

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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Governor Proposes Budget to 'Live Within Our Means'

Suggests Structural Change to Align Spending, Revenue

Governor Arnold Schwarzenegger this week unveiled a budget plan to move California toward fiscal stability without tax hikes by holding spending increases below anticipated revenue growth.

The Governor's plan proposes to increase state spending overall by just 4.2 percent, while including a 7.1 percent increase in General Fund spending for education.

In presenting his budget proposal, the Governor called for structural changes to align state spending with revenues and

end the built-in budget gap that has plagued the state in recent years. Under his plan, if state spending increases above its revenues, "then we cut our spending to live within our means," the Governor said.

Chamber Comment

California Chamber of Commerce President Allan Zarembeg commented, "The Governor has taken a courageous stand to finally bring the budget under

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Finance Director Speaks at Chamber Luncheon



State Finance Director Tom Campbell shares a lighthearted moment with the California Chamber of Commerce Luncheon Forum audience before delving into the deliberations that went into developing the Governor's 2005-06 budget proposal. At right is Chamber President Allan Zarembeg.

Support Grows for Meal/Rest Period Rule Simplification



The California Chamber of Commerce has received numerous comments from members in support of the Chamber-supported state proposal to simplify the rules

governing when employees should take a break from work for meals and rest periods.

The comments support the Chamber's call for more flexible rules that allow workers to eat and rest when they are hungry or tired, rather than at a time set by state bureaucrats.

The proposed regulations will clarify sections of the Labor Code that were added in 2000, but have been subject to considerable misinterpretation due to conflicting opinion letters issued by the Division of Labor Standards Enforcement (DLSE) and further changes to the Labor Code that now differ from the Industrial Welfare Commission orders, according to DLSE.

DLSE has rescinded the conflicting opinion letters and will be applying the

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Labor Law Corner

Employer Should Have Valid Cause for Dismissal When Planning Layoff



Susan Kemp
Senior Labor Law
Counsel

We are planning layoffs. Can we lay off an employee who is on a workers' compensation leave of absence, pregnancy disability leave or family/medical leave?

Employees who are on a protected leave of absence do not have greater

rights than anyone else. You may consider employees on a protected type of leave for layoff. You should, however, use the same criteria for determining which employees will be included in the layoff. You should not choose to lay off only those employees who are already on a leave of absence.

Dismissal Criteria

Criteria you may use for determining layoffs include:

- seniority;
- job duties;
- department; and
- performance.

Required Action

If you are going to make a layoff decision on the basis of job performance, it should be well-documented, and employees should be aware of any performance deficiencies.

All employees who will be laid off, including those on a leave of absence,

should receive any required advance notices (state or federal in the case of a mass layoff or plant closing). See the *2005 California Labor Law Digest* for additional information on required notices for a mass layoff or plant closing.

An employer that is not subject to the legally required notices should provide all employees with the same information about the layoff at the same time.

It is also recommended that employers consult with legal counsel before making final decisions about layoffs. Employers cannot use salary alone as a basis for a layoff decision, because it usually will result in discrimination on the basis of age (over 40).

The Labor Law Helpline is a service to California Chamber preferred-level members and above. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or e-mail: helpline@calchamber.com.

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Seminars of Interest to Business

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

Best Practices in Leadership. Claremont McKenna College Kravis Leadership Institute. February 25-26, Claremont. (909) 607-8111.

Health Care

Health Care in California: Confronting the Future. The Communications Institute. February 8, San Diego. (626) 796-4747.

International

Australia Week 2005. Invest Australia. January 18. Santa Monica.

erin.creane@investaustralia.gov.au
California Council for International Trade Policy Forum. California Council for International Trade Policy. February 23-25. San Diego. (619) 615-0868.

Labor Law

Labor Law Training Seminars.
California Chamber of Commerce.

January 20, Irvine; January 21, San Diego; January 26, Santa Clara; January 27, Oakland; February 3, Sacramento (sold out); February 17, Sacramento. (800) 331-8877.
Labor Law Training Web Seminar. California Chamber of Commerce. March 3. (800) 331-8877.

Chamber Calendar

Luncheon Forums:

January 27, February 10, Sacramento.

**Next Alert:
January 28**

Report: Funding Diversions Bringing State Transportation Programs to Halt

Governor Proposes Constitutional Amendment to Protect Transportation Funds

“California’s transportation program is in crisis and on the verge of collapse.”

