

**REPORT ON THE ACTIVITIES OF  
THE CALIFORNIA STATE  
LEGISLATURE  
FOR THE YEAR 2010**

**PRESENTED TO:  
THE ENGINEERING  
CONTRACTORS' ASSOCIATION  
(ECA)**

**BY: PHILIP M. VERMEULEN,  
LEGISLATIVE ADVOCATE**

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# OVERVIEW OF THE 2010 LEGISLATIVE SESSION

As 2010 draws to a close, so too does Arnold Schwarzenegger's reign (or should it be called experiment?) as governor. As most will recall, voters were fed up with the "business as usual" problems in Sacramento and voted to send a non-politician into office to "clean up the mess and blow up the boxes!" to coin "Arnold" phrases. So, is California better off after seven years? While history will be the ultimate judge, as an insider with thirty seven years of first-hand knowledge, I will be the first to offer my view that while well intentioned, much of California's previous problems still exist (and have been amplified in many instances due to the bad economy) while others achieved only limited, short-term solutions. More importantly, "Arnold" learned that without consensus, little can be achieved on one's own!

I think Sacramento Bee Columnist Dan Walters "pegged it" in a recent column which is worth repeating in its entirety about Arnold Schwarzenegger:

*"Arnold Schwarzenegger came into the governorship seven years ago believing that he could succeed where his predecessors had failed in dealing with California's thorniest issues. He'll leave office in a few months, having learned the hard way that California is difficult, and perhaps impossible, to govern. Its ever-expanding economic and cultural complexity collides with a politics so ossified and diffused, with so many officeholders and institutions sharing authority, that no one is truly accountable for outcomes.*

*Schwarzenegger offered his take on that dysfunction during a presentation in Fresno the other day, a truncated version of which follows:*

*"There is no one in the state that tries to derail the state or state government, but over the years, with the initiative process and with the legislators ... laws were created that made it somewhat dysfunctional ... "You have a governor that is being elected by the people where the people say, 'Terminator, you go to Sacramento and you clean house.'*

*"But then they give you ... a controller that is a Democrat. Then they give you a treasurer that is a Democrat. Then they give you Jack O'Connell, who is in charge of education, who is a Democrat. Then they give you a secretary of state that is a Democrat. So they surround you with people that have a totally different interest than you have. So how are you going to win?*

*"Then the initiative process makes it very challenging, when you go and say 'OK, we are not going to spend any more money.' But you can have some person go out there and pass an initiative that makes the state obligated to spend another \$5 billion. So it's like who is really in charge? So that's when people talk about it is a dysfunctional system or it is not governable.*

*"And then, as if that's not enough, then you have the federal judges that, you say we're going to cut here on this program and the federal judge says, 'No, you can't.' And you say, 'We need a little bit more water here for our farmers in the Central Valley.' The federal judge just says, 'No, no.'"*

*"So that's what makes it difficult, you see what I'm saying? You go and you say, OK, the people of California say we believe in capital punishment. For five years now I've been fighting for the next execution, from one lawyer to the next and from one judge to the next."*

*Despite his evident frustration, Schwarzenegger concluded on an up note, saying, "But I'm an optimist. We are still, with all of those complications, we are the greatest state in the union and the greatest place in the world. And we're are going to come back, even though the ball is deflated and the bounce is not going to be as fast as usual."*

*Schwarzenegger is pretty much on target, although his concluding optimism may be misplaced, and it means his successor probably will not fare any better."*

So in a nutshell while well intentioned, the "beast" called California, its political system and its myriad special interests were too big for even "the Terminator" to control as he had hoped. In my mind's eye, the governor's two biggest achievements were obtaining the badly needed 2004 workers' compensation reforms and his vetoing of many anti-business bills throughout his years of tenure which would have certainly exacerbated many of California's ongoing ills.

How big were his vetoes over these past seven years? With Democrat majorities in both houses throughout his tenure, the Legislature sent him thousands of bills that, combined, would have potentially wreaked major economic havoc had they been enacted in total. Give the governor credit too for "holding the line!" To help put his veto power into perspective, with his final action on the most recent flurry of budget-related bills in October of this year, Arnold Schwarzenegger went down in political history as the modern governor most likely to veto legislation. For 2010 he rejected 28.77 percent of the 1,029 regular session bills that reached his desk (meaning that "only" 733 became law - the second lowest total in modern history), which actually pales in comparison to his record-setting number of vetoes in 2008 which saw him reject 35.17 percent of all bills passed by the Legislature.

Interestingly and something that should be noted at this point, while Schwarzenegger has the three highest veto percentages of any recent governor, his in-coming successor, Democrat Jerry Brown, has the three lowest veto ratios including his last year as governor in 1982 when he rejected just 1.79 percent of bills!

Does this not bode well for California's future given the fact that our "new" governor will soon be taking the reigns again? Stay tuned as the "next chapter" in California's political

leadership is written! As a caveat, remember however, just as in the past several years 2011's major issue in California will once again be the budget which will continue to constrain much of the "save the world" legislation that will most certainly be introduced.

To illustrate this point, I must again quote Sacramento Bee Columnist Dan Walters who is "dead on" with the following article (which has been edited slightly to reflect the fact that our incoming governor has been elected since this article was written):

*"It took nine months for the Capitol's politicians to gestate a state budget, and it's a progeny that even a mother wouldn't love. Like others of recent vintage, it's "balanced" with pie-in-the-sky revenue assumptions, back-door borrowing and Enron-like accounting gimmicks. Like its siblings, this budget is probably good for only a few months, just long enough for the state to float some short-term bank loans – and just long enough for Arnold Schwarzenegger, elected governor in 2003 on a pledge to end "crazy deficit spending," to leave town and dump the mess on his successor.*

*So what's the next stage? State revenues are likely to drop by about \$10 billion a year as temporary tax increases expire and the economy continues to wallow in recession. Brown has pledged not to raise taxes without a popular vote.*

*As the 2010-11 budget falls apart and a newly inaugurated Gov. Brown contemplates big deficits in 2011-12 and beyond, he could call a special legislative session in which he and Democrats could, without Republican votes, pass new budgets (due to the passage of Proposition 25) based on new tax revenues requiring voter approval. There is no direct provision for submitting tax measures to voters, but one obscure constitutional section allows the Legislature to place revisions to pre-existing statutory initiative measures on the ballot. Through that loophole – one used in the past – new taxes could be placed on a special election ballot.*

*The special tax election would have to occur at least 90 days after the special legislative session ended, perhaps May 17 to coincide with Los Angeles municipal elections. Whether voters would go along is very problematic. It would depend on how the tax measures were framed – perhaps as soak-the-rich taxes or new levies on tobacco and liquor – and whether there were well-financed campaigns for them.*

*Were they to fail, however, Brown would be left with political egg on his face and Democratic legislators would be stuck with a budget of their own making that they could not finance, forcing them to take full responsibility for the ensuing spending cuts. It is, in other words, a high-risk scenario, but may be the only pathway for Democrats to seek their holy grail of enacting big tax increases to shore up a deficit-ridden budget."*

So, with 2011 "right around the corner" and our problems in Sacramento still ever-present, what is it going to take to get us out of the doldrums?

## **Infrastructure Should Be at the Forefront of All Discussions About California's (and America's) Future!**

*"If you don't know where you're going, you may wind up somewhere else." Yogi Berra*

If you go back to virtually any of my previous year-end reports, the one issue that I have consistently maintained is California's most important has been and will continue to be re-building and expanding our infrastructure! Simply put, our proud state cannot grow let alone survive unless we come to grips with addressing our future infrastructure needs! While we've approved upwards of \$54 billion in state Government Obligation bond funding (GO bonds) during the Schwarzenegger reign, our infrastructure problems continue to compound to the point that it is estimated that over the next 20 years, California will need to spend \$500 billion to upgrade or replace virtually all of our sewer systems, our water delivery systems and everything in between (such as roads and institutional buildings)!

So, with these needs looming, our economy tanked and looking for new sources of income, a construction industry experiencing a depression and a proven fact that for every dollar dedicated to infrastructure more than \$2 is generated, wouldn't it make sense to focus our efforts in this area? Thankfully others including leading national economists are now starting to preach the same message - what lifted the country out of our last depression was a massive commitment to infrastructure and it's what will lift us out once again! So, what's the hold up?

Let's address wastewater upgrades and expansions as a perfect example. Virtually all wastewater facilities are local (regional in wastewater parlance), meaning that without state or federal help it's going to take approval of local bonds to obtain the necessary funding. Unfortunately (as it pertains to this discussion), while California relies more heavily than most states on local agencies to build and manage infrastructure, it has some of the strictest rules in the nation for raising local revenues. Proposition 13, passed in 1978, limited property assessments and mandated supermajority voter approval for the passage of special taxes.

California is also one of only eight states with supermajority requirements on the passage of **local** GO bonds. In 1996 voters approved Proposition 218, a constitutional amendment that reduced the revenue-raising authority of locally elected governing boards by mandating majority votes for general taxes, assessments, and "property-related" fees. Subsequently, in 2006 the California Supreme Court extended the reach of Proposition 218's restrictions to **water and wastewater utilities**. They are now barred from increasing fees that exceed the "proportional cost" of providing service to the parcel—a potential obstacle to financing new facilities.

Given these constraints on local funding, it is not surprising that state bonds—which require a simple majority approval—seem like a good alternative; BUT, with our state's debt ratio exceeding 7%, and given the fact that costs to service the bond debt nearly

doubles its price, this too may not be a viable option.

So what do we do to get the ball rolling? While there is no one solution, a combined approach may address the needs:

1). Leading economists and many national political leaders are discussing the creation of a National Infrastructure Bank that would finance myriad projects nationwide which would be paid back by the local users. While the details still need to be worked out, the discussions are serious. Of course, the question becomes whether our federal leaders, particularly with the new makeup of Congress, will have both the political and intestinal fortitude. If they do, this could result in the cheapest possible solution to address most of our country's infrastructure needs. The direct benefit would be the revenues and taxes it would generate that would revive the nation's economy. Obtaining the local approval to obtain the monies due to Prop 218 constraints, however, could still be a possible problem, but I believe this could be overcome by educating the public on the cost/benefits!

2). Public/Private Partnerships have a long history both around the US and other countries. The costs to use this approach are greater, but it could help overcome some of the roadblocks of trying to obtain Congress' approval of the previous national option.

3). Recent history suggests how loosening the supermajority rules can affect local infrastructure funding. In November 2000 passage of Proposition 39 lowered the voter threshold on local school bonds from two-thirds to 55 percent. California then witnessed a dramatic increase in local capital support for K-12 and community college facilities. Not only did this change result in significantly higher pass rates, it also led to a more than doubling of measures put on the ballot, as more school districts felt they had a chance of gaining voter approval. Meanwhile, pass rates and the number of ballot measures remained stagnant for other infrastructure measures—including GO bonds not related to education and assorted taxes—which generally require a two-thirds vote. Of course, given the financial constraints of the local electorate, coupled with the Howard Jarvis movements statewide, this action may be more difficult than it seems, but....nothing ventured, nothing gained!

4). Leadership must start at the state level. With a new administration in Sacramento looking to "set the stage" for the next four years, coupled with the proven importance of infrastructure in California's future, it will be incumbent upon myself and my colleagues to "push" infrastructure into becoming one of the highest priority issues.

Finally, as I concluded in last year's report, there is no easy solution, but at some point, which I hope is sooner rather than later, we are going to have to "bite the bullet" and "git 'er done!" I pledge to be one of the driving forces in 2011 on this issue!

## **Regulatory Relief - THE Other High Priority**

The over-regulatory burden on not only the construction industry, but ALL of business in California has become a huge hindrance that is simply killing everyone and everything! Not only is it "snuffing out" our state's growth and viability, due to term limits the

bureaucracy has become the "tail wagging the dog" of the Legislature! My construction lobbyist colleagues and I cannot make the necessary reforms alone. Indeed, it is going to take the commitment of ALL of the business community to work together to effect the changes.

