

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 378 (Bauer-Kahan)
Version: May 24, 2021
Hearing Date: June 8, 2021
Fiscal: No
Urgency: No
JT

SUBJECT

Public officials

DIGEST

This bill makes numerous provisions in existing law gender neutral.

EXECUTIVE SUMMARY

“Language matters. It shapes our understanding of the world, promotes social norms and has the power to perpetuate biases. When we use inclusive language in our Legislature’s rules, rights and laws, we are sending a message to all of our residents that they deserve to be treated with dignity, equality and respect.”¹ This bill removes gendered terms from various provisions of the California Codes, particularly as it relates to public officials in the Government and Insurance Codes, and the Fair Political Practices Act. The bill is sponsored by Lieutenant Governor Eleni Kounalakis, and is supported by State Controller Betty Yee, the American Civil Liberties Union, and the Fair Political Practices Commission. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law contains outdated terminology and gendered terms in:

- 1) Provisions applicable to various public offices, including the Governor, Lieutenant Governor, Secretary of State, Treasurer, Controller, Attorney General, Board of Equalization, and Insurance Commissioner. (Gov. Code § 12001 et seq., § 12500 et seq.; Ins. Code § 12900 et seq.)

¹ Hannah-Beth Jackson & Scott Wiener, *The truth about State Senate Judiciary Committee’s use of gender pronouns* (Feb. 6, 2019) *Sacramento Bee* website: <https://www.sacbee.com/opinion/oped/article225516290.html#storylink=cpy> (as of May 27, 2021).

- 2) The Political Reform Act of 1974, which regulates campaign finance, ethics and conflicts of interest of public officials, and the conduct of lobbyists, lobbying firms, and lobbying employers. (Gov. Code § 81000 et seq.)
- 3) The California Coastal Act of 1976, which establishes the California Coastal Commission and requires specified commissions and agencies, including the Office of Planning and Research, to review the provisions of the act. (Pub. Res. Code § 30000 et seq., § 30415.)

This bill makes numerous provisions in those areas of the law gender neutral, and makes additional nonsubstantive changes.

COMMENTS

1. Gender-neutral language in the law

A recent survey of pronoun use among 40,000 LGBTQ youths by the Trevor Project, a nonprofit dedicated to preventing suicide among LGBTQ youth, found that 25 percent of them used nonbinary pronouns.² California has taken steps to reduce discrimination and harassment faced by many intersex, transgender, and nonbinary individuals on a daily basis. The State has passed significant legislation to protect the LGBTQ community from discrimination as they seek housing, employment, and attend public schools. More recently, SB 179 (Atkins, Ch. 853, Stats. 2017) provided for a third gender option on the state driver's license, identification card, and birth certificate; restructured the process for individuals to change their name to conform with their gender identity; and created a new procedure for an individual to secure a court-ordered change of gender.

California's policy of ensuring that every person receives full legal recognition and equal treatment under the law extends to the very wording of its policies. ACR 260 (Low, Res. Ch. 190, Stats. 2018) called for a coordinated effort among state agencies to draft laws, policies, regulations, and other state agency guidance in a manner that is inclusive of transgender people and people who do not identify with the traditional gender binary. Additionally, certain writing style guides, including the *Chicago Manual of Style* and the *Associated Press Stylebook*, have recently accepted the use of "they" as a singular pronoun in certain cases. The Office of Legislative Counsel has issued similar drafting guidelines. Finally, this Committee's Rules have been drafted in a manner that reflects this convention by using "their" in lieu of "his or her."³

² *Research Brief: Pronouns Usage Among LGBTQ Youth* (Jul. 29, 2020) <https://www.thetrevorproject.org/2020/07/29/research-brief-pronouns-usage-among-lgbtq-youth/> (as of Apr. 10, 2021).

³ Gender-neutral pronouns in last session's version of the Committee's rules prompted a discussion in Committee on grammar and the evolution of language. Conservative bloggers, social media trolls, pundits, and columnists across the nation reported the false narrative that the Committee had altogether

This bill would continue that effort by replacing gendered terms throughout various parts of the code. According to the author: “While California has lead on efforts to promote diversity, equity, and equality, our laws have not kept pace. It’s time we change archaic references within state law that are future forward and adequately represent those who dedicate themselves to our state.”

2. Support

The author writes:

California government code consistently refers to constitutional officers, other government officials, and members of the public as male, or male and female – at least 140 instances in the code sections included in AB 378. In 2021, we well understand that this gender binary does not include everyone who could hold these offices. This antiquated language is not inclusive and does not reflect our California values of equal representation and treatment under the law.

Though this language does not prohibit non-men from holding public offices, the presence in code of “he” in reference to officers like the Secretary of State, or Lieutenant Governor, who are currently women, is outdated and signals exclusion that can reinforce implicit bias.

The bill’s sponsor, Lieutenant Governor Eleni Kounalakis, writes:

Five of California’s constitutional offices are held by women, yet California Code refers to those office holders as men. With a record number of women serving in leadership in our government, the words we use matter, and this update is long past due. AB 378 ensures that the code section referencing these positions is inclusive, no matter who serves in the roles.

As the first woman elected Lieutenant Governor of California, I know firsthand what it means to serve in a role that was not written for you. And yet, California Code is still riddled with male pronouns. I may be the

banned gendered pronouns in its hearings. (*The truth about State Senate Judiciary Committee’s use of gender pronouns, supra*, note 1.) A similarly disingenuous narrative emerged when Congress changed its rules to be gender neutral. (Camille Caldera, *Fact check: US House members can use gendered language; rules change affected one document* (Jan. 16, 2021) USA Today Website, available at <https://www.usatoday.com/story/news/factcheck/2021/01/16/fact-check-house-rules-only-changed-gendered-language-one-document/4175388001/> (as of May 27, 2021).) Lest there be any doubt, it remains the case in the Senate Judiciary Committee that all are welcome to refer to themselves using their chosen pronouns.

first woman elected Lieutenant Governor of California, but I will not be the last.

SUPPORT

Lieutenant Governor Eleni Kounalakis (sponsor)
American Civil Liberties Union
Fair Political Practices Commission
State Controller Betty Yee

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 272 (Laird, 2021) changes numerous provisions throughout existing law to make them gender neutral. The bill also would expand the eligibility for community conservation corps membership to include persons who are 26 years of age.

Prior Legislation: *See* Comment 1.

AB 1817 (Judiciary, Ch. 115, Stats. 2019) removed gendered terms throughout the Family Code.

PRIOR VOTES:

Assembly Floor (Ayes 74, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
