

LEGISLATIVE REPORT

California End-of-Session Report

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CONTRIBUTORS:

- [Gregory Hayes, Policy Director](#)
- [Baltazar Cornejo, Policy Advisor](#)
- [Steven Stenzler, Policy Advisor](#)
- [Alex Torres, Policy Advisor](#)
- [Grace Koplin, Policy Analyst](#)

California lawmakers wrapped up the 2023 session last Thursday night. With over 2,600 bills introduced this session, hundreds still await the governor's signature. Gov. Gavin Newsom has a deadline of Oct. 14 to sign or veto the remaining measures on his desk.

Below is a compilation of important measures from this session, including passed and pending bills along with stalled and would-be bills that may hint at future policy priorities.

Transportation

SB 88 (Skinner): School Transportation

It would apply safety provisions currently required of school bus drivers to school transportation drivers accessed through a Transportation Network Company (TNC). TNCs are often relied upon by school districts to transport homeless and foster youth, who are often transitory and not served well or at all by current school transportation. Additionally, there is a severe nationwide shortage of school bus drivers. TNCs are regulated by the California Public Utilities Commission and have stringent safety measures already in place. Many of the bill's provisions are either redundant or don't apply to individuals driving their own cars as opposed to large buses. **This bill is pending the governor's signature.**

Climate Accountability and Sustainability

A duo of Senate bills from the Democrats' Climate Accountability Package introduced earlier this session has passed the legislature and is pending action by the governor. The package was a combination of three total measures, with one already shelved for the year, intended to improve corporate transparency related to disclosures on carbon emissions to eliminate perceived corporate 'greenwashing' and align state investment systems with state climate goals to address the climate crisis. The stated intent is to add pressure on corporations regarding climate action and improve transparency and standardization regarding emissions disclosures. This is the first time these measures have made their way to the governor's desk, and with support from various major companies and industry stakeholders, there is a high likelihood the bills will be signed into law.

SB 252 (GONZALEZ): THE FOSSIL FUEL DIVESTMENT ACT - HALTED

- It would prohibit the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in the 200 largest fossil fuel companies as determined by carbon content in the companies' proven oil, gas and coal reserves effective on Jan. 1, 2024. It would also require the two systems to divest existing investments in the companies on or before July 1, 2031.

SB 253 (WIENER): CLIMATE CORPORATE DATA ACCOUNTABILITY ACT - PENDING

- The bill would require any U.S.-based business with annual revenues exceeding \$1 billion that does business in the state of California to annually report to the California Air Resources Board (CARB) the full range of greenhouse gas (GHG) emissions attributable to the business.
- Requirements would include annual disclosure of all the reporting entity's scope 1, scope 2 and scope 3 emissions (direct, indirect and supply-chain related emissions, respectively) in accordance with specified timelines, procedures, third-party verification and other requirements set forth by the bill. The proposed inclusion of scope three emissions received a lot of attention given that it by definition would require companies to document and track

emissions that “are the result of activities from assets not owned or controlled by the reporting organization, but that the organization indirectly affects in its value chain.” These emissions often are the majority of a company’s total greenhouse gas emissions and include items such as employee commuting, business travel, purchased goods and services and leased assets, among others.

SB 261 (STERN): CLIMATE-RELATED FINANCIAL RISK ACT

- Would require companies that do business in California and have gross revenues exceeding \$500 million annually, excluding insurance companies, to report on their climate-related financial risk consistent with recommendations of the Financial Stability Board’s Task Force on Climate-Related Financial Disclosure. The bill would also require the CARB to contract with a qualified climate reporting organization to review and publish an analysis of those reports.

A major bill regarding sustainability that stalled earlier this session but is predicted to return next year is SB 707 (Newman), which would establish an extended producer responsibility (EPR) program for waste textiles.

Water

This was an unusual year on water legislation in California. While major water bills attempting to reform the state’s water rights system and further increase regulations on permitting of wells stalled, a number of bills impacting water rights holders, water users and water agencies are pending in the Governor’s desk. A separate client alert on water legislation will include information on the stalled bills predicted to return next year. The bills passed and pending in the governor’s desk include:

AB 249 (HOLDEN): SCHOOL SITES LEAD TESTING

If signed into law, would require community water systems that serve these schools to test their potable water outlets for lead before Jan. 1, 2027. If the lead level exceeds a certain level, the local educational agency or school site is required to notify the parents and guardians, shut down the outlets with excess lead and provide a lead-free source of drinking water for the students. The community water system must prepare a sampling plan and post the results of the lead testing publicly. If the state determines that this law increases costs for local agencies, the state will reimburse those costs.

