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AB 5 and AB 2257 Impacts on Small California Public Agencies

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BACKGROUND

California has recently implemented new legislation, Assembly Bill 5 (AB 5) and Assembly Bill 2257 (AB 2257), which impact independent contractors and could make hiring a worker more complex and confusing. Federal and state governments are concerned with how workers are classified as either employees or contractors. As defined by the State of California Employment Development Department (EDD), "an employee is an officer or a corporation, any worker who is an employee under the ABC test, or any worker whose services are specifically covered by law. An employee can perform services on a temporary or less than full-time basis. The law does not exclude services from employment that are commonly referred to as day labor, part-time help, casual labor, temporary help, probationary, or outside labor" (EDD, 2021, p. 8). Under the ABC or Borello tests, which define an employee, the business must report employee earnings to the EDD and pay employment taxes on those wages. An independent contractor is self-employed, thus taxes are not withheld and they are responsible for their own tax filings (IRS, 2020). Businesses and government entities are mandated to report information to EDD on independent contractors whom they hire. The hiring entity must file a Nonemployee Compensation Form (1099-NEC) or a Miscellaneous Information Form (1099-MISC) for the independent contractors providing services (EDD, n.d.). The 1099 federal form is for the purpose of reporting income to the Internal Revenue Service (IRS). EDD requires the hiring entity to report within 20 days of payments more than $600, or entering into a contract for $600 or more, whichever is earlier (EDD, n.d.).

Federal and state governments are motivated to have workers classified as employees, as it guarantees that tax revenues are collected by the employer and remitted to the government (Carre, 2015). Over 20 years ago, the IRS claimed that due to improper classification it loses

millions of dollars each year, and the author of AB 5 cited that the State of California loses $7 billion a year in payroll tax revenue because of employers not withholding taxes on the earnings of independent contractors (Robbins and DeFatta, 1997; Anderson, 2021). Employees contribute to unemployment insurance, social security, and medicare taxes, whereas independent contractors do not pay these taxes until they file their annual income tax returns with the IRS and California Franchise Tax Board in April of the following year.

With the recent changes, government agencies are struggling to define worker status under the new laws (DeBlanc and Safarloo, 2020). The interest in eliminating independent contractors is tied to concerns about workers in the private sector, specifically the gig economy, being denied appropriate pay and benefits, yet even government agencies are affected by AB 5 changes (Andoyan, 2017, Bergman, 2020). Traditionally, small public agencies use contractors frequently for professional services, specialists, backfill positions, recreation, geographic information systems (GIS), and much more. This research analyzes the following question: What is the impact of Assembly Bill 5 (AB 5) and Assembly Bill 2257 (AB 2257) on small public agencies in California?

Assembly Bill 5

AB 5 was introduced by California Assemblymember Lorena Gonzalez, a Democrat who represents the 80th Assembly District serving southern San Diego County (California State Assembly Democratic Caucus, 2021) in 2019. Gonzalez is a former union organizer turned legislator. During the introduction of the bill, Gonzalez stated that California loses $7 billion a year in payroll tax revenue because of independent contractors. This was a misleading representation of the facts. Further research shows that the information came from the AB 5 fact sheet, which cites “Division of Labor " for the $7 billion number, which originated from a 2012

commission report, issued by the Obama Administration. The report stated that the entire nation, not just the state of California, loses $7 billion over a 10-year period because contractors do not pay payroll taxes (Anderson, 2021).

AB 5 was supported by labor unions; the following 2020 presidential candidates supported the bill: Senators Kamala Harris, Bernie Sanders, and Elizabeth Warren (Campbell, 2019). Supporters of the bill argue that by avoiding unemployment insurance taxes and workers' compensation insurance payments, the liability for coverage shifts to the taxpayers (Lin, 2019). However, the California Chamber of Commerce did not support AB 5. The Chamber thought that supporting AB 5 would be detrimental to the business community, as it would increase labor costs between 20-30% (Roosevelt and Faughnder, 2019). Other industries that did not support this bill were rideshare, trucking, healthcare, entertainment, and many companies that currently use independent contractors. Many who were unsupportive thought that this bill would result in lawsuits against thousands of California businesses, and cause businesses to move out of California. Businesses that could be impacted by the AB 5 employment law changes were concerned that they would have to spend their resources to engage in further lobbying to seek exemptions to the ABC test. Further concerns were that their resources and time would involve ballot initiatives to overturn parts of the law (Lin, 2019; Sarchet et al., 2020).

The rise of the gig economy played a significant role in the formation of the AB 5 legislation. Gig work can be defined as on-demand platform work, but has also been more broadly defined as workers who are in business for themselves, or independent contractors (Bernhardt and Thomason, 2017). Gig companies such as Uber, Lyft, Instacart, DoorDash, and Postmates launched aggressive lobbying and public relations campaigns to defeat AB 5. There were incentives to the independent contractors because this bill would result in a substantial

amount of labor protections and lead to converting all independent contractors to employees. Labor protections include unemployment insurance, health care, paid leave, overtime pay, workers' compensation insurance for on-the-job injuries and $12 minimum hourly wage (Campbell, 2019). Uber believed that reclassifying its drivers as employees would increase its labor expenditures by 20-40% (Rosenblatt and Eidelson, 2020). One study found that several California cities have somewhat higher rates of gig workers compared to the whole United States. This study also found that the gig economy workers have slowed the decline in unemployment. This is especially true in San Francisco where residents were early and enthusiastic adopters of the on-demand platforms (Bernhardt and Thomason, 2017). This legislative change extends far beyond the gig economy, including businesses in entertainment, trucking, translating, interpreters, and government agencies (Roosevelt and Faughnder, 2019).

The timeline history for the bill is as follows. On April 3, 2019, the Assembly Labor and Employee Committee heard the bill and passed it to the Assembly Appropriations Committee. On May 16, 2019, the Assembly Appropriations Committee passed the bill with 13 ayes, 3 noes, and 2 no votes. At the Assembly Floor on May 29, 2019, it passed with 59 ayes, 15 noes, and 6 no votes. On September 10, 2019, with Senate amendments, it passed with 29 ayes and 11 noes. During the Senate debate, Republicans sought to include amendments to expand exemptions for newspapers, physical therapists, arborists, and more, however the Democrats control both houses of the legislature and defeated the amendments. Democrats made a concession to delay the change for the newspaper industry for an additional year (Lin, 2019). The following day, on September 11, 2019, the amended AB 5 passed the Assembly Floor with a vote of 61 ayes and 16 noes. This bill was then presented to the Governor.

