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2016 California

End of Session Wrap-Up: Governor's Actions

The Legislature monopolized the public eye for most of 2016, but September was the Governor's turn in the limelight as he decided the fate of hundreds of bills. Approximately half of the 2,331 measures introduced by lawmakers since January landed on Jerry Brown's desk, and he approved 898. In the entire two years of the 2015-16 session, 1,706 of the 4,471 bills brought forward were ultimately enacted.

One of the only predictable things about Brown's legislative actions is his unpredictability, and this year was no different. While he is a Democrat Governor considering (and most often approving) proposals from a predominantly blue Legislature, Brown is known to deviate from his party's norm at times. He set a personal high record this year with a 15 percent veto rate, denying 159 bills in 2016 alone and 292 measures for the 2015-16 session. While this number is low compared to past Republican Governors, this percentage is high for a Democrat.

The Governor's vetoes are noteworthy, but he also signed a number of high profile bills last month. While many proposals that would have negatively impacted the business community were stopped before they could make it out of the Legislature, often with the help of moderate Democrat members, a number of others passed to the Governor. As previously indicated, Brown signed sweeping climate change legislation in early September via Senator Fran Pavley's (D-Santa Monica) SB 32 and Assemblyman Eduardo Garcia's (D-Coachella) AB 197. Together, the bills will require the state to reduce greenhouse gas emission levels to 40 percent below 1990 levels by 2030, and increase legislative oversight of the California Air Resources Board. AB 1066, Lorena Gonzalez's (D-San Diego) bill to expand overtime pay for farmworkers, is another conspicuous example, and was signed by the Governor in early September. As we previously reported, although an earlier version of AB 1066 stalled earlier in the year, moderate Democrats within the Legislature were unable to stop AB 1066 at the end of session. With the Governor's approval, the overtime requirements for farmworkers will begin to be phased in beginning in 2019.

Although Brown enacted several tobacco use reforms earlier this year, including increasing the smoking age to 21, he vetoed a bill last month that would have prohibited smoking on college campuses. The bill also would have banned chewing tobacco and vaping, and allowed university trustees and board members to fine students up to \$100 for violations.

LEGISLATIVE ANALYST

Lindsay Gullahorn
(916) 273-1208
lgullahorn@capitoladvocacy.com

CAPITOL ADVOCACY

1301 I Street
Sacramento, CA 95814
www.capitoladvocacy.com
(916) 444-0400

In his veto of the Kevin McCarty's (D-Sacramento) AB 1594, Brown stated that the schools already have the authority to set smoking policies on their campuses.

Siding with small business, Governor Brown vetoed SB 654 by Democrat Senator Hannah-Beth Jackson (D-Santa Barbara), which would have expanded paid paternity and maternity leave by requiring businesses with 20-49 employees to provide six weeks of paid leave to new parents within the first year of a child being born. Brown disagreed with the bill's liability implications and stated that it should have allowed for mediation prior to the filing of lawsuits.

The Governor also vetoed several bills that would have created new tax breaks, including Assemblywoman Cristina Garcia's (D-Bell Gardens) bill to exempt tampons from sales tax and a bill by Lorena Gonzalez to do the same for diapers. His veto pen did not stop at sales tax breaks, denying a bill that would have extended the tax relief for income generated from mortgage debt forgiven by lenders in short sale transactions. In his veto message, the Governor stated that "tax breaks are the same as new spending," so all of these measures would result in costs to the General Fund and should be considered as part of the Budget, rather than in the policy process.

Like last year, Jerry Brown vetoed the majority of bills attempting to restrict drone usage that made it to his desk. Although he signed two of these measures - which will protect emergency responders and volunteers from liability when they cause damage to property while trying to do their jobs - he vetoed the other four, citing the need for a more comprehensive approach to regulation. Brown found some of these bills to be duplicative of current statute, including a measure making the use of unmanned aircraft systems illegal while violating a restraining order. A number of other privacy-related measures were enacted this year, including a bill prohibiting the recording of confidential communications with healthcare providers.

Consumer groups and trial lawyers brought forth consumer arbitration bills this year, such as SB 1241 by Senator Bob Wieckowski (D-Hayward) and SB 1078 by Senator Jackson. Governor Brown vetoed SB 1078, which would have prohibited arbitrators, without prior consent, from accepting employment offers in future cases involving a party or attorney in a pending arbitration. However, the Governor signed SB 1241, which will prohibit employers from requiring prospective employees to agree to arbitrate outside of California as a condition of employment.

Also in the employment realm, workers' compensation continued to receive attention from lawmakers in 2016. Jerry Brown signed AB 1244 by Adam Gray (D-Merced), which seeks to reduce fraud in the workers' compensation system, particularly after a recent report that the system has been defrauded of approximately \$1 billion. AB 1244 will require the director of the Division of Workers' Compensation to suspend workers' compensation doctors, hospitals and other providers if they have been convicted of healthcare fraud.

Not surprisingly, healthcare remained in the legislative spotlight in 2016. According to a recent UCLA study, \$367.5 billion is spent annually on healthcare in California, making it the biggest industry in the state. Four of the 17 initiatives on the November general election ballot pertain to healthcare, and dozens of bills were introduced this session that sought to impact healthcare policy. To name just a few, the Governor signed:

- SB 482 (Lara), which requires healthcare providers who prescribe medication to check a patient's prescription drug history in the state's CURES database before prescribing most controlled substances;

- AB 72 (Bonta), which enacts consumer protections against "surprise" medical bills for out-of-network services;

-AB 1668 (Calderon), which gives terminally ill patients the “right to try” experimental treatments;

-SB 908 (Hernandez), a bill to require consumers to be given 60 days written notice when their health insurance premiums have been deemed "unreasonable" by the state; and

-AB 1386 (Low), which will allow businesses and public agencies in California to keep epinephrine auto injectors on hand to help treat emergency allergic reactions. Although Governor Brown signed the measure, he chastised a well-known drug company’s recent price increases of the EpiPen, which is one type of epinephrine auto injector.

Multiple education bills made it through the Legislature and onto the Governor’s desk this year. Brown signed SB 412 by Senator Steve Glazer (D-Orinda), which requires the California State University to create a program to assist and encourage more students to graduate in four years instead of five. He also approved Phil Ting’s (D-San Francisco) AB 1732, which will require all single-user bathrooms in California schools, and any other public place, to be designated as gender neutral, and AB 1719 by Assemblyman Freddie Rodriguez (D-Pomona), mandating CPR instruction in schools.

Last year, Brown vetoed a number of California Public Utilities Commission (CPUC) bills, citing the unworkability of the proposed reforms. Legislators took Brown’s comments to heart and introduced a new package of reforms this year. Although some of the new proposals died at the end of session, like Assemblyman Mike Gatto’s (D - Burbank) constitutional amendments to dismantle the CPUC, the bills that made it out of the Legislature received the Governor’s approval on September 29. Because two of the bills that were part of this package did not clear the Legislature - AB 2903 and SB 1017 - the Governor is now calling on the CPUC to implement some of those measures’ provisions, including the appointment of an Ethics Ombudsman and to work with the California Research Bureau to study the oversight of telecommunications.

Lawmakers will return to the Capitol for one day to be sworn in on December 5, but January 4, 2017 marks the practical beginning of the 2017-18 legislative session. Until then, the focus in Sacramento will be on the legislative races and ballot measures leading up to November 8. As always, we will update you on California’s political environment once the election results are in.