AB 399 (BOERNER): WATER RATEPAYERS PROTECTION ACT OF 2023

If signed into law, would require that both a public agency and the San Diego County Water Authority have a separate vote regarding an exclusion of an agency from the authority, so that both parties can have a say in the decision. The ballots for the county water authority would need to include a statement of the potential financial impact of the exclusion. The bill also states that for the exclusion to be successful, there must be a majority vote in both elections in favor of the exclusion. Additionally, the state must reimburse the local agencies and, if necessary, school districts for costs associated with the exclusion as mandated by the California Constitution.

AB 676 (BENNETT): GENERAL STATE WATER POLICY

If signed into law, would specify that the use of water for domestic purposes includes water use for human consumption, cooking, sanitary purposes, care of household livestock, animals, and gardens, fire suppression and other safety purposes, and a purpose determined to be a domestic purpose as established by the common law.

AB 779 (WILSON): GROUNDWATER ADJUDICATION

If signed into law, would add requirements that a court considers the needs of disadvantaged communities and small farmers when entering a judgement. Would also add a requirement that groundwater pumpers in a basin subject to an adjudication continue to comply with any applicable groundwater sustainability plan.

AB 1572 (FRIEDMAN): NONFUNCTIONAL TURF

If signed into law, this bill would make legislative findings and declarations that the use of potable water to irrigate nonfunctional turf is wasteful and inconsistent with state policies related to climate change, water conservation and reduced reliance on the Sacramento-San Joaquin Delta ecosystem. It would also require integrated regional water management plans to consider the water-related needs of owners and occupants of affordable housing, such as the replacement of nonfunctional turf. Additionally, it would ban the use of potable water for irrigation of nonfunctional turf on commercial, industrial and institutional properties, as well as on properties of homeowners' associations, common interest developments and similar entities. Lastly, it will provide support to reduce costs associated with turf replacement for small and minority-owned businesses.

AB 1594 (GARCIA): MEDIUM- AND HEAVY-DUTY ZERO-EMISSION VEHICLES If signed into law, this bill would make non-financial supports available to operators of medium- and heavy-duty vehicle fleets to transition those fleets to zero-emission vehicles to assist with implementation of Executive Order No. N-79-20 to transition medium- and heavy-duty vehicles to zero-emission by 2045, where feasible, and by 2035 for drayage trucks. It would also provide for public agency utilities to purchase traditional utility-specialized vehicles when needed, such as in the event of severe weather, wildfires, natural disasters and physical attacks. These public agencies would include local publicly owned electric utilities, community water systems, water districts and wastewater treatment providers.

SB 389 (ALLEN): INVESTIGATION OF WATER RIGHTS

If signed into law, the bill would authorize the State Water Resources Control Board to investigate and ascertain whether or not a water right is valid. It would also authorize the board to issue an information order in furtherance of the investigation. Furthermore, it would authorize a diversion of use of water ascertained to be unauthorized to be enforced as a trespass.

SB 649 (ASHBY): CALIFORNIA WATER SUPPLY SOLUTIONS ACT OF 2023

If signed into law, the bill would require the Department of Water Resources, as part of the 2028 update to the California Water Plan, and each subsequent update thereafter to the plan, to provide actionable recommendations to develop additional groundwater recharge opportunities that increase the recharge of the state's groundwater basins.

Privacy and Social Media

This session saw a number of bills introduced to address perceived flaws in California's privacy laws, including legislation to make it easier for consumers to delete their online data, and legislation intended to protect vulnerable individuals from harmful aspects of social media. A bill that was introduced but stalled would have restricted the use of foreign social media applications in state-issued or state-owned devices. Below is a brief rundown of legislation regarding privacy and social media.

SB 362 (BECKER): DATA BROKER REGISTRATION—ACCESSIBLE DELETION MECHANISM

The California Consumer Privacy Act of 2018 (CCPA) and the California Privacy Rights Act of 2020 (CPRA) grant consumers various rights in relation to their personal information, including the rights to request what information has been collected, to request deletion of personal information that has been collected and to direct businesses not to share or sell personal information. If signed into law, SB 362, also known as the Delete Act, would require the California Privacy Protection Agency to create a way for consumers to ask for all of their records to be erased from every data broker with a single request, beginning in January 2026.