On September 18, 2019, Governor Gavin Newsom signed AB 5, into law which codified the Supreme Court of California case, *Dynamex Operations West, Inc. v. Supreme Court of Los Angeles County*, Labor Code (Yee, 2020). Section 2750.3 was added to the California Labor Code, and section 621 (b) of the California Unemployment Insurance Code was amended by removing the existing law, known as common law rules, or the Borello test, and subsequently applying the ABC test (EDD, n.d.). In the *Dynamex* case, the California Supreme Court held that workers be classified as employees for the purpose of California's wage order (minimum wages, maximum hours, meal and rest breaks) and that the burden would be on the hiring entity to establish whether a worker is an independent contractor not subject to wage order protections. As a result, the court decision was to identify standards that apply in determining whether workers would be classified as employees or independent contractors for the purpose of the California wage order. AB 5 implements stricter standards for determining whether workers are independent contractors for wage orders, producing penalties for misclassification. AB 5 updates to the Labor Code and Unemployment Insurance Code requirements by using a three-part test known as the ABC test. This legislation went into effect on January 1, 2020 (A.B. 5, 2019). This law allows the state attorney general and large cities to sue companies that do not comply. Governor Newsom's 2020 State of California budget allocated more than $20 million for enforcement of the new law (Sarchet et al., 2020). After AB 5 was passed, the gig economy struck back with Proposition 22 on the November 2020 ballot, which passed and granted gig economy workers an exemption to AB 5 by classifying their drivers as independent contractors rather than employees.

Dynamex Operations West, Inc. v. Supreme Court of Los Angeles County (2018)

This case resulted in AB 5, where drivers for the same-day delivery company, Dynamex, reported that they were misclassified as independent contractors rather than employees. Similar to app-based drivers for Uber, Lyft and DoorDash, these drivers, known as gig economy workers, were categorized as independent contractors, workers who receive a salary or are not paid hourly wage. Gig economy workers are self-employed and obtain payment for a specific gig or task, like delivering items to a specific location (Bergman, 2020).

In the landmark case of *Dynamex*, the California Supreme Court overturned the precedent of the Borello test that had been enacted three decades earlier. The Supreme Court ruled that a new ABC test was appropriate to determine whether a worker was an employee or an independent contractor (Paretti et al., 2020). The United States Department of Labor and 33 states use variations of the ABC test to evaluate worker status (Wrapbook, 2019). As of January 1, 2020, the new California standard assumes that all workers are employees. It places the onus on the hiring entity to prove all three parts of the ABC test for the worker to be classified as an independent contractor. The ABC test strives to be more predictable than the multifactor Borello test (California Department of Industrial Relations, n.d.). The Labor Code § 2750.3, 2019 states the ABC test as noted in Table 1.

Table 1: ABC Test

ABC test
"(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact" (AB 5, 2019, paras. 21-23).
"(B) The person performs work that is outside the usual course of the hiring entity's business" (AB 5, 2019, paras. 21-23).
"(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed" (AB 5, 2019, paras. 21-23).

Source: Labor Code § 2750.3, 2019.

In addition to the set of standards, AB 5 includes the following exemptions for occupations that remain subject to the previous, multifactor Borello test.

Table 2: Occupation Exemptions

Occupation exemptions to the ABC test
Physicians, dentists, podiatrist, psychologists, veterinarians
Lawyers, architects, engineers, accountants, private investigators, and financial advisers
Some contracts for professional services for marketing, human resources administrators
Business to Business service providers
Construction contractors
Referral service providers

Source: Labor Code § 2750.3, 2019

According to the Labor Code, A, B, and C must all be true for workers to be classified as an independent contractor, unless they meet the definition of the occupation exemption in Table 2. It is important to note that not all occupation exemptions in Table 2 are independent contractors. The Borello test is used to determine a worker's status when exemptions apply, which makes both tests and requirements critical.

S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989)

In the *Borello* case, the California Supreme Court found that while control over the work performed was the most significant factor determining a worker relationship, the case was about whether farmworkers were employees for workers' compensation purposes (Supreme Court of California, 1989). Legislation from the nineteenth to twentieth centuries transitioned worker classification from negligence to worker protection (Redfearn, 2016). With the Borello multifactor test, the principal factor is the right to control the worker. Unlike the ABC test, these factors are not all required. If the right to control can be proven, the worker is deemed an employee by this standard. Common law rules provide evidence of degrees of control that fall into three categories: behavioral, financial, and type of relationship.

- Behavioral: Right to control. Controlling what the worker does and or how the worker does their job.
- Financial: Worker controlled by the payer. Examples include how the worker is paid, whether expenses are reimbursed, and whether equipment is provided.
- Type of Relationship: Contract, benefits, length of employment and if it will continue (IRS, 2020).

Currently the IRS, the District of Columbia and 17 states use the common law/Borello test to define worker relationships. Appendix A, includes each state/territory broken down by worker classification test (Wrapbook, 2019).

Table 3: Common Law Test

Common Law/Borello multifactor test
Right to discharge without cause
Whether a worker is engaged in an occupation or business
Whether a specialist usually does work without supervision

The skill required in the particular occupation
Whether the worker supplies the tools and place of work
Length of time and service performed
Whether the payment is by time or by job
Whether work is part of the regular business of the principal
What relationship the parties believe they are creating

(Yee, 2020).

Lotito, et al. (2020) suggest that up to two million independent contractors in California will need to be reclassified as employees. Intentional or not, the AB 5 law is affecting all independent contractors, as well as freelancers, and small businesses in several industries, including the high profile entertainment industry in Hollywood. Some of the unintended consequences were that journalists and photographers could only submit 35 submissions annually per media outlet, while some photographers submit that many photos daily. Hollywood put political pressure on government officials by drumming up a lot of media coverage about the bill's impact and contacting Assembly members. As a result of the pressures that Hollywood put on government officials, amendments to AB 2257were introduced shortly after AB 5 was passed (Kilkenny, 2019). Additionally, there were others who pushed back, including the Coalition of Practicing Translators and Interpreters of California. This group provided an official statement in August 2020, stating that they fact-checked the statement of the author of AB 5, which quoted a misclassification of 4,111 interpreters and found it misleading, and that incorrect information should not drive state policy (Anderson, 2021). With pressure from the gig economy, Hollywood, the trucking industry, and smaller groups like translators and interpreters speaking against AB 5, AB 2257 was quickly drafted.