These are the opening 12 words of the annual report the California Transportation Commission (CTC), delivered to the Legislature on January 5.

The CTC report went on to state, “The near elimination of the state transportation construction program over the past two years is unprecedented, the result of a basic structural problem in California’s system of transportation financing.”

In his State of the State address the same day, Governor Arnold Schwarzenegger emphasized California’s need to build roads. Acknowledging the need to end the recent annual “borrowing” of transportation funds for other budget items, the Governor incorporated in his latest budget proposal a call for a constitutional amendment to ban such borrowing in the future, along with other reforms to keep state spending in line with revenues.

Commission Report

The CTC performs the vital function of making specific project-by-project allocations based on the availability of state and local funds from various transportation accounts.

The CTC report noted that over the last four years, increasing amounts of transportation funds have been diverted to close the ongoing General Fund deficit. For the last two years, according to the CTC report, a lack of funds has forced it to stop making new allocations to projects ranging from safety improvements to new construction.

Cities and counties also have not been receiving the transportation dollars that were promised for use on local streets and roads. About \$2.6 billion in state and local transportation projects should be ready to go to construction in 2005, but will be delayed due to lack of funding, the CTC report states.

The CTC points out that some projects have been kept on schedule by



California’s transportation program, including its highways, is suffering from a lack of funds, according to the latest report of the California Transportation Commission.

allowing local agencies to borrow against future receipt of funds or by issuing bonds against future federal apportionments, but also points out that such borrowing is reaching its limit as the current flow of transportation dollars is placed in jeopardy.

System in Disrepair

The CTC report underscores that California’s highway system, once the envy of the nation and the world, is slowly falling into disrepair. The CTC points out that until a few years ago, the state transportation system relied almost exclusively on the gas tax and truck weight fees to build and maintain state and local roads. These funds, protected by Article XIX of the state Constitution, provided a stable, although diminishing, source of funding against which to plan long-term transportation projects.

The buying power of the gas tax has declined over time. As inflation has eaten into the value of the tax and as automobiles have become more fuel efficient, the gas tax actually has contributed less in revenue per mile traveled.

In addition, the CTC points out, the Northridge and Loma Prieta earthquakes

diverted billions of dollars from new construction into seismic retrofit projects. This impact still is being felt as the costs for repairing the San Francisco Bay Bridge continue to increase. Also, failure by Congress to pass a new federal transportation funding bill means that California continues to receive the same level of funding because the federal act expired in 2003.

Budget Impact on Transportation

The CTC report also illustrates that state budget problems have had and will continue to have the greatest negative impact on the state transportation program.

- Following passage in 2000 of the Traffic Congestion Relief Act, which earmarked gasoline sales tax revenues for transportation, erosion from other transportation programs began almost immediately as the state’s General Fund condition began to worsen.

- In 2001-02, more than \$4.6 billion in transportation funds was borrowed to cover the General Fund allocations to the Traffic Congestion Program. Cash balances maintained in these accounts to cover future years’ obligations were reduced to barely meet the short-term cash needs of a limited number of projects.

- In 2002-03, more than \$800 million in additional borrowing was authorized.

- In 2002, 69 percent of California voters joined the Chamber in supporting Proposition 42 to dedicate gas sales taxes permanently for transportation projects. Nevertheless, that year, the Legislature set aside the protections of Proposition 42 and diverted more than \$850 million back to the General Fund for the 2003-04 budget.

- The 2004-05 state budget again diverted most of Proposition 42 revenues back to the General Fund, but Governor Schwarzenegger earmarked up to \$1.5 billion from bonding Indian tribal gaming revenues to make up the differ-

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Support Grows for Meal/Rest Period Rule Simplification

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new rules as the official enforcement policy on meal breaks from this point forward. Employers who accurately follow the proposed rules will be deemed in compliance with California meal break requirements.

New Rules Provide Flexibility

The proposed permanent regulation provides workers with additional flexibility by clarifying that:

- Workers working less than six hours in a day can mutually agree with their employer to waive the meal period.

- Workers working between six and 10 hours in a day will be able to take their meal period at a time after the sixth hour, as long as the employer ensures that the worker had time available and the opportunity to eat before the end of the sixth hour.

- Workers working between 10 and 12 hours may mutually agree with their employer to waive the second meal period if the worker took the first meal period.

