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2020 Legislative Update for Water/Wastewater Agencies

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INTRODUCTION

We prepared the following information regarding legislation passed in the California Legislature during the 2019-2020 Legislative Session and signed by the Governor in 2020. This information is not presented as specific legal advice, but rather, an update to our water/wastewater agency clients.

The following Legislative Update is divided in to five sections:

1. General
2. Water
3. Facilities
4. Finance
5. Information

As you review this year's Legislative Update, you will find that the number of enacted laws is less than previous years. In light of COVID-19, we found that the California Legislature and Governor did not pass as many bills as we would normally see by the end of the Legislative Session.

However, despite the lack of enacted laws, we highlight Assembly Bill No. 992 (Mullin) ("AB 992") for your review. AB 992 becomes operative on January 1, 2021 until January 1, 2026 and amends Government Code section 54952.2. On January 1, 2021, the Brown Act will authorize individual Board Members to engage in conversations with the public on an "internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body." Board Members, however, are not authorized to use social media to discuss among themselves business within the subject matter jurisdiction of the legislative body. Additionally, Board Members are prohibited from responding directly to any post and/or comment that is made, posted, or shared by any other Board Member of the same legislative body.

Public agencies may contact our offices for more information regarding AB 992 or any of the legislation mentioned in this Legislative Update.

I. GENERAL

Chapter 89 – Assembly Bill No. 992 (Mullin) - Open meetings: local agencies: social media.

The Ralph M. Brown Act generally requires that the meetings of legislative bodies of local agencies be conducted openly. That act defines "meeting" for purposes of the act and prohibits a majority of the members of a legislative body, outside a meeting authorized by the act, from using a series of communications of any kind to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

This legislation provides that, until January 1, 2026, the prohibition described above does not prevent a member from engaging in separate conversations or communications outside of a meeting authorized by this act with any other person using an internet-based social media platform, as defined, to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body, provided that a majority of the members do not use the internet-based social media platform to discuss among themselves, as defined, business of a specific nature that is within the subject matter jurisdiction of the legislative body, and that a member shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This legislation makes legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This legislation makes legislative findings to that effect.

An act to amend, repeal, and add Section 54952.2 of the Government Code, relating to local government.

Chapter 296 – Assembly Bill No. 3220 (Committee on Environmental Safety and Toxic Materials) – Hazardous materials: underground storage tanks: pesticides.

(1) Existing law provides for the regulation of underground storage tanks by the State Water Resources Control Board. Existing law, until January 1, 2022, requires the board to conduct a loan and grant program to assist small businesses in upgrading, replacing, or removing tanks meeting applicable local, state, or federal standards. Existing law imposes requirements for, among other things, eligibility for a loan or grant and elements of a loan or grant application, and authorizes uses of loan or grant funds.

This legislation revises and recast the provisions relating to that loan and grant program, as provided. The legislation extends the operation of the loan and grant program to January 1, 2026, and would make a conforming change. The legislation authorizes an authorized representative of a local agency, as defined, or the board to inspect any place where project tanks are or have been located and any real property within 2,000 feet of any place where project tanks are or have been located, as provided.

The legislation requires a person to furnish, under penalty of perjury, any information on grants or loans issued, or applied for, under the program or requested for disbursement of funds pursuant to a grant or loan issued under the program that the local agency or board may require. By expanding the scope of the crime of perjury, the legislation imposes a state-mandated local program. The legislation imposes a civil penalty on a person who fails or refuses to furnish that information, who furnishes false information, or who makes a misrepresentation in a document relating to a grant or loan issued under the program, to be collected by the Attorney General in a civil action upon request of the board or by the executive director of the board, as provided. The legislation provides that knowingly making or causing to be made any false statement, material misrepresentation, or false certification in support of any grant or loan is punishable by a fine or imprisonment. By creating a new crime, the legislation imposes a state-mandated local program. The legislation requires a penalty or fine collected pursuant to these provisions to be deposited in the Petroleum Underground Storage Tank Financing Account. The legislation makes an action by the executive director of the board to impose civil liability under these provisions subject to board review, as provided.