Assembly Bill 2257

AB 2257 was passed as emergency clean-up legislation after Governor Newson signed AB 5 (Coffman, 2020). Emergency legislation means that AB 2257 takes immediate effect once signed. The first reading of AB 2257 took place on February 13, 2020, less than two months after AB 5 went into law. After several months of amendments in committee, the California State Senate approved AB 2257 on August 31, 2020, and Governor Newsom signed it on September 4, 2020. While keeping the essential framework of AB 5, AB 2257 repealed Labor Code section 2750.3, and replaced it with Labor Code sections 2775-2787 (Walter, 2020). With this important change, the business to business exemption now applies to public agencies. However, there are twelve business to business conditions to satisfy in order to be exempt. These changes are outlined in Chapter 2 Division 3 of the Labor Code 2776(a). The bold text within the law are key components.

> "(1) The business service provider is **free from the control and direction** of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
>
> (2) The business service provider is providing services directly to the **contracting business rather than to customers of the contracting business**. This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.
>
> (3) The **contract with the business service provider** is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.
>
> (4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, **the business service provider has the required business license or business tax registration.**
>
> (5) The **business service provider maintains a business location, which may include the business service provider's residence,** that is separate from the business or work location of the contracting business.

> (6) The business service provider is **customarily engaged in an independently established business** of the same nature as that involved in the work performed.
>
> (7) The business service provider **can contract with other businesses** to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.
>
> (8) The business service provider **advertises and holds itself out to the public as available to provide the same or similar services**.
>
> (9) Consistent with the nature of the work, **the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.**
>
> (10) The business service provider **can negotiate its own rates.**
>
> (11) Consistent with the nature of the work, the business service provider **can set its own hours and location of work.**
>
> (12) The business service provider is **not performing the type of work for which a license from the Contractors' State License Board is required**, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code" (Labor Code § 2776(a), 2020).

The State of California defines a public agency as any state or local agency. Local agencies include county, city, school district, municipal corporation, special district, and political subdivision (State of California, 1943). The following are changes in the criteria for determining whether business services are being provided by an independent contractor:

- Services are delivered directly to the contracting business rather than to the customer.
- Specific details must be included in the contract with a business to business provider.
- A residence qualifies as a separate business location.
- The business service provider "can" contract with other businesses.
- May use proprietary material from the contracting agency (Coffman, 2020).

As a result of AB 2257, 109 categories of workers receive an exemption from the ABC test. Absent from the new exemptions are the gig economy companies, California trucking, and the entertainment industry (Cole and Luste, 2020). AB 2257 provides some clarification on some

issues and provides additional exceptions to some industries, but still holds challenges originating from AB 5.

LITERATURE REVIEW

Contract Work

Government hiring can be lengthy and take up to six months, including testing, interview panels and pre-employment screening. In order to speed the process for short time workers, government agencies have been hiring workers on a contract basis for years (Ramsey, 2020). Some positions are seasonal and others are highly skilled jobs that are only needed for short periods at widely spaced intervals. Examples include gardeners or snow removal workers in seasonal climates and summer camp counselors or auditors who are only needed on a project basis. Governments may also use temporary contracts to fill essential service positions while recruiting for permanent employees (Schwartzman, 2018). Essential service positions examples include nurses, police dispatchers, and building inspectors. In small agencies, each vacancy is felt. Existing staff can find it challenging to cover during an absence for paid family leave or during a lengthy recruitment process.

A challenge in labor law is how to divide the legal status of temporary workers and permanent employees, since some contract workers are employed full-time during their contracts. The standard to comply with labor laws and California Public Employee Retirement System (CalPERS) rules will limit employees to less than 1,000 hours or 125 days in a fiscal year from July 1 - June 30. The right to benefits and pensions will be different for contractors than for regular employees (CalPERS, 2021). It is standard practice when hiring an independent contractor, part-time, or full-time employee to contact the CalPERS agency directly to verify whether any hours have been worked during the course of the year and to determine how to manage benefits.

While most governments have the need for seasonal work, there are small governments that only need certain services for brief periods each week or each month that cannot justify a full-time position. This work, like janitorial services for a small building with a small workforce, or payroll management for once per month payers, might be most efficiently filled by a variety of contract workers, who do the same job for several agencies. While this approach to staffing is efficient, it is criticized for depriving the workers of benefits like pensions. (Daft, 2016; Stone and Sallus, n.d.) Having independent contractors as part of an organization structure is an organic design that allows for flexibility for the changing environment, saving money for local taxpayers but limits worker benefits for the independent contractors.

In the State of Florida, the Borello test is used to determine worker status (Wrapbook, 2019). For example, in the City of Weston with an estimated population of just slightly over 70,000 only 10 positions are full-time in-house employees (United States Census Bureau, 2019). These positions include the city manager, two assistant city managers, six department directors, and a clerk. The outsourcing of other work happened over 20 years ago based on its charter, offering greater flexibility and efficiency in staffing (Brzozowski, 2019). This lean structure cultivates an adaptive environment to fit the needs of the organization rather than a more mechanistic design, which is more conducive to a stable environment and a larger organization (Lira, 2021).

Contract Workers and Diversity

Integrating contractors diversifies the workforce, as they typically bring specialization. These specialists affect the culture of the organization, as they bring outside perspectives. Outside perspectives can lead to information asymmetries, which can affect the relationship between the contractor and the organization (Brunjes, 2019).

Competitively sourced contracts have contractors who have a history of working with government agencies, so they are less likely to have cause for early termination (Brunjes, 2019). However, studies show that workplaces that are more diverse have challenges with cooperation, coordination, development of identities, and turnover. Time and attention are required to overcome these hurdles (Pearce and Sowa, 2018). AB 5 and AB 2257 could result in environmental uncertainty for contractors and the organization. The legislation could lead to changes in the environment and resources.

The Gig Economy and Labor Law

IT-based businesses have contributed to the rise of the gig economy. This is defined as on-demand platform work, but has also been more broadly defined as workers who are in business for themselves (Bernhardt and Thomason, 2017). The most prominent of the gig economy businesses are Uber and Lyft, the car hailing businesses, and DoorDash, a food delivery service. These started as opportunities for people to use their cars to earn extra income, but many people turned these into full-time jobs, noting the flexible hours and the chance to be their own boss (Lien, 2018).

For many years, people have worked at part-time jobs, either for personal convenience, to supplement their income from a full-time job, or because that was the only work they could obtain. Some industries, like freelance writing and photography, or film editing, have always been provided by independent workers who are paid by the article or photo, or by the job. With the increase in labor regulation at the federal and state levels, the use of part-time occasional workers became more regulated, and some part-time or contract jobs were reclassified as regular employment. Legislation is trending to protect the individual through labor laws (Cherry and Aloisi, 2017). AB 5 followed that trend. A majority of the press surrounding AB 5 was focused

on gig workers being reclassified as employees rather than independent contractors. There have been multiple lawsuits across the United States alleging that on-demand platforms have misclassified their workers (Cherry, 2016).