- Meal breaks can be taken at any point from the beginning of the fifth hour of work to the end of the sixth hour of work.

Businesses Support Change

The Chamber's call for employer action brought enthusiastic messages of support from a number of businesses:

- The **human resource manager from a manufacturing company** wrote, "Please add my voice supporting the rule change covering meal and rest breaks in order to provide our workers more flexibility. Currently our employees begin

their day at 5:30 a.m. or 5:30 pm. and work 12-hour shifts on a 4-3-3-4 work schedule. In order to comply with the current meal rules, our a.m. employees are starting lunch at 10:30 a.m. — they hate it!"

- A **Bay Area small business owner and retail employee** wrote, "I especially support the flexibility to take the meal break anytime between the fifth and sixth hour. When you are in the middle of helping a customer, you can't just say, 'Excuse me, I have to leave because I have been here five hours now.'"

- **One restaurant owner** wrote, "I encourage you to change and simplify the rules covering meal and rest breaks in order to provide workers/businesses more flexibility. I own a restaurant, and currently we have to force our employees to take a break due to time/hour constraints vs. allowing them to have a break when they want it. It is very difficult to run a business this way. Ten-minute rest periods, five-hour time regulations, 30-minute breaks at certain time periods, it's too confusing."

- A **human resource director in Fresno** wrote, "Our California laws to protect the worker, although passed with the highest and most noble intentions, often turn out to be onerous and difficult for the very employees they are designed to protect. Anytime we can simplify these complex rules so that both the employer and employee can better understand them — we not only should do so, but are obligated to do so."

Employer Action Needed

Employers and employees are

strongly encouraged to write letters in support of simplifying the rules covering meal and rest breaks in order to provide their workers more flexibility. **The deadline to submit written comments is 5 p.m. on March 2, by mail, e-mail or fax.**

Send letters of support to: Allen Perloff, Senior Deputy Labor Commissioner, Division of Labor Standards Enforcement, 9th Floor West, P.O. Box 420603, San Francisco, CA 94142; E-mail: dlsecomments@dir.ca.gov; Fax: (415) 703-4807

Please send copies of your comments to the California Chamber at ccc@calchamber.com or fax (916) 325-1272.

Task Force Forming

The Chamber is forming a task force to work on the implementation of the proposed rule changes. Readers who would like to join the task force, or are interested in testifying at one of the following hearings, please contact julianne.broyles@calchamber.com

Hearings

The public hearings are scheduled for:

- February 4 in Los Angeles;
- February 8 in San Francisco; and
- March 2 in Fresno.

A copy of the proposed regulations, including examples, is available at www.dir.ca.gov/dlse/MealandRestPeriod2.pdf.
Staff Contact: Julianne Broyles

Funding Diversions Bringing State Transportation Programs to Halt

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ence. Those funds are the subject of a lawsuit, however, and the CTC voiced doubt that they will be available for allocation in 2005.

Difficult Transition

The CTC points out that the future of transportation in California hinges a great deal on what decisions are made concerning the 2005-06 state budget.

Due to the state's continuing budget

problems, the Governor has proposed to borrow the Proposition 42 funds just one more time in 2005-06 and will support a constitutional amendment banning such borrowing beginning with the 2007-08 fiscal year.

Given that 75 percent of all new construction is funded from Proposition 42 revenues, the CTC warns that a loss of Proposition 42 funds in 2005-06 will mean a reduction of more than \$3.6 billion and possible collapse of the state

transportation program.

The California Chamber of Commerce is committed to working with the Governor to promote policies aimed at continuing economic recovery while balancing the budget in a way that stimulates and sustains economic growth. The state's history shows that getting the budget under control will be a key to ensuring resources are available to fund transportation and other necessary programs.

Staff Contact: Dave Ackerman

State High Court Agrees to Review Case Affecting Profit-Sharing Bonuses



At the request of the California Chamber of Commerce and other business groups, the California Supreme Court has agreed to

review a case that will affect businesses' ability to offer profit sharing bonus plans to employees.

"It's encouraging to see the Supreme Court taking an interest in a case that will have a huge impact on companies' ability to share prosperous times with employees," said Erika Frank, Chamber legislative advocate and general counsel. "Ultimately the court's decision also will determine if employees can have the opportunity to increase their income and benefit from improvements they choose to make on the job."