Current law requires every data broker to register with the California Privacy Protection Agency, which has full authority to enforce the CCPA. There are approximately 500 data brokers currently registered in California, and it can be unclear what information data companies have or share. Furthermore, though under CCPA consumers can request their personal information be deleted, it can be overwhelming to send individual requests to every data broker. SB 362 builds upon the CCPA to expedite and streamline processes for consumers seeking to erase their personal data and protect sensitive information.

This bill received support from the California Attorney General's Office, which also emphasized that this bill limits the right to delete data from businesses and only applies to data collected directly from the consumer. Supporters of the bill applauded that it would strengthen consumer protections and control over online personal data.

By contrast, businesses and advertisers aggressively lobbied against SB 362, arguing that it would ["destroy California's data driven economy."](#) Opponents of the bill argued that this bill could have unintended consequences, especially as credit bureaus and background-check companies use personal information to verify individuals' identities and criminal histories. The author added in an amendment to try to combat this critique, which would allow consumers to choose to exempt certain data brokers from their deletion request. SB 362 passed the legislature on Sept. 14 and is now on its way to the governor's desk for consideration.

This bill is pending action by the governor

SB 60 (UMBERG): SOCIAL MEDIA PLATFORMS—CONTROLLED SUBSTANCES

Pending in the governor's desk is SB 60, which would until Jan. 1, 2028, require social media platforms that operate in the state have to have a policy statement that explains how they deal with users that distribute drugs illegally. Platforms with one million or more users must also clearly state whether or not they have a system for reporting violent posts. Californians who are targets of violent posts or reasonably believe that they are the target, can go to court and get an order to remove the post and any related posts if necessary. Californians can also get an order to have the social media platform remove content that includes an offer to transport, sell or give away a controlled substance.

AB 1394 (WICKS AND FLORA): COMMERCIAL SEXUAL EXPLOITATION

Also pending in the governor's desk is AB 1394, a bipartisan bill that attempts to address commercial sexual exploitation of a minor or nonminor in social media platforms. This bill would require social media platforms to provide a mechanism for users to report child sexual abuse material in which they are depicted. It would provide platforms 30 to 60 days after receiving a report to verify the content of the material and block it from reappearing. It would also provide

victims the right to sue social media platforms for having deployed features that were a substantial factor in causing their exploitation.

SB 680 (SKINNER): CALIFORNIA AGE-APPROPRIATE DESIGN CODE ACT

The California Age-Appropriate Design Code Act failed passage in the Assembly Appropriations Committee earlier this session. It would have prohibited a large social media platform from using a design, algorithm or feature that the platform knows or should have known causes a child user to incur specified harms. Violations of this prohibition would have been enforceable through a civil cause of action that may be brought by a public prosecutor.

SB 74 (DODD & JONES): FOREIGN-OWNED SOCIAL MEDIA APPS

As referenced above, the bill targeting foreign-owned social media apps was placed on hold at the end of session by the authors who will continue to work on the legislation next year to address concerns. The bill would establish a rebuttable presumption that some state agencies shall prohibit use of certain social media platforms, such as Tik Tok, on state electronic devices. It would allow an agency to overcome the presumption and use TikTok on state devices with a written finding that using the platform is necessary for an official state purpose and other requirements.

AB 1282 (LOWENTHAL): MENTAL HEALTH IMPACTS OF SOCIAL MEDIA

Another bill placed on hold at the end of session by its author is AB 1282. The bill would require the Mental Health Services Oversight and Accountability Commission, on or before July 1, 2025, to create a statewide strategy to understand, communicate and mitigate mental health risks associated with the use of social media by children and youth. The report would also include the degree to which individuals negatively impacted by social media are accessing and receiving mental health services, along with recommendations to strengthen California's use of mental health services to reduce the negative outcomes of untreated mental illness. The commission would also explore the persons and populations that use social media and the negative mental health risks associated with social media and artificial intelligence.

