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RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA



June 21, 2023

The Honorable Ash Kalra
Chair, Assembly Labor and Employment Committee
1020 N St., Room 155
Sacramento, CA 95814

RE: SB 399 (Wahab) Employer Communications: Intimidation
Oppose (As Amended 5/2/2023)

Dear Assembly Member Kalra:

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 Parks Districts (CARPD), California State Associations of Counties (CSAC), and the Association of California Healthcare Districts (ACHD) must respectfully **oppose SB 399**, which would prohibit an employer from subjecting, or threatening to subject, an employee 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.

SB 399 applies to all employers, including private employers as well as public employers such as local governments and the State of California. Public employers do not appear to be the primary focus of SB 399. However, cities, counties, special districts, and all other local government employers are swept up in the bill's provisions.

Senate Bill 399 is Inconsistent with Routine Government Operations

While on its face this bill may appear as if it would not be a problem for local agencies, in reality, SB 399 is overly broad and could pose serious concerns 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 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. 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 implementation of state and federal laws applicable to local governments. If enacted, SB 399 would treat many routine government functions 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 a 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. Because governments develop and implement policy, any activity could potentially be argued to be political, leading to costly disputes.

Existing Law Already Restricts Local Governments' Communications with Employees

We are not aware of a widespread problem involving local agencies forcing their religious or political beliefs on their employees. Additionally, SB 399 is not appropriately applied to local government 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 Does Not Contain Exemptions Sufficient to Cover the Breadth of Government Operations

The exceptions and definitions in the bill are vague. The bill says that it does not prohibit:

- *An employer from communicating to its employees any information that the employer is required by law to communicate, but only to the extent of that legal requirement.*
- *An employer from communicating to its employees any information that is necessary for those employees to perform their job duties.*

It is difficult to say who would fall under the exemption and who would be the arbiter of whether certain communications are necessary to do an employee's job, and this exemption likely would not cover the breadth of circumstances discussed in this letter.

There is no clarity in the bill about what it means to require an employee to attend an “employer-sponsored” meeting. For example, even if an employer explicitly says that employees are not required to attend a meeting, an employee could claim that they still felt required to attend because others were attending, or some sort of benefit was being provided.

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 this 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.

From the perspective of local governments, SB 399 is a solution in search of a problem. For these reasons, Cal Cities and CSDA have an OPPOSE position on Senate Bill 399. Please feel free to contact us with any questions.

Sincerely,



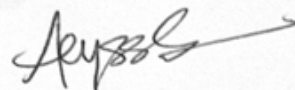
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