



**Board of Directors Meeting
South Bay City Council of Governments
Eileen Hupp, Chairman
Tuesday, September 10, 2019**

1. Welcome Eileen Hupp, Chair
 - a. Flag Salute
2. Self-Introductions and Sign-In All Participants
3. Approval of Minutes Serena Josel, Secretary
4. Industry Insights
5. Government Affairs Report PEAR Strategies
 - a. Faviola Ochoa- Southern CA Gas Company
6. Office Holders, Administrative Agencies and Community Partners - Please limit your reports to no more than 3 minutes.
 - a. U.S. Chamber of Commerce - Jennings Imel and Vartan Dijhanian
 - b. League of California Cities - Jeff Kiernan
 - c. South Bay Cities Council of Governments - Hon. Olivia Valentine
 - d. Office of Congresswoman Waters - Blanca Jimenez
 - e. Office of Congressman Lieu – Aurelia Friedman
 - f. Office of Senator Allen - Sam Liu
 - g. Office of Senator Bradford - Nital Patel
 - h. Office of Senator Lena Gonzalez- Tyler Curley
 - i. Office of Assemblymember Burke - Robert Pullen-Miles
 - j. Office of Assemblymember Gipson - Chris Wilson
 - k. Office of Assemblymember Muratsuchi - Andrew DeBlock
 - l. Office of Assemblymember O'Donnell – Sarah Patterson

- m. Office of Supervisor Hahn- Jennifer Lamarque
 - n. City of Long Beach- Lou Baglietto
7. [Officeholder representatives, non-chamber members, and guests are respectfully asked to leave the meeting at this point]
8. Chair's Report Eileen Hupp
- a. Formation of the Nominating Committee
9. Financial Report Elise Swanson Treasurer
- a. Profit and Loss
 - b. Balance Sheet
10. Adjournment/Announcements All
- a. Special thanks to The South Bay Cities Council of Governments for hosting us
 - b. Special thanks to the LAX Coastal Chamber for breakfast
 - c. **Next SBACC Meeting is Tuesday, October 1, 2019**
 - d. South Bay WIB - Chris Cagle
 - e. South Coast AQMD
 - f. Los Angeles Air Force Base



**Board of Directors Meeting
South Bay City Council of Governments
Eileen Hupp, Chairman
Tuesday, August 6, 2019**

D. Hoffman, P. Donaldson, M. Lyon, S. Josel, J. Heffernan, W. Love, E. Hupp, M. Garth, D. Latimore, M. Waronek, D. Knoll, V. Dijhanian, S. Kramer, E. Swanson, J. Brunkhardt-Taylor, J. Kiernan, G. Kivett, K. Stroman, E. Holly, C. Gale, A. DeBlock, A. Gillbride, H. Butzine, H. Rogers, D. Ledger

1. Welcome Eileen Hupp, Chair
 - Flag Salute
2. Self-Introductions and Sign-In All Participants
3. Approval of Minutes Serena Josel, Secretary
 - Motion to Approve: W. Love
 - 2nd: E. Holly
 - Motion Carries
4. Presentation
5. Government Affairs Report PEAR Strategies
 - AB 25 (Chau) California Consumer Privacy Act of 2018- Clarifies Definition of Consumer. Clarifies that a “consumer” under the California Consumer Privacy Act (CCPA) does not include employees of or job applicants to a business, which would create huge, additional compliance costs for businesses for something never intended by this law designed for “consumers” and could lead to serious, unintended consequences.
 - i. Motion to Support: M. Lyon
 - ii. 2nd: E. Holly
 - iii. Motion Carries
 - AB 394 (Oberholte) CEQA Exemptions Fire Safety- This bill would, until January 1, 2025, exempt from CEQA egress route projects or activities undertaken by a public agency that are specifically recommended by the State Board of Forestry and Fire Protection that improve the fire safety of an existing subdivision if certain conditions are met. The bill would require the lead agency to hold a noticed public meeting to hear and respond to public comments before determining that a project or activity is exempt.
 - i. Motion to Support: E. Swanson
 - ii. 2nd: J. Heffernan
 - iii. Motion Carries
 - AB 516 (Chiu) Authority to remove vehicles- Parking Laws Repeal. Causes loss of revenue to businesses and potentially leads to community blight by allowing prolonged parking on

public streets. Repeals the authority that allows peace officers to tow vehicles for having five or more delinquent parking violations.

- i. Motion to Oppose: D. Knoll
- ii. 2nd: G. Kivett
- iii. Motion Carries

- AB 846 (Burke) Customer Loyalty Programs- This bill provides that the California Consumer Privacy Act (CCPA) does not prohibit a business from offering a different price, rate, level, or quality of goods or services to a consumer, including offering them for no fee, if either the offering is in connection with a loyalty or rewards program, or the offering is for a specific good or service whose functionality is directly related to the collection, use, or sale of the consumer's data.

- i. Motion to Support: E. Holly
- ii. 2nd: E. Swanson
- iii. Motion Carries

- AB 1066 (Gonzalez) Unemployment Insurance: Trade Disputes- Unemployment During Trade Disputes. Permits workers involved in a trade dispute to collect unemployment insurance after a four week waiting period. Significantly increases costs on employers engaged in a trade dispute by allowing employees on strike to receive unemployment benefits if the strike lasts more than four weeks, incentivizing strikes, raising costs for employers, and potentially affecting the solvency of California's UI fund.