Court Review

The Chamber, in a friend-of-the-court

brief, had asked the Supreme Court to review lower court decisions involving the profit sharing plan offered by Ralphs Grocery Company.

Two Court of Appeal decisions preclude businesses from offering profit sharing bonus plans to employees if profit is calculated by well-recognized accounting principles of subtracting expenses from total revenue.

If the decisions are left in place, businesses will face the decision of either creating a new way to calculate profit (one that does not take into account controllable expenses) or eliminating profit sharing plans.

Neither decision benefits either businesses or California employees, the Chamber pointed out in its request to the Supreme Court to review the case. Both untenable options eliminate the ability of employers to financially reward employees for contributing to controlling expenses.

"Although California law precludes employers from deducting certain expenses from an employee's wage or salary, we believe it does not prevent adding a bonus in a manner that promotes safety and rewards employees'

accomplishments," said Paul Schechter, employment law counsel for the Chamber. "The court's review of this case will help clarify the matter."

Chamber Request

The Chamber asked the Supreme Court to consider whether profit sharing bonus plans that reward employees with bonuses after considering workers' compensation expenses and cash shortages, breakage or loss of equipment violate state law.

The Chamber noted that the Court of Appeal decisions limit the flexibility businesses once had in providing economic incentives to employees and eliminate an opportunity for employees to boost their own income through improved performance.

In addition, the Court of Appeal decisions open California businesses to another basis for filing frivolous lawsuits.

The Chamber often represents the interests of California business in the courts by filing friend-of-the-court briefs in cases involving issues of paramount concern to the business community.

Staff Contact: Erika Frank

Is Your Employer Poster Up-to-Date? Time to Check

The start of the new year is a good time to check on whether the mandatory notices posted in the workplace are up-to-date. Employers who did not switch to the new workers' compensation poster last year should be aware that there is a mandatory change which has been in effect since August 1, 2004.

Several other required posters include recommended changes, conforming to state agency formats or minor wording changes. Posters with recommended changes include: Notice to Employees (Unemployment Insurance, State Disability Insurance and Paid Family Leave); Discrimination and Harassment in Employment Are Prohibited by Law; and California Minimum Wage.

The California Chamber of Commerce combines all 15 state and federal required notices into one 26" x 39" sheet. The poster includes a step-by-step checklist so business owners can make sure they are displaying the poster correctly.

The *Employer Poster* must be posted in a conspicuous place in the workplace where all employees and applicants can see it. It must also include information about the employer's workers' compensation benefits, pay day schedule and emergency contacts.

Other Required Postings

● **IWC Wage Orders** - All employers must post the industry-specific Wage Order appropriate to their business. To

determine the correct Wage Order to post, visit www.hrcalifornia.com/wageorders.

● **Log 300** - To find out whether your company is required to record workplace injuries and illnesses, use the online tool at www.hrcalifornia.com/log300.

● **Other** - Unique posters and notices may be required depending on certain circumstances such as heavy equipment or forklifts, chemical use and government contracts. For more information, visit www.hrcalifornia.com.

A chart showing all required posters with version numbers also is available free at www.hrcalifornia.com.

The *Employer Poster* is available for purchase at www.calchamberstore.com.

Governor Proposes Budget to ‘Live Within Our Means’

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control. It may be difficult, but it is absolutely necessary.”

The Chamber has pointed out repeatedly that resolving the state’s chronic budget deficit is critical for the state’s economic and job growth. Persistent state deficits create continued uncertainty and instability in the economy and discourage business investment here.

Governor’s Reform Proposal

The Governor’s reform plan focuses on spending control, calling for an end to “auto-pilot formulas” that permit state spending to grow faster than revenues.

As the Governor pointed out in presenting the budget and Finance Director Tom Campbell reiterated at the Chamber’s Luncheon Forum this week, it is a good year and the state is anticipating a \$5 billion increase in revenues — but barring no action, expenditures are slated to increase by \$10 billion.

Campbell said he had advised against tax increases, commenting he had been a legislator representing Silicon Valley when jobs were leaving the state.

“Increase taxes in this environment and you are going to lose jobs in California,” Campbell said he told the Governor. The Governor agreed, Campbell added.

