GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE
Friday, June 14, 2019
10:00 a.m. – 3:00 p.m.
Sacramento Convention Center, Room 203, 1400 J Street, Sacramento

AGENDA

SPECIAL ORDER: State Budget and Issues Briefing for all policy committee members
10:00 – 10:45 a.m., Room 204, Sacramento Convention Center
Upon adjournment, individual policy committee meetings will begin

Upon adjournment of the general briefing session, the members of the Governance, Transparency and Labor Relations Committee will join the Revenue and Taxation Committee for an opportunity to meet and have a discussion with Lisa Middleton, the newly appointed local government representative on the California Public Employees' Retirement System (CalPERS) Board of Administration.

I. Special Presentation (11:00 a.m.) (Attachment A)
   Lisa Middleton, City Council Member, Palm Springs
   Informational
   Local Government Representative, CalPERS Board of Administration.
   (This will be an opportunity to briefly hear from and engage in a discussion with the recently appointed local government representative to the CalPERS Board.)

II. Welcome and Introductions

III. Public Comment

IV. CalPERS Update Informational
   • Fuller Decision Update
     Dane Hutchings, Director, Government Affairs, Renne Public Policy Group
   • CalPERS Funding Vital Signs Pilot Program
   • Pension Survey Update

V. Update on Workers’ Compensation (Attachment B)
   Jason Schmelzer, Partner, Shaw/Yoder/Antwih, Inc.
   Informational

VI. Legislative Update (Handout)
   Bills of Interest
   Jason Rhine, Assistant Legislative Director, League of California Cities
   Johnnie Pina, Legislative Policy Analyst, League of California Cities
   Informational

VII. Legislative Agenda (Attachment C)
   Action
   • AB 931 (Boerner Horvath) Local Boards and Commissions: Representation
   • SB 438 (Hertzberg) Emergency Medical Dispatch Services

VIII. GTLR Work Plan and Strategic Goal Update
   Informational

Next Meeting (tent.): Annual Conference, Long Beach, October 16
Staff will notify committee members after August 22nd if the policy committee will be meeting in October.

NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state’s Fair Political Practices Commission takes the position that the value of the lunch should be reported on city/official’s statement of economic interests form. Because of the services you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift (note that this is not income for state or federal income tax purposes—just Political Reform Act reporting purposes). If you would prefer not to have to report the value of the lunches as income, we will let you know the amount so you may reimburse the League.

Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:
1. Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up off-agenda item requires a unanimous vote), or
2. A majority of the policy committee finds an emergency (for example, work stoppage or disaster) exists.
A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion in subject to the Brown Act and must occur in a meeting that complies with its requirements.

Informational Items: Any agenda item listed for information purposes may be acted upon by the Policy Committee if the Chair determines such action is warranted and conforms with current League policy. If the Committee wishes to revise League policy or adopt new policy for an item listed as informational, committees are encouraged to delay action until the next meeting to allow for preparation of a full analysis of the item.
Lisa Middleton
CalPERS Board Member

Position:
Local government elected official

Committees:
- Board Governance
- Investment
- Performance, Compensation & Talent Management
- Risk & Audit

Board Terms:
Upon appointment by Gov. Gavin Newsom

Lisa Middleton is serving her first appointment to the CalPERS Board of Administration. She was appointed to the Board by Gov. Gavin Newsom in May 2019.

Lisa was elected to the Palm Springs City Council in November 2017. Representing Palm Springs, she serves on the Riverside County Transportation Commission, the Sunline Board of Directors, and the Coachella Valley Mountains Conservancy. Also representing Palm Springs, she serves on the following Coachella Valley Association of Governments committees: Transportation, Energy & Environment, and Conservation.

She is a member of the League of California Cities Transportation and Public Works Policy Committee and a member of the League's Riverside County Division Executive Committee.

Prior to her election, Lisa served as a member of the Palm Springs Planning Commission and as chairwoman of the Organized Neighborhoods of Palm Springs. She is a member of the board of directors of Neighborhoods USA, the Equality California Institute, and the Desert LGBTQ Center. In 2014 she was the Center's interim executive director.

Lisa retired after serving 36 years with California’s State Compensation Insurance Fund. At her retirement she was the senior vice president of Internal Affairs with executive responsibility for internal audits, fraud investigation, public records, and governance. Lisa was also a member of California's Fraud Assessment Commission. In 2010 she chaired the Commission.

She earned a bachelor's degree in political science and holds a master's degree in public administration from USC. She also completed the LGBT Leadership Institute program through the UCLA Anderson School of Management. Lisa is the first transgender person elected to a non-judicial office in the State of California.
2019 Workers Compensation Legislation

California Workers’ Compensation Law provides for several presumptions which apply specifically for Safety and Law Enforcement Positions. In Workers’ Compensation Law, an injured worker generally has the burden of proof. The Injured Worker’s burden is to prove that the injury was caused by “reasonable medical probability.” This burden essentially means “more likely than not.”

