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May 19, 2023

Early Details Emerging on Governor's Permitting Reform Plan

The press **reported** this morning that Governor Newsom is unveiling a comprehensive plan to streamline and accelerate the building of infrastructure across the state. Among the major provisions, the Governor's proposals will include – among other provisions – various aspects of CEQA administrative and judicial reform as well as provisions relating to progressive design build. Although the specific language to achieve these objectives is not yet available, the Governor asserts that the proposed changes could:

- Cut project timelines by more than three years
- Save businesses and state and local governments hundreds of millions of dollars
- Reduce paperwork by hundreds of thousands pages

This morning's announcement comes on the heels of the release yesterday of a **report** by Antonio Villaraigosa, the Governor's infrastructure advisor, calling for far-reaching permitting reform. Reportedly, the Governor's plan will comprise multiple trailer bills (upwards of 10) and an executive order. We will provide additional details on the proposal once our team has a chance to review and analyze the scope and specifics of the reform plan. In the meantime, see the Governor's full press release [here](#).

Appropriations Committees Announce Suspense Decisions, Narrowing (Somewhat?) the Universe of 2023 Bills

Yesterday morning, the Senate and Assembly Appropriations Committees met simultaneously for vote-only hearings during which the respective chairs announced outcomes for approximately 1,200 bills with fiscal impacts. These “suspense file” hearings occur twice annually – first in May for the committees to make decisions about “house of origin” bills (Assembly decides on Assembly bills and Senate decides on Assembly bills) and secondly in August when “second house” decisions are rendered (meaning the Senate takes up Assembly bills, and the Assembly takes up Senate bills).

As a reminder, there are three possible outcomes for bills during the suspense process: (1) passed either as is or with amendments to reduce cost implications, (2) held in committee, meaning the bill will not move forward to the floor for further consideration (i.e., dead), or (3) made a “two-year” bill, meaning the bill is set aside for the remainder of the legislative year but will be eligible for consideration and action in January 2024. The Senate moved forward 326 (78 percent) measures on its suspense file, while the Assembly passed out 535 (71 percent) of its bills with fiscal impacts; read more on CalMatters’ observations [here](#) about notable wins and losses across various industries.

Below we provide a non-exhaustive list below of suspense file results on bills of interest. Should you wish to check the status of any measure not mentioned below that was taken up yesterday, each committee has posted results ([Assembly](#) | [Senate](#)). Additionally, the Senate posted its list of two-year bills separately [here](#); the Assembly’s two-year bills are incorporated in its full list of outcomes. For measures that passed out of the Appropriations Committee with amendments, language – if not already reflected – should be in print no later than Monday.

Passed (As is or with amendments; now moves on to a floor vote)

AB 4 (Arambula) – Would expand Covered California to undocumented Californians by requiring the state to apply for a federal waiver to allow Covered California to offer coverage under a qualified health plan (QHP) for an individual who, due to their immigration status, is not currently eligible.

AB 7 (Friedman) – Would require the project selection process for each transportation project funded by the state’s major sources of transportation funding to incorporate certain principles regarding resilience, safety, timeliness, accessibility, the environment and climate change, and other topics.

AB 30 (Ward) – Would reconfigure the existing Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program within the Department of Water

Resources to improve planning and better integrate predictive modeling to inform reservoir operations.

AB 41 (Holden) – Would make comprehensive changes to existing state law enacted by the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which would be renamed the Digital Equity in Video Franchising Act of 2023 (DEVFA).

AB 311 (Santiago) – Would expand the California Food Assistance Program (CFAP) to provide food assistance to income-eligible Californians who are currently ineligible due to their immigration status.

AB 338 (Aguiar-Curry) – Would expand the definition of public works, for which prevailing wage must be paid to workers, to include publicly funded fuel reduction work that is done under contract as part of a fire mitigation project and falls within an apprenticeship occupation in the building and construction trades.

AB 366 (Petrie-Norris) – Would require the California Department of Social Services (CDSS) to establish an education and training grant program to enable local entities to establish career-track programs within county human services departments and to provide educational stipends to community college students who have an interest in public child welfare work. This bill also allows counties with a 20% or greater for 30 consecutive days employment vacancy rate in any state-funded or federal grant-in-aid program to use alternate minimum qualifications to meet workforce demands. The bill was amended coming out of Appropriations Committee to delete the career track grants.

AB 459 (Haney) – Would require the California Health and Human Services Agency (CalHHS Agency) to establish the California Behavioral Health Outcomes and Accountability Review (CBH-OAR).

AB 504 (Reyes) - Would establish and protect the right of public employees, except firefighters, to engage in sympathy strikes.