Proudly, we are already moving forward! I have joined forces with most of the business groups that formed a new business coalition this year (ROAR) that is comprised of all major business groups. Our goal is 2 million NEW jobs by the Year 2020 - MUCH of it coming by reducing the over-burden of regulations. What gives us hope that we will be successful in the future is the fact that the on-going recession has resulted in such a huge impact on virtually every Californian that FINALLY the direct "cause and effect" is being driven home. We are confident this will result in significant changes as this recession (depression in construction) continues to linger. Please see Page 39 of this report which discusses my priorities/agenda for 2011.

## **Political Reforms Needed to Ensure California's Future** **- Progress is Being Made!**

Since last year's report, I am happy to report that progress has been made on Political reforms. The changes that have been effected, coupled with the others that I discuss below WILL make our elected leaders significantly more action-oriented while eliminating much of the incessant bickering!

1). **Open Primaries.** First and foremost, California's voters **approved** the change to move to open primaries which I discussed in last year's report. **It will take effect in June of 2012.** As background, Californians have nonpartisan local governments, but state government is polarized between the Democrats and the Republicans. In an open primary, the parties will no longer winnow the candidates. Instead, the top two vote-getters in the primary will face off in a general election regardless of their party affiliation. This will put considerably more competition into legislative races, because the two highest vote gatherers in a primary would then be forced to face-off in the general election, which could go a long way towards eliminating the "extreme" legislators.

2). **Modify Term Limits.** The "effectiveness" (which I never believed in) of term limits has come and gone! The "brain drain" of legislators who finally "learn the ropes" only to then be termed out has been catastrophic! So too, they are always running for the "next" office! Enough already! We absolutely need, at the very least, to modify the law to allow a legislator to stay in office for at least twelve years!

3). **Initiative reform.** Many critics of the initiative process believe it should be more difficult to place measures on the ballot and to pass them; or, as another option, that legislators should get a chance to suggest amendments before proposals go to the voters. Another idea: require any proposal that spends money to include a way to pay for itself, either by raising taxes or redirecting current spending. It has been suggested that the Legislative Analyst could serve as the entity that would conduct the cost analysis which I believe would be the appropriate body to do so.

While the current initiative process may be a right of the people, the fact remains that it has unfortunately become a process by which well-funded interest groups, such as the teachers' union for example, can afford to pay \$2 or more per signature obtained in front of grocery stores and other populated locations. Once they've gathered the required number of signatures, they often then spend an incredible amount of money to advertise what are often half truths and/or misleading messages to convince the voters that the measure is important. Conversely, the opponents often produce just as misleading ads as well. In the end, the typical voter votes "in the dark" about a measure, often times against what may well be in their best interests! Consequently, we are saddled with costly burdens that further exacerbate our budget problems!

4). **Campaign finance reform.** California has limits on donations to candidates for the Legislature and statewide office. Some advocates for reform suggest making those limits stricter; others suggest that some form of public financing or voter-controlled vouchers would reduce the influence of moneyed interests. Others say lifting all limits and requiring better disclosure would work best because politicians and donors will always find a way to game any other system.

I for one am tired of being "shaken down" by the current fund raising process. So too, I know of many legislators who equally hate the current system of fundraising. While costs could be high if we went to public financing (not to mention a serious constitutional question about violations of the First Amendment), there has to be a better way!

## **ECA's Legislative Accomplishments In 2010**

On behalf of ECA and for the betterment of the entire construction industry, ECA sponsored four important construction industry-related bills this session - **SB 694 (Correa)**, **SB 1254 (Leno)**, **AB 2036 (Bill Berryhill)** and **AB 2096 (Miller)**.

Following is a brief description of each of our sponsored measures (excluding AB 2036 which morphed into a co-sponsored bill with other contractor associations and is discussed under co-sponsored bills):

### **SB 694 (Correa) - Time Extensions For the Uniform Cost Accounting Commission. Chapter 310 Of 2010 Statutes**

The Uniform Cost Accounting Act was created through legislation approved back in 1983. The Act was created as a consensus solution to resolving what had been a long standing battle between local government and private contractors about agencies complying with existing force account limits for performing construction work in-house using their own workforces instead of requesting bids to have the work done by outside contractors.

Many of the problems were due to local governments and special districts using different accounting procedures that, for example, did not account for their true overhead costs to build or repair a project using their in-house staff. Consequently, while a public entity's force account limit to use their in-house staff at that time was \$5,000 for labor and material costs combined, they would often not account for their true labor costs to pay for

in-house staff in their calculations, and thus would perform work significantly over this amount.

It was due to this constant battle between the private and public sectors that a consensus solution was reached which created the Uniform Cost Accounting Act and the Uniform Cost Accounting Commission in 1983. The commission adopted an accounting procedure that agencies voluntarily agreed to adhere to in return for an increase in their force account limits which is now at \$30,000 and is re-adjusted every few years to match inflation. Opting into the Act also allows these agencies to increase their informal bidding as well, which means that they can use a streamlined bidding process on projects that cost up to \$125,000.

### **Intent of the Bill**

For all of these reasons, the Act and the Commission have been tremendously successful which has resulted in over 740 local agencies participating as members. With the Act now approaching its 27th year of existence, there are a couple of fixes that need to be made to the law:

Existing law requires the commission to review the accounting procedures of any participating public agency upon evidence by an interested party that the work undertaken by the public agency (1) is to be performed by the public agency after rejection of all bids, claiming work can be done less expensively by the public agency; (2) has exceeded the force account limits; or (3) has been improperly classified as maintenance. In any of those circumstances, a request for commission review may be made within 5 business days and the commission is required to commence review immediately and conclude within 30 days from the receipt of the request.

This bill will extend the time to 8 business days to request a commission review, to 45 days for a commission review of a public agency project that is to be performed after rejection of all bids, and to 90 days for a commission review of work for which evidence was provided that the work has exceeded the force account limits or has been improperly classified as maintenance. These time extensions are needed to ensure that the process has adequate time to perform the reviews that are required of the commission and, more importantly, ensure that private contractors receive as much of the public work as possible!

### **SB 1254 (Leno) - Stop Work Orders For Contractors Not Carrying Workers' Compensation - Chapter Number 643, Statutes of 2010**

Contractors, whether licensed or not, who do not cover their employees with workers' compensation insurance have an economic and illegal advantage over licensees who operate their businesses legitimately. Furthermore, uninsured workers are a potential risk to the public by the fact that a property owner could be held liable for their injuries.

SB 1254 will help to mitigate the harm to law abiding contractors and consumers alike by providing the Contractors' State License Board (CSLB) with the authority to issue an administrative Stop Work Order to any contractor who employs uninsured workers. A

vital feature of the bill is the misdemeanor provisions that would be applicable for the violation of a Stop Work Order.

The bill will also authorize an increase in the number of CSLB peace officers from 3 to 12. This is an essential component of the bill. Its enactment and subsequent implementation would dramatically increase the board's ability to combat the burgeoning underground economy. **It should be noted that the number of peace officer positions the CSLB ultimately obtains will still require the approval of the Director of the Department of Consumer Affairs; however, without this measure they would not have even been able to request the additional peace officers!**

### **AB 2096 (Miller) - Clarification of Use of Private Arbitrators on Public Works - DIED**

Many local public agencies believe that they cannot agree to use private providers of alternative dispute resolution services such as the American Arbitration Association (AAA) or JAMS because of Public Contract Code section 20104, et seq. They believe that they either have to agree to Public Works Contract Arbitration under Public Contract Code section 20104, et seq., or must proceed with court proceedings and the non-binding judicial arbitration called out by Public Contract Code section 20104, et seq.

On the other hand, Civ. Code § 1670 authorizes any independent arbitration of construction claims, not just Public Works Contract Arbitration under Public Contract Code section 20104, et seq. Clearly, there is conflict and confusion within the existing sections of the Public Contract Code.

AB 2096 would have resolved this conflict and confusion by allowing a local public agency the latitude to proceed with private arbitration to resolve construction disputes - if the agency wants to do so. AB 2096 would not have compelled any local agency to take any dispute to private arbitration, nor to use any particular private arbitration service. The election, and its implementation, would be totally within the hands of the local agency.

Besides providing agencies flexibility, this measure would have helped "speed-up" dispute resolution which would have allowed projects to be completed significantly faster with less disruption to the affected parties. Unfortunately, this measure got "held up" by a staff member of the Assembly Judiciary Committee who, despite several conference calls with several key construction attorneys (including Barney Kamine, ECA's Legislative Committee co-chair), could not be "convinced" that there was a need for the bill. This is a classic example of how Term Limits has "messed-up" the Legislative process giving legislative staffers literal control over legislation!

### **Co-Sponsored Several Other Important Bills**

Most of my legislative work in Sacramento involves working closely with my other construction industry colleagues. As a member of the Construction Caucus, we frequently meet to discuss the relevant issues of the time and help each other to ensure that the important bills pass muster while the bad bills are either amended or killed.

Proudly, the following bills were co-sponsored by our Construction Caucus team:

**AB 569 (Emmerson) - Collective Bargaining For Meal and Rest Periods**  
**Chapter 662 of 2010 Statutes**

Stipulates that collective bargaining agreements rather than arbitrary laws and regulations will dictate meal and rest period requirements between **signatory** contractors and their employees.

**AB 815 (Ma) - Public Works Plans and Specifications - DROPPED**

This measure would have made it the responsibility of a public agency to ensure that the plans and specifications were accurate. Unfortunately, due to a bad court decision with LAUSD, it was determined that the public agency DID NOT have to provide accurate plans and specs. This issue went to the Supreme Court. As backup in case the court ruled against construction on this matter, we co-sponsored this measure. **Fortunately, the Supreme Court ruled in construction's favor so we dropped this bill.**

**AB 1409 (John Perez) - County Road Commissioners - Died**

Back when California was still a small state, many counties had problems trying to find contractors to perform road work. County Road Commissioners or Engineers were given the authority to use day labor and/or county employees, along with several other options at their disposal, to perform myriad road projects. This ability has now become severely abused by counties taking millions of dollars of work away from our contractors each year. This measure would have removed this ability for counties. Unfortunately, this measure pegged public worker unions against our building trades (which is becoming more and more of an issue) and when Assemblyman John Perez became Speaker of the Assembly, he decided to step away from the middle of the fight; **consequently the bill died.**

**AB 1506 (Anderson) State funds: Accept Registered Warrants - Vetoed**

This bill would have required state agencies to accept registered warrants issued by the state for the payment of obligations owed them. With each year's budget taking longer to pass, this was a VERY important bill!

**Governor's Veto Message of AB 1506**

I am returning Assembly Bill 1506 without my signature. This measure would require all state departments, upon a specified determination made by the State Controller's Office, to accept registered warrants, also known as IOUs, in lieu of cash payments. The issuance of IOUs represents an embarrassing failure on the part of the state to manage its finances. Unfortunately, if the Legislature does not pass a balanced budget soon, the possibility that the Controller will be forced to issue IOUs this year becomes all too real. I sympathize with businesses that were issued IOUs last year and those businesses that may receive them this year. IOUs place enormous financial strains on recipients who are unable to use them to pay their own obligations, including debts owed to the state. However, requiring state departments to accept IOUs in lieu of cash payments defeats the purpose of issuing IOUs in the first place. It would exacerbate the state's cash crisis and would accelerate the possibility of the state defaulting on its debt service and payroll obligations. Since IOUs could be avoided if the Legislature passed a balanced budget, I am unable to sign this bill. Sincerely, Arnold Schwarzenegger

**AB 2036 (Bill Berryhill) - Electronic Sets of Plans and Specs To Plan Rooms - Chapter 371 of 2010 Statutes**

The original version of this bill was sponsored by ECA; however, due to the same Assembly Judiciary Committee consultant who questioned the need for our aforementioned AB 2096, we had "a vehicle" (a viable bill looking for a problem to fix) that we were able to amend into another great cause for the industry. This bill will require all state and local agencies seeking bids for a construction project to provide upon request an electronic copy of a project's contract documents to a contractor plan room service at no charge.

