

ALERT

CalChamber Opposes Plan to Impose Tax on Services



A recently identified job killer bill that would impose a 3% tax on services purchased by businesses in California was discussed this week as a special order of business in the Senate Governance and Finance Committee.

SB 993 (Hertzberg; D-Van Nuys) has been identified by the California Chamber of Commerce as the 28th job killer bill. SB 993 is a job killer because it adds another layer of taxes onto California companies, raising costs, and puts them at a competitive disadvantage.

Small Business Hit

The negative impacts of SB 993 will hit small businesses the hardest. Although the bill has a limited exemption from this tax increase for certain small businesses, it certainly does not protect all of them. Small businesses depend on the services included under SB 993 to conduct their operations.

Although larger businesses will be able to avoid paying taxes on certain services by bringing them in-house, most small businesses will not be able to do so.

The burden of complying with this
See CalChamber Opposes: Page 4

CalChamber Secures Amendments to Remove Job Killer Tag



A California Chamber of Commerce-opposed job killer has been amended to remove the job killer tag.

Before **AB 1761 (Muratsuchi; D-Torrance)** was amended on May 9, the bill denied hotel guests due process, by requiring hotels to create a blacklist of guests who have been accused, yet not proven, to have engaged in inappropriate behavior toward hotel employees, and precluded the hotel from allowing those guests on the blacklist to enter their properties for three years.

Seeking Changes

CalChamber remains opposed and has proposed amendments that would remove our opposition because the bill still creates unworkable requirements for paid leave, unlimited penalties, and allows for a patchwork of state and local rules in regards to providing protection for hotel employees working alone and the provision of panic buttons.

Even under the amended version of AB 1761, hotel employers in compliance with the provisions of the bill could be subject to ever-changing requirements for new and different equipment, as well as new and different protocols for compliance. Each local ordinance could be different from all other local ordinances.

The result will be a patchwork of requirements that could have owners of
See CalChamber Secures: Page 4



CalChamber Policy Advocate Sarah Boot explains to the Senate Governance and Finance Committee on May 16 why the services tax proposed in SB 993 (Hertzberg; D-Van Nuys) is a job killer that will hurt small businesses and add another layer of taxes when California already has the 48th worst state business tax climate.

Inside

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Labor Law Corner

Use Compensation for On-Call Duty When Figuring Regular Rate of Pay



Barbara Wilber
HR Adviser

When employees are on call, we pay wages for time spent on a call, plus \$100 just for being on call. Is this \$100 used when calculating their regular rate?

Yes, when an employer gives employees money for performing a job or duty, that money is a wage and needs to be included in the regular rate calculation.

Calculation Guidelines

The Division of Labor Standards Enforcement (DLSE) has issued guidance on this issue in its *Enforcement Policies and Interpretations Manual* as stated below:

49.1.2.3 What Must Be Included In Calculating Regular Rate.

Any sum paid for hours worked must, of course, be included in the calculation. Also, any payment for performing a duty must be included. For example, an employment contract may provide that employees who are assigned to be available for calls for specific periods will receive a payment of \$25 for each 8-hour period during which they are “on call” in addition to pay at their regular (or overtime) rate for hours actually spent in making calls.

If the employees who are thus “on call” are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave word where they may be reached, the hours spent “on call” are not consid-

ered as hours worked (See discussion at Section 46.6.3, et seq. of this Manual).

Although the payment received by employees for such “on call” time is, therefore, not allocable to any specific hours of work, it is clearly paid as compensation for performing a duty involved in the employee’s job and, therefore, the payment must be included in the employee’s regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

For more information about calculating the regular rate, review articles on the California Chamber of Commerce HRCalifornia.com website.

Column based on questions asked by callers on the Labor Law Helpline, 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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Labor Law

HR Boot Camp. CalChamber. June 5, Santa Clara; August 21, Sacramento; September 5, Long Beach. (800) 331-8877.

You Can’t Fight City Hall and Their Local Ordinances. CalChamber. June 14, Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. June 21, San Diego; August 10, Oakland. (800) 331-8877.

Lead the Charge: Preventing Sexual Harassment in Your California Workplace. CalChamber. September 17, Pasadena. (800) 331-8877.

HR Checklist for California Supervisors. CalChamber. September 20, Webinar. (800) 331-8877.

Business Resources

TECHSPO LA 2018. TECHSPO. June 13–14, Santa Monica. (800) 805-5385.

International Trade

21st Annual International Business Luncheon. World Trade Center Northern California. May 24, Sacramento. (916) 319-4272.