(2) Existing law, until January 1, 2021, requires an employer to contract with a medical supervisor registered with the Office of Environmental Health Hazard Assessment to satisfy the employer's responsibilities for medical supervision of employees who regularly handle pesticides, as provided. Until January 1, 2021, existing law requires a laboratory that performs tests ordered by a medical supervisor to report specified information to the Department of Pesticide Regulation.

This legislation extends these requirements to January 1, 2023.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This legislation provides that no reimbursement is required by this act for a specified reason.

An act to amend Sections 25299.51, 25299.100, 25299.101, 25299.102, 25299.103, 25299.104, 25299.105, 25299.106, 25299.107, 25299.117, and 105206 of, and to add Sections 25299.112, 25299.113, 25299.113.1, and 25299.113.2 to, the Health and Safety Code, relating to hazardous materials.

III. FACILITIES

Chapter 346 – Assembly Bill No. 2231 (Kalra) – Public works.

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law defines "public works" to include, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds, but exempts from that definition, among other projects, an otherwise private development project if the state or political subdivision provides, directly or indirectly, a public subsidy to the private development project that is de minimis in the context of the project.

This legislation generally provides that a public subsidy is de minimis if it is both less than $600,000 and less than 2% of the total project cost. The legislation specifically provides that a public subsidy for a residential project that consists entirely of single-family dwellings is de minimis if it is less than 2% of the total project cost. The legislation specifys that these provisions do not apply to a project that was advertised for bid, or a contract that was awarded, before July 1, 2021.

An act to amend Section 1720 of the Labor Code, relating to public works.

Chapter 307 – Senate Bill No. 865 (Hill) - Excavations: subsurface installations.

Existing law, the Dig Safe Act of 2016, creates the California Underground Facilities Safe Excavation Board within the Office of the State Fire Marshal. The act subjects the board to review by the appropriate policy committees of the Legislature.

This legislation provides that the board is also known as the "Dig Safe Board" and would make conforming changes to references in the act. The legislation requires the board, on and after January 1, 2022, to be within the Office of Energy Infrastructure Safety within the Natural Resources Agency, as established pursuant to the California Energy Infrastructure Safety Act. The legislation requires policy committee review at least once every 3 years.

The act requires the board to perform various duties relating to the protection of subsurface installations. The act generally requires an operator of a subsurface installation to become a member of, participate in, and share in the costs of, a regional notification center. The act requires a record of all notifications by an excavator or operator to the regional notification center to be maintained for a period of not less than 3 years and available for inspection as specified. The act requires an operator to maintain certain records on subsurface installations.

The act establishes prescribed notification procedures for an excavator who discovers or damages a subsurface installation.

This legislation requires a regional notification center to provide notification records to the board quarterly and provide notifications of damage to the board within 5 business days of receipt at the regional notification center. The legislation requires that, commencing January 1, 2023, all new subsurface installations, except for specified oil and gas flowlines 3 inches or less in diameter that are located within the administrative boundaries of an oil field, be mapped using a geographic information system and maintained as permanent records of the operator. The legislation requires the excavator to notify the regional notification center within 48 hours of discovering or causing damage.

The act subjects any operator or excavator who violates the act to a civil penalty. The act authorizes enforcement by certain entities, including specified agencies following a recommendation of the board against contractors, telephone corporations, gas corporations, electrical corporations, water corporations, operators of hazardous liquid pipeline facilities, and local agencies, as specified. The act authorizes the board to enforce its provisions on prescribed persons not subject to enforcement by the specified agencies, commencing on July 1, 2020.

This legislation also authorizes enforcement of the act by the specified agencies through their own investigations. The legislation authorizes the board to collect penalties imposed on persons subject to its jurisdiction.

The act requires the board, upon appropriation by the Legislature, to grant the use of the moneys in the Safe Energy Infrastructure and Excavation Fund to fund prescribed public education and outreach programs designed to promote excavation safety around subsurface installations.

This legislation deletes those education and outreach program provisions and, instead, require the board, for violations that are neither egregious nor persistent, to offer violators the option of completing an educational course in lieu of paying a fine. The legislation makes moneys in the fund available to the board to fund the educational course, subject to appropriation by the Legislature.