**AB 2060 (Chuck Calderon) - Sales Tax Exemption for Fixed Price Contracts - Vetoed**

AB 2060 would have provided future protection against sales tax increases for contractors with fixed-price public works contracts. It would have required public agencies to compensate contractors for any increase in the sales tax and, conversely, requires adjustments if the sales tax rate decreases. It should be noted that the following veto message from the governor is WRONG! The current 1 cent sales tax increase was "shoved down construction's throat" without ANY attempt to address the fixed price problem!! **This is a huge problem, meaning that we will introduce this measure again next session!**

**Governor's Veto Message of AB 2060**

To the Members of the California State Assembly: I am returning Assembly Bill 2060 without my signature. First, I can understand the impact of new taxes on businesses and the frustration that contractors may have when they are not exempted from sales tax increases. This is one of the reasons I have continued to oppose raising additional taxes because it slows our state's economic recovery efforts and dampens job creation. However, this bill seeks an overly broad and permanent exemption which effectively shifts the burden of paying both state and local sales tax increases from the contractor to the government entity and ultimately, on California's taxpayers. In addition, I believe this bill is unnecessary because current law allows an exemption to fixed-price contracts for city and county tax increases, **and such exemptions have been allowed on past statewide sales and use tax increases.** I believe this process is appropriate and does not affect district tax revenues, as this bill would propose to do. For these reasons, I am unable to sign this bill. Sincerely, Arnold Schwarzenegger

**AB 2098 (Miller) - Highway 91 Improvements - Chapter Number 250, Statutes of 2010**

This measure will authorize the Riverside County Transportation Commission to utilize the design-build procurement process for the State Route 91 Corridor Improvements Project. It will provide for \$1.2 billion in construction funds and will produce 18,000 jobs for the construction industry! While its effect on ECA will not be as large as a wastewater treatment plant would be, it still provides some work for our members and helps set the tone for future infrastructure work that WILL significantly benefit our members.

**AB 2182 (Huffman) - Conversion of septic systems to sanitary sewer systems and the replacing of aging and faulty sewer laterals - Vetoed -**

Would have encouraged property owners to convert from septic systems to community sewer systems and to replace failing private sewer laterals to protect water quality and public health and safety. Under the authority in AB 2182, the property owners within a designated area may individually choose to assess themselves for the cost of designated onsite sewer improvements. The local government then provides the up-front funding for the project and the property owners pay an annual assessment through their property tax bill until those funds, plus interest, are repaid.

A perfect example of how this bill would have benefitted homeowners and businesses is in Malibu, where the Water Resources Board has now mandated that ALL property owners convert from septic systems into sewer laterals that will flow into a state-of-the-art sewage treatment plant that will have to be built. This is just one of hundreds of locations around the state that will benefit from this legislation. More importantly, it would provide substantial WORK for our contractors! **We will re-introduce this measure next session. A new governor will certainly help us prevail given the myopic view of this one pertaining to this issue!**

**Governor's Veto Message of AB 2181**

To the Members of the California State Assembly: I am returning Assembly Bill 2182 without my signature. This bill would authorize public agency officials and property owners to enter into voluntary contractual assessments to finance installation and replacement of onsite sewer and septic improvements on private property. These improvements may consist of converting an existing property from a septic system to a public sewer collection system, replacement of sewer lateral lines, or replacement or upgrade of septic tanks. Under current law, voluntary contractual assessments provide property owners with a cost-effective and easily accessible financing option in which to increase their property's water and energy efficiency. While parts of this bill have merit, I do not support expanding contractual assessment programs to these types of property improvements. For this reason I cannot sign this bill. Sincerely, Arnold Schwarzenegger

**AB 2216 (Fuentes) Works of improvement: progress payments: notice: retention proceeds. - DIED**

This bill would have: (1) required that for private and public works of improvement, a prime contractor or subcontractor pay to any subcontractor, not later than seven days (currently ten days) after receipt of each progress payment, the respective amount allowed the contractor on account of the work performed by the subcontractors; (2) required that written notice given to the surety and the bond principal be given prior to the completion of the project, or recordation of a notice of completion; (3) prohibited retention proceeds from exceeding five percent of the payment for contracts between a public entity and a contractor and all of his subcontractors; and, (4) prohibited progress payments upon public works contracts from being made in excess of 100 percent (currently 95 percent) of the percentage of actual work completed, and would have required the Department of General Services to withhold not more than five percent (currently not less) of the contract price until final completion and acceptance of the project.

**AB 2627 (Nielsen) - Disabled Veteran Business Enterprises (DVBE) - DIED**

Buried in last year's budget bill (ABX4 21) was non-germane language that removed the ability of our contractors to use "good faith effort" for complying with the state's 3 percent disabled veteran business program. In other words, all state construction contracts henceforth must contain 3 percent DVBE participation which can be very problematical if a contractor cannot find a qualified DVBE to perform 3% of the work on a project! Despite the governor's "pledge" to work with us to remove this language, "good faith effort" is still not permitted.

AB 2627 was amended to allow for contractors to utilize "Business Utilization Plans" but unfortunately, the measure did not pass out of the Senate Appropriations Committee. **We will try again next year with the hope that we will be successful!**

**SB 392 (Flores) - Limited Liability Companies -**

**Chapter Number 698, Statutes of 2010**

Will allow contractors to become limited liability companies. The law must take effect by January 2012 at the latest.

**SB 1402 (Dutton) - CARB Penalties and Fines - Chapter 413 Statutes of 2010**

Requires the California Air Resources Board (CARB) to:

- Provide a clear explanation of how penalties are assessed on a per-unit basis;
- Develop a written, consistent penalty policy that ensures the largest penalties are imposed on serious violations that adversely impact air quality; and
- Report those penalties to the Legislature annually.

**I should note, this is one of the few bills that has successfully challenged the status quo operations of CARB!**

**SB 879 (Cox) - Design-Build Authorization For Counties -**

**Chapter Number 629, Statutes of 2010**

Extends the authority for the use of design-build for counties. ECA was able to obtain a change to the definition/authorization for a county to use Best Value to ensure that their findings are "Objective." This change had been requested by Attorney and ECA Legislative Co-Chair, Barney Kamine, and will establish the precedent to add this adjective to the other design-build authorizations in statute.

**Proposed Reforms of California's Tax Structure**

California has become a service-based economy which means that the tax structure has become outdated since most services don't pay sales taxes (which is one of the direct causes, besides spending too much, in the ongoing budget crisis). Recognizing that the existing tax structure relies upon a very small component of wealthy people, the governor created a bipartisan, 14-member tax commission to conduct an in-depth study on how to modernize the tax structure to avoid the current problems of relying on a few to "foot the bill" for the majority, and with it the peaks and valleys that come from this current mechanism.

The Commission released their recommendations which call for a different tax mechanism – a 4 percent "business net-receipts tax". Under this type of structure, ALL service-based businesses would pay 4% of their net receipts as a tax. The argument is that this would eliminate the peaks and valleys, provide a more reliable tax base for government and also reduce the burden on the current ones "footing the bill."

Unfortunately, it appears that this proposal could have a significant negative cost impact on construction, both for service and repair and quite possibly even fixed-price contracts. As a result, ECA has joined forces with virtually every business group in the state to find other solutions to fix California's tax structure. **Since the current Administration is outgoing, this effort will absolutely be a major issue in 2011 and beyond.**

## **Regulatory Activities**

As previously discussed about the over-burden of regulations and its effects on not only construction but all business in California, 2010 was an active year for government agencies and I was in the "thick" of it all. Following is a brief overview of activities that affected the construction industry.

### **CSLB**

I once again worked closely with the Contractors' State License Board (CSLB) on behalf of ECA and the rest of the construction industry. I attended virtually every one of the CSLB's board and committee meetings (which were held throughout the state) and have continued to work closely with the registrar Steve Sands (who attends many ECA events including its annual Installation Dinner in January of each year and our annual DIG Awards banquet in October). I also work closely with the board's staff and the individual board members on construction industry issues and problems.

Proudly, we co-sponsored SB 1254 (Leno) with the CSLB this year, a bill, it should be noted, that has been "pegged" as their "MOST important piece of legislation, ever!" (direct quote from Registrar Steve Sands). **I want to stress that SB 1254 is one of the few bills that is contrary to our advocacy of reducing rules and regulations, because it is badly needed to both "level the playing field" while also promoting the health and safety of workers. Indeed as it currently stands, legitimate contractors are forced to try and compete against criminals who are not sharing in the burden of providing for this coverage for their workers.** So too, legitimate contractors are forced to have to pay for these uninsured workers' injuries through their own workers' compensation policies. Therefore SB 1254 is a perfect example of a "good" and very necessary law which we all should take great pride in for co-sponsoring!

### **CIAQ and Air Quality Regulations**

ECA continued to be an active partner in battling the Off-road Diesel, On-road Diesel and Portable Engine Registration Programs emanating from the California Air Resources Board (CARB). Virtually all of CIAQ's meetings were held at ECA's office this year (as they have throughout this entire battle over the past several years) and both ECA's

executive director, Jim Burton, and board member Aaron Dyer were in attendance and actively participated in all of CIAQ's activities. I also participated in many of CIAQ's board meetings by way of conference calls during this past year and attended myriad CARB meetings in Sacramento advocating the rollback of the off-road diesel regulations.

### **CARB Overestimates Off-Road Diesel Savings**

Despite the pleadings of everyone during the final adoption of the Off Road Diesel regulations in July, 2008, the old adage "be careful what you wish for" came "home to roost." As usual the board ignored our pleadings and adopted the Off Road diesel regulations as proposed by their staff. Consequently, as we warned would happen, much of the construction industry's heavy equipment became virtually worthless from the moment they "banged their gavel." Besides eliminating many contractors' ability to use their equipment to obtain bonding capacity due to the severe devaluation of the equipment, they also forced many contractors to unload their equipment for literally pennies on the dollar in preparation/anticipation of the phase-in of the regulations. It is safe to say, these regulations will likely go down as having one of the worst regulatory impacts on our industry in its history, including our belief that it was most certainly a significant contributing factor to the depression that is still affecting virtually every contractor.

For all of these reasons and more, this is why the admission by CARB that they overestimated the diesel emission reductions from these regulations (thanks to the AGC-funded study) by at least 2 times (or by a factor of 3 according to the AGC study) is absolutely criminal for both their original arrogance and for the damage they have inflicted to our industry! While CARB is planning a final hearing in December to decide if the regulations need to be relaxed, I continue to search for other potential ways of curtailing both the existing diesel regulations and the SB 375 proceedings (which I discuss below) by working with both the Legislature as well as independent, non-partisan bodies such as the Little Hoover Commission.

Specifically to this regard, I met with several of the commissioners to the Little Hoover Commission in late September. For your information, the Little Hoover Commission is an empowered, longstanding and impartial government body that is a highly effective watchdog whose recommendations have affected major reforms within government in the past. The Commission is currently performing an in-depth study on California's regulatory environment and its impact on California's business community and the well-being for the future of California. It intends to make many recommendations on needed regulatory reforms which will then be submitted to the new governor.

Based on the Commission's past track record and their use of the Off Road Diesel Regulations hopefully as their "poster child" to what is wrong with the current regulatory morass, I am confident that this entire mess may become the catalyst to achieve the long-term regulatory reform that we all are seeking.

### **SB 375 Implementation Task Force**

One of the bills that I strongly opposed on your behalf in 2008 was SB 375 (Steinberg), which unfortunately became law. Among other things, SB 375 requires a regional transportation plan to include a "Sustainable Communities Strategy" designed to achieve targets for greenhouse gas emission reductions and also requires cities and counties to revise their housing elements every eight years in conjunction with the regional transportation plans and complete any necessary re-zonings. In other words, this law is attempting to eliminate urban sprawl by requiring the use of in-fill development.