Startup Lebanon—Executive Innovation Retreat. American Lebanese Chamber of Commerce. June 4–8. San Francisco.

ExporTech Los Angeles. Los Angeles Harbor College. June 19, July 17, August 21. Wilmington, CA. (310) 984-0728.

SelectUSA Investment Summit. U.S. Department of Commerce. June 20–22, Oxon Hill, MD. (800) 424-5249.

Vehicle Aftermarket Trade Mission to Chile. Auto Care Association and International Trade Administration. August 21–22, Chile. (301) 654-6664.

83rd Thessaloniki International Fair. HELEXPO. September 8–16, Thessaloniki, Greece.

China International Import Expo. China International Import Export Bureau. November 5–10, Shanghai, China.

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Capitol Insider Blog Posts Examine Styrofoam, Corporate Board Quotas

Capitol Insider

presented by CalChamber

The *Capitol Insider* blog presented by the California Chamber of Commerce offers

readers a different perspective on issues under consideration in Sacramento.

Two recent posts, reprinted below, examine the politics behind styrofoam container legislation and a proposal to set a quota of women members for the

boards of publicly traded corporations headquartered in California.

Sign up to receive notifications every time a new blog item is posted at capitolinsider.calchamber.com.

Environmental Groups on Styrofoam Containers: Ban or Bust

By Adam J. Regele, CalChamber Policy Advocate



A number of California bills (SB 568; SB 705; SB 1335) have been introduced over the years

targeting non-recyclable polystyrene single-use containers, commonly known by the brand name Styrofoam.

Proponents of these bills consistently argue non-recyclable, single-use Styrofoam containers pollute the environment and fill California landfills. It is surprising then, a bill introduced this year specifically addressing those concerns was killed by these very same proponents.

Assembly Member Evan Low (D-Silicon Valley) was forced to pull his AB

2921 recently after fierce opposition from environmental organizations.

AB 2921 would have created the Expanded Polystyrene Food Service Packaging Recovery and Recycling Act. The act sought to impose additional fees on manufacturers to fund public programs that increase community access to recycling centers and promote efforts to recycle and reduce expanded polystyrene single-use containers going into our landfills and natural environment.

The bill was consistent with California law mandating a 75% statewide waste diversion goal by 2020 and consistent with the rationale articulated in earlier bills supported by these same environmental organizations.

Expanded polystyrene single-use containers are 100% recyclable and can be

compacted and transformed into items like clothes hangers, park benches, flower pots, toys, rulers, stapler bodies, seedling containers, picture frames, architectural molding and back into containers. Alternatives such as paper foodservice disposables, on the other hand, are rarely recycled.

This begs the question, why would these organizations now oppose a bill providing more funding for recycling and the diversion of expanded polystyrene entirely paid for by manufacturers?

As the tale of AB 2921 makes clear, these organizations are no longer drawing any distinction between non-recyclable and recyclable Styrofoam. The battle line over polystyrene single-use containers has been redrawn and environmental groups are now positioning as a ban or bust on this issue.

Legislating Is Hard When Up Against Reality

By Loren Kaye, President, California Foundation for Commerce and Education



Lawmaking would be a lot easier if the real world didn't intrude.

Take SB 826,

a bill by Senator Hannah-Beth Jackson (D-Santa Barbara) that would set a quota of women board members for publicly traded corporations that are headquartered in California. Troubled that women amount to more than half the population, but only lightly populate corporate boards, her bill would fine these corporations if women did not comprise about half the board seats (depending on the size of the board) by 2021.

Here's where the real world inconveniently steps in.

- First, change is happening on corporate boards.

According to the [Harvard Law School Corporate Governance Forum](#), the percentage of women currently holding Fortune 500 board seats has increased by 21.2% since 2012, and the number of Caucasian/white men has decreased by 6.4%. At the current rate of progress, the number of women and minorities may increase to 40% (a target percentage set by the Alliance for Board Diversity) by year 2026, assuming that the percentage of Caucasian/white men on boards continues to decrease by 0.9% per year. This

trend is happening without government interference.

- Second, where government has tried to mandate board diversity, the results haven't been very impressive. Beginning with Norway a decade ago, several European nations implemented mandatory gender quotas for corporate boards. (The penalty was corporate dissolution, so compliance was high.) Yet, according to a [survey of these mandates](#) in the *Economist*, "the evidence so far also undermines the business case for quotas. Studies from at least six countries on companies' performance, decision-making and stock market returns fail to show

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new tax will also be more challenging for small businesses that provide services—as they likely have limited resources to set up a new tax system within their companies. Additionally, such small businesses could suffer a loss of customers and revenue due to higher prices for their services.

