



## California Council of the American Society of Landscape Architects (CCASLA)

### 2019 End of Legislative Year Update

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The Legislature adjourned on September 13, 2019, marking the end of the first half of the two- year session.

The Legislature reconvened the second year of the session on January 6, 2020. Legislators will introduce new bills and continue to work on the remaining two-year bills.

Below is an update on some of the bills tracked for CCASLA in the first year of the legislative session:

### Licensure Bills

**SB 608 (Glazer) – CAB/LATC Sunset Review.** This bill extends the sunset date for the California Architects Board (CAB) and the Landscape Architects Technical Committee (LATC) to 2024. Along with extending the sunset date, the bill makes various non-controversial changes that modify the activities of the CAB and LATC.

In attempt to harmonize CAB practices with other DCA boards, the bill requires that CAB fingerprint candidates as a condition of licensure for new applicants. As we have discussed on previous board calls, fingerprinting as a condition of licensure is standard across the Department of Consumer Affairs (DCA). The policy goal of fingerprinting is to increase public safety and protection when working with licensed professionals.

The bill also allows CAB to authorize the Executive Officer (EO) or a designee to conduct an informal settlement conference that allows a licensee to provide additional information that could change the outcome of a citation the individual received. The bill allows the CAB EO to delegate the authority to affirm, modify or dismiss a citation to another individual. Like fingerprinting, this process is standard across many DCA boards. Further, the bill allows individuals who have received citations to request an appeal through a formal hearing.

Currently, there are no accreditation or approval requirements for CE or CE providers, other than that the providers have “knowledge and expertise” in CE requirements. SB 608 requires that CAB to establish minimum criteria for continuing education (CE) and CE providers by January 1, 2023.

For landscape architects, the bill modifies written contract requirements and allows an exemption from these requirements if the client states in writing that a written contract is not required.

Finally, the bill clarifies the duties of the CAB and LATC executive officer. In current law, The LATC requires a licensee that is surrendering their license to appear before the CAB at one of its quarterly meetings. The CAB, however, allows the EO to approve settlement agreements when a licensee either surrenders their license or it is revoked. SB 608 changes the LATC process to bring it into alignment with the CAB's practices on license surrender and revocation.

CCASLA formally supported the bill by submitting letters of support and publicly testifying as appropriate throughout the year.

The Governor signed this bill on September 27, 2019.

**AB 476 (Rubio) – Foreign Trained Professionals.** This bill would have required DCA to create a task force to study the licensing of foreign-trained professionals in order to find the best way to integrate them into the workforce.

With California experiencing high numbers of highly skilled, yet underemployed immigrants, this bill seeks to eliminate barriers that foreign-trained professionals may face when seeking licensure in California. Licensing requirements of many DCA boards unnecessarily prevent competent applicants from obtaining a license. The policy affirms that licensing processes should not require more than the minimum amount of training, expertise and education necessary to practice safely.

The bill was vetoed by the Governor, who argued that although the policy goal is notable, establishing a task force is unnecessary.

**AB 498 (Weber) – Licensing Fee Exemption for Veterans.** This bill exempts veterans from paying any local business and license fees if the veteran is the sole proprietor of the business.

Current law exempts veterans from business licensing fees if their business sells goods other than alcohol. Given the evolution of California's economy since the original exemption was made 80 years ago, this bill extends this exemption to veterans with service-based businesses as well.

The bill passed out of both houses unanimously and was signed by the Governor into law on September 5, 2019.

### **Independent Contractors**

**AB 5 (Gonzalez) – Codification of Dynamex Decision.** After a year of discussion and debate, the Legislature passed a measure that would codify the court decision,

*Dynamex Operations West, Inc v. Superior Court of Los Angeles*. This court ruling restricts the classification of independent contractors by rejecting the “Borello Test” in favor of the more employee-friendly “ABC Test”.

As we have previously reported, Assemblymember Gonzalez has agreed to apply the *Borello* test to various professions, including, but not limited to, insurance agents, certain licensed healthcare professionals, registered securities broker-dealers or investment advisors, direct salespeople, real estate licensees, manicurists, travel agents, hairstylists/barbers, those performing work under contract for professional services and others.

Most importantly for the business community, the author accepted a business-to-business exemption that carves out additional industries. In order to be excluded from the “ABC Test” under this exemption, businesses must meet 12 specific criteria outlined in the bill. Business advocates have noted that although some businesses can meet these criteria, the list of requirements sets a high standard that many business-to-business relationships will not meet.

During the last week of session, legislators debated extensively on this bill. Immediately before the floor vote, the Senate Republicans unsuccessfully attempted to amend the bill to establish broader carve-outs for more industries, but all amendments were rejected. After two hours of debate in the Senate, the bill was ultimately passed 29-11. It passed 61-16 in the Assembly.

Throughout the extensive floor debate, several legislators on both sides discussed the further need for work on this issue, signaling that the passage of AB 5 will not be the end of the discussion on this matter. Legislators specifically discussed the need to find a solution for several other industries, including the music and the trucking industry.

Governor Newsom signed the bill on September 18, 2019.

As noted above, we expect much more legislation on independent contractors in the 2020 session.

## **Water**

**Safe Drinking Water Fee/Tax** – For the past three years the question of how to subsidize communities who lack access to clean drinking water has dominated water politics in Sacramento. In 2017, advocates for these communities began aggressively pushing the Legislature and the Governor to adopt a per-service connection fee on all water ratepayers in the state to fund drinking water improvements in these communities. This proposal faced a difficult political hurdle, as any tax must be approved by two-thirds of the Assembly and Senate to pass.

These communities won sympathy from the State Water Board and former Governor Jerry Brown. Despite numerous efforts in 2017 and 2018 to pass a water tax as part of

the state's budget and as a standalone bill, this proposal was ultimately never brought up for a vote in the Legislature.

Shortly after taking office in 2019, Governor Newsom expressed his support for adopting a tax on water and expressed his desire to do so in the budget. Shortly after, several bills were introduced on the subject in both the Assembly and Senate. SB 200 (Monning) and AB 217 (Eduardo Garcia) both would have imposed a tax on water. Both of these bills were opposed by the water community. As an alternative, the California Municipal Utilities Association (CMUA) and the Association of California Water Agencies (ACWA) cosponsored SB 669 (Caballero). SB 669 would have used a portion of the state's General Fund surplus to set up a trust fund. Revenue from the trust would be used to provide assistance to disadvantaged communities without access to clean drinking water.

Ultimately, this issue was resolved as part of the budget. In order to avoid the 2/3 vote threshold needed to pass a tax, the Governor and the Legislature agreed to rely on revenue from the state's cap-and-trade program. As such, the state budget adopted in June included a one-time appropriation of \$100 million from this fund. SB 200 (Monning) was subsequently amended and passed with a continuous appropriation of up to \$130 million annually for the same purpose through 2030. Governor Newsom signed SB 200 into law.

### **Other Legislation of Interest**

**AB 456 (Chiu) - Public Contracts: Claim Resolution.** This bill extends the sunset date from January 1, 2020 to January 1, 2027 of a claim resolution process that enables contractors to seek public agency review of claims that arise during a public works project. The bill's author notes that the bill will continue to ensure that public agencies are held accountable for paying contractors on time. Furthermore, the author argues that contractors who bid and perform the vital infrastructure work of our state should not have to worry about when or if they will get paid for work that a public agency requested and approved.

The bill passed unanimously out of both houses and was signed by the Governor on October 3, 2019.

**AB 520 (Kalra) - Public Works.** This bill seeks to codify the term "de minimus" in order to define the level of public subsidy that would trigger prevailing wage requirements on an otherwise private project.

The Governor vetoed this bill, arguing that although he supports prevailing wage law, he is concerned that the bill's restrictive nature will have unintended consequences. He also notes that there is nothing to suggest that the longstanding administrative practice of considering the public subsidy in the context of the project and using two percent as the general threshold is inconsistent.