Contract workers are generally not covered by labor law regarding hours worked in a day. Freelance writers, for example, may research and write a story for many straight hours in order to submit it for a timely publication. The Fair Labor Standards Act (FLSA) was passed in 1938 to ensure that workers received a minimum wage for the hours that they worked. If contract workers are converted to employees and work at their own rate, many workers will likely jeopardize this standard. Operating as independent contractors, they are not adhering to a set schedule, minimum wage, and overtime rates. There are several benefits when working as an independent contractor, such as low barriers to entry, flexible hours, ability to be your own boss, and selecting jobs you want to take on. However, there is a financial responsibility for contractors to pay their own benefits, withholding, social security taxes, and providing their own supplies for the job (Contract Counsel, 2021). Additionally, independent contractors are generally not reimbursed for necessary business expenses. Many of the gig-workers' litigation cases that have alleged worker misclassification have been FLSA claims for a lack of living wage, or making less than minimum wage (Cherry, 2009). Working for yourself as an independent contractor means that the worker lacks the following benefits that are paid by an employer: retirement options, health insurance, paid holiday and sick leave.

Impacts on Small Local Government Agencies

The League of California Cities and other professional associations have studied AB 5's impact on government agencies that use contractors to provide professional services and limited time contractors. Their research suggests that one significant barrier in the ABC test, "B: work

performed is outside the usual course of the agency's business," could be challenging to prove, since public service is broad (DeBlanc and Safarloo, 2020). One example of such a challenge would be a small city's recreation department that contracts with certified instructors to provide a range of classes and activities for the community. The risk of misclassification of employees could impact employee benefits, such as retirement, workers' compensation, earned paid time off, and could result in FLSA violations and fines. (DeBlac and Yee, 2020).

Lieber, Cassidy, and Whitmore (2020) law firm hosted a webinar on July 30, 2020, and noted that agencies' understanding of the impacts of AB 5 were not addressed immediately after its passage due to all the changes that cities faced in early 2020. In March 2020, agencies had to make many changes in operations created by the public health mandates related to the COVID-19 pandemic. In order to respond to the pandemic, Human Resource Departments focused on prioritizing policy updates, such as work from home policies and other challenges (DeBlanc and Yee, 2020). As segments of the economy gradually reopen, such as California's legislature, and courts, there will be a return to many activities, such as prosecutions, which may lead to the need to hire independent contractors (Sarchet et al., 2020). AB 5 has been a topic of conversation among government agencies, as they were not exempt from the law. AB 5's consequences and misclassification risks are too costly to not understand (Pugliese, 2020). AB 2257 regulations give more guidance for public agencies. There are risks involved for all agencies and nonprofits in undertaking policy changes to comply with labor law mandates.

On December 10, 2020, Lieber Cassidy Whitmore presented information at a webinar and provided an example of the consequences of a misclassification of an employee. A small government agency contracted with a retiree from CalPERS as an independent contractor. Both parties were happy with the agreement, however during an audit by CalPERS this contractor was

thought to be an employee. CalPERS continues to use the Borello test in order to determine worker relationships. This worker was using the agency's resources (office location, desk, supplies, software), paid hourly rather than by task, kept specific hours dictated by the agency, and the work performed was for over a decade. Thus, the right to control could not be satisfied. Under the Borello test, this worker was deemed an employee rather than a contractor, which resulted in the agency and employee needing to pay retirement contributions through CalPERS for the 14 years that the worker was employed (Coffman, 2020). This determination resulted in an employee pension benefit. Thus, it is clear that the distinction between contractor status and regular employment can be critical for both employers and employees.

The private sector is also pushing back on this legislation, as gig workers lose flexibility in work hours and scheduling when they are converted to an employee. Moreover, employees typically cost more than independent contractors, due to benefits and insurance mandates (Bergman, 2020), resulting in a poor outcome for both parties (Andoyan, 2017). However, the misclassification of employees as independent contractors results in a loss of employee rights and employee benefits, such as unemployment and health insurance (McGee et al., 2016).

The Workplace Policy Institute addressed society's structural issues that fall short, including the employer and employee framework. They questioned that if employment and labor laws were not as challenging, the independent contractor model would likely not be as attractive. They recommended creating a status between employment and independent contracting to resolve the issue (Sarchet et al., 2020). For decades, many foreign legal systems, such as Canada, Italy, and Spain, have implemented this categorization of an intermediate hybrid worker (Cherry and Aloisi, 2017).

California offers a variety of employment options for public agencies. Using some of these as opposed to independent contractors might provide some flexibility for small government agencies. Table 4 shows the classification and their definitions.

Table 4: California Employment Classification

Title	Definition	Available to small cities
At will	An employee may be dismissed at any time for any reason except an illegal reason, agency's rules or employment contract can rebut presumption	Yes
Probationary	Employee on trial employment for a measured length of time	Yes
Seasonal	Employee who works on an irregular basis	Yes
Part-time Employee	Employee who works part-time on special projects.	Yes
Limited Term Employees	Employed to work on special projects for short periods of time, or on a "fill-in" basis. These positions are not intended to be a part of the company's continuing operations.	Yes

Contract	Service provider who is an individual who is not an employee of the service-recipient for California purposes and who receives compensation or executes a contract for services performed for that business or government entity in or outside of California. ABC and Borello tests determine if they are contractors. Examples include: Independent contractors, consultants, and temps.	Yes

(Coffman, 2020).

Gap in Literature

Since AB 5 and AB 2257 were passed in 2019 and 2020, little scholarly research regarding their implementation or impacts on California's small local government agencies has been published. The published research has primarily been conducted by employment and labor relations law firms. The majority of the currently available literature explains the complex legislation and how it affects the private sector. AB 5 did not give an exemption for public agencies, however, the newer legislation, AB 2257, exempts government agencies when contracting from business to business (Yee, 2020). This project seeks to fill the literature gap regarding AB 5 and AB 2257 and the impacts on small California government agencies. This research will be valuable to government agencies when hiring workers and agencies that rely on independent contractors to conduct business.

METHODOLOGY

This research was conducted by a survey to gather data from small government agencies in California. The questionnaire targeted public agencies in California that serve a population of 70,000 or less. The data collected includes demographics of the agency, population served, number of employees, budget, use of independent contractors, awareness and concerns for AB 5 and AB 2257, and changes that agencies instituted in response to the legislation. The survey can be found in Appendix B. The answers indicate the impact the legislation has had on each agency. Findings could result in new organizational practices, policy changes, costs, changes in services or use of resources.