Wildfire Insurance

With insurers leaving California and a crisis brewing with access to insurance, a small group of legislators and Gov. Newsom's team began pulling stakeholders into conversations to develop a solution. The group was nearing a legislative deal that could let insurance rates rise to bring insurers back to the state and prevent more from leaving. However, with two weeks left in the session, POLITICO published an article detailing an industry lobbyist's conversation about the proposal on a public plane ride to Sacramento, which was recorded on a cell phone by a consumer advocate. The reporting and subsequent opposition from several organizations aligned with consumers and ardently against any "giveaways" for insurance companies led legislators to table the effort with commitments from several members and leadership that they plan to move something forward in January.

Energy

On Aug. 31, Gov. Newsom and several Democratic legislators announced a last-minute agreement on legislation aimed at building more clean energy projects, improving grid reliability and making it easier to meet California's 100% clean electricity goal. These proposals now take shape in the form of **AB 1373**, with Assemblymembers Eduardo Garcia (D-Coachella) and Phil Ting (D-San Francisco) along with Sen. Josh Becker (D-Menlo Park) leading this effort. Notable elements include fast-tracking provisions for electric transmission infrastructure and creating a central buyer to procure clean electricity for the grid.

This bill was supported by a coalition of energy developers, labor unions, environmental organizations, investor-owned utilities and business groups. California has ambitious clean energy goals: 100% renewable and zero-carbon energy-producing resources by Dec. 31, 2045. The state has had some success in this effort, though some emissions from some sectors have proven challenging. The measure passed out of both houses on party-line votes and will receive swift approval from the governor.

Labor

As discussed further in this report, labor has flexed its muscle this session on a large number of policy areas. This year, you can add autonomous vehicle technology to the list. In response to concerns about public safety and displacement, the Teamsters union sponsored a bill targeting the testing of autonomous vehicles on public roads without a human operator available to take control. Below is a brief description of the bill that passed the legislature with near-unanimous bipartisan support, but which Gov. Newsom has strongly signaled he would veto.

Two other major proposals from the labor community at the end of session were ACA 6 by Assemblymember Matt Haney (D-San Francisco) and SB 799 by Senator Anthony Portantino (D-Burbank).

AB 316 (AGUIAR-CURRY): AUTONOMOUS VEHICLES

If signed into law, this bill would require manufacturers of autonomous vehicles that weigh 10,001 pounds (or more) to report certain collisions to the Department of Motor Vehicles. The bill would also prohibit the operation of these vehicles without a human safety operator. It also requires the Department of Motor Vehicles to submit a report to the appropriate policy and fiscal committees of the Legislature by Jan. 1, 2029 (or five years after commencement of testing) to evaluate the performance of autonomous vehicle technology and its impact on public safety and employment in the transportation sector.

ACA 6 (HANEY): UNIVERSITY OF CALIFORNIA BASIC STATE LABOR STANDARD

This would have put on the ballot an amendment to the California Constitution to require the University of California (UC) system to conform to the same labor, employment and occupational health and safety standards as other public agencies, including standards against displacement and contracting out of work as provided for in state laws governing the non-emergency use of personal service contracts. Despite strong support from the labor community, the business community and the UC managed to defeat this proposal in the final week of session, by a vote of 3-1 with 3 abstentions in the Senate Elections and Constitutional Amendments Committee where the chair, Sen. Steve Glazer (D-Orinda), expressed concern over the proposal.

SB 799 (PORTANTINO): TRADE DISPUTE ELIGIBILITY FOR UNEMPLOYMENT BENEFITS

A major push for the California Labor Federation and labor-aligned allies, this bill would make striking workers eligible to collect unemployment insurance benefits after a two-week waiting period. New York and New Jersey are currently the only two states that allow individuals on strike to collect unemployment benefits. Previous iterations of this proposal have failed in California. AB 1066 (Gonzalez), from 2019, would have permitted individuals in a trade dispute to collect unemployment compensation after a three-week waiting period. AB 1066 failed on the Senate floor and was later amended, but that subsequent version was vetoed by Gov. Gavin Newsom.

In a furious Senate floor battle resulting in a 27-12 passage, the measure advances to Governor Newsom, who has expressed concern around the unemployment insurance fund's deficit (\$20 billion) and championed fiscal prudence amidst a recent challenging budget cycle. The business community has signaled a strong effort to urge a veto.