Even though SB 993 focuses on business-to-business transactions, and attempts to avoid raising taxes on individuals, it would increase the costs of producing and selling goods here in California. These increased costs ultimately would be passed on to consumers—with the higher prices having a disproportionate impact on working families.

Competitive Disadvantage

SB 993 will unquestionably put California businesses at a competitive disadvantage. For businesses that must purchase services, this new 3% tax has no counterpart in the vast majority of other states, and will instantly add another anti-competitive burden with no countervailing competitive benefit. These companies would need to increase prices, reduce expenses—or perhaps relocate—to accommodate this new burden.

If the new services tax is adopted, any other state in the country will have a more business-friendly tax environment than California and lower prices for the services covered. California does not

need another disincentive for businesses to stay in California, locate in California, or grow in California.

Action Needed

The ramifications of SB 993 will be discussed again by Senate Governance and Finance on June 13. Committee Chair Mike McGuire (D-Healdsburg) said the hearing will include a panel of experts in order to do a “deeper dive” into the issue of taxing services.

CalChamber is urging members to contact their senators and members of the committee and tell them to **oppose SB 993** as a job killer.

Staff Contact: Sarah Boot

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multiple properties in different cities with not only potentially different panic buttons for different locations, but also different protocols, leave policies, complaint response procedures and civil penalties.

This lack of conformity and predictability for businesses creates costly

equipment purchase requirements and administrative burdens, which is why the state occupies this space so that employers can create consistent policies across the state. CalChamber and the coalition of industry associations and local chambers of commerce are urging the bill’s author to remove this provision.

Action Needed

AB 1761 is on the Assembly Floor. CalChamber is asking members to contact their Assembly representatives and urge them to vote “no” on AB 1761, unless it is amended as proposed by CalChamber and the coalition.

Staff Contact: Marti Fisher

Legislating Is Hard When Up Against Reality

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that quotas make a consistent difference, good or bad.”

- Third, mandating gender quotas is probably unconstitutional. The equal protection clauses of both the United States and **California constitutions** prohibit job discrimination on the basis of, among other things, gender. In particular, the California Constitution states, “A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.”


- Fourth, the bill steps all over the modern, common law “internal affairs doctrine,” a tradition memorialized in a California statute that corporate governance is ruled by the law of the state of

incorporation—to avoid multi-state companies having to reconcile conflicting laws in the states in which they do business.

- Finally, the bill betrays a fundamental ignorance as to how corporate directors are selected. As one state senator remarked during a hearing on the bill, “We hold the power of government. When is it appropriate for government to make these decisions? Directors aren’t determined by corporations; they’re determined by shareholders.” No statute can force a shareholder to cast a particular vote.

Sadly, reality so far has not been an impediment to this bill, which has advanced through two policy committees and is awaiting its fate in the Senate’s fiscal committee.

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to Tough
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Governor's Revised Budget Plan Saves Money for Rainy Day; No New Taxes



Last week, Governor Edmund G. Brown Jr. released a revised version of his state budget proposal for 2018–19. The Governor's final budget continues to show fiscal prudence, adding more

than \$13 billion to the state's rainy day fund and using projected billions in additional revenues for one-time spending.

"We're nearing the longest economic recovery in modern history, and as Isaac Newton observed: What goes up must come down," said Governor Brown. "This is a time to save for our future, not to make pricey promises we can't keep. I said it before and I'll say it again: Let's not blow it now."

Education

The budget proposal increases K–12 school funding by about \$4,600 per student compared to 2011–12 levels. The state will fully implement the Local Control Funding Formula, an allocation that eliminates most categorical funding programs in favor of aiming supplemental funding toward poor students, English learners and children in foster care.

The May Revision maintains the 3% increase in funding for higher education proposed in January (2% for the University of California and 1% for the California State University), while continuing to keep tuition levels unchanged at both systems.

Since the end of the Great Recession, the UC system has received \$1.2 billion in funding, the CSU system has received \$1.6 billion, and community colleges have received \$2.4 billion.

In addition, the May Revision provides each university system with \$100

million in new, one-time funding for deferred maintenance.

The revised budget also refines the state's California Online College plan and the new funding formula for community colleges.

K–12 Workforce Program

As in January, the Governor proposes \$200 million to support K–12 career technical education programs that are aligned with needed skills for industry and regional workforce development efforts.

