

SB 922 authorizes a public entity to use, enter into, or require contractors to enter into, a project labor agreement for a construction project, if the agreement includes specified taxpayer protection provisions.

SB 922 authorizes the members of the governing board of a local public entity to choose by majority vote whether to use, enter into, or require contractors to enter into a project labor agreement for a specific project or projects awarded by that entity and whether to allocate funding to a specific project covered by such an agreement. It prohibits a charter provision, initiative, or ordinance from preventing the governing board of a local public entity, other than a charter city, from exercising this authority on a project-specific basis.

SB 922 provides that if a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a project labor agreement for a project to be awarded by the city, or prohibits the governing board from considering whether to allocate funds to a city-funded project covered by such an agreement, then state funding or financial assistance may not be used to support that project, as specified.

**AB 587 – Exemption from Prevailing Wage for Work Performed by Volunteers Extended to January 1, 2017.**

*Amends Section 1720.4 of the Labor Code, relating to public works.*

Existing law defines “public works” as, among other things, construction, alteration, demolition, installation, or repair work that is performed under contract and paid for in whole or in part out of public funds. All workers employed on public works projects are required to be paid not less than the general prevailing rate of per diem wages for work. Existing law governing public works does not apply to specified work performed by a volunteer, a volunteer coordinator, or a member of the California Conservation Corps or a community conservation corps. These provisions are effective only until January 1, 2012, and as of that date are repealed.

AB 587 extends that repeal date to January 1, 2017.

## PUBLIC FINANCES

**AB 506 – Restricts Local Public Entities from Filing for Federal Bankruptcy Unless the Entity Completes Neutral Evaluation Process or Declares Fiscal Emergency Based on Findings of Jeopardy to Residents.**

*Amends Section 53760 of, and add Sections 53760.1, 53760.3, 53760.5 and 53760.7 to, the Government Code, relating to local government.*

Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.

AB 506 prohibits a local public entity from filing under federal bankruptcy law unless the local public entity has participated in a specified neutral evaluation process with interested parties, as defined, or the local public entity has declared a fiscal emergency and has adopted a resolution by a majority vote of the governing board at a noticed public hearing that includes findings that the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent bankruptcy protections.

**SB 194 – Allows Public Agency to Accept Donation by Credit Card; Streamlines Controller’s Reports; Social Security Numbers on Military Discharge Papers; Unclaimed Property Value that Can be Transferred to a Local Agency Increased; Three-Member Community Service Boards OK.**

*Amends Sections 6159, 17562, 29001, 29006, 29008, 29085, 29089, 29100, 29106, 29130, 29144, 50057, 53601, 54954.6, 65353, 66426.5, 66428, 66452.6, and 66484.3 of, to add Section 27303.5 to, repeals Section 61041 of, and repeals Chapter 12.5 (commencing with Section 26170) of Part 2 of Division 2 of Title 3 of, the Government Code. Amends Section 4768 of, amends and renumbers Section 33320.51 of, and repeals Section 33038 of, the Health and Safety Code. Amends Section 20395 of the Public Contract Code. Amends Sections 21669.5 and 99243 of the Public Utilities Code, repeals Part 16 (commencing with Section 36000) of the Revenue and Taxation Code. Amends Sections 2151, 22525, 36522, 36608, 36615, 36622, 36623, 36625, 36627, 36631 and 36670 of the Streets and Highways Code, relating to local government.*

(1) Existing law authorizes a public agency to accept payment for designated obligations by credit card, debit card, or electronic funds transfer, subject to approval by the governing body of the agency or other appropriate entity, as specified.

SB 194 authorizes, subject to the approval of the county board of supervisors, a county to accept a payment of a donation, gift, bequest, or devise made to or in favor of a county, or to or in favor of the board of supervisors of a county, by credit card, debit card, or electronic funds transfer.

(2) The California Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except as specified.

Existing law requires the Controller to submit an annual report to various committees of the Legislature on the mandate program that contains specified information, including a comparison of the estimated annual cost of each mandate in the preceding fiscal year to the amount determined to be payable by the state for that fiscal year.