Participation in the survey had minimal risk and did not target special populations or include sensitive subject matter. Appendix C includes the standard consent form to participate in the survey. The survey was conducted through Qualtrics software. Its intent was to gather public information and did not contain personal or private opinions or information. With a systematic investigation and well-focused questions, the purpose was to compare and draw conclusions based on the data received. If the organization has instituted changes based on the legislation, a follow up interview was requested. Since there were no human subjects, this project was excluded from Institutional Research Board review.

FINDINGS

The goal of this research was to identify whether the new legislation, AB 5 and AB 2257, has impacted small public agencies in California. The survey aimed to reveal whether agencies made changes to their operations based on the new legislation. The survey was administered to agencies throughout California and targeted counties, special districts, cities, and towns that serve a population under 70,000. A survey with the same set of questions was constructed and sent to leadership positions within those organizations. The surveys were sent to the following leadership roles: city managers, city clerks, department directors, human resources, and general managers. There is a possibility that if the survey were sent to a different leader within that same organization that responses could differ, based on their role and knowledge. Therefore, the impacts on the organization could be different from these results. This was demonstrated by one agency that had two surveys that were submitted by different leaders and their answers varied. Discrepancies included referencing different departments that used independent contractors, along with independent contractors using different resources. Both leaders had different awareness levels of both bills, and had different responses on receiving legal counsel. After conducting follow ups with that agency, it appears that both leaders had made errors when submitting their responses. The corrected information from the follow up interviews was used.

Survey Results

The survey was delivered to 33 different agencies and a total of 17 returned the survey, which is 52 % of the sample. The timing of the survey could have caused some limitations in the survey responses. One agency replied they were unable to complete the survey due to being understaffed as a result of COVID-19. Of the 17 survey responses, one agency serves a population over 70,000 and falls outside of the small agency definition for this project. This

project identifies public agencies serving a population under 70,000 as small agencies. For that reason, 16 returned surveys were used to develop the findings, and they reflect 15 different agencies. All of the respondents were from the greater San Francisco Bay Area. The following 18 questions were asked in the survey.

Question 1: Name of Agency

To limit liability and risks to the participating agencies, all agencies are de-identified within this research paper.

Question 2: Size of the population that the agency serves?

Forty four percent of the respondents work for an agency that serves a population of 10,000 or less. Since the agencies are de-identified a lot of the data will be compared based on the population that the agency serves.

Table 5: Size of the population that the agency serves

Population Served	**Number of Agencies Serving that Population**
10,000 or less	6
10,001 - 20,000	1
20,001 - 30,000	0
30,001 - 40,000	4
40,001 - 50,000	2
50,001 - 60,000	2
60,001 - 70,000	0

Question 3: Number of employees

Table 6: Number of Employees

Population Served	Number of Employees
10,000 or less	3.5, 8, 11, 15, 26, 65
10,001 - 20,000	87
30,001- 40,000	60, 200, 221, one skipped this question
40,001 - 50,000	100 and 329
50,001 - 60,000	240 and 500

Agencies serving populations 10,000 or less have employees ranging from 3.5 to 65 employees. However, 65 employees are an outlier, as the next largest number of employees for agencies serving that population is 26. Sixty-five employees are over two standard deviations from the mean.

Question 4: Annual Budget

Table 7: Budget

Population Served	Budget in Millions
10,000 or less	6, 7, 8, 13, 19, 21
10,001 - 20,000	60
30,001- 40,000	26, 40, 115, one skipped this question
40,001 - 50,000	50, 159
50,001 - 60,000	100, 195

Question 5: Does your agency use independent contractors?

Of the 15 agencies, only one of them does not use independent contractors and 14 of them use independent contractors. For the one agency that reported that they do not use independent contractors, additional clarifying questions were asked after the survey. That agency stated that AB 5 limits use of contracted services to backfill vacancies. They use consulting companies and have specific contract language about complying with labor law and CalPERS rules. They disclosed that they tend to not use staffing agencies because they are often masked for independent contractors, however as another precaution they generally enter into a temporary employment contract with the individual. This is so that the agency is reporting and withholding taxes appropriately. This process is used to deliver recreational activities such as classes, events, and facility rentals for which they hire part-time staff. This agency serves a population of 10,000 or less and was the outlier with 65 employees, their annual budget is also $3 million dollars more than the other respondents serving that population size. However, they do have an in-house police department, whereas some smaller agencies contract with the counties for law enforcement services. In addition to not using independent contractors, this is likely another reason for the unusually high number of employees.

Question 6: If yes, how many?

Many agencies indicated that the number of contractors varies based on needs and projects. This provides agencies with flexibility. The average number of independent contractors is more than 20.

Question 7: In what capacity do you use independent contractors?

All of the agencies using independent contractors indicated that they use them for professional services, such as attorney, or auditor. Ten agencies, or 71%, use skilled trades such as plumber,

electrician, and arborists contractors. Nine agencies, or 64%, indicated that they use laborers such as gardeners, maintenance, and janitors as contractors. Six agencies, or 43%, use independent contractors for parks and recreation services, such as instructors and umpires.

Question 8: For which departments do the independent contractors work?

Table 8: Number of Agencies Using Independent Contractors by Department

Department	Number of Agencies Using Independent Contractor in the listed Department
Engineering	12
Building	11
Public Works	10
Attorney	9
Planning	9
Janitorial	8
Parks and Recreation	6
Finance	6
Public Safety/Emergency Services	4
City Manager's Office	4
Law Enforcement	2
Other	2

When conducting a follow up interview, it was found that agencies also use contractors for the other departments not listed in the survey: Information Technology (IT) and Human Resources services.

Question 9: Rate the level of concern your agency has about employee vs. independent contractor definition?

The survey reveals that seven, or 44%, of the respondents were either concerned or very concerned about the impacts of AB 5 and AB 2257. Five, or 31%, were unconcerned or very concerned and five, or 31%, were neutral.

Question 10: If concerned or very concerned, why specifically?

The following concerns were listed:

- Small agency and we do not have the volume of employees to cover some of the specialized tasks.
- State bills are making such arrangements much more challenging to staff positions that are by nature part-time.
- Compliance with AB 5 and AB2257, impact of Prop 22 and changing exemptions from the legislature.
- Could take away the effective tool of independent contractors.
- AB5 limits our use of contracted services to backfill for vacancies.
- CalPERS Penalties.

Question 11: Are any of the independent contractors using your agency's resources to conduct business?

A total of seven agencies, or 50% of those employing independent contractors, use their agency resources. The breakdown of resources is listed below in Table 9.