The May Revision clarifies elements of the Strong Workforce Program. It calls for technical assistance providers and workforce pathway coordinators, and additional resources to administer regional grants.

Rainy Day Reserve

The May Revision maintains the January budget commitment to fully fill the rainy day reserve fund created by voters in 2014. The administration projects the fund will have a total balance of \$9.4 billion by the end of the current fiscal year, growing to \$13.8 billion by the end of 2018–19.

The budget also proposes to direct an extra \$3.2 billion into the state's traditional budget reserve fund.

New Revenues

Since January, the state's revenue projections have increased. Now California anticipates \$8 billion in higher revenues through 2018–19.

The administration reports the increased revenue will enable the state to keep its existing commitments to increase funding for Medi-Cal, Cal Grants, child care, In-Home Supportive Services and foster care reform, among other programs.

The revised budget proposes allocat-

ing the majority of the remaining funds for one-time expenditures in three areas:

- **Infrastructure:** \$2 billion to help offset huge liabilities from years of deferred maintenance for universities, courts, state facilities and flood control.

- **Homelessness:** \$359 million to help local governments across the state bridge the gap until new funding flows from new housing bills signed by Governor Brown last year.

- **Mental health services:** \$312 million for programs that help people with mental illness, including training for mental health professionals and early identification of mental health problems. This includes \$254 million to help counties serve youth with mental illness.

In addition, to help address the state's housing shortage, the May Revision also proposes to place the \$2 billion "No Place Like Home" bond on the November ballot, which would expand housing opportunities for Californians with mental illness.

Climate Change

To date, the state has appropriated \$6.5 billion in cap-and-trade auction proceeds to various programs. Earlier this year, the administration allocated \$1.25 billion in cap-and-trade auction funds to continue the state's efforts to reduce greenhouse gas emissions and combat climate change.

The May Revision proposes \$96 million, which includes additional auction proceeds and other funds, to implement the Forest Carbon Plan and take other actions to protect California's forests against the increasing threat of disastrous wildfires. This \$96 million is on top of \$160 million proposed in January's cap-and-trade expenditure plan to support forest improvements and fire protection.

For details on the Governor's May Revision, visit www.ebudget.ca.gov.

18 CalChamber Member Companies Among Best Workplaces in San Francisco Bay Area



Eighteen California Chamber of Commerce member companies were recently selected as among the “Best

Places to Work” in the Bay Area by the *San Francisco Business Times* and the *Silicon Valley Business Journal*.

The list, which is compiled annually as a joint project by the publications, highlights Bay Area companies whose employees rate them highest on such values as a collaborative culture, solid compensation and benefits, and good management practices.

Companies that made the best places to work list were featured in a special April edition of the *San Francisco Business Times* and the *Silicon Valley Business Journal*.

The companies featured on the list were categorized into five groups: Largest (employers with more than 1,000 employees); Large (employers with 250-999 employees); Midsize (employers with

100-249 employees); Small (50-99 employees); and Smallest (employers with 25-49 employees). Companies with fewer than 25 employees were not included.

CalChamber Members

Below are the CalChamber member companies recognized in the “Best Places to Work in the Bay Area” list:

Largest

- **Hyatt Hotels of the Bay Area**, a hotel hospitality chain, was ranked No. 2.

- **Rosendin Electric**, an electrical construction firm, was ranked No. 6.

Large

- **Udemy**, a platform for learning and teaching online, ranked No. 1.

- **Golden State Lumber**, a building materials retailer, ranked No. 2.

- **Optimizely**, an experience optimization platform, ranked No. 4.

- **Hotel Nikko San Francisco**, hotel/hospitality, ranked No. 11.

- **Prometheus Real Estate Group**, largest private owner of multifamily properties in the San Francisco Bay Area, ranked No. 22.

- **Hanson Bridgett LLP**, law firm, ranked No. 33.

Midsize

- **Dynamic Signal**, an employee communication and engagement platform, ranked No. 4.

- **Filice Insurance Agency**, employee benefits and human resources compliance, rated No. 5.

- **Syserco**, an energy management and services company, ranked No. 6.

- **Dome Construction Corp.**, a general contractor, ranked No. 20.

- **Nevro**, a medical technology company, ranked No. 24.

- **Course Hero**, an online learning platform, ranked No. 25.

- **1st United Credit Union**, a credit union, ranked No. 29

- **Farella Braun + Martel LLP**, a law firm, ranked No. 31.

Small

- **ANX Home Healthcare**, a home healthcare provider, ranked No. 5.

- **Freed Associates**, a health care consulting firm, ranked No. 23.