AB 687 (Hart) - Would require the Department of Cannabis Control (DCC) to grant local agencies, as defined, read access to electronic track and trace data and ensure that – if the cannabis products are delivered -- ZIP code information of the delivery address also is captured.

AB 689 (Carrillo) – Would require California Community Colleges (CCC), beginning in the 2024-2025 academic year, to set aside 15 percent of slots in its impacted courses and programs for incumbent health care employees. The bill also requires a CCC to provide priority registration to incumbent health care employees when enrolling in CCC courses and programs.

AB 744 (Carrillo, Juan) – Would direct the California Transportation Commission (CTC) to coordinate state assessment and implementation of the use of data, modeling, and analytic software tools and requires CTC to acquire or procure such data, modeling, and software tools for use by state and local transportation planners.

AB 764 (Bryan) – Would update the procedures local agencies must follow when adjusting the boundaries of the districts used to elect members of their governing

bodies and establishes a procedure for legal challenges when a local jurisdiction does not comply with redistricting requirements.

AB 799 (L. Rivas) – Would require regions to develop a regional homelessness action plan every five years and submit it the state for approval, makes various changes to round five and any future rounds of the Homeless Housing, Assistance and Prevention program, and requires the California Interagency Council on Homelessness to develop a financing plan to end homelessness by 2035.

AB 1053 (Gabriel) – Would reduce financing costs for affordable housing by allowing a developer to request funding from the Department of Housing and Community Development (HCD) as a construction loan, the traditional permanent financing option, or a combination of both.

AB 1057 (Weber) – Would give additional flexibility to local health jurisdictions to administer more Home Visiting Programs that address the unique needs of their communities and provide support to families who need it most.

AB 1085 (Mainenschein) – Would require DHCS to seek any necessary federal approvals for a Medi-Cal benefit to cover housing support services within six months of the completion of an analysis on statewide provider capacity to provide these services, and makes a Medi-Cal beneficiary eligible for housing support services if they are either experiencing homelessness or are at risk of homelessness.

AB 1092 (Wood) – Would require a health plan that intends to acquire or obtain control of an entity to give notice to, and secure prior approval from, the Director of the Department of Managed Health Care (DMHC). The bill also authorizes the DMHC director to disapprove a transaction or agreement if it would substantially lessen competition in the health system or among a particular category of health care providers, requires the DMHC director to provide information related to competition to the Attorney General, and prohibits the DMHC director from waiving or delaying any provisions of this statute.

AB 1248 (Bryan) – Would require a city, county, school district, or community college district with over 300,000 residents to establish an independent redistricting commission (IRC).

AB 1413 (Ting) – Would move the Homeless Housing, Assistance, and Prevention (HHAP) program and the Encampment Resolution Program from the California Interagency Council on Homelessness to the Department of Housing and Community Development and eliminate the bonus pot in HHAP and make it available in round four and five of HHAP.

AB 1448 (Wallis) – Would strengthen local enforcement mechanisms against unlicensed cannabis activities, including the application of civil penalties.

AB 1484 (Zbur) – Would require inclusion of temporary employees in the same bargaining unit as permanent employees upon request of the recognized employee organization to a local public employer.

AB 1568 (Wood) – Would require the Department of Developmental Services to revise and implement a rate setting process for Independent Living Services and specify services that must be offered.

AB 1637 (Irwin) – Would require a local agency that maintains a website and email addresses accessible to the public to utilize a “.gov” or “.ca.gov” domain no later than January 1, 2026. Amendments remove special districts and school entities from the bill and provide another year to comply.

AB 1713 (Gipson) – Would require a state or local agency that receives federal funds subject to an expiration date to submit a written report to the Legislature or the local agency’s legislative body, respectively, no later than one year before the funding expiration date, with a summary of how funds have been expended and the plan to expend the remaining funds. Amendments would require the report only if 50 percent or more of the allotted federal funds are returned.

SB 4 (Wiener) – Would establish that qualifying affordable housing development projects are a “use by right” on land owned by religious institutions or independent higher education institutions. The bill was passed with amendments.

SB 22 (Umberg) Would extend the sunset provisions applicable to the use of remote proceedings for specified civil court hearings to January 1, 2026.

SB 43 (Eggman) – Would expand the definition of “gravely disabled,” for purposes of involuntarily detaining an individual, to include a condition in which a person, as a result of a mental health disorder or a substance use disorder, or both, is at substantial risk of serious harm or is currently experiencing serious harm to their physical or mental health.

