

CLEAR ADVOCACY

CLEAR COMMENTARY
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Can't We All Just Get Along?

Nope. Not happening.

After a summer break that lasted weeks longer than expected because of COVID-19, the Senate and Assembly didn't even wait to tap gloves before they took to their respective corners and promptly accused the other of low blows about refusing to set bills for hearing. When they recessed in early July, the Senate had sent the Assembly about 200 bills and the Assembly sent over 530 bills. The Senate grumbled that while they had self-policed to reduce the numbers of and focus their bills on urgent public health and economic issues, their Assembly counterparts had not.

Cue the fireworks.

Late last week and this week, Senate committee chairs autonomously began to weed whack dozens or more of the Assembly bills awaiting hearing by selectively identifying those bills that would be heard...and effectively killing without hearing those excluded.

And...Kaboom!

On Monday, Assemblymembers assailed the Senate for arbitrarily deciding which measures would be heard and proceed. One key Assembly chair said he would vote for no Senate bills until the conflict is resolved. As Monday crept into evening, the Assembly Speaker canceled all Assembly hearings for Tuesday, some hearings were pushed into the following week and floor session was postponed for Thursday.

The compressed legislative deadline timeline is already arguably unmanageable. We have heard a smorgasbord of rumors regarding what may happen next. While many around the capitol are getting out the popcorn for what might be an epic smackdown between houses, we anticipate the ultimate outcome may likely be a proportionate number of bills moving through the process.

The process itself? Well, no one says lawmaking is pretty.

Psst, Will You Vote For Me?

The two chambers are disagreeing on the following:

- The scope of session
- How to conduct hearings
- Legality of remote or proxy voting in their respective houses

Other than that, everything is fine.

The Senate is permitting the use of remote voting in their policy and fiscal committees, but not on the Senate Floor. Senators who request to vote remotely will have to obtain approval, “due to COVID-19” and will have to participate in the committee hearing from their district office. In addition, the committee chair and a majority of Members will have to be physically present in the Capitol for the committee hearing to take place.

The Assembly is allowing “proxy” voting.

What, you say?

The Assembly is considering the adoption of a new rule authorizing the Speaker to permit proxy voting by designated Members for floor session (but not committee hearings) during the COVID-19 state of emergency. Eligible members of the Assembly must request authorization from the Speaker and to be “eligible,” which is defined as the legislator “shall be at a higher risk from the COVID-19 virus.”

The proxy authorization will be terminated when the 2020 Session adjourns November 30, or the state of emergency ends, or the Speaker withdraws the authorization. The four

legislative leaders (bipartisan) are authorized to actually cast the proxy votes of the absent Assembly Members.

But wait! Objection, Mr. Speaker!

The Institute of Governmental Advocates (IGA), the association representing the leading professional lobbyists and lobbying firms in California, sent a strong letter opposing the proposed proxy voting (similar to its objections to the earlier proxy-voting legislation, [ACA 25](#), which passed the Assembly but stalled in the Senate).

As IGA stated in its opposition letter to ACA 25, the Legislature should never reject, even in the face of crisis, the structural underpinnings of our representative democracy as enumerated in our State Constitution. The letter further questions whether the rule change is unconstitutional and threatens the legality of any bill passed using proxy votes. Expect a dust up in both houses regarding proxy voting. More to follow.

Gimme

[AB 1253](#) was gutted and amended this week to impose three new tax rates on small businesses and wealthy Californians. On top of the existing state tax structure, AB 1253 provides the following:

- 1% tax on income above \$1 million, but not over \$2 million
- 3% tax on income over \$2 million, but not over \$5 million
- 3.5% tax on income over \$5 million

These thresholds would be recomputed for each tax year beginning on or after January 1, 2021 based upon the California CPI. Under existing law, the highest base rate for individuals, or businesses taxed under the personal income law (e.g., LLCs, Subchapter S corporations), is 9.3%. There is also the “millionaire’s tax” of an additional 1% for income in excess of \$1 million.

If AB 1253 were enacted, the 13.3% rate would rise to 14.3% for incomes above \$1 million and the state’s highest rate would be raised to 16.8% for incomes above \$5 million. California already has the highest tax rate in the nation of 13.3 percent. The bill requires a 2/3rds vote. It may never get a hearing. Stay tuned.

Choose Your Poison

The state minimum wage law stipulates the minimum wage shall increase on January 1, 2021 to \$13/hour for businesses with fewer than 25 employees and \$14/hour for larger employers.

This looms at a time when the economy is contracting. Unemployment is off the charts. Businesses large and small continue to grapple with a restricted independent contractor law from last year ([AB 5](#). Remember that?).

The Governor possesses the authority to suspend the increase due to the economic conditions imposed by the virus.

Granted, either option inflicts massive pain; so, presented with this binary choice, what's a Governor to do????

Surprising no one, Governor Newsom announced yesterday that, while he can suspend the minimum wage increase, he won't. His reasoning being that workers have borne a disproportionate hardship as essential workers that have maintained public health and safety and suspending the increase would only make their life harder.

The business community response was swift and (in understatement) harsh. The National Federation for Independent Businesses blasted the move by saying that, with the combination of increased costs for paid family leave, recent increased workers compensation premiums, zero fixes to the aforementioned AB 5 law, and now an increase in the state minimum wage, the state's official economic policy is to "completely annihilate small businesses."

Ouch.

Better Late Than Never?

As unemployment claims reached astronomical heights from the economic shutdown, the state's antiquated unemployment benefits system revealed itself not up to the task. The newly unemployed experience clogged phone lines and antiquated computer systems glitching to deny them the access to their eligible benefits. While 8.7 million claims have been filed, a million or so remain unresolved, with the claimant and their dependents hanging in limbo...and without income since as far back as March.

Yesterday Governor Newsom announced he is creating an unemployment "Strike Team" to streamline and improve the process for resolving unemployment claims through the state Employment Development Department (EDD).

That's the good news.

The bad news is that, even with the expedited focus and Strike Team, the million pending claims are unlikely to be resolved until the end...of...September.

And on that rough note, we bid you a safe and healthy weekend.



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