SB 194 deletes the requirement that the report contain a comparison of the estimated annual cost of each mandate in the preceding fiscal year to the amount determined to be payable by the state for that fiscal year.

(3) Existing law requires the recorder of each county to establish a social security number truncation program in order to create a public record version of each official record so that the public record is in an electronic format and is an exact copy of the official record except that any social security number contained in the official record shall be truncated by redacting the first 5 digits of that number. Existing law requires that when a public record version of an official record exists, and upon request of any person to inspect, for a copy of, or to otherwise publicly disclose that record, the recorder shall make available only the public record version of that record, and publicly disclose the official record only in response to a subpoena or court order. Existing law authorizes the recorder of a county to record military discharge documents, including a veteran service form DD214, subject to certain requirements.

Notwithstanding those provisions, SB 194 authorizes a county recorder to provide a copy of a DD214 official record when requested by a specified type of person and upon certification by that person that a full social security number is required to receive benefits and he or she is authorized to receive a copy as specified in that subdivision.

(4) Existing law provides that money in the treasury of a local agency or in the custody of a local agency officer that is unclaimed for 3 years is the property of the local agency after newspaper publication of notice if no verified complaint is filed and served. The legislative body of the local agency may transfer that unclaimed money from a special fund to the general fund. Existing law provides that with respect to unclaimed items in the amount of \$1,000 or less, the legislative body of any county may authorize by resolution the county treasurer to perform on its behalf the claiming and transfer of unclaimed money, as described.

SB 194 increases the maximum amount from \$1,000 to \$5,000.

(5) Existing law requires specified community services districts that had a board of directors that consisted of 3 members to increase the number of members on the board to 5 after January 1, 2006, as specified.

SB 194 repeals these provisions.

## DOMESTIC PARTNERS

### ***SB 651 – Eliminates “Common Residence” Requirement; Allows for Underage and Confidential Domestic Partnerships.***

*Amends Sections 297 and 2320 of, and adds Sections 297.1 and 298.7 to, the Family Code, relating to family law.*

Existing law provides that two unmarried, unrelated adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring may establish a domestic partnership by filing a declaration with the Secretary of State if certain requirements are met, including that both persons have a common residence and that both persons are at least 18 years of age. Existing law authorizes two unmarried persons, not minors, who have been living together as husband and wife to obtain a confidential marriage license.

SB 651 eliminates the requirement that domestic partners have a common residence. It also permits a person who is under 18 years of age who otherwise meets the requirements for establishing a domestic partnership to do so upon obtaining a court order that provides that authority to the underage person. SB 651 also provides for the consent of the underage persons' parent or guardian and requires that the court order and the written consent be filed with the court clerk and submitted to the Secretary of State with a Declaration of Domestic Partnership. It also requires the Secretary of State to establish a process by which two persons could enter into a confidential domestic partnership and maintain each confidential Declaration of Domestic Partnership and permit the Secretary of State to charge a reasonable fee in this regard.

## ELECTIONS

### ***AB 754 – Attorney-In-Fact May File Candidacy Papers for Those Deployed on Active Military Service.***

*Adds Section 202 to the Elections Code, relating to elective office.*

Existing law prescribes the manner in which a person may be nominated to run for office, including the form and filing of a declaration of candidacy and

nomination paper.

AB 754 permits a person who is deployed on active military service outside of the state to have a declaration of candidacy, nomination paper, or any other paper necessary to run for office filed by an attorney-in-fact who is commissioned and empowered in writing for that purpose through a power of attorney.

## MILITARY VETERANS

### **SB 806 – Six Year Statute of Limitations to Recover Overpayments to State Employees on Active Military Duty for California National Guard.**

*Amends, repeals, and adds Section 19775.2 of the Government Code, relating to state compensation, and declaring the urgency thereof, took effect immediately on September 30.*

Existing law requires the state, when it determines that an overpayment of compensation has been made to an employee, to notify the employee of the overpayment and afford the employee an opportunity to respond before commencing recoupment actions. Existing law requires that administrative action to recover an overpayment from a state employee be initiated within 3 years from the date of overpayment.