An act to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.6, 4216.12, and 4216.17 of the Government Code, relating to excavations.

IV. FINANCE

Chapter 235 – Senate Bill No. 998 (Moorlach) - Local government: investments.

Existing law, the Joint Exercise of Powers Act, generally authorizes 2 or more public agencies to agree to jointly exercise a common power. Existing law specifically authorizes 2 or more public agencies that have the authority to invest funds in their treasuries to agree to jointly exercise that common power and describes how funds subject to that agreement may be invested.

This legislation authorizes a joint powers authority formed as described above to establish the terms and conditions pursuant to which agencies may participate and invest in pool shares. The legislation specifies that a federally recognized Indian tribe is eligible to participate in a joint powers authority formed for this purpose, consistent with its status as a public agency under the Joint Exercise of Powers Act, or to otherwise invest in pool shares consistent with the terms and conditions established by the joint powers authority.

Existing law regulates the investment of public funds by local agencies, as defined. Existing law authorizes the legislative body of a local agency, as specified, that has money in a sinking fund or in its treasury not required for immediate needs to invest the money as it deems wise or expedient in certain securities and financial instruments. In this regard, existing law authorizes investment in prime quality commercial paper issued by entities meeting certain criteria. Existing law prohibits local agencies, other than counties, from investing more than 25% of their moneys in eligible commercial paper and further prohibits these agencies from purchasing more than 10% of the outstanding commercial paper of any single issuer. Existing law authorizes local agencies, as specified, to invest in medium-term notes, which are defined as corporate and depository institution debt securities with a maximum remaining maturity of 5 years or less, issued by specified corporations or by depository institutions.

This legislation prohibits a local agency, other than a county or a city and a county, from investing more than 10% of its total investment assets in the commercial paper and the medium-term notes of any single issuer.

This legislation, until January 1, 2026, for local agencies that have more than $100,000,000 of investment assets under management, instead prohibits investing more than 40% of their moneys in eligible commercial paper.

Existing law generally prohibits a local agency from investing any funds pursuant to specified authorizations in a security that could result in zero-interest accrual if held to maturity.

This legislation, until January 1, 2026, creates an exception to this prohibition by authorizing a local agency to invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, as specified.

An act to amend Section 6509.7 of, and to amend, repeal, and add Sections 53601 and 53601.6 of, the Government Code, relating to local government.

Chapter 240 – Senate Bill No. 1386 (Moorlach) - Local government: assessments, fees, and charges: water: hydrants.

The California Constitution specifies various requirements with respect to the levying of assessments and property-related fees and charges by a local agency, including requiring that the local agency provide public notice and a majority protest procedure in the case of assessments and submit property-related fees and charges for approval by property owners subject to the fee or charge or the electorate residing in the affected area following a public hearing.

Existing law, known as the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with these requirements and, among other things, authorizes an agency providing water, wastewater, sewer, or refuse collection services to adopt a schedule of fees or charges authorizing automatic adjustments that pass through increases in wholesale charges for water, sewage treatment, or wastewater treatment or adjustments for inflation under certain circumstances. Existing law defines, among other terms, the term "water" for these purposes to mean any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.

This legislation specifies that hydrants, as defined, are part of the system of public improvements included in the definition of "water" for purposes of the Proposition 218 Omnibus Implementation Act. The legislation specifies that the fees or charges for property-related water service imposed or increased, as specified, may include the costs to construct, maintain, repair, or replace hydrants as needed or consistent with fire codes and industry standards, and may include the cost of water distributed through hydrants. The legislation also authorizes the fees or charges for the aspects of water service related to hydrants and the water distributed through them to be fixed and collected as a separate fee or charge, or included in the other water rates and charges fixed and collected by a public agency, as specified.

An act to add Section 53750.5 to the Government Code, relating to local government finance.

V. INFORMATION

Chapter 350 – Assembly Bill No. 2560 (Quirk) - Water quality: notification levels and response levels: procedures.

The California Safe Drinking Water Act provides for the operation of public water systems and imposes on the State Water Resources Control Board various duties and responsibilities for the regulation and control of drinking water in the state. The act requires the state board to adopt drinking water standards for contaminants in drinking water based upon specified criteria and requires any person who owns a public water system to ensure that the system, among other things, complies with those drinking water standards.