In 2009 I was appointed to the Regional Transportation Planning Task Force that produced implementation recommendations that were submitted to the California Air Resources Board (CARB) for their adoption this year. Throughout the Task Force deliberations, I continually "hammered" that now more than ever, for the men and women out of work, for construction companies that have no projects in the pipeline and for local officials trying to maintain vital services, ALL are looking for a process that will bring all parties together to work toward a successful, responsible program statewide.

The Task Force did its job and sent its recommendations to the CARB staff. Unfortunately, as with virtually every other implementation process assigned to them, after a series of public workshops focusing on setting realistic targets for greenhouse gas emission reductions, the California Air Resources Board (CARB) staff unexpectedly proposed unreasonable and unachievable targets that will absolutely impede economic recovery and impose major financial burdens on local communities.

When the CARB staff rendered their recommendations, I immediately joined forces with the business coalition and aggressively lobbied the other government stakeholders including the Metropolitan Transportation Commission (MTC), the planning, coordinating and financing agency for the nine-county San Francisco Bay Area, and the Southern California Association of Governments (SCAG), which is the metropolitan planning organization representing six counties, 190 cities and more than 19 million residents. It is important to note that both organizations agreed that, contrary to the CARB staff recommendations, they could not achieve the CARB targets.

Amazingly, EVEN with virtually every other stakeholder (except for the environmentalists) agreeing with our recommended targets, CARB voted to adopt the higher target levels on September 23rd of this year! If we ever needed another sign that CARB is out of control, this is it! Here we go again with another long term fight with the enviros!

### **Workers' Compensation Reform**

Once again I spent a considerable amount of time on workers' compensation/safety-related activities both in the Legislature and in the Labor Agency through its regulatory agencies which include the Division of Workers' Compensation (DWC), Cal OSHA, the Labor Commissioner, the Department of Industrial Relations and several other commissions. Thankfully, as I previously discussed, the 2004 workers' compensation reform measure has continued to produce tremendous cost savings; however cost drivers, such as the costs for medical services, are again beginning to rise dramatically. To drive home this point, as I wrote this report, the Workers' Compensation Rating Bureau has

recommended over a 26% rate increase for 2011 which the Insurance Commissioner is still deliberating over!

Factors that continue to exacerbate this problem include several interest groups such as the Applicant Attorneys, some labor groups and consumer unions who are continually introducing "bad" legislation that would if passed significantly increase comp costs. These groups also use similar tactics through the regulatory process for their own narrow interests.

Thankfully in 2010, my colleagues and I were able to keep the "wolf at bay" by helping to kill virtually all of their self-serving bills as well as their frontal assaults on the regulatory bodies. It is important to note, ALL of my advocacy for further reforms to the workers' compensation system ALWAYS include ensuring that the health and safety of workers remains paramount. To this end, I continually work with the aforementioned interest groups to help pursue legislation that will help the truly injured workers (as the original no-fault system was intended). Conversely, I will fight to the end in both the Legislature and regulatory bodies on any effort that is intended to create a "full employment act" for one of the aforementioned special interest groups.

### **Cal OSHA Activities**

The Occupational Safety and Health Standards Board (OSHSB) was again very busy in 2010. As in years past, I actively participated in virtually every proceeding/advisory committee meeting that affected the construction industry.

The major focus once again this session was on increasing the requirements to protect workers from exposure to working in outdoor heat and in-turn at what temperature should shade be required? While the debate continues, legislation sponsored by labor was again introduced this session (and ultimately defeated).

Another ongoing Advisory Committee pertains to exposure levels for certain chemicals, which also includes several types of **wood dusts**. This committee continues their deliberations and will do so through 2011.

### **California Highway Patrol**

As in years past, my close ties with past and present commissioners of the Highway Patrol assisted in helping to resolve longstanding problems between the CHP and our contractors hauling equipment and materials on state and local highways. I interceded to ensure that the City of Long Beach once again signed on to the County of Los Angeles' General Hauling Plan.

## **OTHER INDUSTRY-RELATED ACTIVITIES**

### **Common Ground Alliance**

I am an active member of the Common Ground Alliance (CGA), a coalition comprised of all of the utilities within the state, the One Call Centers, some contractor associations, and

government entities such as the PUC. Within CGA, are various committees including the legislative and regulatory committees that meet on a frequent basis. One ongoing activity is to develop future legislation that will set up an enforcement arm within the state government to ensure that all excavators (which include the utilities) comply with current notification and marking requirements prior to any digging. These efforts are a result of the federal government requiring that all states either develop their own regulations OR be faced with federal mandates. This is an ongoing activity.

### **Abandoned Utility Line Seminars**

In 2008 ECA's immediate past president, Justin Malloy, discussed with me (and followed with discussions at an ECA board meeting), the matter of utilities failing to mark abandoned utility lines. I brought the matter up at a Common Ground Alliance (CGA) meeting which then resulted in two seminars in which I served as the master of ceremonies (and which ECA co-hosted). One seminar was held in January of 2010 at Southern California Gas Company's facility in Downey while the other was held in May at PG&E's facility in Walnut Creek. In all, over 150 contractors, utilities and regulators attended these important forums. Future seminars, a closer working network of interested parties and even possible legislation will ultimately emanate from these seminars. In other words, thanks to Justin Malloy's efforts, ECA has generated a considerable amount of enthusiasm for this issue which will help us to find the solution.

### **Membership Involvement**

As in years past, ECA's Legislative Committee once again worked closely with me this year. Specifically, the committee provided me with the input and guidance I needed on all bills and regulatory issues to ensure that my representation was properly focused to serve the membership to the best of my ability. For their assistance I am deeply appreciative!

### **Weekly Updates**

I also continue to write my weekly update that is emailed to most of our membership. Each week I try and provide vital information that our members need to know, such as regulatory information emanating from the Contractors' Board or new laws that have become effective, to cite just two examples. **If you are not on my email list, you need to be!** Send me an email at **phil@pvgov.com** and I will be sure to include you on my list.

### **Thank You, Barney Kamine!!**

Finally, I would express my deepest appreciation to Barney Kamine who once again donated a considerable amount of his time to my legislative efforts on behalf of ECA. Barney has through the years been "the man" who has written most of the bills that ECA has sponsored. Barney's efforts, however, did not simply stop here. Countless hours of his time went into research, phone calls to me, conference calls with consultants and other stakeholders on behalf of ECA - ALL at his own expense! Words cannot begin to describe how much better off the construction industry is as a result of Barney's selfless dedication!!! Thank you, Barney!!!! You are truly one of a kind!

## **BILLS SIGNED BY THE GOVERNOR THAT IMPACT YOUR BUSINESS**

Following are the highlights of bills signed by the governor that I tracked on your behalf this session, sorted by subject matter. In all there were over 425 bills that I tracked, but most did not pass muster this year due to the budget crisis.

If you would like a complete copy of any of these bills, please go to <http://www.leginfo.ca.gov>. Once in this site, type the bill number that you would like to review and then click on the PDF version so you can read it in its exact format. Of course, if you have ANY questions on a particular bill, please email me at phil@pv.gov.com

**All Chaptered bills become law effective January 1, 2011 unless it states it is an urgency measure which means it became law immediately upon the governor's signature.**

### **Air Quality Regulations**

#### **SB 1402 (Dutton) - CARB Penalties and Fines**

##### **Chapter 413 Statutes of 2010**

Requires the California Air Resources Board (CARB) to:

- Provide a clear explanation of how penalties are assessed on a per-unit basis;
- Develop a written, consistent penalty policy that ensures the largest penalties are imposed on serious violations that adversely impact air quality; and
- Report those penalties to the Legislature annually.

**This is one of the few bills that has successfully challenged the status quo operations of CARB!**

### **Building Standards**

#### **AB 1693 (Ma) Building standards: code adoption cycle.**

##### **Chapter No. 145, Statutes of 2010**

The California Building Standards Law provides for the promulgation of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval or adoption. Existing law requires that the commission receive proposed building standards from state agencies for consideration in an annual code adoption cycle. This bill will modify the code adoption cycle and extend it to 18 months.

## **Career Technical Education**

### **AB 2211(Fuentes) Instruction - Chapter Number 254, Statutes of 2010**

Authorizes school districts maintaining high schools to establish work-based learning programs and purchase related liability insurance. Authorizes specified school programs to deliver such opportunities for pupils that may include work experience education, community classrooms, cooperative career technical education programs and job shadowing experience. Authorizes specified entities to develop related principles and guidelines. Provides that sufficient textbooks may include digital materials.

## **Contractors' License Board/ Contractors**

### **SB 392 (Florez) Contractors: limited liability companies.**

#### **Chapter Number 698, Statutes of 2010**

This bill will allow a construction firm to become a limited liability company. The Contractors' State License Board must be prepared to issue a contractor's license to a limited liability company no later than January 1, 2012 and would authorize the responsible managing manager, responsible managing officer, responsible managing member, or responsible managing employee of the limited liability company to qualify for that license. The bill will also require, as a condition precedent to the issuance, reissuance, reinstatement, reactivation, renewal, or continued valid use of a limited liability company contractor's license, that the applicant or licensee file or have on file a surety bond in the sum of \$100,000 for damages arising out of claims of employees. The bill will also require a \$1 million General Liability policy or place on deposit or escrow \$1 million plus an additional \$100,000 per licensee in excess of five employed by the LLC, up to \$5 million in total insurance, escrow, or deposit, and provides, if the LLC is suspended, each member of the LLC who is licensed as a contractor will be liable for up to \$1 million in damages occurring as a result of the licensed activities of the LLC during the suspension.

### **SB 1254 (Leno) -Stop Work Orders For Contractors Not Carrying Workers' Compensation - Chapter Number 643, Statutes of 2010**

Contractors, whether licensed or not, who do not cover their employees with workers' compensation insurance have an economic and illegal advantage over licensees who operate their businesses legitimately. Furthermore, uninsured workers are a potential risk to the public by the fact that a property owner could be held liable for their injuries.

SB 1254 will help to mitigate the harm to law abiding contractors and consumers alike by providing the Contractors' State License Board (CSLB) with the authority to issue an administrative Stop Work Order to any contractor who employs uninsured workers. A vital feature of the bill is the misdemeanor provisions that would be applicable for the violation of a Stop Work Order.

The bill will also authorize an increase in the number of CSLB peace officers from 3 to 12. This is an essential component of the bill. Its enactment and subsequent

implementation would dramatically increase the board's ability to combat the burgeoning underground economy. **It should be noted that the number of peace officer positions the CSLB ultimately obtains will still require the approval of the Director of the Department of Consumer Affairs; however, without this measure they would not have even been able to request the additional peace officers!**

## **Design/Build**

### **SB 879 (Cox) - Design-Build Authorization For Counties.** **Chapter Number 629, Statutes of 2010**

Extends the authority for the use of design-build for counties. We obtained an amendment to the use of "Best Value" which will ensure that all counties in their findings are "Objective." This change had been requested by Attorney and ECA Legislative Co-Chair, Barney Kamine, and will establish the precedent to add this adjective to the other design-build authorizations that are in statute.

## **ECA Sponsored/Co-Sponsored Bills**

### **AB 569 (Emmerson) - Collective Bargaining For Meal and Rest Periods .** **Chapter 662 of 2010 Statutes - Co-Sponsored**

Stipulates that collective bargaining agreements rather than arbitrary laws and regulations will dictate meal and rest period requirements between **signatory** contractors and their employees.

### **AB 2036 (Bill Berryhill) - Electronic Sets of Plans and Specs To Plan Rooms .** **Chapter 371 of 2010 Statutes - Co-Sponsored**

This bill will require all state and local agencies seeking bids for a construction project to provide upon request an electronic copy of a project's contract documents to a contractor plan room service at no charge.

### **SB 694 (Correa) - Time Extensions For the Uniform Cost Accounting Commission.** **Chapter 310 Of 2010 Statutes - Sponsored**

The Uniform Cost Accounting Act was created through legislation approved back in 1983. The Act was created as a consensus solution to resolving what had been a long standing battle between local government and private contractors about agencies complying with existing force account limits for performing construction work in-house using their own workforces instead of requesting bids to have the work done by outside contractors.

