

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Road Repair/Transportation Investment Plan Unveiled

CalChamber Joins Governor, Legislative Leaders



California Chamber of Commerce President and CEO Allan Zarembeg joined Governor Edmund G. Brown Jr. and legislative leaders this week at a State Capitol news conference announcing a

landmark transportation investment to fix roads, freeways and bridges across California and put more dollars toward transit and safety.

“Our transportation infrastructure is critical to California’s economy,” said Zarembeg. “The California Chamber of Commerce supports new revenue to repair and maintain our roads and bridges and to reduce traffic congestion. Every day, California drivers spend too many hours in choking traffic on deteriorating

roads, while businesses face increased costs and falling productivity from congested highways.

“Raising additional revenues for transportation will not be an easy vote when the time comes, but doing nothing will only ensure deterioration in the system necessary to move people and goods. We look forward to our partnership with the Governor and the Legislature on this important issue as we work toward a comprehensive solution.”

Accountability Provisions

According to the Governor’s news release, the \$5 billion-a-year program will cost most drivers less than \$10 a month and comes with strict new accountability provisions to ensure funds can be spent only on transportation.

In addition, the Governor’s news release provided the following information:

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Job Killer Mandates State-Only Beverage Labels



The California Chamber of Commerce has identified a new job killer bill that mandates state-only labeling requirements for sugar-sweetened drinks.

SB 300 (Monning; D-Carmel) establishes the Sugar-Sweetened Beverages Health Warning Act, which would prohibit a person from distributing, selling, or offering for sale a sugar-sweetened beverage in a sealed beverage container, or a multipack of sugar-sweetened beverages,

in California unless the beverage container or multipack bears a health warning.

CalChamber has identified this as a job killer because this warning may lead to unfair competition violations and ultimately class action suits.

Warning Label

SB 300 requires this warning be placed on certain beverages: “STATE OF CALIFORNIA SAFETY WARNING: Drinking beverages with added sugar(s) contributes to obesity, type 2 diabetes, and tooth decay.” The bill is very specific

See New Job Killer: Page 4

New Criminal Background Regulations Coming July 1



The California Office of Administrative Law (OAL) approved new regulations this week relating to the use of criminal

background information in employment decisions.

These regulations will be filed with the Secretary of State’s office and take effect on July 1. Employers will have additional burdens under the new regulations.

As previously reported, the California Fair Employment and Housing Council (FEHC) proposed these criminal history regulations last year.

In addition to reiterating existing prohibitions on the use of criminal history information in California, the regulations require employers to demonstrate that any criminal history information sought is job-related and consistent with a business necessity.

Job-Tailored Consideration

Employers can demonstrate that the consideration of criminal history information is appropriately tailored to the job in one of two ways:

- Employers may conduct an individualized assessment of the circumstances and qualifications of applicants/employees excluded by the conviction screen.

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Job Creator Passes First Committee: Page 3

Labor Law Corner

Rules for Pay During Suspension of Nonexempt Employee



Ellen S. Savage
HR Adviser

What are the rules for paying a nonexempt employee during a suspension?

A nonexempt employee may be suspended without pay. This is true whether the employee is suspended for disciplinary reasons or suspended during an investigation into potential harassment or other misconduct.

Some companies may choose to provide pay to nonexempt employees during an investigatory suspension, or provide pay if the investigation results in a finding that there was in fact no wrongdoing on the part of the employee, but this is not legally required.

A nonexempt employee who is suspended without pay might request to use vacation pay for the days he or she is suspended. However, the law does not require an employer to allow employees to use vacation pay during a suspension, and many employers choose not to allow use of vacation pay so that the employee will feel the financial impact of the suspension.

On the other hand, some employers may wish to implement a policy requiring nonexempt employees to use vacation pay during a suspension, thus reducing an employee's vacation bank for time off that might otherwise be available for taking a vacation in the future. Employers are permitted to have such policies.