During the 2019 legislative session, the Legislature has introduced a series of measures, specifically in the workers’ compensation space that will drive up employer cost and expand the system to pre-2012 reform levels. The predominant area we have seen this year surrounds the proposed expansions of presumptions within the Workers’ Compensation system—all backed by the California Professional Firefighters (CPF), the Peace Officers Research Association of California (PORAC) and/or The American Federation of State, County and Municipal Employees (AFCME).

How do Presumptions Drive Cost?
The presumptions afforded to Safety and Law Enforcement officers allow them to gain an evidentiary advantage in proving industrial causation. One of the biggest challenges for employers for presumptions is that it takes cost-containment measures off of the table such as the ability to use apportionment in assessing the causation of the injury – especially when the use of ‘4850’ time is accounted for.

Additional presumptions within the workers compensation system and expanding the classification of employees eligible for presumptions becomes incredibly challenging for employers to try and stabilize costs, ensure appropriate staffing and provide adequate services to the public. There is also a concern that this will lead to an increase in the prevalence of Industrial Disability Retirement (IDR’s) which are costly for public agencies.

Governor Brown Blocked Broad Expansions of Worker’s Comp
In 2012, Governor Brown spearheaded one of the largest workers’ compensation reform packages in recent memory. His action sent an incredibly strong message to the Legislature, the public and interest groups such as the attorneys and organized labor that he was unwilling to sign measures that would drive up employer cost. As such, Governor Brown became a critical backstop for curbing costs in the workers’ comp system.

Governor Newsom’s Position Unclear
Governor Newsom, to date, has not indicated where he will land on proposed worker’s compensation expansions. The California Professional Firefighters were early endorsers of Newsom’s gubernatorial campaign and may anticipate Governor Newsom will be more receptive than Governor Brown. Despite the potential of the measures listed below to drive up costs for public employers in the workers’ compensation system, the Legislature is poised to test this new Governor by sending him the majority, if not all, of these pieces of legislation. The critical question is, will Governor Newsom continue to hold the line on cost driving measures in the system? It is too soon to tell—but come September, we will find out the answer.
Current Workers Compensation Expansion Bills Affecting Public Employers

Below are four measures that prove to be most problematic in the 2019 legislative session for public employers, ranked in order of greatest fiscal impact:

1) **AB 1400 (Kamlager-Dove) Firefighting Operations. Civilian Employees.**
   Provides all presumptions within the Workers Compensation system currently authorized for active duty firefighters to “all fire service personnel.” This will apply broadly to all non-sworn fire personnel. **Sponsor: AFCME**

2) **SB 542 (Stern) Post-Traumatic Stress Disorder.**
   Creates a new presumption for post-traumatic stress disorder within the workers’ compensation system for police and fire personnel. Applies retroactivity provisions to January 1, 2017. **Sponsor: California Professional Firefighters**

1) **AB 932 (Low) Off-Duty Firefighters: Out-of-State.**
   Expands the scope of workers’ compensation to apply when a firefighter engages in a fire-suppression, rescue operation, the protection or preservation of life or property, outside of this state. **Sponsor: California Professional Firefighters**

2) **SB 416 (Hueso) Expansion to All Peace Officers**
   Expands all presumptions in the workers’ compensation system currently approved for firefighters, sheriffs, police officers, California Highway Patrol officers, and arson investigation units to all employees designated as peace officers as defined in Chapter 4.5 of Title 3 of Part 2 of the Penal Code, except for those peace officers described in subdivision (b) of Section 830.1, subdivision (b) or (d) of Section 830.2, or Section 830.39, 830.4, or 830.5 of the Penal Code. **Sponsor: California Peace Officers Association of California (PORAC)**

Recent Action and Next Steps

The League of California Cities,\(^1\) in conjunction with the California Coalition on Workers Compensation (CCWC), California State Association of Counties (CSAC), California Special Districts Association (CSDA), and other statewide public and private organizations have joined together in opposing these measures. All the measures outlined above, however, have made it through their respective legislative houses. It is critical that cities work through the League to oppose these measures to increase our ability to either stop them in the Legislature or get these measures vetoed.

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\(^1\) Dane Hutchings, who served as Legislative Representative for the League on these issues, recently joined Renne Public Policy Group as a legislative advocate and contributed to the development of this update. Dane continues to represent the League under contract on these issues through the 2019 Session.
1. **AB 931 (Boerner Horvath) Local Boards and Commissions: Representation: Appointments.** *(Full Bill Text Here)*

**Bill Summary:**
This bill would require cities, with populations over 50,000, to have all nonelected local boards and commissions be comprised of a specified minimum number of women based on the total number of board members or commissioners.

**Bill Description:**
On and after January 1, 2030 local boards and commissions of a city with a population of 50,000 or greater, with appointed members, must have boards and commissions with the following specifications.

- If the board is comprised of five or more members or commissioners, then the board shall be made up of 50 percent women board members or commissioners.
- If the board is comprised of four or fewer members or commissioners, then the board shall have a minimum of one woman board member or commissioner.

"Woman" means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.

The measure states that the nature of this bill is a matter of statewide concern and applies to all cities, including charter cities.