- i. Motion to Oppose: M. Lyon
- ii. 2nd: E. Holly
- iii. Motion Carries

- AB 1321 (Gipson) Public Lands: Automated Technology- Limits Efficiency Improvements at the Ports. Significantly expands the State Lands Commission's authority by allowing the Commission to make determinations regarding automation technology at the ports based upon employee safety, which is not the Commission's expertise, and could result in limited efficiencies at the ports.

- i. Motion to Oppose: W. Love
- ii. 2nd: E. Holly
- iii. Abstain- E. Swanson, D. Hoffman, J. Heffernan
- iv. Motion Carries

- Cal Water requests that SBACC support the Coalition for Fire Protection & Accountability, which was formed to protect water suppliers. Under current law, water suppliers can be held responsible for fires they did not cause.

- i. Motion to support the coalition with a letter: M. Garth
- ii. 2nd: E. Holly
- iii. Motion carries.

6. Office Holders, Administrative Agencies and Community Partners - Please limit your reports to no more than 3 minutes.

- U.S. Chamber of Commerce - Jennings Imel and Vartan Dijhanian- Thanked chambers for signing onto the USMCA support.
- League of California Cities - Jeff Kiernan- update on the August legislation

- South Bay Cities Council of Governments - Hon. Olivia Valentine: updated provided by C. Gale
 - Office of Assemblymember Muratsuchi - Andrew DeBlock: AB 39, AB 720, & AB 308 moving to Senate Approps—now would be a good time to send letters (samples can be found on SBACC website).
7. [Officeholder representatives, non-chamber members, and guests are respectfully asked to leave the meeting at this point]
8. Chair's Report Eileen Hupp
- Wed, Dec 11- Installation PV Golf Club
 - Installation award nomination form will be on the SBACC website
 - September meeting will be held on 9/10 due to Labor Day.
9. Financial Report Elise Swanson, Treasurer
- Profit and Loss
 - Balance Sheet
 - i. Receive and file: E. Holly
 - ii. 2nd: W. Love
 - iii. Motion Carries
 - 2018 Tax Returns
 - i. Receive & file: E. Holly
 - ii. 2nd: M. Lyon
 - iii. Motion Carries
10. Adjournment/Announcements All
- Special thanks to The South Bay Cities Council of Governments for hosting us
 - Special thanks to Elise Swanson from the San Pedro Chamber for breakfast
 - **Next SBACC Meeting is Tuesday, September 10, 2019**
 - Adjourned at 9:27 a.m.

ASSEMBLY THIRD READING
ACA 1 (Aguiar-Curry)
As Amended March 18, 2019
2/3 vote

SUMMARY:

Proposes to amend the California Constitution, subject to approval by voters at a statewide election, to allow a city, county, or special district, with 55% voter approval, to incur bonded indebtedness or impose specified special taxes to fund projects for affordable housing, permanent supportive housing, or public infrastructure.

Major Provisions:

- 1) Allows a city, county, or special district to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, or the acquisition of lease of real property for public infrastructure, affordable housing, or permanent supportive housing, by:
 - a) Incurring indebtedness in the form of general obligation (GO) bonds to be approved by 55% of the voters voting on the proposition; or,
 - b) Imposing, extending, or increasing a sales and use tax or transactions and use tax, or parcel tax, if the proposition proposing that tax is approved by 55% of the voters voting on the proposition.
- 2) Defines the following terms:
 - a) "Affordable housing" to include housing developments, or portions of housing developments, that provide workforce housing affordable to households earning up to 150% of countywide median income, and housing developments, or portions of housing developments, that provide housing affordable to lower, low-, or very low income households; and,
 - b) "Public infrastructure" to include, but not be limited to, projects that provide any of the following:
 - i) Water or protect water quality;
 - ii) Sanitary sewer;
 - iii) Treatment of wastewater or reduction of pollution from stormwater runoff;
 - iv) Protection of property from impacts of sea level rise;
 - v) Parks and recreation facilities;
 - vi) Open space;
 - vii) Improvements to transit and streets and highways;

- viii) Flood control;
 - ix) Broadband internet access service expansion in underserved areas;
 - x) Local hospital construction;
 - xi) Public safety buildings or facilities, equipment related to fire suppression, emergency response equipment, or interoperable communications equipment for direct and exclusive use by fire, emergency response, police or sheriff personnel; and,
 - xii) Public library facilities.
- 3) Provides specific requirements for voter protection, public notice, and financial accountability.

COMMENTS:

This measure lowers the voter threshold from a two-thirds supermajority to 55% majority to approve local (city, county, and special district) GO bonds and certain special taxes for affordable housing, public infrastructure, and permanent supportive housing projects, and defines those terms. This measure also requires the proposition submitted to the voters to contain certain accountability provisions including a requirement that the proceeds from the bonds or taxes only be used for the purposes specified in the measure, and not for employee salaries or other operating expenses, a list of specific projects to be funded, and a requirement that the city, county, or special district has evaluated alternative funding sources, and a requirement that the city, county, or special district conduct both an annual performance audit and an independent financial audit that is then posted and easily accessible to the public. A citizens' oversight committee must also be appointed to ensure that the proceeds of the bonds or special tax are expended only for the purposes described in the measure approved by the voters.