Reporting Time Pay

When a nonexempt employee reports to work expecting to work a full shift, but is suspended and sent home early during

that shift, reporting time pay obligations arise. An employee who is sent home as the result of a suspension is entitled to pay for half the scheduled shift.

Thus, an employee who normally works an eight-hour day but is suspended and sent home three hours into the shift would be entitled to pay for the three hours worked plus one additional hour of reporting time pay.

Exempt Employees

Note the rule for paying salaried exempt employees during a suspension differs from the rule for nonexempts. Salaried exempt employees in California may be suspended without pay only if the suspension is for the duration of the employer's full seven-day workweek. No salary deductions may be made for partial workweek suspensions for exempt employees.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

Leaves of Absence. CalChamber. April 6, Sacramento; April 25, Oakland; June 22, Huntington Beach. (800) 331-8877.

Are Drug-Free Workplaces in California Up in Smoke? CalChamber. April 20, Live Webinar. (800) 331-8877.

HR Boot Camp. CalChamber. May 11, Sacramento; May 25, San Diego; June 6, Santa Clara; August 24, Thousand Oaks; September 6, Beverly Hills. (800) 331-8877.

Preventing Discrimination in the Workplace. CalChamber. May 18, Live Webinar. (800) 331-8877.

Nothing Ordinary About Local Ordinances in California. CalChamber. June 15, Live Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. August 18, Sacramento. (800) 331-8877.

Meal and Rest Break Rules. CalChamber. September 21, Webinar. (800) 331-8877.

International Trade

Trade Connect Introductory Workshop. Port of Los Angeles. April 5, Garden Grove. (310) 732-7765.

Export Compliance Training Program. Orange County Center for International Trade Development (CITD). April 17–May 22, Santa Ana. (714) 564-5415.

Startup Showcase Series 2017. Indo-American Chamber. April 19, Milpitas. (510) 841-1513.

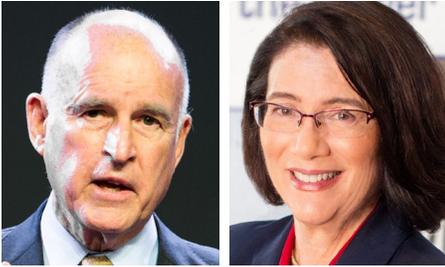
NAFTA's Economic Progress 2017. Port of Los Angeles. April 28, Camarillo. (310) 732-7765.

Asia Society 14th Annual Dinner. Asia Society Northern California. May 4, San Francisco. (415) 421-8707.

World Trade Week Kickoff Celebration
See CalChamber-Sponsored: Page 4



Governor, CalChamber Chair to Speak at Sacramento Host Breakfast



Governor Edmund G. Brown Jr.

CalChamber Chair Susan Corrales-Diaz

Governor Edmund G. Brown Jr. will be the featured speaker at the annual Sacramento Host Breakfast on June 1, co-sponsored by the California Chamber of Commerce and the Sacramento Host Committee.

Preceding the Governor at the podium will be 2017 CalChamber Chair Susan Corrales-Diaz, president and CEO of Systems Integrated.

The annual Host Breakfast provides a venue at which California's top industry and government leaders can meet, socialize and discuss the contemporary issues facing businesses, the economy and government.

Leaders from business, agriculture, the administration, education, the military and legislators from throughout the state are invited to join the discussion.

The breakfast, together with the Host Reception the evening of May 31, provides networking opportunities for business leaders from all industries in California to discuss key issues facing the state.

Walters at Capitol Summit

Kicking off the Sacramento activities on May 31 will be the CalChamber Capitol Summit. The half-day summit will feature political insiders and Cal-

Chamber policy advocates who will address national campaigns and state policy issues.

A featured speaker at the Summit will be longtime political columnist Dan Walters.

In his more than 50 years as a journalist, Walters has written numerous columns about California, first at *The Sacramento Union* and since 1984 at *The Sacramento Bee*. The column is carried by many California publications.

Register by May 19

May 19 is the deadline to register for the Sacramento Host Breakfast, Host Reception and Capitol Summit. The cost is \$65. Space is limited.