Assembly Members Burke, Carrillo, Friedman, Gloria, McCarty, Petrie-Norris, Quirk-Silva, Luz Rivas, Blanca Rubio, Smith, Wicks, and Senator Skinner coauthor the measure.

**EXISTING LAW:**
For context, existing law establishes various boards, commissions, and task forces within the state government. In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions. However, according to Article 10, Section 11141 of the Government Code, *it is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this provision.*

Existing law requires each legislative body of a local agency to prepare an appointments list of all regular and ongoing boards, commissions, and committees that are appointed by that legislative body and to make this list available to the public. This...
law applies to counties and cities, both chartered and general law. This list, which is maintained by the city or county clerk's office, must be kept up-to-date, and include notices of unscheduled vacancies of local appointments.

Existing law establishes the policy of the Legislature to ensure equal access to specific information about the many local regulating and advisory boards, commissions, and committees and to ensure equal opportunity to be informed of vacancies on those boards.

Additionally, existing law provides, pursuant to the United States Constitution:

- That no state shall deny any person within its jurisdiction the equal protection of the laws.
- That a person may not be denied equal protection of the laws.
- That a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.
- That the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

**Background:**
This measure states that access to board and commission membership frequently establishes a pathway to other governmental leadership positions and that it is critical to have boards and commissions comprised of those who more accurately reflect the gender make up of California communities. The measure goes onto say the bill is necessary to remedy the injustices resulting from underrepresentation of women in leadership positions and will help ensure all Californians feel they are represented.

According to the author, “The opportunity to serve on a board or a commission allows citizens to have a direct voice and representation. Most often, membership on boards and commissions can serve as a path to other leadership opportunities in government. Supporting the equitable representation of women in government will ensure women have a role in the policy-making process...”

The measure claims that research shows that decision making bodies in certain geographic areas of California are comprised disproportionally of white males from privileged socioeconomic backgrounds. The measure specifically cites an August 2018 report by the Center on Policy Initiatives entitled “Community Representation Report: Boards and Commissions in the San Diego Region.” The report concluded that the five entities it studied were disproportionately white, male, economically advantaged, and professionally or politically connected to the established power structure.

Census data (2016) indicates women account for 50.3% of the state's population. The overall gender composition of city boards and commissions is unknown as is the
number of entities currently meeting the requirements of this bill. There are currently 178 cities in California with populations of at least 50,000.

Prior Legislation

SB 826 (Jackson and Atkins), Chapter 954, Statutes of 2018
This measure required each publicly held corporation with its principal executive offices in California to have at least one female director on its board, beginning December 31, 2019. If the authorized number of directors is five, the corporation must have at least two female directors on its board. If the authorized number of directors is six or more, the corporation must have at least three female directors on its board.

SB 826 also required the Secretary of State (SOS) to publish a report on his or her website by July 1, 2019, documenting the number of such corporations that have at least one female director on their boards and to do the same by March 1, 2020.

SB 826 authorized the SOS to fine corporations for violating the provisions of the bill, and counted as a violation each director seat that is required to be held by a female by the end of a calendar year and that is not held by a female during at least a portion of that calendar year. Fines were set at $100,000 for a first violation, $300,000 for a second or subsequent violation, and $100,000 for failure to timely file board member information with the SOS.

SB 984 (Skinner) 2018
This measure would have required, beginning January 1, 2024, that the composition of each appointed state board and commission to comply with the following:

- If the number of board members or commissioners is five or more, the board or commission must have a minimum of 40% women board members or commissioners; and,
- If the number of board members or commissioners is four or fewer, the board or commission must have a minimum of one woman board member or commissioner.

SB 984 defined “woman” as an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

SB 984 required the office of the Governor to collect and release, annually, at a minimum, and on an aggregate basis, demographic data provided by all state board and commission applicants, nominees, and appointees relative to ethnicity, race, gender, gender identity, and sexual orientation. SB 984 was held in the Assembly Appropriations Committee.

Existing League Policy:
The League currently does not have explicit existing policy relating to this topic. The only policy relating to this topic is stated in the League’s mission statement. The League believes:
• Local self-governance is the cornerstone of democracy.
• Our strength lies in the unity of our diverse communities of interest.
• In the involvement of all stakeholders in establishing goals and in solving problems.

Fiscal Impact:
According to the Assembly Appropriations Committee, there would be unknown onetime costs, likely in the low hundreds of thousands of dollars (GF) over several years statewide, to the approximately 178 affected cities to assess the composition of each appointed board and commission and facilitate necessary changes required to be in compliance by 2030. These costs would vary by city depending on city population and the number of boards and commissions appointed by a particular city. These costs are likely reimbursable by the state subject to a determination by the Commission on State Mandates.

The Assembly Appropriations Committee also states that there would be unknown, potentially significant, local costs for litigation due to constitutional challenges that may arise.

Legal Analysis:
SB 826 (Jackson), as mentioned above, serves as a platform to address potential constitutional considerations regarding the use of a quota-like system that aims to diversify corporate boards. Although a lawsuit has yet to be filed in response to the statute, its susceptibility to litigation provides a preview of similar issues that can arise under AB 931.