Many of the problems were due to local governments and special districts using different accounting procedures that, for example, did not account for their true overhead costs to build or repair a project using their in-house staff. Consequently, while a public entity's force account limit to use their in-house staff at that time was \$5,000 for labor and material costs combined, they would often not account for their true labor costs to pay for

in-house staff in their calculations, and thus would perform work significantly over this amount.

It was due to this constant battle between the private and public sectors that a consensus solution was reached which created the Uniform Cost Accounting Act and the Uniform Cost Accounting Commission in 1983. The commission adopted an accounting procedure that agencies voluntarily agreed to adhere to in return for an increase in their force account limits which is now at \$30,000 and is re-adjusted every few years to match inflation. Opting into the Act also allows these agencies to increase their informal bidding as well, which means that they can use a streamlined bidding process on projects that cost up to \$125,000.

### **Intent of the Bill**

For all of these reasons, the Act and the Commission have been tremendously successful which has resulted in over 740 local agencies participating as members. With the Act now approaching its 27th year of existence, there are a couple of fixes that need to be made to the law:

Existing law requires the commission to review the accounting procedures of any participating public agency upon evidence by an interested party that the work undertaken by the public agency (1) is to be performed by the public agency after rejection of all bids, claiming work can be done less expensively by the public agency; (2) has exceeded the force account limits; or (3) has been improperly classified as maintenance. In any of those circumstances, a request for commission review may be made within 5 business days and the commission is required to commence review immediately and conclude within 30 days from the receipt of the request.

This bill will extend the time to 8 business days to request a commission review, to 45 days for a commission review of a public agency project that is to be performed after rejection of all bids, and to 90 days for a commission review of work for which evidence was provided that the work has exceeded the force account limits or has been improperly classified as maintenance. These time extensions are needed to ensure that the process has adequate time to perform the reviews that are required of the commission and, more importantly, ensure that private contractors receive as much of the public work as possible!

### **SB 879 (Cox) - Design-Build Authorization For Counties.**

#### **Chapter Number 629, Statutes of 2010 - Co-Sponsored**

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- Report those penalties to the Legislature annually.

This is one of the few bills that have successfully challenged the status quo operations of CARB!

## **Employer/Employee**

**AB 569 (Emmerson) - Collective Bargaining For Meal and Rest Periods**

**Chapter Number 662, Statutes of 2010**

Stipulates that collective bargaining agreements rather than arbitrary laws and regulations will dictate meal and rest period requirements between signatory contractors and their employees. **This measure DOES NOT apply to non-signatory contractors.**

**AB 1814 (Buchanan) Discrimination in employment.**

**Chapter Number 130, Statutes of 2010**

Existing law, the Fair Employment and Housing Act (FEHA), protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age,

or sexual orientation. FEHA provides that it does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal.

This bill will provide that FEHA does not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the retiree becomes eligible for Medicare benefits.

**SB 657 (Steinberg) Human trafficking.**

**Chapter Number 556, Statutes of 2010**

One of the most absolutely worthless bills of the year, this bill enacts the California Transparency in Supply Chains Act of 2010. Beginning January 1, 2012, it requires retail sellers and manufacturers doing \$100,000,000 in annual worldwide gross receipts to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. The bill will also require the Franchise Tax Board to make available to the Attorney General a list of retail sellers and manufacturers required to disclose efforts to eradicate slavery and human trafficking pursuant to that provision. Since China is considered one of the countries that is a prime target, it will be interesting to see how this act has ANY effect! **So, why did the governor sign it? This is his wife Maria's BIG issue!**

**SB 909 (Wright) Investigative Potential Employee Reporting Agencies: disclosures.**

**Chapter Number 481, Statutes of 2010**

Effective January 1, 2012, this bill requires a person (i.e., a prospective employer) who procures an investigative consumer report for employment purposes to disclose to the consumer (i.e., an applicant) the Internet Web site of the investigative consumer reporting agency. This bill also requires the reporting agency to conspicuously post on its Internet Web site its privacy policy, including information on whether reports are prepared or processed outside of the United States or its territories.

**SB 1304 (DeSaulnier) Employment: leave and benefits.**

**Chapter Number 646, Statutes of 2010**

This bill will require private employers to permit employees to take paid leaves of absence for organ and bone marrow donation. The bill will require a private employer to restore an employee returning from leave for organ or bone marrow donation to the same position held by the employee when the leave began or an equivalent position. The bill will prohibit a private employer from interfering with an employee taking organ or bone marrow donation leave and from retaliating against an employee for taking that leave or opposing an unlawful employment practice related to organ or bone marrow donation leave. The bill will also create a private right of action for an aggrieved employee to seek enforcement of these provisions.

## **Environmental**

**SB 1456 (Simitian) Environmental quality: cumulative effects and mediation.**

**Chapter Number 496, Statutes of 2010**

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. This bill, until January 1, 2016, will provide that if a lead agency determines that a cumulative effect has been adequately addressed in a prior environmental impact report, in accordance with a specified procedure, that cumulative effect is not required to be examined in a later environmental impact report, mitigated negative declaration, or negative declaration.

## **Government Efficiency**

**AB 1659 (Huber) State government: agency repeals.**

**Chapter Number 666, Statutes of 2010**

This bill will create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in state government agencies and to conduct a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. The bill will define an "eligible agency" as an entity of state government, however denominated, for which a date for repeal has been established by statute on or after January 1, 2011. The bill will require each eligible agency scheduled for repeal to submit a report to the committee containing specified information. The bill will require the committee to take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed, and would require that an eligible agency be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency.

**AB 1666 (Swanson) Local government: whistleblower hotline.**

**Chapter 80, Statutes of 2010**

This bill will specify that a city, county, or city and county auditor or controller may maintain a whistleblower hotline to receive calls from persons who have information regarding fraud, waste, or abuse, and would define those terms. The bill will also authorize the auditor or controller to provide a copy of a substantiated audit report or investigation to the appropriate appointing authority for disciplinary purposes.

## **Hauling**

**AB 145 (De Leon) Motor carriers: construction trucking services.**

**Chapter Number 429, Statutes of 2010**

Existing law requires the Department of Motor Vehicles to regulate the safe operation of commercial motor vehicles and trailer and semitrailer commercial vehicle combinations owned and operated by motor carriers. Existing law also requires every motor carrier of property to comply with specified safety, permit, and liability insurance regulations and to pay the fees required by these provisions.

This bill will apply this prohibition to a broker of construction trucking services and will prohibit that broker from furnishing construction transportation services to any construction project unless it has secured a surety bond of not less than \$15,000 that meets specified requirements. The bill will make a broker of construction trucking services who violates these provisions guilty of a misdemeanor and subject to a fine of up to \$5,000.

## **Hazardous Waste**

### **AB 1674 (Saldana) Hazardous substances: storage tanks.**

#### **Chapter Number 535, Statutes of 2010**

Existing law generally regulates the storage of hazardous substances in underground storage tanks, including imposing certain requirements on those underground storage tanks installed on or after July 1, 2003, and before July 1, 2004, or on or after July 1, 2004. Existing law exempts from the underground storage tank requirements an underground storage tank that meets all of the specified criteria, one of which is that the applicable local agency determines, without objection from the State Water Resources Control Board, that the underground storage tank meets or exceeds the requirements generally imposed on underground storage tanks under existing law.

This bill, with respect to the criteria that an underground storage tank is required to meet for an exemption, will delete the requirement that the board not object to the local agency's determination. To qualify for the exemption, the bill also will provide that if the underground storage tank is installed on or after July 1, 2003, the local agency will be required to determine that the tank meets or exceeds the requirements for underground storage tanks installed after January 1, 1984, except for certain in lieu conditions for motor vehicle fuel tanks, and that any portion of a vent line, vapor recovery line, or fill pipe that is beneath the surface of the ground is subject to regulation as a pipe.

## **Health**

### **AB 1602 (Perez) - California Health Benefit Exchange Governance and Guidelines.**

#### **Chapter Number 655, Statutes of 2010**

This measure, together with SB 900 below, prematurely creates overly broad and expansive governance and guidelines without oversight for the state health benefit exchange, which could lead to unnecessary cost increases and limited choice for employers.

### **AB 2470 (De La Torre) - Health Insurance Litigation -**

#### **Chapter Number 658, Statutes of 2010**

Before amendments, would have driven up the cost of health care premiums and gone beyond federal health care reform by establishing litigation as the only meaningful approach to resolving disputes over canceled coverage. After amendments, conforms California rescission rules to federal requirements.

**SB 900 (Alquist) California Health Benefit Exchange.**

**Chapter Number 659, Statutes of 2010**

Establishes the State Health Benefits Exchange. Requires the Exchange to implement specified functions imposed by the federal Patient Protection and Affordable Care Act in a consumer-friendly manner, enter into contracts with health care service plans and health insurers seeking to offer coverage in the Exchange, and provide a choice in each region of the state between 5 levels of coverage. Specifies products to be offered. Creates a related fund. Requires a review of a related Internet portal.

**Infrastructure**

**AB 133 (Smyth) Subdivisions: major thoroughfares.**

**Chapter 33, Statutes of 2010.**

The Subdivision Map Act authorizes a local agency to require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges or major thoroughfares if specified conditions are met. The fees collected are deposited in a planned bridge or major thoroughfare fund. If the benefit area of a bridge fund is one in which more than one bridge is required to be constructed, a fund may be established that covers all of the bridge projects in that benefit area. For the unincorporated area of San Diego County only, "construction" is defined to include design, acquisition of rights-of-way, actual construction, and reasonable administrative expenses, as specified.

This bill will authorize a local agency to establish a fund for a benefit area that covers all of the bridge and major thoroughfare projects in that benefit area when that benefit area is one in which more than one bridge or major thoroughfare is required to be constructed. The definition of "construction" for the unincorporated area of San Diego County will also be applied to the unincorporated area of, and, in specified circumstances, to other specified areas within, Los Angeles County.

**AB 2098 (Miller) - Highway 91 Expansion**

**Chapter Number 250, Statutes of 2010**

This measure will authorize the Riverside County Transportation Commission to utilize the design-build procurement process for the State Route 91 Corridor Improvements Project. It will provide for \$1.2 billion in construction funds and will produce 18,000 jobs for the construction industry!

**Land Use**

**AB 231 (Huber) Environment: California Environmental Quality Act: overriding consideration. Chapter Number 432, Statutes of 2010**

This bill will authorize a lead agency, until January 1, 2016, to incorporate by reference a finding of overriding consideration made in a prior Environmental Impact Report (EIR) for a later project if specified conditions are met, including that the lead agency determines that the later project's significant impacts on the environment are not greater

than or different from those identified in the prior EIR.

**AB 1846 (V. Manuel Perez) Environment: expedited environmental review: climate change regulations. Chapter Number 195, Statutes of 2010**

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect.

This bill will additionally require that the above environmental analysis be performed for a rule or regulation that requires the installation of pollution control equipment or a performance standard or treatment requirement adopted pursuant to the California Global Warming Solutions Act of 2006, including those for rules and regulations requiring the installation of pollution control equipment adopted by the State Energy Resources Conservation and Development Commission and the California Public Utilities Commission. The bill will authorize the use of the focused environmental impact report for a project that consists solely of the installation of pollution control equipment or other components that are necessary to complete the installation of that equipment that reduces greenhouse gas emissions in compliance with a rule or regulation adopted pursuant to the California Global Warming Solutions Act of 2006.

**AB 2565 (Ammiano) Environment: CEQA: lead agency: documents. Chapter Number 210, Statutes of 2010**

This bill will authorize a public agency to provide California Environmental Quality Act (CEQA) environmental documents upon request in an electronic format and to also charge for their cost.

## **Legal**

**AB 2372(Ammiano) Grand theft: property value threshold. Chapter Number 693, Statutes of 2010**

Existing law generally provides that grand theft is theft when the money, labor, or real or personal property taken is of a value exceeding \$400. This bill would increase the value threshold for committing grand theft from \$400 to \$950.