For more information or to register, visit www.calchamber.com/2017summit-host.

Job Creator Bill Passes First Committee Hurdle



A California Chamber of Commerce-supported job creator bill providing

small businesses with the tools and resources needed to comply with California's regulations passed an Assembly policy committee this week with no opposing votes.

AB 912 (Obernolte; R-Big Bear Lake) recognizes challenges small businesses face in implementing state rules by allowing adjustment of civil penalties under certain circumstances.

California's complex regulatory scheme is challenging for all employers, but especially small businesses. In recognizing this challenge, California has provided the Governor's Office of Business and Economic Development (GO-Biz) as a resource for small employers to obtain information regarding various obstacles that small businesses face.

AB 912 would further assist small businesses in navigating the regulations in California so that they can comply and grow their business without facing costly enforcement actions for inadvertent mistakes.

Specifically, AB 912 will require state

agencies that adopt regulations to help small businesses understand and comply with those regulations, adopt policies which consider specified circumstances—such as the small business cooperating with authorities and the violation not posing an imminent threat—in assessing penalties against small businesses when there has been a violation. This penalty relief will grant the small employer equitable relief from burdensome administrative penalties.

The growth of small businesses in California is a key component to maintaining a strong economy. By helping small businesses comply with California regulations, AB 912 will help ensure such growth.

Key Vote

AB 912 passed the Assembly Jobs, Economic Development and the Economy Committee on March 28, 6-0.

Ayes: Quirk-Silva (D-Fullerton), T. Allen (R-Huntington Beach), Berman (D-Palo Alto), Cervantes (D-Riverside), Grayson (D-Concord), Steinorth (R-Rancho Cucamonga).

Not voting: Rodriguez (D-Pomona).

The bill will be considered next by the Assembly Accountability and Administrative Review Committee.

Supported Bills Pass

Two other CalChamber-supported bills won unanimous approval from Assembly Jobs, Economic Development and the Economy:

- **AB 86 (Calderon; D-Whittier): Entrepreneur Assistance to State.** The bill creates the opportunity for government operations to improve policies in new and efficient ways by making use of the expertise of successful volunteer entrepreneurs, at no cost to the state. The state would be able to appoint up to 10 entrepreneurs to volunteer with state agencies through the entrepreneur-in-residence program.

- **AB 657 (Cunningham; R-Templeton): Small Business.** AB 657 helps small businesses navigate state regulations by increasing the businesses' ability to contact and obtain assistance from small business liaisons in each agency. Contact information for the small business liaison must be displayed prominently on the agency's website.

AB 86 and AB 657 will be considered next by the Assembly Appropriations Committee.

Staff Contact: Marti Fisher

New Job Killer Mandates State-Only Beverage Labels

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about the size of type, placement of warning and characters per linear inch on each product according to the amount of beverage contained. Vending machines, self-serve dispensers and sit down restaurants all must provide the warning.

CalChamber's analysis finds that this bill exposes manufacturers and retailers of sweetened beverages to significant liability. Consumers would be able to sue for a violation of this new labeling requirement under California's Unfair Competition Law. So not only could a business incur a civil penalty of up to

\$500; it also would have to defend against lawsuits.

It is conceivable that a class action suit would be brought based on the assertion that consuming these beverages contributes to a person's obesity, diabetes and tooth decay, and that companies would be held liable for millions of dollars of awards for a person's choice to consume the beverage.

Manufacturers make and sell products nationwide and globally. SB 300 unfairly burdens these companies with the requirement to specially label products for the California market. Small ethnic businesses

are especially vulnerable as more of their profits are from products made in other countries that may not choose to label for just the California market.

Action Needed

SB 300 will be heard in the Senate Health Committee on April 19. The CalChamber is asking members to contact their senator and members of the committee to urge them to **oppose SB 300 as a job killer**.