SB 45 (Roth) – Would establish the California Acute Care Psychiatric Hospital Loan Fund to provide zero-interest loans to qualifying county applicants for the purpose of constructing or renovating acute care psychiatric hospitals or psychiatric health facilities or renovating or expanding general acute care hospitals in order to add or expand an inpatient psychiatric unit.

SB 75 (Roth) – Would authorize the creation of 26 new superior court judgeships, subject to an appropriation, which would be distributed to courts – once funded – based on the Judicial Council’s biennial Judicial Needs Assessment.

SB 245 (Hurtado) – Would expand the California Food Assistance Program (CFAP) to provide food assistance to income-eligible Californians who are currently ineligible due to their immigration status.

SB 282 (Eggman) – Would require federally qualified health centers (FQHCs) and rural health centers (RHCs) to receive Medi-Cal reimbursement for two visits on the same day at the same location under the following circumstances: the patient suffers from illness or injury that requires additional treatment and diagnosis after the first visit; or, the patient has a medical visit and a mental health or dental visit on the same day.

SB 326 (Eggman) – Would require a county, in order to maximize federal financial participation, to submit claims for reimbursement to DHCS for a behavioral health service eligible for reimbursement through Medi-Cal when that

service is paid, in whole or in part, using Mental Health Services Act (MHSA) funds.

SB 366 (Caballero) – Would revise and recast existing law related to the California Water Plan to require it to be a comprehensive plan for addressing the state’s water needs and meeting water supply targets, among other provisions.

SB 408 (Ashby) – Would establish programs and services to support foster youth and youth at risk of foster care with significant trauma and complex needs. This investment is needed to ensure no youth are left behind in California’s continuing effort to implement Continuum of Care Reform (CCR). The bill was substantially narrowed coming out of Senate Appropriations Committee.

SB 418 (Padilla) – Would establish the California Prison Redevelopment Commission, specify its composition, and set forth its responsibilities with respect to developing recommendations on creative uses for repurposing closed state prison facilities. The bill was amended to, among other things, condition its implementation upon an appropriation.

SB 423 (Wiener) – Would extend and make numerous changes to the streamlined ministerial approval process for qualifying housing projects created by SB 35 (Wiener, 2017). The bill was passed with significant amendments related to labor standards and other requirements.

SB 519 (Atkins) would permit any county to establish a department of corrections and rehabilitation that would have authority over the custody, treatment, care, and rehabilitation of person in carceral settings, including fire and road camps.

SB 525 (Durazo) – Would enact a \$25 minimum wage for health care workers, as specified. Increases to this minimum wage would be indexed annually to the change in the Consumer Price Index.

SB 532 (Wiener) – Would exempt fiscal disclosure requirements for local tiered-tax and bond measures from the 75-word cap on local ballot labels.

SB 548 (Niello) – Would authorize a county and a trial court that have a joint contract with the California Public Employees Retirement System (CalPERS) for the provision of retirement benefits for their employees to voluntarily separate the contract into two individual contracts.

SB 551 (Portantino) – Would add requirements regarding the membership of local mental health boards.

SB 567 (Durazo) – Would revise the existing statewide restrictions on residential rent increases and the existing statewide protections against eviction without just cause.

SB 584 (Limón) – Would impose a tax on the occupancy of short-term rentals at a rate of 15% of the rental price, beginning January 1, 2025, which would be administered and collected by the California Department of Tax and Fee Administration (CDTFA). Proceeds of the tax would be deposited into the Laborforce Housing Fund, and continuously appropriated to the Department of Housing and Community Development (HCD), to provide grants to public entities,

local housing authorities, and mission-driven nonprofit housing providers for the creation of “labor force housing,”

SB 600 (Menjivar) – Would, by January 1, 2025, require the Department of Social Services to establish the CalFresh Minimum Nutrition Benefit Program to provide a household with a monthly CalFresh allotment of a minimum monthly benefit of \$50. Under current law, the monthly minimum benefit is \$23 for one- and two-person households.

SB 747 (Caballero) – Would make numerous changes to streamline and clarify the Surplus Lands Act, including its applicability to leases, and creates a new exemption for lands to be used for economic development purposes. The bill was passed with amendments to limit certain exemptions from the Act to cities and counties with compliant housing elements.

SB 769 (Gonzalez) – Would require certain local agency officials to receive at least two hours of fiscal and financial training at least once every two years, if a local agency provides compensation or reimbursements for expenses incurred in the performance of official duties.

SB 770 (Wiener) – Would direct the Secretary of the California Health and Human Services (CHHS) Agency to pursue waiver discussions with the federal government with the objective of a unified health care financing system, as specified.