**SB 972 (Wolk) Indemnity: design professionals. Chapter Number 510, Statutes of 2010**

This bill will provide, with respect to contracts and amendments to contracts entered into on or after January 1, 2011, with a public agency for design professional services, that all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting these contracts or amendments to contracts that purport to require the design professional to defend the public agency under an indemnity agreement, including the duty and the cost to defend, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The bill

will provide that all contracts and all solicitation documents between a public agency and a design professional are deemed to incorporate these provisions by reference.

**SB 1046 (Cogdill) Government tort claims: California State University.**

**Chapter Number 636, Statutes of 2010**

This bill removes the California State University (CSU) from the jurisdiction of the Victim Compensation and Government Claims Board (VCGCB) and instead allows the CSU to process its own tort claims consistent with procedures established in the Government Tort Claims Act (TCA).

## **Mechanics' Liens**

**SB 189 (Lowenthal) Mechanics liens.**

**Chapter Number 697, Statutes of 2010**

This bill will revise and recast the mechanics' lien statutory provisions and make both substantive and technical changes. This was a consensus bill.

## **Public Works**

**AB 552 (Solorio) Correctional facilities -**

**Chapter Number 22, Statutes of 2010**

A previous authorization approved \$6.2 billion in lease-revenue bond financing for construction of 40,000 new state prison beds and \$1.2 billion for an estimated 13,000 new county jail beds, phased-in over time and contingent upon a series of construction and rehabilitation program implementation benchmarks.

This bill will additionally authorize the spending of these funds to develop beds and treatment space to serve inmates requiring mental health or medical services. The bill will authorize renovating existing buildings at existing facilities for medical, dental, and mental health treatment as well as to design, construct, or renovate any ancillary improvements. The bill would also make changes regarding the calculation of design-build project augmentations from these funds.

**AB 759 (Ma) Public contracts with expatriate corporations.**

**Chapter Number 349, Statutes of 2010**

Existing law regarding contracting between state agencies and private contractors sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies, in overseeing and implementing state contracting procedures and policies.

This bill will revise the definition of an expatriate corporation, and would exclude as an expatriate corporation a foreign incorporated entity that is publicly traded in the United States that meets specified conditions, including, among others, that the foreign incorporated entity is created and organized under the laws of a foreign country with

which the United States has a comprehensive income tax treaty and is considered a resident of that foreign country for purposes of that treaty or any successor treaty, and any successor corporation meeting specified requirements, as provided.

**AB 2036 (Berryhill, Bill) Public contracts: contract document distribution.**

**Chapter Number 371, Statutes of 2010**

This bill will require a state department and a local agency, upon request from a contractor plan service, to provide an electronic copy of a project's contract documents to the contractor plan room service at no charge.

**AB 2181(Hagman) State Contract Act: contracting by state agencies.**

**Chapter Number 252, Statutes of 2010**

This bill Increases the dollar limit of specified capital outlay projects from \$400,000 to \$600,000 and allows state agencies to budget those projects as a minor capital outlay project and carry them out without the Department of General Service's (DGS) approval. It also requires the Department of Finance (DOF) to adjust the minor capital outlay budget limit every two years to reflect the percentage change in the annual California Construction Index (CCI) used by DGS.

**AB 2184 (Arambula) - Local agency: alternative bidding procedures: notice.**

**Chapter 62, Statutes of 2010.**

The Uniform Public Construction Cost Accounting Act provides for alternative bidding procedures for public projects let by contract by a public agency when the public agency has voluntarily elected to become subject to the accounting procedures set forth in that law. That law sets forth publishing requirements for notices inviting formal bids to let contracts, including a requirement to mail the notice to all construction trade journals at least 30 calendar days before the date of opening the bids.

This bill will also require the notice to be sent electronically, if available, by either facsimile or electronic mail to all construction trade journals, and would require notice to be sent at least 15 calendar days before the date of opening the bids.

**AB 2560 (Brownley) Education finance: federal tax credit bond volume cap.**

**Chapter Number 266, Statutes of 2010**

This bill will authorize the State Department of Education and the California School Finance Authority to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of school districts and county offices of education and would authorize the California School Finance Authority to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of charter schools, or to be further assigned and distributed to one or more issuers in the state for the benefit of charter schools, as determined by the authority.

**SB 694 (Correa) - Time Extensions For the Uniform Cost Accounting Commission.**

**Chapter 310 Of 2010 Statutes**

This bill will extend the time to 8 business days to request a commission review, to 45

days for a commission review of a public agency project that is to be performed after rejection of all bids, and to 90 days for a commission review of work for which evidence was provided that the work has exceeded the force account limits or has been improperly classified as maintenance. These time extensions are needed to ensure that the process has adequate time to perform the reviews that are required of the commission and, more importantly, ensure that private contractors receive as much of the public work as possible!

**SB 1341(Price) Los Angeles County Metropolitan Transportation Authority: contracting. Chapter Number 494, Statutes of 2010**

Enacts provisions for the Los Angeles County Metropolitan Transportation Authority (Metro) relative to preferences in contracting for small business enterprises. Specifically this bill:

- 1). Allows Metro, on contracts above \$100,000, to award contracts to the lowest responsible bidder, to do any of the following in facilitating contract awards to small businesses:
  - a). Provide for a small business preference in the construction component of a design-build team, and provides that the preference shall be 5% of the lowest responsible bidder meeting specifications that provide for small business participation;
  - b). Establish a subcontracting participation goal for small businesses on contracts financed with nonfederal funds and grant a preference of 5% to the lowest responsible bidders who meet the goal; or,
  - c). Require bidders to make a good faith effort prior to the time bids are opened, to comply with the goals and requirements established by Metro relating to participation in the contract by small businesses.

## **Safety**

**AB 2774 (Swanson) Occupational safety and health. Chapter Number 692, Statutes of 2010**

Establishes a rebuttable presumption that a serious violation exists if DOSH can demonstrate a “realistic possibility” that death or serious physical harm could result from the actual hazard created by the violation. Demonstration of a violation does not establish that the violation is serious. Before issuing a citation, DOSH shall make a reasonable attempt to “determine and consider” employee and supervisor training, procedures for discovering, controlling and correcting hazards, supervision of exposed employees and the employer’s safety communication.

DOSH also must consider the employer’s explanation of the circumstances surrounding the alleged violation, why the employer believes a serious violation does not exist and why it believes its actions were reasonable and responsible.

DOSH will have satisfied its requirement to “determine and consider” by sending the employer a form at least 15 days prior to issuing a serious citation describing the conditions it intends to cite and soliciting employer information.

An employer may rebut a serious allegation by demonstrating that it did not know and could not have known of the violation with reasonable diligence (retaining current language). But the LC change would require the employer to show it took “all the steps a reasonable and responsible employer in like circumstances should be expected to take,” an addition to the Labor Code.

DOSH inspectors shall be deemed competent to offer testimony to establish serious violations if they demonstrate at the time of the hearing that their DOSH-mandated training is current.

Definition of “serious physical harm” to include (in addition to hospitalization, loss of body member or serious, permanent disfigurement), “Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illness or broken bones.”

Labor Code change also notes, “Serious physical harm may be caused by a single, repetitive practice means, method, operation or process.” **This is a bill I joined with the other employer groups to actively oppose until we were able to achieve ALL of the amendments that we needed to improve the existing law!**

## **Small, Women, Disabled and Minority Business Preferences**

**AB 177 (Ruskin) Public contracts: small businesses and disabled veteran business enterprises.**

**Chapter Number 342, Statutes of 2010**

This bill will increase the period of certification revocation and suspension for having furnished incorrect supporting information or withholding relevant information as a small business or micro-business and revoke the disabled veteran business enterprise certification of the business if the business has both certifications, revise the types of costs payable to the state, and additionally prohibit a business or person from contracting with the state until the amounts are paid.

## **Storm Water Runoff**

**AB 2554 (Brownley) Los Angeles County Flood Control District: fees and charges.**

**Chapter Number 602, Statutes of 2010**

Existing law, the Los Angeles County Flood Control Act, establishes the Los Angeles County Flood Control District and authorizes the district to control and conserve the flood, storm, and other wastewater of the district. This bill will authorize the district to impose a fee or charge to pay the costs and expenses of carrying out projects and providing services to improve water quality and reduce storm water and urban runoff

pollution in the district. The bill would require that any fees imposed be levied and collected together with taxes for county purposes, and the revenues paid into the county treasury to the credit of the district.

## **Taxes**

### **AB 2195 (Silva) Taxation: State Board of Equalization: penalty: burden of proof.** **Chapter Number 168, Statutes of 2010**

Existing law imposes various taxes and fees that are administered and collected by the State Board of Equalization. Existing law provides that the taxpayer has the burden of proof in court proceedings for a refund of tax, while the state agency has the burden of proof with respect to its assertion of fraud or intent to evade penalties. This bill will provide, for purposes of the taxes and fees administered by the State Board of Equalization, that the board shall have the burden of proof, by clear and convincing evidence, in sustaining its assertion of penalties for intent to evade or fraud in a civil proceeding.

### **SB 1028 (Correa) State Board of Equalization: administration: interest.** **Chapter Number 316, Statutes of 2010**

This bill gives the BOE authority to impose only one day's interest on a payment made only one day late, in special circumstances and on a case-by-case basis. This bill is intended to encourage timely payments of taxes, fees and surcharges while providing taxpayers with fairness and relief in specified circumstances.

## **Transportation**

### **AB 1784 (Fong) Santa Clara Valley Transportation Authority.** **Chapter 57, Statutes of 2010.**

Existing law creates the Santa Clara Valley Transportation Authority with various powers and duties relative to public transportation and other related matters. Existing law provides that the authority may provide funding to the Department of Transportation for repair and maintenance of state highways within its boundaries. This bill will authorize the authority to enter into agreements with any city within the territory of the authority or with the County of Santa Clara to improve a street, road, highway, or expressway under the jurisdiction of the city or county.

### **AB 2098 (Miller) - Highway 91 Expansion** **Chapter Number 250, Statutes of 2010**

This measure will authorize the Riverside County Transportation Commission to utilize the design-build procurement process for the State Route 91 Corridor Improvements Project. It will provide for \$1.2 billion in construction funds and will produce 18,000 jobs for the construction industry!

### **SB 1371(Correa) Transportation: bond funded projects: letter of no prejudice.** **Chapter Number 292, Statutes of 2010**

Existing law, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes, including \$950 million to be allocated by the California Transportation Commission to eligible recipients for capital improvements to intercity and commuter rail lines and urban rail transit systems in connection with or otherwise related to the high-speed train system. This bill will allow an eligible recipient for funding for capital improvements to intercity and commuter rail lines and urban rail transit systems in connection with or otherwise related to the high-speed train system under the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to apply to the California Transportation Commission for a letter of no prejudice relating to those projects. The bill will authorize the commission to develop guidelines to implement these provisions.

## **Unemployment Insurance**

### **AB 2058 (Block) Unemployment insurance: retraining benefits.**

#### **Chapter Number 591, Statutes of 2010**

Establishes the State Training Benefits Program. Specifies that an unemployed individual who qualifies for unemployment compensation benefits, extended duration benefits, or an application for federal-state extended benefits or any federally funded unemployment compensation benefits, and applies for the program, shall be deemed to be eligible for the program during a period of training or retraining. Relates to procedures governing training or retraining eligibility. Requires disclosure of related information.

### **AB 2538 (Niello) Unemployment insurance: eligibility for benefits: notification.**

#### **Chapter Number 392, Statutes of 2010**

Existing law requires the Employment Development Department to implement and administer the unemployment insurance program in this state, and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law provides for penalties and interest if any person or employing unit is delinquent in the payment of any contributions for unemployment insurance, and authorizes the Director of Employment Development to collect the delinquency or enforce any state tax liens by levy served personally or by certified mail. Existing law requires that, if the levy is made on a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the branch or office of the bank or savings and loan association at which the deposit is carried or at which credits or personal property is held.