The article, Mandating Gender Diversity in the Corporate Boardroom: The Inevitable Failure of California’s SB 826, notes:

A successful equal rights challenge means that SB 826 will have no effect at all. The legislation thus offers a poor bargain for diversity advocates: gain a trivial number of board seats, if any, but increase the risk of judicial rulings inimical to broader affirmative action initiatives.”¹

If AB 931 were to become law, it could face a constitutional challenge under the equal protection provisions of the California Constitution. Unless the government can provide specific evidence of discrimination against women as well as more narrowly tailored language that specifies what measures will be taken to further the compelling state interest, it is unlikely that this bill will survive such a challenge. Ultimately, “public policy in California mandates the equal treatment of men and women.”²

¹ Grundfest, Joseph A., Mandating Gender Diversity in the Corporate Boardroom: The Inevitable Failure of California’s SB 826, Stanford Law School and The Rock Center for Corporate Governance (September 12, 2018).
Constitutional Considerations: Equal Protection under the California Constitution

The bill would create an express gender classification, which raises a constitutional question regarding the extent to which it violates the equal protection provisions of the California Constitution. More specifically, the bill potentially elevates gender as a priority over other aspects of diversity. Legislative classification is the “act of specifying who will and who will not come within the operation of a particular law.”3 Because all government classifications “discriminate” (i.e., draw distinctions) between persons or groups of persons in some way, they create a potential equal protection problem.4

Under California law, a classification based on gender is considered “suspect” for purposes of an equal protection analysis.5 The California courts apply strict scrutiny to gender classifications; such a classification is only justified if there is (1) a compelling government interest and (2) the means to achieve that interest are narrowly tailored.6 The government must meet the requirements of this two-prong test in order to successfully overcome an equal protection challenge.

1. “Compelling” State Interest

Under the first prong of the equal protection analysis, the government needs to show that the measure is justified by a compelling government interest.7 Here, the government would argue the compelling interest is to diversify and balance the number of women and men on local boards and commissions in response to the underrepresentation of women in these settings. Citing general statistics that show that women are underrepresented on local boards and commissions in order to defend this bill as an attempt to address past discrimination, however, would be insufficient.8 The defenders of this bill would need to show specific evidence of discriminatory behavior, rather than simply inferring discrimination from general statistics.9

Moreover, the justification of the challenged gender classification “must not rely on overbroad generalizations about the talents, capacities, or preferences of males and females.”10 Unless the government could provide specific evidence

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4 The potential problem arises when the state adopts a classification that affects two or more similarly situated groups in an unequal manner.” (In Re Eric J., 25 Cal.3d 522, 530 (1979).) That problem is present here because if there were two qualified candidates for a board member position, one male and one female, AB 931 would require the local board or commission to choose the female candidate and deny the male candidate the position, based on gender, in order to meet the state mandate. Additionally – as coalitions of groups that represent other protected classes, such as those based on ethnicity, may argue – the bill creates a classification that affects men of ethnic minorities and women—two similarly situated groups—unequally.
5 Sail’er Inn v. Kirby, 5 Cal.3d 1, 17-20 (1971).
6 Connerly, 92 Cal.App.4th at 33.
8 Connerly, 92 Cal.App.4th at 36.
9 Id.
10 Id. at 39.
that discrimination against women has actually caused the disproportionate number of women serving on local boards and commissions, the government would fail to meet the first requirement of an equal protection claim.

2. “Narrowly Tailored” Means

If a compelling interest is shown, the inquiry then focuses on whether the means chosen to address the interest are narrowly tailored to achieve that interest.\(^\text{11}\) “Only the most exact connection between justification and classification will suffice. The classification must appear necessary rather than convenient, and the availability of [gender-neutral] alternatives—or the failure of the legislative body to consider such alternatives—will be fatal to the classification.”\(^\text{12}\)

Here, a state mandate of meeting a specific quota of women on all applicable local boards and commissions is unlikely to satisfy this second requirement of the equal protection analysis. The bill’s widely applied provisions fail to serve as the least restrictive means possible to achieve the compelling state interest of diversifying local boards and commissions. The bill’s current “one-size-fits-all” language makes it susceptible to an equal protection challenge.

Comments:

AB 931 passed out of the Assembly Local Government Committee on April 3 based on verbal amendments that were agreed to in concept that exempt all state and local government entities except for general law and charter cities with a population size of 50,000 or over. The original bill would have applied to all state and local public agencies and included provisions that would have collected demographic data from all state and local board and commission nominees or appointees relative to ethnicity, race, gender, gender identity, and sexual orientation.

After hearing of the proposed amendments the morning the bill was set to be heard, League staff testified in opposition to the measure. The League of California Cities (LOCC) Women Caucus took a position of oppose unless amended on this measure once the measure was amended and limited the number of cities affected. The LOCC Women’s Caucus original ‘oppose unless amended’ letter stating the need and importance of the bill, while also seeking several amendments addressing the measure’s impact on local government.

After speaking with the author, the Caucus decided to support the bill without taking any of the amendments they originally asked for. Because the Diversity Caucuses in the League cannot take positions contrary to the League, League staff is seeking clear direction from the League’s policy committee on this measure.