This measure is co-sponsored by California Labor Federation, California Professional Firefighters, Housing California, and State Building and Construction Trades Council.

According to the Author:

"This legislative initiative simply asks the voters of California if they wish to consider a more attainable supermajority for local initiatives to fund local affordable housing and infrastructure projects. In practice, local officials propose a local bond or special tax, and then it is up to the voters in that community to decide whether they support the idea or not. Local governments and local voters know best what their communities need. In some neighborhoods this means a new library or fire station; in others this means an increase in the affordable housing stock. ACA 1 will empower local governments to address local priorities without needing to wait for state and federal funding initiatives. A majority vote tax measure is much more likely to pass, while voters would still need to overwhelmingly support a bond or special tax in order for it to be approved with 55% of the vote. ACA 1 will level the playing field and create parity between school districts and cities, counties, and special districts, so that all local governments have a viable financing tool to address community needs."

Arguments in Support:

Supporters argue that when the state seeks voter approval for a statewide measure, it requires a simple majority, but when a city or county seeks voter approval for a similar investment, they

face a stringent two-thirds vote threshold. Supporters believe ACA 1 will level the playing field and create parity with school districts, which need 55% approval for school construction, so that cities, counties and special districts have a viable financing tool to help address important community needs for affordable housing, public infrastructure, and permanent supportive housing. Because of the numerous challenges in funding important public infrastructure and housing projects for their communities, supporters argue that this constitutional amendment is necessary to deal with the urgent need for investment in housing, and the chronic underfunding of local infrastructure to improve storm water management, transit development, park facilities, and streets and roads. Supporters also argue that one of the major obstacles to building housing, particularly in infill areas, is the cost of critical infrastructure, which often neither the developer or the city or county has the money to fund.

Arguments in Opposition:

Howard Jarvis Taxpayers Association argues that "ACA 1 repeals one of the most important protections in Proposition 13 by lowering the existing two-thirds vote threshold for both local bonds and special taxes to 55% for a myriad of purposes. While revenue raised from ACA 1 may slightly increase the affordable housing stock, it will also have the perversely negative effect of increasing the cost of housing dramatically. Nationwide, according to the National Association of Home Builders, an increase of just \$1,000 in the new median home price knocks 120,000 potential buyers out of the market. Making it easier to approve hundreds of dollars a year in new annual bonds and parcel won't make it easier to afford a home, and it won't make it easier for renters, a third of whom spend half their take home pay on rent, to be able to save. With these housing expenses, it's little wonder that California's homeownership rate of 54 percent is well off the national average of 64%, and that the large majority of the 100,000 people who leave California each year make less than \$90,000. Proposition 13 is not the cause of California's evaporating middle-class."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee One-time General Fund costs to the Secretary of State (SOS) in the range of \$414,000 to \$552,000 for printing and mailing costs to place the measure on the ballot in a statewide election. Actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot. SOS indicates that printing and mailing costs associated with placing a measure on the statewide ballot are approximately \$69,000 per page, depending on the length of the ballot. The fiscal estimates noted above reflect the addition of 6-8 pages in the Voter Information Guide. Actual costs will depend upon the length of the title and summary, analysis by the Legislative Analyst's Office, proponent and opponent arguments, and text of the proposal.

VOTES:

ASM LOCAL GOVERNMENT: 5-2-1

YES: Aguiar-Curry, Bloom, Chiu, Luz Rivas, Robert Rivas

NO: Lackey, Voepel

ABS, ABST OR NV: Ramos

ASM APPROPRIATIONS: 11-7-0

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Quirk, Robert Rivas

NO: Bigelow, Brough, Diep, Fong, Maienschein, Obernolte, Petrie-Norris

UPDATED:

VERSION: March 18, 2019

CONSULTANT: Debbie Michel / L. GOV. / (916) 319-3958

FN: 0000687

AB 5 (Gonzalez) Worker status: employees and independent contractors

Recommended Position

Oppose

Background

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines "employee" for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

Summary

AB 5 would

1. Codify the recent *Dynamex* decision, requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors, and
2. Expand the scope of *Dynamex* to include unemployment insurance and other labor law protections.

Author Amendments:

1. Clarify the operation of the ABC test and reorganize existing dispensations from the *Dynamex* employment test,
2. Include psychologists, travel agents, enrolled agents, commercial fisherman, and others under the Borello test,
3. Include freelance journalists and photographers under the professional exemption in the bill,
4. Address trucking in the construction trades and clarify the use of trucks by owner-operator truck drivers who are classified as employees, and
5. Clarify the operation of workers' compensation under the bill.

Status

Date	Action
08/30/19	Read second time and amended. Ordered returned to second reading.
08/30/19	From committee: Amend, and do pass as amended. (Ayes 5. Noes 2.) (August 30).
08/12/19	In committee: Referred to APPR. suspense file.
07/11/19	Read second time and amended. Re-referred to Com. on APPR.
07/10/19	From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 4. Noes 1.) (July 10).
06/12/19	Referred to Com. on L., P.E. & R.
05/30/19	In Senate. Read first time. To Com. on RLS. for assignment.
05/29/19	Read third time. Passed. Ordered to the Senate. (Ayes 59. Noes 15. Page 2071.)