This bill will authorize the director to serve the levy by first-class mail instead of certified mail. This bill will instead require that, if the levy is made on a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the centralized processing unit or location designated by that bank or savings and loan association where the credits or other property is held. To implement those provisions, the bill will also authorize the department to serve notice to an address for a bank or savings and loan association by

magnetic media, electronic transmission, or other electronic technology.

## **Water Conservation and Improvements**

### **SB 613 (Harman) Irvine Ranch Water District and Santa Margarita Water District.** **Chapter Number 624, Statutes of 2010**

This bill will authorize the Irvine Ranch Water District and the Santa Margarita Water District to pledge and apply all or part of the revenues of each district to the payment or security of any or all of the principal, redemption price, and purchase price of general obligation bonds for improvement districts and consolidated general obligation bonds for improvement districts. The bill will require each district, on or before January 1, 2014, to submit a report to specified persons describing the district's use, if any, of the authority this bill will grant.

### **SB 918 (Pavley) Water recycling.**

#### **Chapter Number 700, Statutes of 2010**

This bill will require the State Department of Public Health to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge by December 31, 2013. The bill will require the department to develop and adopt uniform water recycling criteria for surface water augmentation by December 31, 2016, if a specified expert panel convened pursuant to the bill finds that the criteria would adequately protect public health. The bill would require the department to investigate the feasibility of developing uniform water recycling criteria for direct potable reuse and to provide a final report on that investigation to the Legislature by December 31, 2016. The bill will require the department, in consultation with the State Water Resources Control Board, to report to the Legislature from 2011 to 2016, inclusive, as part of the annual budget process, on the progress towards developing and adopting the water recycling criteria for surface water augmentation and its investigation of the feasibility of developing water recycling criteria for direct potable reuse. The bill will also require the State Water Resources Control Board to enter into an agreement with the department to assist in implementing the water recycling criteria provisions.

## **Workers Compensation**

### **AB 2305 (Knight) Contractors: workers' compensation insurance coverage.**

#### **Chapter Number 423, Statutes of 2010**

Extends the requirement that all C-39 Roofing Contractors must maintain a workers' compensation insurance policy to remain properly licensed. It presumes that all roofers require employees to perform roofing work.

### **SB 156 (Wright) Insurance: fraud prevention and detection.**

#### **Chapter Number 305, Statutes of 2010**

Amends existing law that provides for the prevention, detection, and investigation of insurance fraud to include workers' compensation and requires insurers to disclose such

insurance fraud incidents. Authorizes the Department of Insurance to convene meetings with insurance companies to discuss information concerning suspected, anticipated, or completed acts of fraud. Protects a person sharing information pursuant to the authorization from civil liability for libel, slander or other cause of action.

## 2011 ACTIVITIES

My mantra for 2011 will continue to be, "If you are not at the table, you are on the menu!" Simply put, politics and particularly California politics, is a contact sport. The edge our association has is that we are truly at "the table" affecting policy and controlling our own destiny! This will become a MUCH bigger issue in 2011 as I explain below!

The California State Legislature officially starts its new two-year session in early January 2011. Besides the many new faces in the Legislature, California will have a new governor who will quickly move to form his new Administration. This means that Jerry Brown is already naming cabinet secretaries, agency and department heads and then will move down the ladder as the year progresses. As the new Administration "settles in" expect other major changes.

There is absolutely no doubt that labor will once again gain the upper hand in many legislative and regulatory matters since most of the aforementioned positions will be filled by labor and other "friends of Jerry." So too, with a Democratic majority in both houses coupled with a Democratic governor, it could well be "Katie bar the door" in terms of both pro-labor/anti-business laws being "jammed through" the Legislature, while regulatory changes in agencies such as Cal OSHA could become overwhelming to say the least! As another example, Jerry Brown has been promising to work with labor to overturn the 2004 workers' compensation reforms as one of his FIRST orders of business, just as the 2004 reforms were Schwarzenegger's first major accomplishment as governor. Conversely to these fears, however, there MAY be the fact that the state of the State is so bad that these past anti-business practices cannot continue and that even Jerry Brown will be forced to work with the business community to turn things around (see further discussion on this below).

What I can absolutely guarantee is there will be a considerable amount of work to both "get to know" and/or re-acquaint myself with the new appointees. So too, I will be "up to my eyeballs" with my colleagues trying to defend our ground or helping to make the badly needed changes to regulations, such as those from the Air Resources Board.

While working with the new Administration as well as a new Legislature will be a daunting task in and of itself, there is another huge factor that is literally, the "500 pound gorilla in the room," namely the depression within the construction industry while the remainder of the state continues to "waddle" in the recession. What is it going to take to reverse this mess? To this end pertaining to construction, Governor Schwarzenegger asked me earlier this year what I thought it would take to "kick-start" California's construction industry. My reply - "A good earthquake!"

While I was being facetious, my point is that something has to be done to kick-start the long term solution to fix the construction industry in California and with it our state's future. As I discussed earlier under my accomplishments in 2010, the BEST and most promising opportunity to "fix" construction is by finding (a) permanent funding source(s) for the \$500 billion in infrastructure needs that California will require over the next 20 years. Simply put, without the investment in our infrastructure there is no future for California, period; AND, it cannot come from bonds as it costs us nearly double the amount of the bond to service the debt. I believe my earlier discussion laid out our options. Now, the challenge will be making it become reality! My commitment is to make this my highest priority in 2011!!!

One final note, while our challenges to fund the hundreds of billions we will need to build or upgrade our infrastructure and to address the out of control regulations is formidable, let me stress that one of the largest impediments to our efforts will be fighting the public worker unions such as the SEIU! Incredibly, these self-serving public workers' unions oppose ALL future infrastructure needs, because in their eyes money "taken" for these requirements means less money for them! This "them against us" mentality has gotten so bad in Sacramento that our building trades (Laborers, Carpenters, and Operating Engineers to name a few) have also become archrivals to their public-sector counterparts for the same reasons!

Fortunately, despite all of the bad things that have occurred due to the significant downturn in the economic, the "average Joe" has awakened and is becoming more upset with the public workers' unions and their ever-spiraling out of control pensions. This I hope will provide for the needed "wind against our back" to help the business community re-take and re-focus California's future even with Jerry Brown coming in as our next governor!

Why should the "Average Joe" care? Believe it or not, and what is going to be known by more and more of the general public SOON, the estimated unfunded liability for state and local public worker pensions RIVALS the projected infrastructure needs of California over the next 20 years - **\$500 billion!** And while I'm not downplaying the importance of public workers, this number simply cannot sustain itself, particularly since funding this same amount for infrastructure instead of public union workers' pensions will ensure the future of both our state as well as our industry!

That is why I'm cautiously optimistic that even with Jerry Brown coming in there is a realization that significant changes must occur! Couple this with the general public being fed up with this recession and its impacts, along with the efforts of the business community, we believe that these factors combined will allow sanity to re-take Sacramento and get us on the right track once again!

With this in mind, let me lay out my agenda for 2011:

### **My Most Important Issues in 2011 On Your Behalf**

## **#1 - Permanent, long-term funding solutions to address California's infrastructure needs.**

## **#2 - Regulatory Reform**

## **#3 - Other Important Bill Introductions**

### **Specific Legislative Plans For 2011**

As I just stated, it is my belief that with a new Administration soon to be in place, coupled with many new faces within the Legislature, 2011 is going to be the year to "wipe the slate clean" and move forward with a joint effort with the other business groups in the state to "Take back California."

Following is the plan that we have already agreed to pursue with our other business coalition partners in 2011:

### **Policies to Spur Economic Growth and Job Creation**

- **Invest in public works that provide the backbone for economic growth.**

I've said enough throughout this report about what it will take to fund the \$500 billion that is needed to re-build California's infrastructure. Suffice that this is my highest priority for 2011.

- **Ensure certainty and stability of private investments in plants, equipment and technology, including a fair and predictable tax structure.**

Implementing measures that make the policy environment in California fair and predictable will help improve the business climate. The current policy environment is completely unstable and unpredictable leading many companies to decide to move or expand elsewhere. Companies that can accurately predict the policy environment in California can plan their long term investments. By the way, ALL of this spells out W-O-R-K for the construction industry:

- Improve California's stability and predictability are increase manufacturing jobs through tax incentives
- Protect enterprise zones
- Reform the California Environmental Quality Act
- Minimize the compliance costs of climate change law
- Stop punitive taxation that undermines economic growth
- Stop creating fees that serve as revenue sources

- **Get Control of the Bureaucracy**

Past legislatures have ceded to unelected officials (BUREAUCRATS!) sweeping powers to impose new regulations, collect administrative fees and assess fines and penalties – all with no requirements for legislative oversight or approval. The current system creates the potential for an uncertain, punitive and an increasingly unaccountable regulatory environment. Requiring legislative review and approval for major new regulations ensures that the intent of legislation is carried out in the most effective manner for businesses and for legislators' constituents.

- **Measure the Economic Impact of New Regulations and Legislation**

Many regulations and pieces of legislation are imposed without a true understanding of their impact on jobs and economic growth. Requiring economic impact reports by independent experts or an entity other than the regulatory agency will reveal the true cost in jobs and lost revenue, empowering you to make reasonable adjustments as necessary. Just think if this had been done for the CARB regulations as well as the storm-water runoff regulations!

- **Weed Out Ineffective Regulations**

Businesses must continually update processes to improve products and services to remain competitive. In the same manner, the legislature should review regulations already on the books and require periodic reviews for new regulations, removing those that are duplicative, outdated or failing to deliver on their promises.

Suffice to say that my colleagues and I don't have all of the solutions to get us turned around overnight, BUT we do have the enthusiasm and support (and hopefully a new governor) to commence working from the outset of 2011 on the things we know will put us on the right path. Our pledge is to "pull out all of the stops" with your support to accomplish the aforementioned.

Besides these important efforts, my sponsored legislation on your behalf that I've already begun to work on includes:

**I. Sales Tax Exemption for Fixed Price Contracts** - Due to the veto of our AB 2060 (Calderon) my colleagues and I will come back in 2011 with the same bill since we will have a new governor to work with. This measure would have provided future protection against sales tax increases for contractors with fixed-price public works contracts. It would have required public agencies to compensate contractors for any increase in the sales tax and, conversely, requires adjustments if the sales tax rate decreases.

**II. Conversion of septic systems to sanitary sewer systems and the replacing of aging and faulty sewer laterals** - Due to the veto of AB 2182 (Huffman), I have already begun working with the author to re-introduce this measure in 2011. This bill would have encouraged property owners to convert from septic systems to community sewer systems and to replace failing private sewer laterals to protect water quality and public

health and safety. Under the authority in AB 2182, the property owners within a designated area may individually choose to assess themselves for the cost of designated onsite sewer improvements. The local government then provides the up-front funding for the project and the property owners pay an annual assessment through their property tax bill until those funds, plus interest, are repaid.

A perfect example of how this bill would have benefitted homeowners and businesses is in Malibu, where the Water Resources Board has now mandated that ALL property owners convert from septic systems into sewer laterals that will flow into a state-of-the-art sewage treatment plant that will have to be built. This is just one of hundreds of locations around the state that will benefit from this legislation. More importantly, it would provide substantial WORK for our contractors! We will re-introduce this measure next session. A new governor will certainly help us prevail!

**III. Provide Attorney's Fees to a Contractor Who Successfully Challenges A Public Agency Over the Awarding of A Contract** - In late August of 2010 the Court of Appeals decided *Great West Contractors, Inc. v. Irvine Unified School District*. It again demonstrates that a better remedy is required to vindicate the competitive bidding laws than just recovery of bidding expenses by the contractor who is illegally denied the contract. We will propose a statute under which the successful contractor can be awarded his attorney fees in any successful litigation challenging an illegal award of contract.

**IV. Resolve the Ability of One Contractor to Recoup Payments to Another Due to Licensing Glitches** - Contractors are using technical, minor "glitches" of a contractor's licensing history as an excuse not to have to legitimately pay for work that has been successfully built. Working with the Contractors' Board, we intend to introduce legislation to resolve this unfair abuse of existing contractor license law.