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\(^{11}\) Connerly, 92 Cal.App.4th at 37.

\(^{12}\) Id.
Staff Comments / Policy Considerations:

Other Under-represented Groups. While this measure attempts to address the underrepresentation of women, many other groups of people have also suffered disproportionately low rates of representation. This measure does not account for these populations, including the growing number of people who identify as non-binary.

Is it equitable to have an artificial quota for women without acknowledging any other protected status? For example, if a community is majority non-white, would it be equitable if an appointed board was 50% women but all white? This bill pinpoints a specific issue without accounting for other equity factors.

Potential Constitutional Conflicts. As outlined in the League’s legal analysis, this measure may be subject to constitutional challenges.

Math and Mechanics. Many local boards and commissions have uneven numbers of members. In some cases, this would ensure that the board or commission is always majority women.

What happens if no women apply to the board or commission? The city would be left with a tough decision to make. They would have to choose to either violate the law by appointing too many men or not have enough people on the board or commission to fill vacant seats.

Data. There is a lack of data. The gender make up of boards and commissions across the state is unknown. The study that is referenced in the bill is limited to five boards and commissions in the San Diego area. We do not know if there is a gender disparity across the state on boards and commissions. Even if we did, there is still no data as to why the disparity exists. Is it due to discrimination, a lack of applicants, or something else? We simply do not know the problem or what the solution would be.

The Study. The measure specifically cites an August 2018 report by the Center on Policy Initiatives entitled “Community Representation Report: Boards and Commissions in the San Diego Region.” This study looks at the composition of City Of San Diego Planning Commission, Port Commission, Escondido Union High School District Board, San Diego County Board of Supervisors, and Metropolitan Transit System Board of Directors. Out of the five boards and commissions that this study looks at, only the San Diego Planning Commission would be impacted by this bill because this bill is limited to nonelected boards within a city. This excludes the elected boards and boards that have appointees from a number of different local government agencies.

Statewide Concern. The bill declares that the subject of the bill is a matter of statewide concern and therefore the measure should apply to general law and charter cities. However, if this is a matter of statewide concern as the bill states, it should follow that this measure apply broadly to the state and all local government boards and
commissions. The current language and the 50,000 threshold seems contrary to the language of ‘statewide concern’ within the bill.

This measure would create a bifurcated system in which some cities would have to follow the new standard, while others would not. This bill would also exclude the local boards and commissions that include members who are appointed by multiple participating cities, counties or other local bodies that each appoint only one or a minor portion of the board or commission.

**Enforcement.** This measure has no enforcement provisions. If a city is in violation of this measure, this bill does not specify a remedy or list any enforcement actions that would go into effect.

Additionally, now that the reporting requirement has been stricken from the measure, the state would likely not know which cities are and are not in compliance with the new standard.

**Support-Opposition: (As of 5/20/2019)**

**Support:**
- California Commission on the Status of Women and Girls
- National Organization for Women, Hollywood Chapter
- National Women’s + Political Caucus of California
- Consumer Attorneys of California
- Equal Rights Advocates
- Women Serve on Boards

**Opposition:**
- Modoc County Board of Supervisors

The measure was amended on 4/2/2019 to limit the measure to cities with a population over 50,000. These amendments were taken last minute in Assembly Local Government Committee and resulted in the California State Association of Counties, the Rural County Representatives of California (RCRC), and the Urban Counties of California removing their opposition.

**Staff Recommendation:**

League staff recommends an **Oppose Unless Amended** position. League staff recommends that the committee ask for the same amendments originally asked for in the LOCC Women’s Caucus ‘oppose unless amended letter. The amendments are as follows.

1. Create parity among public agencies by requiring all state and local agencies to report demographic information to the governor’s office as originally outlined in the bill.
2. Amend the reporting requirements to permit an agency to provide a written explanation and further information regarding the data being reported. For example, if there is a commission that did not receive any applications from
female prospective candidates, the agency should have the opportunity to provide that context to the data that is submitted.

3. Remove the mandated requirement of a percentage of commission and advisory board makeup for cities.

4. Work with the California Commission on the Status of Women and Girls—or another applicable statewide agency—to create a series of best practices that state and local agencies should strive for when filling vacant positions on advisory boards and commissions.

Committee Recommendation:

Board Action:
2. **SB 438 (Hertzberg): Emergency Medical Dispatch Services (Full Text of Bill)**

**Bill Summary:**
Senate Bill 438 would prohibit a public agency from entering into a contract for 911 call processing regarding the dispatch of emergency response resources, unless the contract is with another public agency, or was created prior to January 1, 2019 by a joint powers authority that only comprises public agencies.

**Existing Law:**
- Requires every 911 system to include police, firefighting, and emergency medical and ambulance services. Permits 911 systems to incorporate private ambulance services. (Government Code §53110)

- Authorizes counties to develop an EMS program and designate a local EMS agency (LEMSA) responsible for planning and implementing an EMS system, which includes day-to-day EMS system operations. (Health and Safety Code §1797.200, et seq.)