Table 9: Number of Agencies that let Independent Contractors Use Agency Resources

Resources	Number of Agencies that let Independent Contractors Use Agency Resources
Technology	5
Office Space	6
Agency Email Address	4
Vehicle(s)	2

AB 2257 now exempts government agencies from the ABC test when contracting business to business. However, twelve business to business conditions must be satisfied to be exempt.

Question 12: What is your agency's awareness level of AB 5 and AB 2257?

When asked about their agency's awareness level of AB 5 and AB 2257, 56% of the respondents were aware of the bills, 19% were neutral and were unaware, and one declined to answer.

Question 13: Were you aware of changes in the employee law due to AB 5?

Ten respondents were aware of the changes in the employee law due to AB 5, four were not aware and two agencies did not answer this question.

Question 14: Are you aware of changes in the employee law due to AB 2257?

Eleven respondents were aware of the changes in the employee law due to AB 2257, four were not aware and one agency did not answer this question.

Question 15: Has your agency received legal counsel on the application of AB 5?

Eight agencies, or 53%, indicated that they received legal counsel on the application of AB 5, three agencies indicated that they have not, four were not sure, and one did not respond to this question.

Question 16: Has your agency received legal counsel on the application of AB 2257?

Eight agencies, or 53%, indicated that they received legal counsel on the application of AB 2257, three agencies indicated that they had not, and five did not respond to this question. Each agency that received legal counsel on AB 5 also received legal counsel on AB 2257.

Question 17: Were any independent contractor positions converted to employees as a result of AB 5 and AB 2257?

Only two agencies, or 14% of the agencies who employed independent contractors, converted them to employees. One agency serves a population of 10,000 or less. That agency previously had part-time independent contractors for district clerk, fire operations, and emergency services manager (ems). When each of these contractors left, they were replaced with part-time regular employees. However, the agency continues to hire independent contractors for services for engineering, records consulting, and strategic plan facilitation.

The other agency that serves a population of 30,001- 40,000 added and converted the following positions in multiple departments.

Table 10: Added Positions

Added Position	Department	FTE
Permit Technician	Building	1
Senior Building Inspector/Plan Checker	Building	1
Associate Planner	Planning	1
Economic Development Specialist	Community Development	0.25
Human Resources Analyst II	Human Resources	1
Program Manager	Public Works	1

Table 11: Converted Casual Employees to Benefitted Employees

Converted Casual Employees to Benefitted Employees	Department	FTE
Senior Planner	Planning	1
Sustainability Coordinator	City Manager's Office	0.5

This agency had an increase of 6.75 Full-time Employees (FTEs). However, this was only an actual workforce increase of 2.25 positions. Three full-time positions were formerly provided contractually. The added positions were one full-time position in Public Works, one in Human Resources, and an increase from 30 hours to 40 hours per week for the Economic Development and Housing Specialist position. The remaining 1.5 FTE was a result of converting casual part-time employees to permanent benefitted positions.

Question 18: If I have follow-up questions, who may I contact? Please provide name and email address. This information will be kept confidential, and not be listed in the research report.

This information was used for follow up information.

The below table is a summary of information from the survey.

Table 12: Summary Comparison Data

Agencies De-identified	Use of Independent Contractors	Population Served	Number of Employees	Annual Budget	Budget Per capita *
Agency 1	No	10,000 or less	65	$ 21,000,000	$ 2,100
Agency 2	Yes	10,000 or less	26	$ 18,800,000	$ 1,880
Agency 3	Yes	10,000 or less	15	$ 7,000,000	$ 700
Agency 4	Yes	10,000 or less	11	$ 8,000,000	$ 800
Agency 5	Yes	10,000 or less	8	$ 6,000,000	$ 600
Agency 6	Yes	10,000 or less	3.5	$ 13,412,000	$ 1,341
Agency 7	Yes	10,001 - 20,000	87	$ 59,900,000	$ 2,995
Agency 8	Yes	30,001 - 40,000	60	$ 26,000,000	$ 650
Agency 9	Yes	30,001 - 40,000	200	$ 40,000,000	$ 1,000
Agency 10	Yes	30,001 - 40,000	221	$ 115,000,000	$ 2,875
Agency 11	Yes	30,001 - 40,000			
Agency 12	Yes	40,001 - 50,000	100	$ 50,000,000	$ 1,000
Agency 13	Yes	40,001 - 50,000	329	$ 158,604,560	$ 3,172
Agency 14	Yes	50,001 - 60,000	500	$ 194,600,000	$ 3,243
Agency 15	Yes	50,001 - 60,000	240	$ 100,000,000	$ 1,667

*estimates based on the largest population within the range

ANALYSIS

While the participation rate of the survey does not provide a thorough assessment of the impacts that AB 5 and AB 2257 have on small government agencies in California, this research offers insight into the legislative changes to the labor law, and the challenges that small public agencies are facing. As discussed in the Background and Literature Review, AB 5 legislation was passed in September of 2019, and went into effect in January 2020, at the start of the COVID-19 pandemic. Small agencies were concentrating on operational changes, and with AB 2257 in the pipeline, many municipalities did not prioritize these changes. AB 2257 was passed in September of 2020 and went into effect immediately, but only provided clarification in the business to business exemption, which now applies to public agencies, but requires twelve conditions that must be satisfied to be exempt from the ABC test.

Based on the survey results, less than 15% of small government agencies using independent contractors changed their operation by converting independent contractors to employees. This might be an indication of the unwillingness to bring on independent contractors as employees. To increase headcount, elected officials must approve the agency resources to make this change. However, it takes agency staff to have a level of awareness about AB 5 and AB 2257 and their impacts to implement the change and carry it out. In the survey, questions 12 and 13 ask the awareness level of AB 5 and AB 2257, and there was only a slim majority of 56% that were aware of the bills. At the same time, only 44% of the respondents were concerned or very concerned about their agency's definition of employee vs. independent contractors. This is alarming. These updates to the labor law are complex and confusing, and only 50% of the agencies confirmed they received legal counsel on the updates.

Based on the findings, 85% of the agencies have not converted independent contractors to employees. This is cause for concern, as the impacts and risks for misclassifications can be detrimental to the hiring entity and worker. AB 2257 provides the important change that the business to business exemption now applies to public agencies. However, that business needs to satisfy twelve lengthy conditions to be exempt from the ABC test. If the business meets the conditions, the worker still needs to pass the Borello test to be free from control and direction from the hiring entity. However, condition nine within the labor law states that "the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract" (A.B. 2257, 2020). Additionally, condition five states that the business service provider shall maintain a business location. For those six agencies providing office space, it would be crucial to ensure the business has its own business location. If the business meets the conditions to be exempt from the ABC test, the business will need also to pass the Borello test. Within the Borello test, found in Table 3, supplying agency resources to the worker favors an employee relationship. For both tests, providing agency resources favors an employee relationship.