Existing law provides that a state employee who is granted a military leave of absence for active duty, whose continuous state service is not broken by a permanent separation, shall be entitled to receive his or her salary for a period not to exceed 30 calendar days in any one fiscal year.

SB 806 provides, until January 1, 2015, that when the state determines that an overpayment of compensation has been made to a state employee on a leave of absence for active military duty as a member of the California National Guard, administrative action to recover overpayment be initiated within 6 years from the date of overpayment, notwithstanding existing law, unless specified conditions exist. SB 806 makes this provision applicable to any overpayment made up to 6 years prior to the operative date of this measure, as specified.

## LIBRARIES

### **AB 438 – Restricts Local Agencies From Withdrawing from County Free Library Systems in Order to Operate Libraries with Private Contractors to Achieve Cost Savings Unless the Library is Funded Only by a Special Tax.**

*Amends Sections 19104 and 19116 of, and adds and repeals Section 19104.5 of, the Education Code, relating to libraries.*

Existing law provides that the county boards of supervisors may establish and maintain, within their respective counties, county free libraries pursuant to specified provisions of law. Existing law provides that the board of trustees, common council, or other legislative body of any city or the board of trustees of any library district may, on or before January 1 of any year, notify the county board of supervisors that the city or library district no longer desires to be a part of the county free library system, as specified.

AB 438 imposes specified requirements if the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district intends to withdraw from the county free library system and operate the city's or library district's library or libraries with a private contractor that will employ library staff to achieve cost savings, unless the library or libraries are funded only by the proceeds of a special tax imposed by the city or library district. These requirements, until January 1, 2019, would include, but not be limited to, publishing notice of the contemplated action in a specified manner, clearly demonstrating that the contract will result in actual overall cost savings to the city or library district for the duration of the entire contract, as specified, prohibiting the contract from causing existing city or library district employees to incur a loss of employment or specified benefits or an involuntary transfer, and imposing specified requirements on contracts for library services in excess of \$100,000 annually. The bill also provides that its provisions do not preclude a city, library district, or local government from adopting more restrictive rules regarding the contracting of public services, and would prohibit its provisions from applying to contracts between a city or library district and a nonprofit organization if specified requirements are met.

## MEDICAL RECORDS

### **SB 850 – *Electronic Medical Record Systems Must Record Changes or Deletions.***

*Amends Section 56.101 of the Civil Code, relating to medical records.*

The Confidentiality of Medical Information Act requires that every provider of health care, health care service plan, pharmaceutical company, and contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records do so in a manner that preserves the confidentiality of the information contained in the record, and provides that negligence in conducting these activities may result in damages or an administrative fine or civil penalty, as specified.

SB 850 requires an electronic health or medical record system to automatically record and preserve any change or deletion of electronically stored medical information, and would require the record to include, among other things, the identity of the person who accessed and changed the medical information and the change that was made to the medical information.

## DISCIPLINE

### **AB 692 – *State Personnel Board Must Schedule Evidentiary Hearing to Appeal Termination Decisions Within 60 Days of a Former Employee’s Written Request; Board May Use Electronic Media to Conduct Hearing.***

*Amends Section 18671.1 of the Government Code, relating to public employment.*

The California Constitution establishes the civil service and creates the State Personnel Board to enforce the civil service statutes. Existing law authorizes the State Personnel Board to hold hearings and make investigations concerning matters relating to the administration of the civil service. These provisions require, among other things, that a hearing or investigation be commenced within a reasonable time after the filing of the petition whenever a hearing or investigation is conducted in regard to an appeal by an employee.

AB 692 authorizes an employee to make a written request for a priority hearing by the board for an appeal of an action that resulted in the employee’s termination if an evidentiary hearing has not commenced within 6 months of the filing of the appeal. AB 692 requires the board to schedule an evidentiary hearing within 60 days of the written request, as specified. It also authorizes the board to order all of, or a portion of, any hearing to be conducted using electronic media pursuant to board rules.

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