- Requires every LEMSA to have a licensed physician as medical director, to assure medical accountability throughout the planning, implementation, and evaluation of the EMS system. Requires the medical direction and management of an EMS system to be under the medical control of the medical director. (Health and Safety Code §1797.202, HSC §1798)

- Requires the administration of prehospital EMS by cities and fire districts providing such services as of June 1, 1980, to be retained by those cities and fire districts and to be continued at not less than the existing level until such time that a written agreement is reached between a city or fire district and a county. (Health and Safety Code §1797.201)

- Permits a local EMS agency to create one or more exclusive operating areas in the development of a local plan, if a competitive process is utilized to select the provider or providers of the services. Specifies that no competitive process is required if the local EMS agency develops or implements a local plan that continues the use of existing providers operating within a local EMS area in the manner and scope in which the services have been provided without interruption since January 1, 1981. (Health and Safety Code §1797.224)

**Bill Description:**
Specifically, SB 438:

- Prohibits a public agency from delegating, assigning, contracting for “911” call processing or emergency notification duties regarding the dispatch of emergency
response resources, unless the delegation or assignment is to, or the contract is with another public agency.

- Allows a joint powers authority that contracted for dispatch of emergency response resources on or before January 1, 2019, to continue such a contract, and renegotiate or adopt new contracts, if: a) the membership of the joint powers authority includes all public agencies that provide prehospital emergency medical services (EMS), and b) the joint powers authority consents to the renegotiation or adoption of the contract.

- Provides that medical control does not affect a public safety agency’s authority to:
  - Directly receive, process, and administer requests for assistance originating within the agency’s jurisdiction through the 911 system; or
  - Determine the appropriate deployment of public safety and emergency response resources within the agency’s territorial jurisdiction

- Provides that medical control does not authorize or permit a local EMS agency to delegate, assign, or enter into a contract in contravention of the prohibition on contracting for EMS dispatch as established by the bill.

- Provides that a public safety agency’s voluntary consent to conform its prehospital response or response mode to comply with an emergency medical dispatch protocol adopted by a local EMS agency does not constitute a transfer of any of the public safety agency’s authorities regarding the administration of EMS.

- Makes various findings and declarations to support its purposes.

**Background:**
The Warren-911-Emergency Assistance Act requires every local public agency to establish and operate an emergency telephone system using the digits 911. The purpose of the Act is to ensure an efficient statewide system for delivery of 911 calls to the appropriate local agency’s Public Safety Answering Points (PSAPs) that answer and respond to requests for emergency assistance. The Warren-911-Emergency Assistance Act also authorizes the state to oversee the development and operation of the 911 system. Under the 911 Act, every 911 system must include police, firefighting, and emergency medical and ambulance services. These systems may include private ambulance service.

A call to 911 first goes to the primary PSAP, which is always a law enforcement agency. When the primary PSAP receives a call, the dispatcher determines whether the call is related to law enforcement, fire, or medical needs, and are routed appropriately to a secondary PSAP: law enforcement personnel, the local government with fire protection responsibility, or the emergency medical services (EMS) provider.

Beginning in 1978, the Legislature began to consider imposing some consistent structure on the delivery of emergency medical services prior to a patient arriving at a hospital. In 1980, the Legislature enacted the Emergency Medical Services System and
the Prehospital Emergency Medical Care Personnel Act (EMS Act) to create
the modern-day EMS system (SB 125, Garamendi). The EMS Act created the Emergency
Medical Services Authority (EMSA) within state government to coordinate and integrate
all state activities concerning EMS, as well as to establish minimum standards, policies,
and procedures that local agencies must meet and follow when delivering EMS. The
EMS Act allowed counties to develop an EMS program and designate a Local EMS
Agency (LEMSA) to implement the state standards and develop medical protocols.
Under the EMS Act, cities and fire districts can only provide EMS if they were providing
it on January 1, 1980, and cannot expand the territory that they serve beyond what they
served at that time unless through an agreement with a LEMSA. Today, seven regional
EMS systems covering multiple counties and twenty-six single county agencies have
responsibility for developing protocols and standards for EMS response and care.

The EMS Act vests “medical control” with the LEMSA—the LEMSA’s medical director
adopts policies and procedures for dispatch, patient destination policies, patient care
guidelines, and quality assurance requirements to ensure that EMS under its jurisdiction
meets state standards, such as response times. EMS may be provided under contract
by private services, by contract or agreement with fire departments or other public
agencies, or by both public and private entities. In order to provide comprehensive EMS
coverage, a LEMSA may employ both private entities and public agencies. For
example, depending on the location of the emergency, the medical needs of the patient,
and the capabilities of the public and private agencies, one call may be routed to the
private ambulance service that contracts with the LEMSA, while another call may be
routed to a fire district to send an engine. Concerned that private EMS dispatchers are
prioritizing private ambulance companies when determining who should respond to a
call, both fire chief and firefighter union representatives want to ensure that public
agencies are in charge of EMS dispatch, and thereby ensure that the safety and care of
patients is prioritized.