Date	Action
05/24/19	Read third time and amended. Ordered to third reading. (Page 1984.)
05/24/19	Assembly Rule 69 suspended. (Page 1969.)
05/23/19	Ordered to third reading.
05/23/19	Action rescinded whereby the bill was read third time and amended.
05/23/19	Read third time and amended.
05/20/19	Read second time. Ordered to third reading.
05/16/19	From committee: Do pass. (Ayes 13. Noes 3.) (May 16).
05/16/19	Joint Rule 62(a), file notice suspended. (Page 1760.)
05/15/19	In committee: Set, first hearing. Referred to APPR. suspense file.
05/13/19	Joint Rule 62(a), file notice suspended. (Page 1609.)
05/02/19	Re-referred to Com. on APPR.
05/01/19	From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
04/04/19	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 0.) (April 3). Re-referred to Com. on APPR.
03/27/19	Re-referred to Com. on L. & E.
03/26/19	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
03/25/19	Referred to Com. on L. & E.
12/04/18	From printer. May be heard in committee January 3.
12/03/18	Read first time. To print.

AB 1482 (Chiu) Tenancy: rent caps

Recommended Position

Oppose

Background

Existing law specifies that a hiring of residential real property, for a term not specified by the parties, is deemed to be renewed at the end of the term implied by law unless one of the parties gives written notice to the other of that party's intention to terminate. Existing law requires an owner of a residential dwelling to give notice at least 60 days prior to the proposed date of termination, or at least 30 days prior to the proposed date of termination if any tenant or resident has resided in the dwelling for less than one year, as specified. Existing law requires any notice given by an owner to be given in a prescribed manner, to contain certain information, and to be formatted, as specified.

Summary

AB 1482, among other things, would require just cause, as defined, by residential landlords to terminate a lease in specified circumstances and would impose caps, with exceptions, on increases in residential property rent, as specified.

This bill, with respect to the just-cause provisions, would:

- Prohibit, with certain exceptions, an owner, as defined, of residential property from terminating the lease of a tenant who has occupied the property for at least 12 months without just cause, as defined.
- Specify two categories of "just cause" for the purpose of these provisions:
 - At-fault just cause, which includes default of the rent payment and assigning or subletting the premises in violation of the tenant's lease.
 - No-fault just cause, which includes the intent to occupy the property by the owner or specified relatives of the owner and withdrawal of the property from the rental market.
- Require, for certain just-cause terminations that are curable, the owner give a notice of violation and an opportunity to cure the violation prior to issuing the notice of termination.

With respect to the rent increase limit provisions, this bill would:

- Prohibit the owner from increasing the rental rate in an amount that is more than the lower of either:
- 7 percent plus the percentage change in the cost of living, as defined, or 10 percent
- The amount would be calculated based on the lowest rental rate charged for the immediately-preceding 12 months, subject to specified conditions.

Status

Date	Action
08/30/19	From committee: Do pass and re-refer to Com. on RLS. (Ayes 5. Noes 2.) (August 30). Re-referred to Com. on RLS.
08/19/19	In committee: Referred to APPR. suspense file.
07/11/19	Read second time and amended. Re-referred to Com. on APPR.
07/10/19	From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 6. Noes 1.) (July 9).
06/28/19	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.

Date	Action
06/12/19	Referred to Com. on JUD.
05/30/19	In Senate. Read first time. To Com. on RLS. for assignment.
05/29/19	Read third time. Passed. Ordered to the Senate. (Ayes 43. Noes 31. Page 2128.)
05/20/19	Read third time and amended. Ordered to third reading. (Page 1725.)
05/09/19	Read second time. Ordered to third reading.
05/08/19	From committee: Do pass. (Ayes 12. Noes 4.) (May 8).
04/25/19	From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 1.) (April 25). Re-referred to Com. on APPR.
04/23/19	Re-referred to Com. on H. & C.D.
04/22/19	From committee chair, with author's amendments: Amend, and re-refer to Com. on H. & C.D. Read second time and amended.
04/01/19	Re-referred to Com. on H. & C.D.
03/28/19	From committee chair, with author's amendments: Amend, and re-refer to Com. on H. & C.D. Read second time and amended.
03/28/19	Referred to Com. on H. & C.D.
02/25/19	Read first time.
02/23/19	From printer. May be heard in committee March 25.
02/22/19	Introduced. To print.

memo

Company name

To: SBACC Board of Directors
From: Henry Rogers
CC: Eileen Hupp
Date: September 5, 2019
Re: **AB 5**

Comments: Assembly Bill 5, which writes into law a strict test before companies can classify workers as contractors, cleared a key fiscal committee Friday in the state Senate. It is expected to pass both houses of the Legislature before lawmakers adjourn Sept. 13.

Gov. Gavin Newsom is expected to sign the bill.

Some 400,000 Californians are estimated to work either part-time or full-time for fast-growing platform-based technology companies, offering an array of services such as rides, food deliveries, household repairs and dog-walking.

Any such gig company carve-out is unlikely this year, but in an aggressive power play Uber, Lyft and DoorDash threatened Thursday to spend \$90 million on a 2020 ballot measure unless the Legislature passes a new bill allowing them to avoid classifying drivers as employees.

Newsom has indicated he may support gig companies' proposal to create a special employment category for app-based drivers, and his staff has been negotiating the details with Uber and Lyft for months.