AB 1228 (HOLDEN): JOINT FRANCHISE LIABILITY

The major provision of this bill, holding corporations liable for acts by their franchisees, was removed last year from Assemblymember Chris Holden's landmark legislation AB 257, the FAST Act, which created an independent body to set wage, hour and labor law for the fast food industry. It set up a titanic battle between organized labor and the fast food industry resulting in a referendum to repeal the FAST Act for the 2024 ballot. Intense negotiations ensued to resolve the dispute with Gov. Newsom playing a prominent role. What resulted is viewed as a very substantial victory for the Service Employees Union in obtaining a \$20hour minimum wage per hour for fast food workers commencing in April 2024. The restaurants agreed to drop the 2024 referendum, and the joint franchise liability component was dropped as well.

Health Care

California hospitals have faced financial distress in the past year—on Aug. 24, the state announced it would give close to \$300 million in interest-free loans to 17 struggling hospitals across California. The end of the session brought a number of health care bills to the forefront, affecting all stakeholders from patients to physicians to hospitals and insurers. Some bills, such as SB 385 and SB 487, seek to strengthen both patient and physician protections in regard to seeking and providing abortions, contraceptive services and gender-affirming care amidst other states' bans on these procedures. A number of other bills, as described below, could place further stress on hospitals and health care systems by imposing administrative costs and higher wages for healthcare workers. Below please find a summary of some of the most notable bills waiting on the governor's desk.

SB 525 (DURAZO): MINIMUM WAGE FOR HEALTH CARE WORKERS

One of the most significant bills to be introduced was Sen. Maria Elena Durazo's (D - Los Angeles) bill to raise the minimum wage for healthcare workers to \$25 per hour. If signed by the governor, SB 525 will establish three minimum wage schedules for covered health care employees, as defined, depending on the nature of the employer:

- Dialysis clinics and large health systems with more than 10,000 workers would pay a minimum wage of \$23 an hour in 2024, \$24 in 2025 and \$25 in 2026.
- Hospitals with a high mix of Medi-Cal and Medicare patients as well as rural independent hospitals would have to pay workers \$18 an hour in 2024. That rate would increase 3.5% annually until it reaches \$25 in 2033.

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- Community clinics would start the pay increase at \$21 per hour in 2024, rising to \$22 in 2026 and \$25 in 2027.
- Other health care employers would increase their minimum wage to \$21 per hour in 2024, \$23 in 2026 and \$25 by 2028

SB 525 passed after a hard-fought deal between labor calling for more support for essential workers and industry administrators concerned about higher costs as many California health care facilities are already [struggling to stay afloat](#). A number of last-minute amendments, including a provision to prohibit cities and counties from increasing local wages until 2034, were made to appease the employer side and soften the blow of raising wages for healthcare workers. These amendments also include barring attempts to cap hospital executive pay, such as the [ballot measure](#) Los Angeles residents were expecting to vote on in 2024. If Gov. Newsom signs this bill, any local and city ordinances similar to that measure would be voided.

The California Hospital Association (CHA) initially opposed SB 525 but changed its position to support this past week after striking a deal with SEIU to secure these additional amendments. Similarly, the California Dialysis Council withdrew its opposition after health worker union leaders agreed to hold off until 2026 on introducing costly recurring ballot measures relating to kidney dialysis clinics. Despite many 'behind the scenes' deals, Republicans still stood up against the bill until the end, citing concerns about their rural hospitals being unable to shoulder the additional costs even with the additional amendments and the phase-in wage increases. Gov. Newsom has not yet given an indication as to whether or not he will sign this bill into law, but he has warned of vetoing bills given his concern with California's \$31.5 billion deficit.

AB 40 (RODRIGUEZ): EMERGENCY MEDICAL SERVICES

If signed into law, AB 40 would require local emergency medical services (EMS) to implement and maintain an ambulance patient offload time (APOT) standard of no longer than 30 minutes, 90% of the time. This bill would also require hospitals with emergency departments (EDs) to create protocols to reduce APOT. Starting on Dec. 21, 2024, if a hospital with an ED surpasses the local EMS standard for the month prior, the hospital will be required to conduct a minimum of biweekly calls with the local EMS agency and EMS providers to discuss the APOT reduction protocol and other requirements for the California Emergency Medical Services Authority (EMSA). Violations of this bill could be punishable as a misdemeanor.

The California Hospital Association (CHA) requested amendments to AB 40 to create a phase-in approach to allow hospitals to adapt to implementing the APOT standard over time. Since the author of the bill, Assemblymember Freddie Rodriguez (D-San Bernardino), rejected the requested amendments, CHA remains opposed to this measure. CHA will be requesting a governor's veto on this bill.