City of Tracy
Supporters of the measure point to an unfortunate incident that occurred in the City of
Tracy years ago as a primary example that underscores the need for the bill. In Tracy,
the San Joaquin County LEMSA apparently had a practice of routinely authorizing
private ambulances to respond to what were deemed “low acuity” calls—calls that are
otherwise determined to be a lower level emergency—even where the city fire
department could arrive at the scene faster than the private ambulance unit could. In
response to one such “low acuity” call, the private ambulance summoned experienced a
significant delay, taking approximately 19 minutes to arrive on the scene. It was
reported that the patient was experiencing shortness of breath, and that the EMT’s
delayed arrival ultimately resulted in the patient’s death.

According to the Author:
“The provision of fire protection services, rescue and emergency medical services,
hazardous material emergency response, ambulance and other services related to the
protection of lives and property is critical to the public peace, health and safety of the
state. Likewise, the call processing and administration of such emergency response
functions has traditionally been recognized as one of the highest priorities and obligations of government. Public agencies finance these services with tax dollars and determine the appropriate deployment strategies and levels of emergency response services appropriate for their communities.

EMS has been a part of the fire service for more than 70 years. Fire service-based EMS systems are strategically positioned to deliver time critical response, effective patient care, and scene safety. Additionally, integral parts of the EMS system (e.g. firefighters, apparatus, and facilities) are already being paid for as part of the department’s “all hazards response infrastructure.” Fire departments comprise the largest group of providers of pre-hospital EMS care in North America by covering 97% of the 200 most populated communities in the United States. Additionally, fire departments provide Advanced Life Support (ALS) to 90% of the 30 most populated United States. No other entity, public or private, provides pre-hospital emergency response at the same level as fire departments.

However, many jurisdictions choose to outsource their local emergency services, under the guise of a cost-savings. However, efforts to privatize public services, such as law enforcement, fire protection, and emergency medical response and the dispatch of such services, have resulted in increased costs to citizens and/or a reduction in services provided and in some cases a failure to deliver timely services.

The New York Times, in its 2016 investigative article, *When You Dial 911 and Wall Street Answers*, reports that for governments and their citizens, the effects of privatization have often been calamitous. When dealing with emergency care and other vital services, like firefighting, privatization often results in an inherent pressure: the demand to turn a profit while caring for people in their most vulnerable moments.”

Fiscal Impact:
None

Existing League Policy:
The League supports and strives to ensure local control of emergency medical services by authorizing cities and fire districts to prescribe and monitor the manner and scope of pre-hospital emergency medical services, including transport through ambulance services, all provided within local boundaries for the purpose of improving the level of pre-hospital emergency medical service.

The League supports legislation to provide a framework for a solution to long-standing conflict between cities, counties, the fire service and LEMSA’s, particularly by local advisory committees to review and approve the EMS plan and to serve as an appeals body. Conflicts over EMS governance may be resolved if stakeholders are able to participate in EMS system design and evaluation and if complainants are given a fair and open hearing.

Support and Opposition:
Support: (as of 05.03.2019)
Alameda County Fire Chief’s Association
Alameda Fire Department
Alpine Fire Protection District
Anderson Fire Protection District
Apple Valley Fire Protection District
Big Bear Fire Department
Bodega Bay Fire Protection District
Bonita Sunnyside Fire Protection District
Branciforte Fire Protection District
California City Fire Department
California Fire Chiefs Association (Co-Sponsor)
California Metropolitan Fire Chiefs Association
California Professional Firefighters (Co-Sponsor)
Cambria Community Services District Fire Department
Central County Fire Department
Chino Valley Fire District
Chula Vista Firefighters Local 2180
City of Atascadero Fire & Emergency Services
City of Carlsbad Fire Department
City of Chula Vista Fire Department
City of Colton
City of Corona Fire Department
City of Culver City
City of Dinuba Fire Department
City of Dixon Fire Department
City of Fountain Valley Fire Department
City of Huntington Beach Fire Department
City of Lodi Fire Department
City of Loma Linda Fire Department
City of Ontario
City of Oxnard Fire Department
City of Palm Springs Fire Department
City of Palo Alto Fire Department
City of Petaluma Fire Department
City of Rohnert Park Department of Public Safety
City of Sacramento Fire Department
City of San Diego Fire-Rescue Department
City of San Marcos
City of Santa Cruz Fire Department
City of Santa Rosa Fire Department
City of Santee Fire Department
City of South Lake Tahoe Fire Department
City of Stockton Fire Department
City of Ventura Fire Department
City of Vista
Cordelia Fire Protection District
Cosumnes Fire Department Community Services District
Fire Districts Association of California
Firefighters Local 1186
Foresthill Fire Protection Department
Fresno County Fire Protection District
Gilroy Fire Department
Humboldt Bay Fire
Lake County Fire Protection District
Lathrop-Manteca Fire Protection District
Linda Fire Protection District
Mammoth Lakes Fire Protection District
Marina Fire Department
Mid-Coast Fire Brigade
Montecito Fire Department
Monterey County Fire Chiefs Association
Monterey Firefighters Association
Newport Beach Fire Department
Newport Beach Firefighters Local 3734
North County Fire Authority
North County Fire Protection District
North Tahoe and Meeks Bay Fire Protection Districts
Northshore Fire Protection District
Novato Fire District
Orange City Fire Department
Orange County Fire Chief’s Association
Sacramento Metropolitan Fire District
San Benito-Monterey Chapter CALFIRE Local 2881
San Bernardino County Fire Protection District
San Joaquin County Regional Fire Dispatch Authority
Santa Clara County Fire
Scotts Valley Fire Protection District
Seaside Fire Department
Sonoma County Fire District
South Placer Fire District
Southern Marin Emergency Medical Paramedic System
Southern Marin Fire Protection District
Stanislaus Consolidated Fire Protection District
Thornton Rural Fire Protection District
Tiburon Fire Protection District
Tracy Firefighters Association Local 3355
United Firefighters of Los Angeles
Waterloo Morada Fire District
Williams Fire Protection Authority

