

CCASLA Legislative Update

DJ Taylor, ASLA,
CCASLA Director



The California Council of ASLA (CCASLA), which is comprised of two members from each of the four California chapters, serves our membership by monitoring legislation and the lawmaking process taking place in our state Capitol. The CCASLA works with legislative advocates to assist in determining what position to take on Assembly Bills (AB) and Senate Bills (SB) that might have an effect on the profession of Landscape Architecture in California. Those positions are generally watch, oppose, or support.

CCASLA is closely following AB 1850 (Gonzalez), which pertains to worker classification. In late 2018, the California Supreme Court changed the standards used to evaluate whether a worker should be considered an independent contractor or employee under the Dynamex Decision. The Dynamex Decision applied a simple three part A,B,C test when determining whether an employee should be classified as an independent contractor. The three-part test includes the following:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity’s business; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Prior to this decision, workers were subject to the “Borrello” test which was considered more flexible for employers.

What is AB 5 (2019)?

The three-part test outlined above does not work perfectly when applied to all industries. Accordingly, Assemblymember Lorena Gonzalez introduced AB5 in 2019 to exempt certain industries/employees from the three-part test above. An exemption from AB5 means that a business is subject to the previous multi-factor “Borrello” test, which is easier to meet to maintain independent contractor status.

AB5 was an extremely contentious bill last year. Assemblymember Gonzalez was very resistant to adding exemptions into her bill. Nevertheless, she will continue to work on the issue in 2020 and has introduced a bill (AB 1850, reference above) to further refine who is and is not subject to Dynamex.

How is the Dynamex/AB5 Enforced?

When a worker believes they have been misclassified as an independent contractor, they must bring a lawsuit against their employer or file a wage claim with the Labor Commissioner to enforce their rights under the statute created by AB5. This means that a landscape architect contracting with another landscape architect would be subject to enforcement of AB5 only if the LA you are contracting with believes they should be classified as an employee and is willing to take you to court or file a wage claim.

Landscape Architects are not identified as exempt, but there is language in current law (created by AB5 in 2019) that exempts business-to-business relationships that meet certain criteria. CCASLA is considering consulting legal counsel to understand if the business relationships practiced by landscape architects meet these criteria.

CCASLA and its legislative advocates are also monitoring the bills in the chart below.

The next LATC meeting is pending Friday, May 29 at UC Davis. For more information, please visit the LATC website at www.latc.ca.gov.

If you have any questions, you can contact Joy Lyndes (jlyndes@coastal-sage.com) and/or DJ Taylor (djtaylor@delorenzo-intl.com) or go to the CCASLA website at www.cc-asla.org.

Bill#	Subject	Position	Status
AB 613 (Low)	Professions and Vocations: Reg fees	Watch	Two Year Bill
AB 1263 (Low)	Contracts: Consumer Services	Watch	Senate-Pending Referral
AB 1616 (Low)	DCA: Boards: Expunged Convictions	Watch	Senate-Pending Referral
AB 1788 (Bloom)	Pesticides: Anticoagulants	Watch	Two Year Bill
AB 1850 (Gonzalez-Fletcher)	Employee Classification: Clarify Dynamex	Watch	Asm L&E
AB 1925 (Oberholte)	Independent Contractors: Small Business	Watch	Asm L&E
AB 2031 (L. Rivas)	School Pavement to Parks Grant Program	Watch	Asm Education
AB 2113 (Low)	Immigrants: Professional Licensing	Watch	Asm B&P
AB 2231 (Kalra)	Prevailing Wage: Locality	Watch	Asm L&E
AB 2373 (Blanca Rubio)	Structural Pest Control:Anticoagulant rodenticides	Watch	Asm B&P
AB 2454 (Chen)	DCA: Retired/Inactive License-Discipline	Watch	Asm B&P
AB 2460 (Daly)	DCA: Retired Category Licenses	Watch	Asm B&P
AB 2491 (Choi)	School Facilities: Organic Pesticides Pilot Prog	Watch	Asm L&E
AB 2765 (O'Donnell)	Public Works: Prevailing Wages	Watch	Asm L&E
AB 2823 (Waldron)	Worker Status: Independent Contractors	Watch	Asm L&E
AB 2953 (Gray)	Highways: Landscaping/Cleaning/Groundwater	Watch	Asm Trans
AB 3197 (Diep)	Contractors: Registration/Exemption	Watch	Asm Judiciary
AB 3219 (Frazier)	Construction Defects: Actions	Watch	Asm Judiciary
AB 3290 (E.Garcia)	Subletting/Subcontracting Fair Practices Act	Watch	Asm – Pending Referral
SB 878 (Jones)	License Processing Timeframes	Watch	Sen B&P – 3/23/20
SB 973 (Jackson)	Employers: Annual Report: Pay Data	Watch	Sen Labor 3/25/20
SB 1168 (Morrell)	State Agencies: Licensing Services	Watch	Sen GO 3/24/20
SB 1296 (Durazo)	Nature and Parks Career Pathway/ResiliencyAct	Watch	Sen Nat Res 4/14/20
SB 1306 (Bates)	Pesticides: bromadiolone: internet purchase/sell	Watch	Sen EQ 4/1/20
SB 1324 (Allen)	Professional Licenses	Watch	Sen B&P