SB 43 (EGGMAN): LANTERMAN-PETRIS-SHORT ACT

The Lanterman-Petris-Short Act provides for the involuntary commitment and treatment of a person who is a danger to themselves or others or who is "gravely disabled." Existing law, for purposes of involuntary commitment, defines "gravely disabled" as a condition in which a person is unable to provide for their basic personal needs such as food, clothing or shelter due to a mental health disorder or if a person has been deemed mentally incompetent. SB 43 expands the definition of "gravely disabled" to also include a condition in which a person is unable to provide for their basic personal needs and unable to provide for their personal safety or necessary medical care as a result of a severe substance use disorder or a co-occurring mental health disorder and a severe substance use disorder.

SB 43 was relatively unopposed, receiving 75 yes votes and zero opposed on the third reading vote in the Assembly. Proponents of the bill argue that, if signed into law, this bill could lead to improvements to California's homelessness and mental health crises, especially if voters support [Gov. Newsom's bond measure](#) to increase state investment in mental health facilities.

Artificial Intelligence

There were several attempts in the U.S. Congress this year to pass legislation to target the rapidly growing use of Artificial Intelligence (AI) technology. However, with most AI developments happening in Silicon Valley and San Francisco, California legislators also felt the need to introduce state bills attempting to regulate the use of AI in California. Though no AI bills are going to the governor's desk, there are a number of bills introduced this past year that are now two-year bills which will shape a debate around artificial intelligence in 2024:

SB 313 (DODD): THE CALIFORNIA AI-WARE ACT

Known as the California AI-ware Act, this bill would, if enacted, would create the Office of Artificial Intelligence within the Department of Technology. This office would have the power to make sure that automated systems are designed and deployed in a way that respects people's privacy and civil liberties and minimizes bias. There are also existing laws that require state agencies that collect user information online and use generative artificial intelligence technology to communicate with people to give them notice of the AI they are interacting with and provide instructions on how they can talk to a real person from the agency. Though this bill died on the suspense file this year, the author has noted their intent to refile in 2024.

SB 398 (WAHAB): THE ARTIFICIAL INTELLIGENCE FOR CALIFORNIA RESEARCH ACT

SB 398, also known as the Artificial Intelligence for California Research Act, would require the Department of Technology to investigate the possibility of using advanced technology, such as AI, to improve state and local government services. The department, upon receiving an appropriation from the legislature, would need to create and implement a research plan that looks into the potential benefits and risks of using artificial intelligence technology in government services and provide a report on their findings to the legislature by January 2026. The department already exists and is responsible for the approval and oversight of information technology projects, and for submitting reports to the legislature about an annual information technology strategic plan.

On Wednesday, Sept. 13, the second-to-last day of session, two legislators, Sen. Scott Wiener and Assemblymember Ash Kalra, introduced bills that aim to create statewide safeguards for the AI industry. These bills will not be debated for months but could prove influential in the ongoing attempts to regulate AI:

SB 294 (WIENER): AI REGULATION

Existing law requires the Secretary of Government Operations to develop a plan to look into creating standards and technologies for California state departments, including researching the impact of "deepfakes"—artificial intelligence-generated audio or visual content that features individuals saying or doing things they did not actually do or say. SB 294 expresses the intent of the legislature to create laws related to AI, which would include creating standards and requirements for the safe development, secure deployment and responsible use of AI models. There would also be disclosure requirements for AI models in California.

This bill includes placeholder language but ultimately the author aims to create an agency to regulate AI and hold AI labs accountable for damages if their technology has “foreseeable safety risks.”

AB 459 (KALRA): CONTRACTS AGAINST PUBLIC POLICY

AB 459 would make it illegal to have certain agreements between an employer and employee, including prohibiting an employer from requiring a worker or applicant to agree to engage in activities that are known by the employer to be illegal. This includes things like using a digital version of someone’s voice or likeness, or training a generative artificial intelligence system, where the employee does not get paid. This bill would specifically relate to AI provisions in Hollywood contracts so that studios could not use AI to generate content that would mimic an actor’s work.