Opposition: (as of 05.03.2019)
Opponents Argue:
“This measure would restrict county oversight and accountability for the operation of public safety answering points (PSAPs), including 9-1-1 EMS dispatch centers, and circumvent the authority of LEMSA medical directors to ensure the appropriate deployment and use of EMS resources.

SB 438 attempts to overturn 22 years of Supreme Court precedent in County of San Bernardino v. City of San Bernardino (1997 15.Cal. 4th 909). The State Supreme Court explained in enacting the EMS Act in 1980, “the Legislature conceived of ‘medical control’ in fairly expansive terms, encompassing matters directly related to regulating the quality of emergency medical services, including policies and procedures governing dispatch and patient care.” Other subjects of medical control include those policies designed to improve the “speed and effectiveness” or emergency response as well as “how the various providers will interact at the emergency scene.”

LEMSAs are required to adhere to stringent medical control standards established by the Emergency Medical Services Authority (EMSA) when enacting local policies and procedures, including those that govern EMS dispatch and response. EMSA enforces adherence to these state standards through the local EMS plan approval process. Local EMS agency medical directors are charged with ensuring that all dispatch entities, whether public or private, operate under medical control to the benefit of the patients within their boundaries.

Should SB 438 become law, local municipal agencies would be permitted to act outside of the medical control of the LEMSA medical director, and EMSA, in the response and delivery of prehospital emergency care. This fragments the EMS system and may result in considerable variation in the care provided to patients. It also would risk patient safety, as deviations from LEMSA policies and procedures may occur without LEMSA and EMSA oversight and authority to monitor dispatch and response times, as well as
issue corrective actions. It is for these reasons that our organizations regretfully must oppose SB 438.”

NOTE: In response to claims by the opposition, the California Fire Chiefs Association (Cal Chiefs), a co-sponsor of the measure, has sought to make clear what SB 438 does not do. According to Cal Chiefs, the bill does NOT:

- Limit or undermine the county Medical Director’s lawful authority to formulate proper prehospital EMS training and certification standards, training program approval standards, or patient treatment protocols and guidelines for patient care in the prehospital EMS environment.
- Limit the Medical Director’s ability to control the “speed” of the medical response (e.g. code 3 v. code 2) or the nature and content of any medical-related pre-arrival instructions (e.g. CPR, choking, etc.).

Comments:
Consistent with League policy, SB 438 seeks to address, in part, a long-standing conflict between cities and counties on the provision of one component of EMS—dispatch services for emergency medical and pre-hospital transportation services.

Practical Implications
In short, the bill seeks to do two things. First, it would make clear that county LEMSAs do not have the power to dictate when city fire department or fire district units are dispatched to respond to a 9-1-1 call in their own jurisdictions. As such, the bill would restrict LEMSAs from unilaterally preventing available public-safety resources from responding within a local agency’s territorial jurisdiction by concocting local medical control policies that favor a private entity response. Second, with the exceptions of any existing contracts for dispatch services between a public agency and a private entity or future any JPA agreements between public agencies only, the bill would prohibit local agencies from entering into any future contracts for dispatch services with non-public entities.

The Provision on Prohibited Contracting
SB 438 would permanently bar any city that does not have an existing contract for private EMS dispatch services, from entering into such an agreement in the future. This is undoubtedly important as such a provision not only could constrain cities with limited flexibility in providing fire services in times of financial distress, but could also set a precedent for CPF or any other labor group to go after other services that cities might otherwise wish to contract for.

According to discussions with Fire Chiefs affiliated with the League, there is a clear understanding and acknowledgment that under this bill, local fire departments would relinquish whatever fiscal flexibility that private contracting for dispatch services might provide. For them, the benefit of added clarity and certainty of statutorily “establishing home rule” for cities and fire districts to respond to medical emergencies within their own borders far outweighs the drawback of an inability to privately contract for dispatch services.
Given all of these considerations, the central question cities must ask themselves is this:

Are cities, city fire departments and fire districts willing to accept the permanent inability to privately contract for emergency medical dispatch services, in exchange for the certainty that local EMS providers can respond to emergency calls within their jurisdiction, in light of the aforementioned potential consequences,?

Staff Recommendation:
None

Committee Recommendation:

Board Action: