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CITIES**



**California Special
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ACHD
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RCRC
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**URBAN COUNTIES
OF CALIFORNIA**



association of california
school administrators

September 3, 2024

The Honorable Gavin Newsom
Governor, State of California
1021 O St., Ste. 9000
Sacramento, CA 95814

**RE: SB 399 (Wahab) Employer communications: intimidation – (As amended August 19, 2024)
REQUEST FOR VETO**

Dear Governor Newsom,

The League of California Cities (Cal Cities), California Special Districts Association (CSDA), Urban Counties of California (UCC), Rural County Representatives of California (RCRC), California Association of Recreation and Park Districts (CARPD), California State Association of Counties (CSAC), the Association of California Healthcare Districts (ACHD), and the Association of California School Administrators (ACSA), respectfully oppose Senate Bill 399 (Wahab) and request that you veto this measure.

SB 399 would prohibit an employer from subjecting, or threatening to subject, an employee to any adverse action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer, the purpose of which is to communicate the employer's opinion about religious or political matters.

This bill applies to all employers, including private employers and public employers such as local governments, schools, and the State of California. Public employers do not appear to be the primary focus of SB 399. However, cities, counties, special

districts, schools, and all other local government employers are swept up in the bill's provisions despite existing laws already ensuring protection for their employees and the complications SB 399 creates with local government duties to serve the public.

Senate Bill 399 is Inconsistent with Routine Government Operations

SB 399 is overly broad and could pose serious challenges for local jurisdictions. The bill defines "Political matters" as "...matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." By this definition, it could be reasonably argued that many of the issues before a city council, county board of supervisors, or a special district board would fall under "legislation" or "regulation."

The bill's provisions are incompatible with the proper and legitimate functioning of government. Government entities are required to make and implement policies for the benefit of their communities and abide by laws imposed upon them through legislation, regulations, or by ballot measures. This may come in the form of internal deliberations, analysis, and vetting of local rules, ordinances or other policies adopted by local legislative bodies, or the consideration of state and federal legislation, local government positions on such legislation, and adherence to state and federal laws applicable to local governments.

If enacted, SB 399 would treat many routine government functions, including holding meetings to discuss pending legislation, as political matters and interfere with government operations. SB 399 may apply to employees required to be present where legislation or regulations/ordinances are debated, such as city council or board meetings, and even to such mundane tasks as seeking input or analysis from employees as to the implementation of proposed or enacted legislation, regulations, or ballot measures. Because governments and schools develop and implement policy, any activity could potentially be argued to be political, leading to costly disputes.

Recent Amendments do not Address Public Employer Concerns

The August 19 amendments to SB 399 created a narrow public entity communications exception by providing that the bill does not prohibit:

*An employer that is a public entity from **communicating to** its employees any information related to **a policy of the public entity** or **any law or regulation** that the public entity is **responsible for administering**. (emphasis added).*

This narrow exception, found in proposed Labor Code Section 1137(g)(4), does not address the broad concerns with the bill consistently put forward by public employers. The exception's inadequacy is clear when comparing it to the bill's restrictions:

- The exception is limited to "communicating to" employees, and does not address **employer-sponsored meetings** which are also regulated by the bill. Further, the exception also refers only to communicating "to" employees, not communicating "with" employees, implying that employees need only

receive information and not actively participate. This is fundamentally at odds with the work of public employers, which frequently involves the development or implementation of public policy and requires the active participation of employees in that effort. Take, for example, the need to meet with a public works director to seek information concerning a pending law or regulation of the local agency or the state, or to take a position on such laws or regulations. SB 399 sets up a scenario where an employee's refusal to perform their basic job functions in this regard could result in disputes and litigation.

- The exception is limited to a policy of the public entity or any law or regulation the public entity is responsible for administering, leaving out significant amounts of routine responsibilities of public employers. First, the exception is limited to a law or regulation, which is just a subset of the items included within the definition of "Political matters" subject to the bill. For example, the Political matters definition includes elections for political office, generally, without a limitation that the employer expresses an opinion about how to vote in an election. Moreover, the exception contemplates an existing policy of the public entity, not the development of policy, and laws or regulations a public entity is responsible for administering, omitting reference to pending legislation, proposed regulations, or ballot measures; or laws or regulations imposed upon a public entity which the public entity does not administer.

Finally, the generally applicable "information that is necessary for those employees to perform their job duties" exception in proposed Labor Code Section 1137(g)(2) is too narrow and insufficient for similar reasons. It is similarly limited to communication to employees, omitting meetings and communications with employees. Further, the exception is likely to give rise to disputes over whether hearing certain information is "necessary" to the performance of job duties.

Existing Law Already Restricts Local Governments' Communications with Employees

The bill's sponsors have pointed to no examples of local agencies forcing their religious or political beliefs on their employees. Additionally, SB 399 is not appropriately applied to local government and schools because existing law already provides significant protections for public employees. For example, Government Code Section 3550 provides that a public employer shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization. Section 3551.5 imposes significant penalties for violations of Section 3550 and grants employee organizations standing to bring the claims.

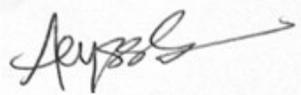
Senate Bill 399 Exposes Local Governments to Risk of Significant Litigation Expenses

The uncertainty created because of the vague and overly broad provisions of this bill would make it incredibly difficult to comply with and would certainly be litigated. SB 399 would also create a private right of action in court for damages

caused by adverse actions on account of the employee's refusal to attend an employer sponsored meeting.

SB 399 is a solution in search of a problem. For these reasons, our organizations respectfully request your veto on Senate Bill 399. For more information, please contact us.

Sincerely,

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CC:

The Honorable Aisha Wahab, California State Senate
Mary Hernandez, Chief Deputy Legislative Secretary,
Office of Governor Newsom