AB 2257 provides additional exemptions for relief to some industries, but does not address the fundamental problems of the ABC test. For example, all governments and businesses will have a challenging time debating item B and possibly C of the test. The statute does not provide guidance or define the "usual course of the hiring entity's business" or "customarily engaged in an independently established trade, occupation, or business" (A.B. 2257, 2020). Without the previous two statements being defined, these factors will be determined on a case-by-case basis. With government agencies having a wide range of services, the usual course of business could be challenging to demonstrate. Additionally, the statute does not specify

customarily and does not state if the worker needs to be available or perform the same services for others. This is subjective and open to interpretation, which can lead to the risk of litigation.

The survey findings illustrate a stark contrast when using independent contractors and when not. Table 12 de-identifies agencies and provides a summary of comparison data. Agency 1 does not use independent contractors and serves a population of 10,000 or less, and employs 65 employees. Agency 1 compared to other agencies serving the same population of 10,000 or less by comparing the number of employees, budget, and per capita. Agency 1 employs more than 2.5 to 18.6 times more employees than agencies 2-6, which use independent contractors. The mean of employees for agencies 2-6 is 12.7. Agency 1 employs over five times more employees than the average of employees for agencies 2-6. The findings indicate that agencies that do not use independent contractors due to AB 5 and AB 2257 incur significant costs and have more employees. This is consistent with Bergman's finding that employees typically cost more than independent contractors (Bergman, 2020). However, agency differences can be a factor of employees and the budget they carry. For example, counties and cities likely have more employees, as they require a larger range of services (building, planning, police, fire, public works, recreation, finance) than a special district. A water or fire district has a more focused service to provide.

With the many agencies unable to satisfy the business to business exemption based on the number of workers using agency resources, public agencies should ultimately be exempt from AB 5 because the taxpayers bear the burden of excess costs created by the legislation. The survey results indicate this, and the following is a simple example illustrating these findings. Suppose a yoga instructor is converted to an employee rather than an independent contractor. In that case, that yoga instructor will be paid an hourly wage rather than a percentage of the gross

class revenue. An industry standard for independent contractors in the recreation field is for the instructor to receive a split based on the total revenue. The contractor selects the price for the course, keeping in mind the split with the municipality. Typically, the split is based on the resident rate, and an administration fee is deducted and then 60% for the independent contractor and 40% for the government agency or 70% and 30%, respectively. This incentivizes the instructor to fill classes and keep students, as they are rewarded based on the increase in revenue. When classes are successful, this split is more favorable than an hourly wage. Instructors would likely not find it advantageous to convert to an employee, as their hourly rate would be significantly less than their typical earnings as an independent contractor. Additionally, when an employee's right to control falls on the hiring entity, those classes with a few students would likely get canceled. As a result, the public suffers by paying more for a reduction in services. That agency has paid the instructor an hourly wage for completing an onboarding process with mandatory training, but results in class cancelations. This legislation raises the question, who benefits and who pays? In this case, the taxpayers are paying more, and the outcome is a reduction in services.

To understand the impact on small government agencies, there are 1,515 cities in California, and 91%, or 1,383 cities, serve a population of 70,000 or fewer (United States Census Bureau, 2020; United States Census, 2021). The San Francisco Greater Bay Area includes nine counties with 101 municipalities. Seventy five of the 101 cities serve a population of 70,000 or fewer (United States Census Bureau, 2020; United States Census, 2021).

The literature review and findings indicate that the majority of the small government agencies use independent contractors based on their needs that fluctuate. This suggests that small government agencies are at risk of increased costs due to AB 5 and AB 2257. For this reason,

lobbying the legislators to have public agencies exempt from the ABC test would be beneficial to reduce the cost burden taxpayers bear from the legislation.

The recommendations for next steps include the League of Cities publishing a guidebook and devoting a session at its annual conference to discuss the application of AB 5 and AB 2257. A guidebook could save taxpayers, workers, and government agencies money. The guidebook would include best practices to reduce risks when using independent contractors and hiring staff. The guidebook could be available at the conference, with a focused session for questions and answers.

In addition to lobbying for public agencies to be exempt from the ABC test, businesses and government agencies should lobby California State Assembly members to provide guidance or define the "usual course of the hiring entity's business" and "customarily engaged in an independently established trade, occupation, or business" within the labor law (A.B. 5, 2019).

Future Research

There are three areas identified for future research.

1) Conducting a similar survey with a larger sample size would be needed to examine the impacts on small government agencies thoroughly. Recommendations for the follow-up survey include narrowing the focus and only distributing the survey to cities. This would provide an apples-to-apples comparison based on the scope of services. Counties typically have a more significant range of services, while special districts have a much narrower range of services than cities. Add a new question to the survey, "do all of your independent contractors have a business license to work within your jurisdiction?"

2) Determine whether there are hybrid workers between an employee and an independent contractor, and whether this employee classification could be mutually beneficial for the worker and hiring entity.

3) Consider whether litigation involving independent contractors and public agencies occurs, and what the outcomes are.

CONCLUSION

This study identified whether the new legislation, Assembly Bill 5 (AB 5) and Assembly Bill 2257 (AB 2257), have impacted small public agencies in California. Having independent contractors as part of an organization structure allows for flexibility for the changing environment, saves money for local taxpayers but limits worker benefits for the independent contractors.

Based on the findings of this research and its analysis, less than 15% of small government agencies using independent contractors made changes to their operation by converting independent contractors to employees. This could be due to the COVID-19 pandemic, as many other operational changes were prioritized during the time that both updates to the labor law were enacted. Agencies that do not use independent contractors due to AB 5 and AB 2257 incur high costs and have more employees. This is consistent with Bergman's finding that employees typically cost more than independent contractors (Bergman, 2020). The data reveals that almost all small public agencies continue to use independent contractors. This might be an indication of the unwillingness to bring on independent contractors as employees. Even more concerning, 50% of the agencies that use independent contractors provide agency equipment, favoring an employee relationship.

A significant hurdle for government agencies passing the ABC test is "B: work performed is outside the usual course of the agency's business," as it could be challenging to prove, since public service is broad (DeBlanc and Safarloo, 2020). Many agencies are concerned about this legislation, and more will be if litigation starts. Litigation will likely lead to another update to the labor code. However, a larger sample is necessary to evaluate the impacts on small government agencies in California fully.