An [easy-to-edit sample letter](#) is available at www.calchambervotes.com.
Staff Contact: Valerie Nera

New Criminal Background Regulations Coming July 1

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Before taking an adverse employment action, such as refusal to hire, the employer must give the individual notice of the disqualifying conviction and a reasonable opportunity for the individual to respond and demonstrate that the criminal history exclusion should not apply to his/her particular circumstances. The employer must consider this information and determine whether an exception is warranted.

- An employer may demonstrate that its "bright-line" conviction disqualification policy (one that doesn't contain an individualized assessment of the facts) properly distinguishes between applicants and employees that do and do not pose an unacceptable level of risk and that the conviction being used has a direct and specific negative bearing on the applicant/

employee's ability to perform the duties or responsibilities necessarily related to the position.

Any bright-line rule that includes conviction-related information that is seven or more years old will be presumed to not be sufficiently tailored to meet a job-related/consistent with business necessity defense. The burden will be on the employer to rebut this presumption.

Notice Required

Regardless of whether an employer uses a bright-line policy or conducts an individual assessment, if the employer gets the criminal information from a source other than the applicant or employee (such as through a third-party background check), the employer must provide the individual with notice and the ability to challenge the factual accuracy

of the information. This notice must be provided before any adverse action can be taken.

Even if the employer can show that a criminal history inquiry is job-related/consistent with business necessity, an individual can still bring a discrimination claim if he/she can show that there is a less discriminatory and more effective alternative means of achieving the business necessity.

The California Chamber of Commerce asked the OAL to **reject the regulations** on numerous grounds.

In addition to these new regulations, the California Legislature has introduced legislation (AB 1008; McCarty; D-Sacramento) that addresses the use of prior criminal history information in employment decisions.

Staff Contact: Gail Cecchetti Whaley

CalChamber-Sponsored Seminars/Trade Shows

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Breakfast. Los Angeles Area Chamber. May 4, Los Angeles. (213) 580-7569.
California Pavilion—TUTTOFOOD Milan World Food Exhibition. Northern California-Sacramento Regional CITD and Mission College CITD. May 8–11, Milan, Italy. (408) 855-5390.

23rd Inland Empire Annual World Trade Conference. California Inland Empire District Export Council. May 17, San Bernardino.

26th La Jolla Energy Conference. Institute of the Americas. May 24–25, La Jolla. (858) 964-1715.

NAFSA Annual Conference and Exhibition. NAFSA: Association of Interna-

tional Educators. May 28–June 2, Los Angeles. (202) 737-3699.

SelectUSA Investment Summit 2017. SelectUSA. June 18–20, Washington, D.C. (202) 482-6800.

5th Annual Pacific Cities Sustainability Initiative. Asia Society. June 29–30, Los Angeles. (213) 788-4700.

Tools to stay in touch with your legislators.

calchambervotes.com

Road Repair/Transportation Investment Plan Unveiled

From Page 1

California has not increased the gas tax in 23 years. Since then, California's population has grown by 8 million, with millions more cars and trucks on state roads. Californians also drive more than 350 billion miles a year—more than any other state—yet road and transit investments have not kept pace with this growth.

Each California driver spends approximately \$700 per year in extra vehicle repairs caused by rough roads. If California does not make investments to fix the roads now, it will cost eight times more to replace later.

Legislation

The legislation, the Road Repair and Accountability Act of 2017, SB 1 (Beall; D-San Jose), invests \$52.4 billion over the next decade, split equally between state and local investments:

Fix Local Streets and Transportation Infrastructure (50%):

- \$15 billion in “Fix-It-First” local road repairs, including fixing potholes;
- \$7.5 billion to improve local public transportation;
- \$2 billion to support local “self-help” communities that are making their own investments in transportation improvements;
- \$1 billion to improve infrastructure that promotes walking and bicycling;

- \$825 million for the State Transportation Improvement Program local contribution;

- \$250 million in local transportation planning grants.

Fix State Highways and Transportation Infrastructure (50%):

- \$15 billion in “Fix-it-First” highway repairs, including smoother pavement;
- \$4 billion in bridge and culvert repairs;
- \$3 billion to improve trade corridors;
- \$2.5 billion to reduce congestion on major commute corridors;
- \$1.4 billion in other transportation investments, including \$275 million for highway and intercity-transit improvements.

Ensure Taxpayer Dollars Are Spent Properly with Strong Accountability Measures:

- Constitutional amendment to prohibit spending the funds on anything but transportation.
- Inspector General to ensure Caltrans and any entities receiving state transportation funds spend taxpayer dollars efficiently, effectively and in compliance with state and federal requirements.
- Provision that empowers the California Transportation Commission to hold state and local government accountable for making the transportation improvements they commit to delivering.
- Authorization for the California

Transportation Commission to review and allocate Caltrans funding and staffing for highway maintenance to ensure those levels are reasonable and responsible.

- Authorization for Caltrans to complete earlier mitigation of environmental impacts from construction, a policy that will reduce costs and delays while protecting natural resources.

Guided by the principles set forth by President Ronald Reagan when he increased the federal gas tax in 1982, this transportation investment package is funded by everyone who uses state roads and highways:

- \$24.4 billion by increasing gasoline excise tax 12 cents;
- \$16.3 billion from an annual transportation improvement fee based on a vehicle's value;
- \$7.3 billion by increasing diesel excise tax 20 cents;
- \$3.5 billion by increasing diesel sales tax to 5.75%;
- \$200 million from an annual \$100 Zero Emission Vehicle fee starting in 2020;
- \$706 million in General Fund loan repayments.

Leadership in both the Senate and the Assembly expect the measure to be voted on by Thursday, April 6, according to the Governor's news release.

Staff Contact: Amy Mmagu

Prop. 65 Compliance Challenges Include Warning Rules, Litigation Threat

From Page 5

at trial, businesses often will instead elect to voluntarily provide a warning out of an abundance of caution in order to shield themselves from the inevitable threat of litigation that would otherwise exist if they did not warn.

These types of prophylactic warnings have contributed to the oft-criticized “overwarning” problem under Proposition 65, wherein many Proposition 65 warnings are provided to shield off a legal challenge rather than to warn consumers of actual chemical exposures.

Despite being a criticized practice, overwarning often is the right business decision because it has historically been

an extremely safe course of action from a liability standpoint.

Liability for Not Warning

Since Proposition 65 was enacted more than 30 years ago, legal challenges brought under the law have almost solely and exclusively challenged a business's decision not to warn. Plaintiffs have rarely challenged the *contents* of a provided warning, in great part because the long-standing regulations regarding what constitutes a “clear and reasonable” warning have been relatively straightforward and thus, businesses that provide warnings are less susceptible to legal challenges.

OEHHA's recent regulatory update to

its “clear and reasonable” warning regulations is likely to open up an entirely new type of challenge under Proposition 65 wherein the contents of a warning are challenged as being inadequate. This regulatory development, combined with other developments and recent chemical listings, are likely to make compliance with Proposition 65 more difficult in the future and will almost certainly result in increased enforcement activity under the law.

More Information

For more information, read the full article on Proposition 65 in the California Chamber of Commerce [2017 Business Issues and Legislative Guide](#).

Flood Management Overview Report Spotlights Need for Ongoing Efforts



Generating funding to maintain and upgrade California's aged and extensive flood management infrastructure is a key challenge facing the state, according to a report this month from the Legislative Analyst's Office (LAO).

The flood management infrastructure was not designed to account for evolving statewide goals, scientific knowledge or conditions, notes the March 22 LAO report.

The funding challenge is especially great at the local level where state constitutional provisions constrain the ability to generate additional tax and assessment revenues.

Balancing flood risk with expanding population and development is another key challenge for both state and local governments, the report comments. With state population growth comes a push to develop into new areas, but development in flood-prone areas increases the potential for flood damage.

The report also cites "overlapping and fragmented" flood-related responsibilities among local, federal and state governments for complicating flood management efforts and making implementation of flood projects "especially protracted and difficult."

2017 Flood Damage

Earlier this year, the Governor declared a state of emergency in 52 of the state's 58 counties due to damage from winter storms and flood.

As the report points out, exceptionally high precipitation caused localized flood-

ing, mudslides, flood warnings and road damage throughout the state. Erosion to the main and backup spillway at Oroville Dam led to a risk of catastrophic flooding and evacuation of nearly 200,000 residents.

Since 1992, every county in the state has been declared a federal disaster area at least once due to a flood. Estimates are that 7.3 million people (1 in 5 Californians), \$575 billion worth of structure and crops valued at \$7.5 billion are located in areas that have at least a 1 in 500 probability of flooding in any given year, according to the LAO report.

Benefits of Floods

Floods can have beneficial impacts for both humans and the environment in some cases. Examples cited in the report include replenishing groundwater basins, creating habitat for fish and wildlife, carrying and depositing sediments that improve agricultural productivity, and improving water quality by flushing out contaminants.

Flood management strategies often incorporate leaving floodplains undeveloped and encouraging flooding in certain areas.

Flood Management Approaches

Local, federal and state agencies have developed a variety of physical structures to convey and control water flows and floods. These structures include levees, weirs, detention basins, dams, seawalls and bypasses.

In West Sacramento an effort is underway to enhance floodplain capacity. Setting back 4 miles of the existing levee along the Sacramento River through the Southport project will not only expand the river's width and allow greater access to its original floodplain, but also will create 152 acres of new riparian habitat.

Among strategies used by the Napa River/Napa Creek project was incorporating a dry bypass channel to provide a shortcut for fast-moving water that historically had overtopped the normal pathway of the river. The bypass, completed in 2015, flooded for the first time in February 2017, helping prevent a repeat of the widespread flooding in downtown Napa that occurred during the 2005 storms.

Funding Needs

It has been estimated that between \$2 billion and \$3 billion is spent each year statewide on flood management activities. The majority of the funding is generated and spent by local government entities, which hold the primary responsibility for managing flood risk. The federal and state governments each provide several hundred millions of dollars annually for flood management activities.

Several studies have estimated that reducing flood risk across the state will cost tens of billions of dollars above current expenditure levels over the next couple of decades:

- A 2013 report from the state **Department of Water Resources (DWR)** and **U.S. Army Corps of Engineers** estimated it will cost \$52 billion for 836 flood management improvements and projects across the state that were in the planning or implementation stages at that time. The estimate did not include a time frame for the expenditures. The report also estimated another \$100 billion might be needed to address unassessed flood risks for which specific projects are not yet in the planning or implementation stages.

- The **American Society of Civil Engineers** in 2012 gave the state's levees and flood control infrastructure a "D." Authors of the report card estimated it would cost an additional \$2.8 billion a year for 10 years to make statewide levees and flood control systems safe enough to earn a "B."

- In a 2017 update prepared by the **DWR** for adoption by the **Central Valley Flood Protection Board** (still in draft form), a portfolio of prioritized system-wide capital improvement is estimated to cost between \$13 billion and \$17 billion over 30 years. Another \$5 billion is estimated as being needed over the same period for ongoing annual activities, such as planning, emergency management, and operations and maintenance.

The LAO report concludes that continuing the ongoing investment in flood-related efforts is essential as the state seeks to better manage its flood risk.

The full report is available at www.lao.ca.gov.

Staff Contact: Valerie Nera



LIVE WEBINAR: THURSDAY, APRIL 20, 2017 | 10:00 - 11:30 AM PT

Are Drug-Free Workplaces in California Up in Smoke?

Even with the recent passage of Proposition 64, also known as the Adult Use of Marijuana Act, employers can still prohibit drug use, possession and impairment at work, and test for drug use when appropriate.

The **challenges facing employers** won't be maintaining your drug-free workplace policies and practices, but rather properly communicating and consistently enforcing these policies and practices—now that adults can legally use marijuana for recreational purposes.

Cost: \$199.00 | Preferred/Executive Members: \$159.20



This webinar is mobile-optimized for viewing on tablets and smartphones.

LEARN MORE at calchamber.com/april20 or call (800) 331-8877.

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