But the amendments do not exempt the thousands of port truck drivers who work for Southern California transportation companies, which have been repeatedly charged with misclassification and wage theft by state authorities.

"Trucking has some of the worst violators," Gonzalez said. "We are not going to strip out employee protections."

AB 5 was never added to the California Chamber of Commerce's annual list of "job killer" bills, a designation that often dooms legislation. That is because without a bill, the court decision would remain in force, affecting a far larger swath of companies than AB 5, and inviting more [litigation](#).

"AB 5 is a compromise," said chamber President and Chief Executive Allan Zarembeg. "It deals adequately with certain professions, but not with a lot of other situations. ... Organized labor likes everyone to be an employee. That's not necessarily realistic."

The chamber, he said, is "hopeful for a legislative solution" for companies that deliver customers through an app.

SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

AB 5 (Gonzalez) - Worker status: employees and independent contractors

Version: July 11, 2019

Urgency: No

Hearing Date: August 12, 2019

Policy Vote: L., P.E. & R. 4 - 1

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: AB 5 would (1) codify the recent *Dynamex* decision, requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors, and (2) expand the scope of *Dynamex* to include unemployment insurance and other labor law protections.

Fiscal Impact:

- The Department of Industrial Relations (DIR) indicates that it would incur first-year costs of \$2.2 million, and \$2.1 million annually thereafter, to implement the provisions of the bill (Labor Enforcement and Compliance Fund, see Staff Comments).
- Total annual administration costs to the Employment Development Department (EDD) would range between \$2.5 million and \$2.9 million (see Staff Comments).
- Additionally, the bill could result in unknown, potentially significant costs to the Medi-Cal program. Staff notes skilled nursing facilities and intermediate care facilities employ contractors to provide physical therapy, occupational therapy, mental health services, and dietary services. To the extent the bill makes it more challenging for specified facilities to continue employing these contractors, Medi-Cal beneficiaries who reside in skilled nursing facilities and/or intermediate care facilities would have longer stays in institutional settings instead of returning to the community. In addition, if these independent contractors, or new employees qualify as an independent contractor, types of claims could shift significantly, either to reflect higher-cost of care or, potentially, lower preventative utilization in the short-term but costly services in the out-years.

Background: New business models and communications technologies have led many workers to supply their labor outside of the traditional employment relationship in recent years. An incentive exists for employers to misclassify their employees as independent contractors and illegally avoid paying the cost of benefits. Misclassified employees often are denied access to critical benefits and protections they are entitled to by law, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. Thus, the misclassification of employees represents a cost-shift from an employer to the employee and state taxpayers. Empirical evidence suggests the use of independent contractors has become more pervasive; one study concluded that the

number of workers classified as independent contractors rose 30 percent during the years 2005 to 2015.

With respect to classification of employees, the primary court precedent is less than precise on who was an independent contractor and who was not. Specifically, in *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341, the California Supreme Court created an 11 point “economic realities” test on whether someone could lawfully be considered an independent contractor. Outside of particularly clear-cut instances, this made determining who was or was not an independent contractor complicated, expensive, and prone to litigation, resulting in considerable frustration for both worker and employer stakeholders.

In early 2019, the California Supreme Court revisited the independent contractor issue in *Dynamex Operations West v. Superior Court* (2018), and concluded that certain package delivery drivers were misclassified as independent contractors rather than employees under a California wage order specific to the transportation industry. Thus, under *Dynamex*, the test for whether a worker is an independent contractor or an employee is greatly simplified to a three-prong test: (A) the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such 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 the work performed for the hiring entity.

Proposed Law: This bill would codify and expand the recent decision in *Dynamex Operations West v. Superior Court* (2018) 4 Cal. 5th 903. Specifically, among other things, this bill would do the following:

- Provide that, except where a statutory exemption from employment status or an exemption from a particular obligation related to employment applies or where a statutory grant of employment status or a particular right related to employment applies, for purposes of the provisions of this code and the Unemployment Insurance Code and the IWC’s wage orders, where a definition for employee is not provided a person providing labor or services for remuneration must be considered an employee unless the hiring entity demonstrates that all of the following conditions are satisfied:
 - The person 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.
 - The person performs work that is outside the usual course of the hiring entity’s business.
 - The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- Provide that, for the following occupations, the applicable test for determining if an individual is an employee or an independent contractor is the predecessor test

to Dynamex developed by the California Supreme Court in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 or relevant statute: (1) licensed insurance brokers, (2) licensed physicians and surgeons, (3) registered securities broker-dealers, investment advisors, or their agents and advisors, (4) a direct salesperson, provided that the salesperson's compensation is based on actual sales, rather than wholesale purchases or referrals, (5) a real estate licensee, as provided under existing licensure provisions in the Business and Professions Code, and (6) a repossession agent.

- Provide that relationships between a business entity and an individual providing work under contract is under the *Borello* test if all of the following criteria are satisfied:
 - The service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - The service provider is providing services to the contracting business rather than to customers of the contracting business.
 - The contract with the service provider is in writing.
 - If the work is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.
 - The service provider maintains a business location that is separate from the business or work location of the contracting business.
 - The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.
 - The service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.
 - The service provider advertises and holds itself out to the public as available to provide the same or similar services.
 - The service provider has no other financial relationships with the contracting business.
 - The service provider can negotiate its own rates, provided that the rate is equal to or greater than two times the minimum wage for hours worked.
 - The service provider can set its own hours and location of work.
 - The service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Section 7000 and following of the Business and Professions Code.