Crypto

AB 39 (GRAYSON): DIGITAL FINANCIAL ASSET BUSINESS REGULATORY OVERSIGHT

For the second year in a row, [Assemblymember Tim Grayson’s \(D-Concord\)](#) bill to regulate cryptocurrency was again approved by the legislature with bipartisan support. If signed by the governor, AB 39 will establish California’s first licensing and regulatory framework for business activity associated with digital financial assets, defined as “a digital representation of value that is used as a medium of exchange, unit of account, or store of value.” The bill deputizes the Department of Financial Protection and Innovation (DFPI) to administer the law. Reorganized in 2020, the DFPI was granted new authority to oversee industries like consumer credit repair companies, debt collectors and debt-relief companies. If signed, it will represent a significant expansion of their jurisdiction.

The licensure scheme includes reporting, record-keeping and surety requirements and establishes the authority to assess a fee to cover the costs of administration. Licensees are required to provide prospective and current clients with a long list of disclosures, including:

- a schedule of fees and charges, along with the manner by which they will be calculated;
- notice of whether a product or service is covered by a public guarantor or by private insurance against theft or loss, including cybertheft;
- notice of the irrevocability of a transfer or exchange and any exception to irrevocability; and
- a list of instances in the past 12 months when the licensee’s service was unavailable to 10,000 or more customers.

The bill will also require a licensee that manages a digital financial asset for another person or persons to maintain custody and control of those assets in an amount sufficient to satisfy the aggregate entitlements of the persons to the type of digital financial asset. In other words, licensees could not pledge, stake or lend digital assets owned by its customers for a reward without holding an equivalent position on their balance sheet. This effectively kills a significant revenue-earning function for many issuers in this space and was a major point of contention for the industry.

Finally, the bill specifically addresses the exchange of “stablecoins,” requiring licensees to maintain a reserve of securities equal to the amount of outstanding stablecoins issued. This again would limit the pledging, staking or lending activity licensees could engage in to generate additional revenue.

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Last year, Gov. Newsom vetoed a similar measure ([AB 2269 \(Grayson, 2022\)](#)) over the objections of consumer advocates, and despite public promises “to create a transparent and consistent business environment for companies operating in blockchain.” Not long after the veto was delivered the FTX scandal broke, leaving many to question the wisdom of leaving the cryptocurrency market in California unregulated. The pressure is now on the Governor to sign the latest iteration of this bill, in spite of vociferous opposition from the industry.

MOBILE DRIVER’S LICENSE

In August, the California DMV initiated its public rollout of the Mobile Driver’s License (mDL) program, a blockchain-powered digital identity solution that positions the state as a leader in high-tech project delivery. First authorized in a budget trailer bill in 2021 ([AB 149 from 2021](#)), the language included a bevy of consumer protections, including assurance that the mDL will not collect or retain extraneous information about users, a prohibition against sharing, selling, or disclosing user information, and a provision that the holder of an mDL shall not be required to physically turn over their electronic device for the purposes of identity verification. As program enrollment continues to grow, other state agencies are likely to begin exploring their own digital identity implementations in the near future.

Housing

It was a banner year for housing legislation in Sacramento, with impactful bills on streamlining, CEQA reform, accessory dwelling units and local government finance all advanced to the governor’s desk. Several factors influenced the success of legislation this year, including strong signals from the governor that he is ready to see meaningful reform to CEQA, and the fallout from last year’s fight over labor standards on streamlined housing projects. Below is a brief description of some of the biggest housing wins.

SB 4 (WIENER): HOUSING DEVELOPMENT AT HIGHER ED AND RELIGIOUS INSTITUTIONS

Billed as the YIGBY (Yes in God’s Backyard) bill, Senate Bill 4 will require ministerial approval of a development application on any land owned by either an independent institution of higher education or a religious institution on or before Jan. 1, 2024.

The project would have to meet a number of criteria to be eligible for the streamlining, including affordability requirements, parking minimums, and specified labor standards on projects over 50 units. A 2020 study conducted by UC Berkeley’s Turner Center for Housing Innovation on a prior iteration of the bill found that there are approximately 38,000 acres of land owned by religious institutions statewide that are large enough to facilitate development. While the study did not analyze the feasibility of development on these parcels, a conservative estimate that only 25% of the land is developable could still yield nearly 300,000 new units.

See Brownstein’s full write-up on the politics around SB 4 [here](#).