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Readers looking for an easy way to stay up-to-date on proposed state and federal laws or regulations of interest to employers can download the *CalChamber Alert* app at www.calchamberalert.com/app.

In addition to coverage of the CalChamber’s pro-jobs advocacy, the *CalChamber Alert* offers explanations of major court decisions affecting employers and the economy; special reports on job killer bills, the economy, ballot measures and legislative vote records; plus information on CalChamber compliance products and services.

A regular feature is a popular column answering common California employment law questions.

The latest version has been optimized for greater speed on iOS or Android platforms.



CalChamber Calendar

Capitol Summit:

May 23, Sacramento

International Forum:

May 23, Sacramento

Water Committee:

May 23, Sacramento

Board of Directors:

May 23–24, Sacramento

Host Breakfast:

May 24, Sacramento

CalChamber Urges Congress to Act on North American Free Trade Agreement



The California Chamber of Commerce is **urging Congress to approve** a renegotiated

North American Free Trade Agreement (NAFTA) quickly in the face of multiple deadlines for adoption of a modernized and rebalanced pact.

U.S. House Speaker Paul Ryan has said Congress must receive the renegotiated NAFTA by May 17 to meet requirements of Trade Promotion Authority guidelines and the U.S. congressional calendar. U.S. Commerce Secretary Wilbur Ross has indicated the NAFTA negotiations must be completed by the end of May to have a 2018 congressional vote, and the July 1 Mexico election date looms.

Ongoing Talks

According to U.S. Trade Representative Robert Lighthizer, for many weeks now, the United States, Mexico and Canada have engaged in intensive, continuous discussions to renegotiate NAFTA, building on the seven rounds of rigorous negotiations that have taken place since August 2017.

There is a sense of urgency because time is running short to get the NAFTA deal to Congress before the end of the legislative session. The renegotiated NAFTA agreement is operating under Trade Promotion Authority (formerly called fast track trade negotiating authority). This is the process by which Congress gives authority to the President and/or U.S. Trade Representative to enter into trade negotiations in order to lower U.S. export barriers.

Once legislation is submitted, under Trade Promotion Authority, both houses of Congress will vote “yes” or “no” on the agreement with no amendments, and do so within 90 session days (not to be confused with a treaty, which is “ratified” by the U.S. Senate).

During negotiations, however, there is a process for sufficient consultation with Congress.

“The negotiations have covered a large number of very complex issues, especially those objectives outlined by Congress as part of the bipartisan Trade Promotion Authority, such as intellectual property, dairy and agriculture, de minimis levels, energy, labor and more,” said Lighthizer in a May 14 statement. “The current NAFTA is a seriously flawed trade deal, and the Trump administration is committed to getting the best possible trade agreement for all Americans. The United States is ready to continue working with Mexico and Canada to achieve needed breakthroughs on these objectives. Our teams will continue to be fully engaged.”

CalChamber Position

The CalChamber understands that NAFTA was negotiated more than 25 years ago, and, while our economy and businesses have changed considerably over that period, NAFTA has not. We agree with the premise that the United States should seek to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under NAFTA.

The provisions of the NAFTA with Canada and Mexico have been beneficial for U.S. industries, agricultural enterprises, farmers, ranchers, energy companies and automakers. Any renegotiation

of NAFTA must recognize the gains achieved and ensure that U.S. trade with Canada and Mexico remains strong and without interruption.

The CalChamber actively supported the creation of the NAFTA among the United States, Canada and Mexico, comprising 489.5 million people with combined annual trade with the United States being around \$1.139 trillion in 2017. In 2017, goods exports exceeded \$525.46 billion while goods imports totaled nearly \$614.02 billion.

The CalChamber’s longstanding support for NAFTA is based upon an assessment that it serves the employment, trading and environmental interests of California and the United States, as well as Canada and Mexico, and is beneficial to the business community and society as a whole. Since 1993, trade among the three NAFTA countries has nearly quadrupled.

Mexico and Canada are California’s largest and second largest export markets. A successful renegotiation of NAFTA will benefit the California economy and jobs.

Action Needed

CalChamber is asking members to contact their representatives in Congress and **urge them to vote to support** the modernized and rebalanced NAFTA agreements in time for a full vote on Congress this calendar year.

The CalChamber continues to support dispute settlement provisions in the agreement, but does not support the proposed five-year sunset clause, as a forced re-examination of the pact on such a short timeframe causes uncertainty for all parties.

Staff Contact: Susanne T. Stirling

Tools to stay in touch with your legislators.

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