- Provide that, for a worker who provides hairstyling and barbering services, an electrologist, an esthetician, or a worker providing natural hair braiding, the applicable test for determining if an individual is an employee or an independent contractor is Borello if the worker is free from direction or control of the contracting entity. This includes, but is not limited to, the following:
 - The worker sets their own rates for services performed, provided the rate is equal to or greater than two times the minimum wages for hours worked and is paid directly by their clients.
 - Sets their own hours of work and has sole discretion to decide which clients from who they will provide services.
 - Has their own book of business or clients and schedules their own appointments.
 - Uses own funds to purchase requisite supplies used to provide services.
 - Maintains their own business license.
- Provides that the Borello employment test governs professional contracts if the contracting entity can demonstrate all of the following:
 - The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity.
 - If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.
 - The individual has the ability to use their own employees in the completion of the work, where reasonable, and has the authority to hire and fire other persons who assist in providing the services. Nothing in this section requires an individual to hire an employee.
 - The individual has the ability to engage in other contracts for services than with the hiring entity.
 - Both the individual and the hiring entity have the ability to negotiate compensation for the services performed.
 - Outside of project completion dates and reasonable business hours, the individual has the ability to set their own hours.
 - For services that do not reasonably have to be performed at a specific location, the individual can determine where to perform the services under the contract.

- The individual is customarily engaged in the same type of work performed under the contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.
- The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.
- Provide that an individual contracting for professional services, as defined, can do so as a sole proprietor or other business entity.
- Provide that the *Borello* test governs the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry if all of the following criteria are satisfied:
 - The individual is free from the control and direction of the contractor in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - The subcontract is in writing.
 - The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.
 - If the work is performed in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.
 - The subcontractor maintains a business location that is separate from the business or work location of the contractor.
 - The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.
 - The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, performance bonds, or warranties relating to the labor or services being provided.
 - The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

Related Legislation: AB 2496 (Gonzalez Fletcher, 2018) would have created a rebuttable presumption that a worker in the janitorial field is an employee, and therefore is due the same protections and privileges as other employees. The bill was vetoed by the Governor.

Staff Comments: DIR's Division of Labor Standards Enforcement (DLSE) anticipates that this bill, as currently drafted, would pose various implementation issues. These include (1) addressing legal challenges concerning retrospective application of the statute, (2) potential ambiguity regarding the various exceptions in the bill, and (3) the extent to which other alternative employment tests are nonetheless applicable after the bill's enactment. DLSE expects both its Wage Claims Adjudication Unit (WCA) and

Bureau of Field Enforcement (BOFE) to be impacted; however, the precise increase in workload cannot be determined, as it is not possible to predict how many new cases would result from the bill's passage. DIR notes that some of those cases likely would have been filed even absent enactment of AB 5, since worker misclassification is a pervasive problem absent the bill, pre-dating AB 5, with workers filing claims under the current *Borello* standard.

Any increase in workload due to new claims, based on factors such as increased clarity regarding the application of the ABC test to the Labor Code, would likely be offset by the ability to use a simpler test instead of the more complicated *Borello* test. However, DLSE anticipates the need for additional attorneys to help deputies and hearing officers to analyze, understand and implement the various aspects of the legislation, such as the carve-outs which include numerous threshold criteria before the *Borello* test is even triggered. In addition, DLSE would likely be challenged in its administrative decisions, resulting in additional litigation in court that would require more staff.

DIR anticipates that its Division of Workers' Compensation (DWC) also would experience an increase in workload. The expansion of the application of the ABC test to workers' compensation could result in an influx of new claims by workers if businesses affirmatively classify or reclassify their workers as employees, thereby making them eligible for workers' compensation benefits. However, here too, it is impossible to project with any certainty the number of new claims that would result, or the level of severity of any injuries that would be involved. If the number of claims increases 10 to 20 percent, this would result in substantial costs in the workers' compensation system, in order to staff DWC to adjudicate the claims, and accommodate the increased workload that would result.

In summation, DIR indicates that the bill's total fiscal impact would be \$2.2 million in the first year and \$2.1 million ongoing. If the bill were to expand the ABC test to clearly cover workers' compensation, it could result in substantially increased additional costs, extending in the millions of dollars annually, depending on the actual number of new claims.

EDD notes that the bill would have several fiscal impacts as well. First, the current version of the bill would require it to adopt the ABC test when determining if an individual is an employee or independent contractor unless there is a statutory exemption. This represents a change from how it has conducted employment status determinations previously (which were based on common law). Second, the bill would require it train tax representatives who conduct employer audits on how to administer the ABC test when making employment determinations. Third, the department's Tax Branch would need to update all appropriate guidance, forms, policies, notices, and procedures in order to convert from using the common law test to the new ABC test. Fourth, EDD would conduct outreach to employers through seminars, training materials, and special events over the next few years. Fifth, Tax Branch staff would review any relevant employer notices housed within EDD's Accounting and Compliance Enterprise System to determine if those notices required updates to comply with the ABC test. Sixth, the department would also provide a one-time direct mailing in 2019-20 to California's 1.4 million employers informing them of the new ABC test.