**V. Determine if Legislation To Minimize Bid Protests Should Be Introduced -**  
Besides #1 above, we have received a member request to determine if legislation should be introduced that would limit job protests. While the right to protest the awarding of a job is an absolute important part of the public works bidding process and ensures that the system remains both fair and legitimate, the question has been asked whether the protest process has gotten out of control and whether there should be some limits or other factors included within the process.

**VI. "Good Faith Effort" Problem Pertaining to DVBE**  
As previously discussed, the restoration of the "good faith effort" is vitally necessary. Although our past efforts have failed to restore this important component to the MBE/WBE process, we are determined to come back again next session to resolve this problem. With a new Administration in place, we believe our chances will be much better!

**VII. Proper Marking of Abandoned Utility Lines**  
As we noted in last year's grant request, our own Barney Kamine suggested that a "fix" to address the proper marking of abandoned utility lines was going to require legislation.

Following are Barney's remarks:

"Abandoned lines might not be shown on the plans, but I am not sure the public agency-owner would be liable to the contractor for failing to show abandoned lines under Government Code § 4215, because an abandoned line is probably not an "existing main or trunk line utility facilities."

"We probably need to clarify Government Code § 4215 and/or get a new statute holding the utilities liable for failure to notify Dig Alert of the location of abandoned lines."

#### **VIII. The Regents "Best Value Construction Contracting Pilot Program"**

(Public Contract Code sections 10506.4 through 10506.9) sunsets on January 1, 2012, so there should be some legislation next year to extend it. We will pursue to:

1. Assure that when the pilot program is extended, the statutory language construed by the court in Schram does NOT change.
2. Try to get the statutory language construed by the court in Schram into every other "best value" statute.

#### **IX. Re-Write through Statute B&P Code Section 7106**

The affidavit contained in this section needs to be re-written. The revised language was placed in a Senate Business and Profession's Committee Bill this year at my request but was pulled due to concerns raised by the Department of General Services' attorneys that we did not go far enough with the changes. I'm currently working with DGS to have this bill re-introduced in 2011.

#### **X. Re-Introduce AB 2096 (Miller) - Arbitration**

Despite the setback with the consultant for the Assembly Judiciary Committee this year who couldn't understand the need for a bill which several private attorneys (including ECA's Legislative Co-Chair, Barney Kamine) strongly supported, we remain committed to re-introducing our bill that will allow the agencies the latitude to proceed with private arbitration to resolve construction disputes.

#### **XI. Prompt Pay Law Review and Rewrite**

Our pledge is to continue on with our plans to work with our colleagues to introduce legislation in early 2011 to re-write and/or consolidate the prompt pay provisions within the codes.

#### **XII. 4 Day, Ten Hour Work Week**

This is a matter of great importance to our ECA members and their employees (and to every other contractor as well) which we have previously discussed in our 2007, 2008, 2009, and 2010 proposals. The question is why shouldn't employers allow employees to work four, ten hour days if both parties agree? Unfortunately when dealing with public works, the California State Constitution prevents this from happening! Written into the constitution back in the 1800s, there are only two ways that we will ever be able to

change this requirement:

1). Introduce a bill that ultimately obtains a two thirds vote of the Legislature which is then signed by the governor. Next, it would have to be placed on the general election ballot and approved by a majority (plurality) of the voters (50% plus 1).

2). Qualify a ballot initiative for the general election ballot. Again, it would have to be approved by a majority of the voters.

I am committed to making this a priority issue once again in 2011. Please bear in mind however, the odds are very much against us because it will require union support - but they will only want a bill that addresses signatory contractors (same problem as the meal and rest period issue). Again, despite these potential obstacles, we are committed to trying to make this happen.

### **XIII. Google Can Be A Problem**

This was an issue that was raised by our attorneys in 2007, 2008, 2009 and again in 2010; however, they never produced a “fix” for the problem. We propose a “fix” again this year in hopes that our legal team will find a solution that we can introduce.

It seems that a contractor was awarded a public works job, but then the agency tried to remove him and called him a non-responsive bidder. The contractor demanded a hearing to plead his case in which he ultimately prevailed. In publicly noticing the hearing however, the public agency’s staff had included materials as handouts to prove their case.

Unfortunately if you now Google this contractor’s name, this agency’s staff report comes up even though he was able to disprove everything that was contained in the report against him! So, the “fix” we need to make is to somehow require a public agency to remove from cyberspace any reference to a purported problem, such as being non-responsive, if it is reversed. Otherwise this contractor (or any other contractor in the same circumstance) may always have this matter “hanging over his head” when he bids on any type of job and the prospective owner happens to Google the contractor to check on him.

### **XIV. Be Prepared to Introduce Legislation Quickly on an As-Needed Basis**

It seems that virtually every year ECA finds a need to have a bill introduced at the last minute to address an unforeseen problem or issue. As always, I stand ready to meet the challenge again in 2011.

### **Federal Stimulus Funds**

Although California received a huge infusion of funds from the American Recovery and Reinvestment Act of 2009, only about 25% have been spent by California to date! This woeful amount spent to date includes an even smaller amount that has been spent on ECA's lifeblood, clean water and waste water treatment facilities! This is absolutely criminal given the fact that the money has a specific use that would significantly help our industry out!

While our lobbying efforts cannot release funds any sooner than an agency is ready to release them, we stand committed to continuing to work with the local cities, counties and special districts (such as sanitary districts) to help "shake" these funds from the federal government's "tree!" Granted, these funds are literally, a "drop in the bucket," BUT each and every dollar spent is a dollar that wasn't there before these funds were approved by the federal government.

#### **Additional Sewer and Wastewater Treatment Work**

In 2007 ECA joined the Clean Water Construction Coalition. Comprised of underground contractor associations from around the country, this coalition is pushing to obtain the passage of Federal legislation that will continue to produce billions of dollars of work for our ECA members updating California's sewer and wastewater treatment facilities in 2011. The proposed amounts total \$2.1 in wastewater treatment and \$1.39 billion in drinking water, meaning that California should receive at least 10 percent of these funds which, combined with the other recovery act funds previously mentioned, will significantly help to lift our industry out of its depression. By the way, there is discussion that these funds should be included as part of the funds available through the National Infrastructure Bank.

My pledge is to remain an active participant in helping to bring as much funding to California as possible. To this end, I will continue to write letters to our congressional delegation (I provided a copy of Senator Feinstein's reply to my request earlier this year in my weekly update), meet with members in their district offices and travel to Washington D.C. if necessary to lobby on a one on one basis.

#### **CIAQ and Air Quality Regulations –**

As previously discussed, with our industry "on the ropes" due to the economy, we have already achieved emission reductions far above what the regulations had intended to achieve several years from now. Our efforts will continue to force CARB to not only roll back, but drop the implementation dates for the off-road diesel regulations. Since the CARB staff over-estimated the emission reductions by at least a factor of 2, it is hoped that these gross inaccuracies, coupled with attrition factors which have lead to over 30,000 pieces of equipment already having been sold, will cause CARB to "see the light" and back off (for once!). If not, discussions are already underway to find a legislative solution if necessary.

#### **SB 375**

With the recent adoption by CARB of over-inflated targets for reducing green house gas emissions in future construction, it is absolutely essential that the construction industry keep the pressure on to roll these back before they are implemented which further stymies our limping economy! Based upon CARB's past experiences, we feel certain that the recently adopted targets are wrong and that they will need to be revised downwards. I will keep ECA at the table!

### **Workers' Compensation**

As previously stated, Jerry Brown has pledged to "gut" the workers' compensation reforms of 2004. Adding to this problem, "cost-drivers" are already in play which could result in dramatic rate increases starting in early January of 2011. Indeed, these potential rate increases could exceed 25% or more!

ECA will once again be at the table for all of the activities both in the regulatory and the legislative arenas dealing with workers' compensation. With my extensive background in workers' compensation, it has and will continue to play a large role in making sure that our members are properly represented.

I also pledge to continue with my efforts to help promote self-insured groups for our contractors. Indeed, with costs expected to rise dramatically in 2011, self insured groups could be an extremely attractive solution for our contractor members that we will be aggressively reviewing for their viability.

### **Career Technical Education**

Although the budget crisis took center stage over education in 2010, the fact remains that we need to still do considerably more to help promote Career Technical Education (CTE). I pledge to continue to make CTE a major legislative priority in 2011. Simply, CTE is our industry's future. Without an adequate and well-trained workforce there cannot be ANY future for our industry, let alone for California.

### **Regulatory Activities**

As I previously discussed for 2011, I've got my work "cut out" for me working with the other business groups on achieving MAJOR regulatory reform. I promise to keep you posted through my weekly updates on both my activities and my progress. Stay tuned! Even with my overall efforts, I will still be working on a one on one basis with specific agencies on their regular agendas:

### **Contractors' License Board**

As in years past, I will again work closely with the Contractors' License Board in 2011. It is worth mentioning that I have two BIG projects that I will focus on in 2011:

### **Sting Operations of Public Agency Awarding Bodies**

A recent activity I suggested to Dave Fogt, Chief of Enforcement for the CSLB, is to have the board aggressively pursue sting operations against public agencies! It has been known for a long while that many public agencies do not check the contractors or their subs they are contracting with on a public works project to ensure that they are properly licensed, maintain workers' compensation, and comply with all of the other existing requirements as a contractor, including paying the proper prevailing wages. This lack of enforcement is allowing far too many public works' jobs to go to illegal/cheating contractors at the expense of our legitimate contractors! This will be a huge activity for the board in 2011 and beyond. Again, besides hoping to "catch" public agencies not performing their due diligence, I am hoping the word will get out to other public agencies

that will change their business practices!

### **Co-Sponsor Legislation to Require Contractors To Submit Workers' Compensation Exemption Form Upon License Renewal**

Believe it or not when a contractor obtains his initial contractor's license, he can file a workers' compensation exemption form with the board stating that he does not employ employees and thus is exempt from having to provide proof of workers' compensation. A contractor only has to file this form ONCE!!! This is nuts! When I pointed this out to the board they agreed with me and are moving forward with co-sponsoring with us legislation that will require contractors to re-file this form every two years upon their license renewal under penalty of perjury! While this obviously won't be a cure-all, it will certainly help!

### **Other Regulatory Agencies**

Even with regulatory reform being one of my highest priorities, every day regulatory life will go on, meaning that I will continue working closely with the Air Resources Board, the California Highway Patrol, the Building Standards Commission, the Business and Transportation Agency, the other departments and bureaus within the Labor Agency (in addition to Cal OSHA), the Water Resources Control Board and its nine regional water quality boards, the Department of Transportation (Cal Trans), the Department of Insurance, the Insurance Commissioner and virtually every other agency, department or bureau whose actions affect the interests of our members and the construction industry.

### **Tax Reform**

As discussed under my 2010 accomplishments, tax reform is going to remain a high priority both in and around the Capitol. I will continue to be a major participant in these discussions/negotiations ensuring that this too is not another factor that kills construction!

### **Wrap-Up**

I want to thank you for your continued support. 2011 marks the commencement of my 15<sup>th</sup> year of representing your interests in Sacramento and my 38<sup>th</sup> year "in the halls" of the Capitol. My passion and enthusiasm as your legislative advocate becomes stronger each year which I believe shows by my many successes on your behalf. There are still many challenges ahead, but with your continued support I will continue to give it 1000% of my effort!

## **ADDITIONAL SERVICES PROVIDED TO MEMBERS**

I want to reiterate that you have direct access through me into "the government" to resolve any problem or to address any needs that your business may have. These services

include fast-tracking a Contractors' License Board application, resolving a Cal OSHA citation, or helping to resolve a dispute with an agency. Do you have a technical question of any kind, or want to know if I can help? Call me to find out! I can be reached at (916) 784-7055, (916) 784-2852 (fax), or [phil@pvgov.com](mailto:phil@pvgov.com) by email. Thank you for allowing me to serve as your legislative advocate. It is truly an honor and a privilege!