The act requires a public water system to provide prescribed notices within 30 days after it is first informed of a confirmed detection of a contaminant found in drinking water delivered by the public water system for human consumption that is in excess of a maximum contaminant level, a notification level, or a response level established by the state board.

This legislation requires the state board to comply with specified public notice and comment procedures when establishing or revising a notification level or response level, except as specified for a contaminant that the Division of Drinking Water of the state board finds presents the potential for imminent harm to public health and safety.

An act to add Section 116456 to the Health and Safety Code, relating to water quality.

Chapter 30 – Senate Bill No. 84 (Committee on Budget and Fiscal Review) - Political Reform Act of 1974: online filing system.

(1) The Political Reform Act of 1974 generally requires elected officials, candidates for elective office, and committees formed primarily to support or oppose a candidate for public office or a ballot measure, along with other entities, to file periodic campaign statements. The act requires that these campaign statements contain prescribed information related to campaign contributions and expenditures of the filing entities. The Online Disclosure Act, which is also a part of the Political Reform Act of 1974, requires the Secretary of State, in consultation with the Fair Political Practices Commission, to develop online and electronic filing processes for use by these persons and entities.

The Online Disclosure Act requires the Secretary of State, in consultation with the Commission, to develop and certify for public use an online filing and disclosure system for campaign statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format meeting certain requirements. The

Online Disclosure Act requires the Secretary of State to make this online filing and disclosure system available for use no later than February 1, 2019, with an extension to December 31, 2019, if the Secretary of State provides a specified report.

This legislation extends the date for the Secretary of State to make the filing and disclosure system available for use to February 2021, with no provision allowing for an extension.

The legislation appropriates $6,992,000 from the General Fund to the Secretary of State for expenditure in the 2019–20 fiscal year in augmentation of Item 0890-001-0001 of Section 2 of the Budget Act of 2019 to fund 7 positions and contracted services to design, develop, and implement a campaign finance and lobby activity electronic reporting and internet disclosure system to replace the current California Lobbying and Campaign Contribution and Expenditure Search System

(2) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a 2/3 vote of each house of the Legislature and compliance with specified procedural requirements.

This legislation declares that it furthers the purposes of the act.

(3) This legislation declares that it is to take effect immediately as legislation providing for appropriations related to the Budget Bill.

An act to amend Section 84602 of the Government Code, relating to the Political Reform Act of 1974, and making an appropriation therefor, to take effect immediately, legislation related to the budget.

Chapter 136 – Senate Bill No. 1320 (Stern) - Climate change: California Climate Change Assessment.

Existing law requires the Director of State Planning and Research to establish the Integrated Climate Adaptation and Resiliency Program under the administration of the Office of Planning and Research to coordinate regional and local efforts with state climate adaptation strategies to adapt to the impacts of climate change. Existing law requires the office, in coordination with appropriate entities, to establish a clearinghouse for climate adaptation information for use by state, regional, and local entities.

This legislation requires the office, through the Integrated Climate Adaptation and Resiliency Program, to develop the California Climate Change Assessment, in coordination with the Natural Resources Agency, the State Energy Resources Conservation and Development Commission, and the Strategic Growth Council, and in consultation with partner public agencies designated by the office. The legislation requires the office to complete the assessment no less frequently than every 5 years. The legislation requires the assessment to provide an integrated suite of products that report the impacts and risks of climate change, based on the best available science, and identify potential solutions to inform legislative policy, as provided. The legislation requires the products to include, among other things, downscaled climate projections that assess climate change impacts throughout the state, including at regional and local levels, for near-term, medium-term, and long-term timescales, and under varied emissions scenarios, as provided. The

legislation requires the office to engage with regional and local governments, tribes, vulnerable communities, businesses, and members of the public, as necessary, in determining the scope of the assessment and would require all final assessment products to be posted on or accessible through a state internet website. The legislation makes the implementation of these provisions contingent upon an appropriation of funds by the Legislature in the annual Budget Act or another statute for these purposes.

An act to add Part 4.4 (commencing with Section 71340) to Division 34 of the Public Resources Code, relating to climate change.