SB 423 (WIENER): STREAMLINED APPROVALS FOR MULTIFAMILY HOUSING

Senate Bill 423 (Wiener) will permanently enshrine the state’s landmark streamlining bill [SB 35 \(Wiener, 2017\)](#), providing streamlined, ministerial approval of projects in cities that have not met their Regional Housing Needs Assessment (RHNA) goals or adopted a compliant housing element.

Passed in 2017 under Gov. Jerry Brown, it is estimated that through the end of 2021, over 18,000 units have been proposed under SB 35, with 13,000 or nearly three-fourths being affordable to those in the very low- or low-income categories. Consistent with the state’s environmental goals,

the bill focuses on streamlining dense projects on urban infill sites near transit and other amenities. Important changes to the bill from the previous version include a requirement for some projects to make at least 10% of the units affordable to very low-income households, expansion of the streamlining provisions to apply to specified areas within the coastal zone, and the exclusion of sites in specified fire hazard zones unless sites have adopted fire hazard mitigation measures.

The bill initially served as a venue for a protracted battle between two warring labor organizations, the State Building and Construction Trades Council and the Carpenters Union, but after a series of high-stakes negotiations a set of compromise amendments were adopted. Specifically, the amendments require a skilled and trained workforce (i.e., contractors and subcontractors must utilize a minimum number of apprenticed union laborers) on housing projects that are over 85 feet above grade, while requiring prevailing wage and healthcare for projects below 85 feet. Essentially, this will mean that all steel-construction projects will be subject to the skilled and trained provisions supported by the State Building and Construction Trades, while timber-construction projects will be subject to the labor standards proposed by the Carpenters Union.

Many in the housing world see the heavily negotiated environmental and labor protections as a template for future legislation that can gain consensus support and ease the path of subsequent bills.

AB 1633 (TING): THE HOUSING ACCOUNTABILITY ACT

Although it did not garner as much press as the measures described above, AB 1633 may turn out to be one of the most important CEQA-reform measures advanced in recent years. It provides that the failure of a jurisdiction to either exempt an eligible project from CEQA or to certify a compliant Environmental Impact Report (EIR), is an enforceable violation of the Housing Accountability Act. This essentially resolves a grey area in existing law concerning the interplay between CEQA and the HAA, by providing that a local jurisdiction cannot use ambiguous CEQA concerns as the basis to indefinitely delay a project.

The impetus for this bill comes from the now-infamous case of [469 Stevenson Street](#) in San Francisco, in which the SF Board of Supervisors required a proposed 500-unit mixed-income development to undertake additional studies related to the project's EIR. The city cited vague concerns and then proceeded to delay the provision of necessary documents, leading to what state lawmakers called an "effective denial" of the project. Under the new law, plaintiffs can utilize the legal remedies in the HAA to sue local agencies that utilize CEQA delays as a means to disapprove, render financially infeasible, or downsize a project without having actually voted to do so.

Of note, the bill excludes from HAA enforcement many the state's most environmentally sensitive areas, including the coastal zone, prime farmland, wetlands, hazardous waste sites, flood hazard areas, habitat for protected species, and projects in high or very high fire hazard severity zones. If the bill is signed by Governor Newsom, observers expect to see an immediate uptick in the number of HAA lawsuits filed in the state.

ACA 1 (AGUIAR-CURRY): LOCAL GOVERNMENT FINANCING

would authorize local governments to increase taxes to fund construction of public infrastructure, affordable housing or permanent supportive housing by a 55% majority vote instead of the two-thirds vote currently required. The bill would extend the same provisions to voter approval of general obligation bonds and would create an exception to the 1% cap on property taxes to service the bonds. Established by Proposition 13 of 1978, the two-thirds vote threshold has long been a

thorn in the side of local government finances, with proponents claiming that many past revenue measures have failed despite majority support because of the high bar.

One unintended effect of Prop. 13's limit on property tax revenue has been the rise of excessive impact fees to fund infrastructure necessary to support new housing. These fees disproportionately fall on new homebuyers, who tend to be less affluent and more diverse, while preserving affordability for older, more affluent homeowners who have already benefited from low property taxes as a result of Prop. 13.

ACA 1 has the potential to break this cycle by allowing a community to collectively decide to establish a broader tax base to support the infrastructure needed to serve new homes. In the long term, this policy has the potential to reduce the fee burden on new development, making more projects possible, bringing down prices and encouraging growth that can be matched with appropriate infrastructure.

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