Held in Committee (Dead)

AB 24 (Haney) – Would have required a bar, gas station, public library, or residential hotel that receives an opioid antagonist kit from the California Department of Public Health (CDPH) to place the kit in an area of the facility that is readily accessible only by employees.

AB 78 (Ward) – Would have increased grand juror daily rate from \$15 to 70 percent of the county median income.

AB 550 (Schiavo) – Would have required a city, county, or city and county to take certain steps 60 days after the local Continuum of Care releases a point-in-time (PIT) count of the number of people experiencing homelessness in the community.

AB 595 (Essayli) – Would have required every animal shelter to provide public notice at least 72 hours before euthanizing any dog, cat, or rabbit, with information that includes the scheduled euthanasia date and availability for adoption.

AB 1131 (Garcia) – Would establish the Hospitals First Revolving Fund, administered by the Department of Health Care Access and Information (HCAI), to provide grants and low-cost loans to hospitals in rural and medically underserved communities to prevent the closure of a hospital or facilitate the reopening of a closed hospital.

AB 1525 (Bonta) – Would have required 60% of the funding allocated to California State Transportation Agency, California Department of Transportation

Caltrans and California Transportation Commission be allocated for projects for priority populations, as defined.

SB 405 (Cortese) – Would have created a Department of Housing and Community Development pilot program to use probability analysis to determine if local jurisdictions have identified adequate sites to accommodate their share of regional housing needs and established new online posting requirements for local housing element site inventories.

SB 634 (Becker) – Would have created a streamlined land use approval process for a new type of interim housing and required local governments to respond within 60 days to requests to lease their property for such projects.

SB 670 (Allen) – Would have required the California Air Resources Board to develop maps of average light-duty vehicle miles traveled at the local, regional, and statewide levels, and provides direction to how those maps should be reconciled with existing ones.

Designated Two-Year Bills

SB 7 (Blakespear) – Would require the regional housing needs assessment to include homeless as an income category for local housing element planning purposes, and enact the Homeless Housing Obligation Act, which requires each city and county to develop a housing obligation plan to provide housing opportunities for each homeless person within its jurisdiction by January 1, 2030, as specified. The bill would also require the Department of Housing and Community Development to develop and administer a new program, upon appropriation of funding by the Legislature, to provide grants to cities, counties, and nonprofit housing entities to fulfill the obligations to provide housing opportunities for homeless persons.

SB 37 (Caballero) – Would create the Older Adults and Adults with Disabilities Housing Stability Program (OAHDS) and the OAHDS Stability Fund, and upon receipt of an appropriation, require the Department Housing Community Development to oversee the program and offer competitive grants to grantees serving older adults and adults with disabilities at risk of, or experiencing, homelessness.

SB 870 (Caballero) – Would renew the expired managed care organization (MCO) provider tax on an unspecified timeline and with unspecified rates, and would state the intent of the Legislature that the MCO tax will serve, in part, as a vehicle to better fund Medi-Cal reimbursements and to prevent the closure of rural hospitals.

Post-May Revision HHS Budget Update

The Assembly and Senate budget subcommittees started their respective work on reviewing the May Revision proposals. Assembly Budget Subcommittee No. 1 met on May 16 and heard all health and human services (HHS) May Revision

proposals and left them open. Presumably they will either be reconvening as a subcommittee or the full Assembly Budget Committee will meet to take action in the coming days. Senate Budget and Fiscal Review Subcommittee No. 3 heard selected HHS items and held all items open.

The Assembly had a robust discussion on the Managed Care Organization (MCO) tax – in recognition of the fact that this proposal is one of only a few that would grow revenues in the May Revision, which means it also offers a unique opportunity to generate additional funding to address issues within the Medi-Cal program. Of note, the Senate did not agendaize the MCO tax discussion this week; that item is slated for a panel discussion on May 23.

For context, the Governor's May Revision proposes to renew the MCO Tax effective April 1, 2023, through December 31, 2026, resulting in \$19.4 billion in funding to help maintain the Medi-Cal program. Effective January 1, 2024, the Administration proposes to increase rates to at least 87.5% of Medicare for Primary Care (inclusive of Nurse Practitioners and Physician Assistants), Maternity Care (inclusive of OB/GYN and doulas) and non-specialty mental health services. The Administration is proposing to put \$10.3 billion into a special fund reserve for future consideration. Following the submission of the MCO Provider Tax proposal to CMS, the Department of Health Care Services (DHCS), in collaboration with key stakeholders in the Medi-Cal delivery system, will assess ongoing, long-term rate enhancements to determine which will deliver the greatest benefit to improving Medi-Cal systems across California, with a focus on enhancing equitable access to care. The evaluation will prioritize augmentations to primary care, maternal care, behavioral health, as well as specialty care, outpatient, and acute care systems.