**SB 134 (Hertzberg) – Water Loss Enforcement.** This bill prohibits the State Water Resources Control Board from issuing an enforcement action for a violation of water loss performance standards against an urban water supplier if water loss is the only objective not being met, and if the State Water Board is already taking enforcement action for water losses as part of an urban water use objective.

This bill is a follow up to SB 606 and AB 1668 of 2018, which created individual urban water use objectives. SB 134 clarifies that these bills do not allow the water loss standard to be enforced twice.

The bill was signed by the Governor on August 30, 2019.

### **Two-Year Bills**

**AB 468 (Muratsuchi) - Pesticides at Schools.** This bill would have prohibited the use of lawn care pesticides on the outdoor areas and playgrounds at schools.

The bill was supported by health organizations but opposed by school organizations such as the California School Boards Association, the Association of California School Administrators, as well as the pest control industry.

It was never brought up for a vote.

**AB 533 (Holden) – Turf Removal Water Conservation Program.** This bill would extend, by five years, the sunset date for the existing gross income exclusion applicable to rebates, vouchers, or other financial incentives issued by a local water agency or supplier for participation in a turf removal water conservation program.

The bill passed unanimously out of the Assembly Revenue and Taxation Committee but was pulled from the Assembly Appropriations Committee before its hearing, making it a two-year bill.

**AB 613 (Low) Regulatory Fees.** This bill would authorize specified DCA regulatory boards to adjust their licensing fees once every four years by an amount not to exceed the increase in the Consumer Price Index for the preceding four years.

Opponents of the bill, including the California Medical Association (CMA), argue that existing law already authorizes boards to seek fee increases through the regulatory and legislative process. Boards can request a fee increase through their sunset review process every four years. Further, the bill's opponents argue that licensing fees for certain professionals are already high and that the bill would decrease public transparency in the process of determining fee values.

The bill's hearing was postponed in the Senate Business and Professions Committee, making it a two-year bill.

**AB 626 (Quirk-Silva) – Conflicts of Interest.** This bill seeks to clarify that design professionals who provide certain preliminary services on a public project shall not be deemed financially interested in a contract to provide services on a subsequent portion of that project, pursuant to Government Code Section 1090, if the work product for the preliminary services is publicly available.

The author argues that precluding design professionals from working on subsequent phases of a project limits the pool of qualified consultants who may propose during any phase, meaning that projects may not be developed with the most qualified and competent professionals, thus depriving the public of the best and safest infrastructure possible, as well as potentially increasing project cost.

As discussed on previous calls, the author pulled her bill after some negative press and opposition from various contracting organizations. Like other two-year bills, AB 626 will have the opportunity to move further in the second year of session.

**AB 768 (Brough) – Record/Late Fees.** This bill would authorize the Department of Consumer Affairs and each board to charge a fee not to exceed \$2 for the certification of a copy of any record, document or paper in its possession. The bill would also require that any delinquency, penalty, or late fee for any licensee within the Department to be 50% of the renewal fee for that license, but not to exceed \$150.

This bill was never set for hearing in a policy committee.

**AB 1271 (Diep) – Licensing Exams.** This bill would have required that the Department of Consumer Affairs provide a report to the Assembly and Senate Business and Professions Committees with information on licensing examinations for each licensed profession under DCA's jurisdiction.

Like AB 768, this bill was never set for hearing.

**AB 1788 (Bloom) – Rodenticides.** This bill would ban second-generation anticoagulant rodenticides (SGARs) statewide and prohibit the use of first-generation anticoagulant rodenticides (FGARs) on state-owned lands, with some exceptions. The bill would allow SGARs to be used by a governmental agency for public health activities, agricultural activities including warehouses storing foods and breweries/wineries, and for the purposes of eradicating nonnative species present on offshore lands. FGARs would also be permitted for agricultural activities.

The bill passed out of the Assembly 49-16, with 15 Democrats not voting. It was later pulled from the Senate Appropriations Committee, making it a two-year bill.