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APPENDIX A

State / Territory	Worker Classification Test
Alabama	Common Law
Alaska	ABC Test
Arizona	Common Law
Arkansas	ABC Test
California	ABC Test
Colorado	A&C of ABC Test
Connecticut	ABC Test
Delaware	ABC Test
District of Columbia	Common Law
Florida	Common Law
Georgia	ABC Test
Hawaii	ABC Test
Idaho	A&C of ABC Test
Illinois	ABC Test
Indiana	ABC Test
Iowa	Common Law
Kansas	ABC Test
Kentucky	Common Law
Louisiana	ABC Test
Maine	ABC Test
Maryland	ABC Test
Massachusetts	ABC Test
Michigan	Common Law
Minnesota	Common Law
Mississippi	Common Law
Missouri	Common Law

Montana	A&C of ABC Test
Nebraska	ABC Test
Nevada	ABC Test
New Hampshire	ABC Test
New Jersey	ABC Test
New Mexico	ABC Test
New York	Common Law
North Carolina	Common Law
North Dakota	Common Law
Ohio	ABC Test
Oklahoma	A&B or A&C of ABC Test
Oregon	ABC Test
Pennsylvania	A&C of ABC Test
Puerto Rico	ABC Test
Rhode Island	ABC Test
South Carolina	Common Law
South Dakota	Common Law
Tennessee	ABC Test
Texas	Common Law
Utah	ABC Test
Vermont	ABC Test
Virginia	A&B or A&C of ABC Test
Washington	ABC Test
West Virginia	ABC Test
Wisconsin	A&C of ABC Test
Wyoming	A&C of ABC Test

(Wrapbook, 2019).

APPENDIX B

Survey

Thank you for agreeing to take part in this survey. Your input will contribute to my findings in answering the following research questions.

Research Question: What is the impact of Assembly Bill 5 (AB 5) and Assembly Bill 2257 (AB 2257) on small public agencies in California?

Q1 Name of Agency

_____

Q2 Size of the population that the agency serves?

- ○ 10,000 or less
- ○ 10,001 - 20,000
- ○ 20,001 - 30,000
- ○ 30,001 - 40,000
- ○ 40,001 - 50,000
- ○ 50,001 - 60,000
- ○ 60,001 - 70,000
- ○ 70,001 or more

Q3 Number of employees?

_____

Q4 Annual Budget?

_____

Q5 Does your agency use independent contractors?

- ○ Yes
- ○ No

Q6 If yes, how many?

_____

Q7 In what capacity do you use independent contractors (check all that apply)?

- ☐ Professional Services: Attorney, Auditor, etc.
- ☐ Managerial: Executives, Managers, etc.
- ☐ Skilled trades: Plumber, Electrician, Arborists, etc.
- ☐ Laborers: Gardener, Maintenance, Janitor, etc.
- ☐ Parks and Recreation: Instructors, Umpire, etc.

Q8 For which department do the independent contractors work?

- ☐ Attorney

- [ ] Building
- [ ] City Manager Office
- [ ] Engineering
- [ ] Finance
- [ ] Janitorial Services
- [ ] Law Enforcement
- [ ] Parks and Recreation
- [ ] Planning
- [ ] Public Safety/Emergency Management
- [ ] Public Works
- [ ] Other

Q9 Rate the level of concern your agency has about employee vs. independent contractor definition?

- ○ Very concerned
- ○ Concerned
- ○ Neutral

- ○ Unconcerned
- ○ Very unconcerned

Q10 If concerned or very concerned, why specifically?

_____

Q11 Are any of the independent contractors using your agency's resources to conduct business? Check all that apply.

- ☐ Technology
- ☐ Office space
- ☐ Vehicle(s)
- ☐ Agency email address
- ☐ Other

Q12 What is your agency's awareness level on AB 5 and AB 2257?

- ○ Aware
- ○ Neutral
- ○ Unaware

Q13 Were you aware of changes in the employment law due to AB 5?

- ○ Yes
- ○ No

Q14 Are you aware of changes in the employment law due to AB 2257?

- ○ Yes
- ○ No

Q15 Has your agency received legal counsel on the application of AB 5?

- ○ Yes
- ○ No
- ○ Not sure

Q16 Has your agency received legal counsel on the application of AB 2257?

- ○ Yes
- ○ No
- ○ Not sure

Q17 Were any independent contractor positions converted to employees as a result of AB 5 or AB 2257?

- ○ Yes
- ○ No
- ○ Not sure

Q18 If I have follow-up questions, who may I contact? Please provide name and email address. This information will be kept confidential, and not be listed in the research report.

_____

APPENDIX C
CONSENT FORM

REQUEST FOR YOUR PARTICIPATION IN RESEARCH

Topic: AB 5 and AB 2257 Impacts on Small Government Agencies

Researcher: Sarah Robustelli, San Jose State University graduate student and Frances L. Edwards MUP, PhD, CEM, faculty advisor.

PURPOSE

The purpose of conducting this research study is to find what costs and limitations Assembly Bill 5 (AB 5) and Assembly Bill 2257 (AB 2257) impose on small public agencies in California and what services have traditionally been provided by independent contractors for small public agencies.

PROCEDURES

Participants will be asked to provide public information about demographics of their agency and questions about independent contractor relationships. This will take place through a Qualtrics survey and should take about 30 minutes to complete.

POTENTIAL BENEFITS

Agencies will help contribute to general knowledge about AB 5 and AB 2257. This research may help other agencies better understand the legislation and best practices.

COMPENSATION

There is no compensation for participation in this study.

CONFIDENTIALITY

All of the information asked is public information.

PARTICIPANT RIGHTS

Your participation in this study is completely voluntary. You can refuse to participate in the entire study or any part of the study without any negative effect on your relations with San Jose State University. You also have the right to skip any question you do not wish to answer. This consent form is not a contract. It is a written explanation of what will happen during the study if you decide to participate. You will not waive any rights if you choose not to participate and there is no penalty for stopping your participation in the study.

QUESTIONS OR PROBLEMS

You are encouraged to ask questions at any time during this study. For further information about the study, please contact Sarah Robustelli, 650-996-8015 or sarah.robustelli@sjsu.edu or Dr. Edwards at frances.edwards@sjsu.edu.

Selecting the Start button for the survey is your consent to participate in the survey.

SIGNATURES

Your signature indicates that you voluntarily agree to be a part of the study, that the details of the study have been explained to you, that you have been given time to read this document, and that your questions have been answered. You will receive a copy of this consent form for your records.

Participant Signature

_____

Participant's Name (printed) Participant's Signature Date

Researcher Statement

I certify that the participant has been given adequate time to learn about the study and ask questions. It is my opinion that the participant understands his/her rights and the purpose, risks, benefits, procedures of the research, and has voluntarily agreed to participate.

_____

Researcher's Name (printed) Researcher's Signature Date