Finally, EDD estimates it would receive approximately 20 percent more phone calls and other employer correspondence as a result of the bill. The department expects employers would appeal determinations, request hearings, and dispute benefit claims related to the ABC test. Consequently, it would be required to hire or redirect staff to address this workload. The new employment test may also spur litigation from employers who question its validity.

The total implementation costs for EDD would be \$2.5 million in 2019-20, \$2.9 million in 2020-21, and \$2.5 million in 2021-22. These estimates exclude any potential information technology needs resulting from this workload. While the initial transition to using the ABC test would require additional staffing resources, EDD could experience efficiencies from the bill in future years if the ABC test proves to be a more streamlined process for determining employment status. Applying the ABC test could also be less time consuming for tax representatives conducting these audits since the presumption of employment could make it easier for EDD to classify worker as employees.

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SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

AB 1482 (Chiu) - Tenancy: rent caps

Version: July 11, 2019

Urgency: No

Hearing Date: August 19, 2019

Policy Vote: JUD. 6 - 1

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: AB 1482, among other things, would require just cause, as defined, by residential landlords to terminate a lease in specified circumstances and would impose caps, with exceptions, on increases in residential property rent, as specified.

Fiscal Impact:

- This measure would have varying impacts on state and local revenues, specifically property tax, sales tax, and income tax revenues, depending on the actions of landlords and renters. (See Staff Comments.)
- Workload to the Legislative Analyst's Office (LAO) to study and report on the effectiveness of the rent increase limits imposed by this bill would displace existing workload for the office.

Background: A landlord in California may terminate a month-to-month or other periodic tenancy without cause on 30 days' notice during the first year that the tenant resides in the dwelling or on 60 days' notice after that. Local ordinances in some jurisdictions—Los Angeles, San Francisco, Berkeley, and Oakland, among others—instead require a landlord to have and state a cause for termination of a tenancy as a precondition for obtaining a judge's order. Existing law prohibits a landlord from removing a tenant's personal property, locking the tenant out, or using threats, violence, force, repeated visits to the property, or menacing conduct to influence a tenant to vacate or that interferes with the tenant's quiet enjoyment of the premises and that would create an apprehension of harm in a reasonable person. Rather, a judge may order the eviction of a tenant when a landlord has shown it is more likely than not that the tenant remains in possession of the rented premises without the landlord's permission:

- After the expiration of the lease term;
- More than three business days after service of a notice requiring payment of the past due rent, unless the tenant cures the default within the three days;
- More than three days after service of a notice indicating that the tenant has breached or failed to perform a covenant of the lease, unless the tenant cures the breach or performs the lease covenant within the three days; or
- After the tenant has:
 - Breached a covenant of the lease prohibiting subletting, assignment, or waste;
 - Committed or permitted a nuisance on the premises; or
 - Used the premises for an unlawful purpose.

With respect to restrictions on rent increases in California, according to the analysis of this bill by the Senate Committee on Judiciary:

California state law regarding rent increases is generally quite simple. In the absence of a long-term lease with a fixed rental rate or a local rent control ordinance, a landlord may raise the rent at any time and by any amount that the landlord chooses. The only limitation has to do with how much notice must be given. As long as the rent increase is, cumulatively, less than 10 percent in a single year, only 30 days' notice is required. (Civ. Code § 827(b)(2).) For rent increases of more than 10 percent, the landlord must give 60 days' notice. (Civ. Code § 827(b)(3).) A California tenant's only remedy for dealing with a rent increase that is too large to afford, or that the tenant is unwilling to pay, is to try to move elsewhere.

On the local level, however, there are some jurisdictions—Los Angeles, San Francisco, and San Jose, among others—that have placed limits on how much landlords may increase residential housing rents from one year to the next. Generally, the courts have held that rent control laws are permissible so long as landlords receive a “fair rate of return.” (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, aff'd (1986) 475 US 260.) The California Supreme Court has stated that “a rent control law that merely allows a landlord to recoup the bare cost of a necessary capital improvement runs the risk of being confiscatory and thereby violating the landlord's right to due process of law.” (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 773.)

Proposed Law: This bill, with respect to the just-cause provisions, would:

- Prohibit, with certain exceptions, an owner, as defined, of residential property from terminating the lease of a tenant who has occupied the property for at least 12 months without just cause, as defined.
- Specify two categories of “just cause” for the purpose of these provisions:
 - At-fault just cause, which includes default of the rent payment and assigning or subletting the premises in violation of the tenant's lease.
 - No-fault just cause, which includes the intent to occupy the property by the owner or specified relatives of the owner and withdrawal of the property from the rental market.
- Require, for certain just-cause terminations that are curable, the owner give a notice of violation and an opportunity to cure the violation prior to issuing the notice of termination.
- Require, for no-fault just-cause terminations, as specified, the owner assist certain tenants to relocate, regardless of the tenant's income, by providing a direct payment of one month's rent to the tenant, as specified. If the owner does not provide relocation assistance, the notice of termination would be void.
- Except certain properties and circumstances from the application of its provisions.
- Require an owner of residential property to provide notice to a tenant of the tenant's rights under these provisions at the beginning of the tenancy by providing an addendum to the lease that must be signed by the tenant when the lease is signed. The owner would be required to translate the notice into the language that was used to negotiate the lease, if applicable.
- Allow local rules or ordinances that provide a higher level of tenant protections, as specified.
- Void any waiver of the rights provided by the provisions.