DHCS explained their rationale for assuming the MCO tax remains in place through 2026 and not longer. DHCS said that in their conversations with the federal government that the Centers for Medicare and Medicaid Services (CMS) talked about making changes to the MCO tax rules to make the tax more proportional between Medi-Cal and non-Medi-Cal liabilities. Based on those conversations, the state is not assuming a higher benefit to MCO beyond 2026. DHCS does not anticipate the model they are proposing as part of the May Revision will be approvable in the future because they anticipate CMS will change the federal regulations associated with health care-related taxes. DHCS clarified that it is their intention to renew the MCO tax when it expires in 2026 but that the revenue beyond that date may be significantly less.

Assembly Member Wood asked the Administration to explain why the MCO tax proposal spreads the funding out over eight to 10 years. He expressed concerns about spreading out provider rate increases over time and questioned whether

the proposed rate increases would stabilize the system. DHCS believes the provider rate increases that the MCO tax proposal offers will add certainty and stability. The rate proposal is structured so that if Medicare increases rates during the time period, Medi-Cal rates would increase for the primary care, maternity care, and non-specialty mental health services – and presumably for the other services that DHCS has yet to identify for rate increases. DHCS is proposing to use the revenue from their maximized MCO tax to solidify the base Medi-Cal program, and the revenue placed into the special fund would be used over a longer period of time.

Assembly Member Arambula asked the Administration if their proposal caps the General Fund backfill component of the MCO tax. DHCS clarified that \$2.5 billion of the \$3.7 billion in 2023-24 would offset General Fund expenditures, which is the amount proposed in the January budget; they are proposing to use \$11.1 billion of the \$19.4 billion in revenue for rate increases. Assembly Member Arambula also asked DHCS about their assessment of the adequacy of their proposed rate increases. DHCS responded that rates at 87.5% of Medicare is lifting all boats and that some rates are currently as low as 60% of Medicare. A number of states are doing rate analyses, and DHCS is following that work closely. DHCS is proposing more time because of how complicated existing payment streams are, as well as to provide time necessary to assess and address geographic issues.

Both houses also discussed the Administration's updated cost estimates for the expansion of Medi-Cal to undocumented residents. The May Revision reflects significant changes in estimated per-enrollee costs for undocumented residents. Relative to the Governor's budget proposal in January, these revised per-enrollee cost estimates result in increased General Fund costs of \$279.6 million in 2022-23 and \$1.9 billion General Fund in 2023-24. The Administration assumes significantly higher per-enrollee costs for undocumented residents than previously assumed—both for populations impacted by prior expansions of comprehensive Medi-Cal services and for the planned eligibility expansion for undocumented residents between the ages of 26 through 49. The budget adjustments are due to several factors, including:

- *Adjustments to Federal Payments and Deferrals.* Since 2020, the Administration has been working with the federal government to ensure federal dollars related to services for undocumented residents are claimed appropriately. Relative to the January budget, the Administration estimates that federal repayments and deferrals related to undocumented residents will increase General Fund cost pressures by \$982 million in 2023-24. Of this amount, \$857 million is attributed to a combination of higher enrollment among

undocumented residents than previously anticipated and the higher estimated per enrollee costs.

- *Updated Costs to Expand Eligibility for Comprehensive Medi-Cal to Undocumented Adults.* The Legislature previously approved expanding eligibility for comprehensive Medi-Cal services to undocumented residents between the ages of 26 through 49 beginning January 1, 2024. The January budget previously estimated that the expansion would cost \$634.8 million General Fund in 2023-24 increasing to over \$2 billion General Fund at full implementation in 2028-29. The May Revision updates the estimated cost in 2023-24 to be \$1.2 billion General Fund—an increase of about \$578.3 million General Fund relative to the January budget estimate.
- *Non-Emergency Funding Adjustment.* The non-emergency funding adjustment is a technical adjustment intended to ensure federal funds are not used to provide services for undocumented residents inappropriately by replacing federal funds budgeted in the fee-for-service and managed care base with General Fund for undocumented Medi-Cal enrollees when appropriate. Relative to the January budget, the May Revision increases this adjustment by \$786.6 million General Fund in 2022-23 and \$801.6 million General Fund in 2023-24. Of these amounts, the Administration attributes \$450 million to be due to increased caseloads for undocumented residents with the remaining amounts due to the higher per-enrollee cost estimates.