With respect to the rent increase limit provisions, this bill would:

- Prohibit an owner of residential real property from increasing the rental rate for that property more than once annually.
- Prohibit the owner from increasing the rental rate in an amount that is more than the lower of either:
 - 7 percent plus the percentage change in the cost of living, as defined, or
 - 10 percentThe amount would be calculated based on the lowest rental rate charged for the immediately-preceding 12 months, subject to specified conditions.
- Exempt all of the following from these provisions:
 - Deed-restricted affordable housing.
 - Specified dormitories.
 - Housing that has been issued a certificate of occupancy within the previous 10 years.
 - Housing subject to a local ordinance that imposes a more restrictive rent increase cap than these provisions.
 - Specified single-family housing.
- Require the LAO to submit a report, by January 1, 2023, to the Legislature regarding the effectiveness of these provisions.
- Void any waiver of the rights provided by the provisions.
- Provide that these provisions apply to all rent increases occurring on or after March 15, 2019.
- Provide that in the event that an owner increased the rent by more than the amount specified above between March 15, 2019, and January 1, 2020, the applicable rent on January 1, 2020 shall be the rent as of March 15, 2019, plus the maximum permissible increase. The owner would not be liable to the tenant for any corresponding rent overpayment.
- Allow an owner of an assisted housing development, who demonstrates under penalty of perjury compliance with specified provisions related to the expiration of rental restrictions, to establish the initial unassisted rental rate for units without regard to the cap on rent increases imposed by this bill. The owner would be required to comply, however, with the rent cap provisions for subsequent rent increases in the development.

All provisions of the bill would sunset on January 1, 2023.

Related Legislation: AB 36 (Bloom, 2019) would allow local jurisdictions to apply rent control to units more than 10 years old and/or single-family homes owned by a person who owns up to two units in the jurisdiction. AB 36 is pending referral in the Assembly Committee on Rules.

AB 1110 (Friedman, 2019) would extend the notice period required for a landlord to impose a large rent increase on a tenant in a periodic tenancy. AB 1110 is pending on the Senate floor.

AB 1481 (Bonta, 2019) would require a landlord to have and to state a just cause when terminating a tenancy and to pay relocation assistance for terminated leases. AB 1481 was ordered to the Assembly inactive file, but its contents were amended into this bill.

AB 1697 (Grayson, 2019) would prohibit evictions without just cause for tenants with at least 12 months occupancy and require relocation assistance for terminated leases. AB 1697 was ordered to the Assembly inactive file, but its contents were amended into this bill.

Staff Comments: As stated in the author's statement to the Senate Committee on Judiciary, "California is in a housing crisis." Simply put, rent is high in the state, because there is not enough housing for the number of people who want to live here. A shortage in stock leads to competition for available units, which, in turn, leads to increases in rent. California has 17 million renters, but only about 20 percent of people live in jurisdictions with rent control. This measure would, in part, place an upper limit on the yearly increase of rent landlords may charge for much of the rental housing units across the entire state. A statewide cap in rent increases could lead to some landlords of housing units that would be subject to the cap to sell their units to individuals who would live in the units, thereby removing housing stock from the market. Additionally, it is likely that the value of rental housing would decline if potential purchasers who intend to continue to maintain the units for rental purposes would not want to pay as much for the properties given the potentially-lower revenue generated from the investment because of restrictions imposed by AB 1482. A decline in rental property values, over years, would lead to a decrease in property tax payments made by owners of those properties. Reductions in local property tax revenues, in turn, would increase General Fund Proposition 98 spending. (The exact amount would depend on the specific amount of the annual Proposition 98 guarantee, which depends upon a variety of economic, demographic, and budgetary factors.) Furthermore, this measure could result in some landlords receiving less rental income, which, in turn, would reduce their income tax payments to the state. Relatedly, however, if the cost to purchase rental properties decreases over time, there would be reduced expenses that landlords could claim on their income tax returns (such as mortgage interest, property taxes, and depreciation) that would lead to increases in state income tax revenue.

According to the author, over 50 percent of renters and 80 percent of low-income renters pay more than 30 percent of their income towards rent. As AB 1482 could lead to some renters moving less often (because of the just cause termination requirement and the rent increase cap) and paying less in increased rents (because of the rent increase cap), this bill could result in renters using more of their income to consume more taxable goods, leading to an increase in state and local sales tax revenue.

The provisions of this bill would sunset on January 1, 2023. The long-term effects on state and local revenues of imposing the just-cause termination and rent increase caps for three years is unclear. The sunset could be extended beyond the date proposed in the measure, but AB 1482 includes legislative intent language that the rent increase cap provisions are "intended to respond to the unique circumstances of the current housing crisis, and to only apply for a limited time." (Proposed Civil Code, § 1947.12, subd. (j).)

Proposed Author Amendments: The author has proposed amendments that, among other things, would define "substantially remodel;" require that relocation assistance provided pursuant to the bill be recoverable as damages in an action to recover possession if the tenant fails to vacate after the notice to terminate the tenancy expires; and exempt from the provisions of this bill (i) housing that has been issued a certificate of occupancy within the previous 15 years and (ii) residential real property that is not

owned by (a) a real estate investment trust, as defined, (b) a corporation, or (c) a limited liability company in which at least one member is a corporation.

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