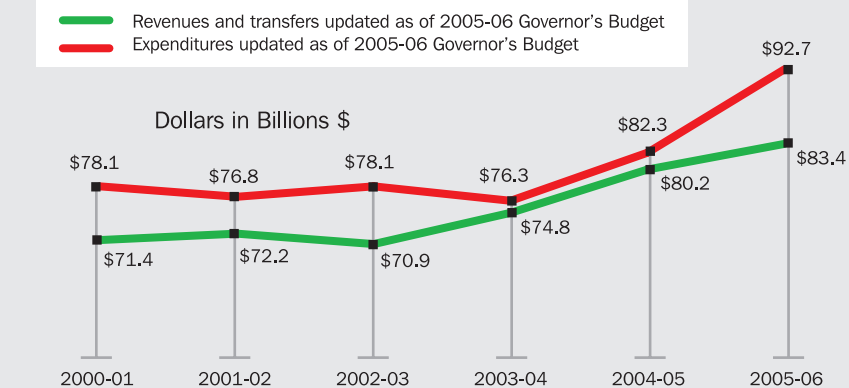
The reform plan builds on the balanced budget requirement in Proposition 58, part of the Governor’s California Recovery Plan supported by the Chamber and approved by California voters in March 2004. Proposition 58 states that the Governor may call a special legislative session if the finance director informs him that spending is likely to surpass available revenue.

The reform plan goes a step further and requires the Governor to call a special legislative session to deal with the imbalance.

If no state budget is in effect at the beginning of the fiscal year on July 1, the reform plan calls for the previous year’s budget appropriations to remain in effect until the Legislature and Governor enact a new budget.

The Governor’s reform plan requires the state controller to reduce all state payments across the board if expenses exceed revenues and the Legislature fails to act within 45 days. The reduction plan makes an exception for debt service and

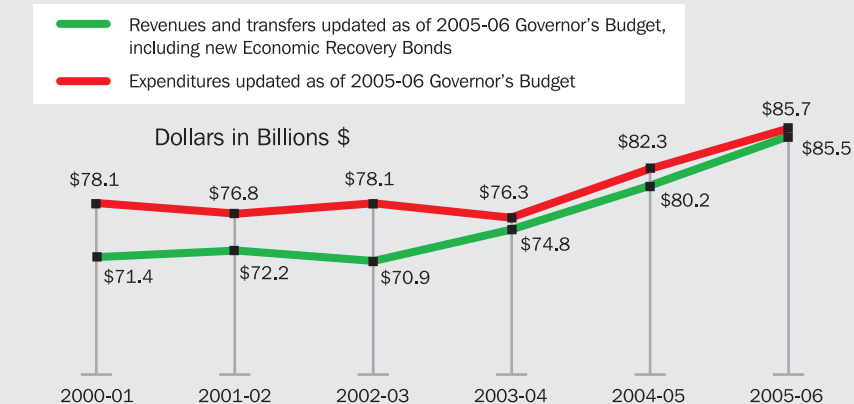
California’s Structural Budget Problem, 2005-06



Source: Governor’s Budget Summary 2005-06

This chart from the Governor’s budget summary shows how “auto-pilot” formulas will help put spending \$9.3 billion above revenues in 2005-06 unless the state acts.

Closing the Budget Gap, 2005-06



Source: Governor’s Budget Summary 2005-06

This chart illustrates the outcome of the Governor’s budget proposal to bring spending in line with revenues in 2005-06.

where the reduction would violate the federal constitution.

Budget Process

The Governor has called a special session of the Legislature to consider his budget reform plan with a goal of taking the constitutional amendment to voters this summer.

The state Constitution requires the

Legislature to send the Governor a budget by June 15, but the Legislature has missed that deadline for the last 18 years. More typically, lawmakers have completed a budget by the June 30 end of the fiscal year.

To save on printing costs, the Governor’s budget proposal is available only on the website at <http://govbud.dof.ca.gov/>.

Feinstein Introduces Federal Bill to Guard Against Identity Theft



U.S. Senator Dianne Feinstein (D-San Francisco) is introducing legislation to help protect consumers from identity theft.

Her proposal seeks to regulate the use of Social Security numbers by government agencies and private companies, set national standards for database security, and establish guidelines for companies that send their consumers' personal information overseas for processing.

Feinstein said "inadequate protection of Social Security numbers and other personal information" has left U.S. consumers "at tremendous risk of identity theft." She commented that theft of a Social Security number "can be especially devastating" because the number has become a "de facto identifier" in U.S. society.

Despite the widespread use of Social Security numbers, no single federal law regulates the overall use or restricts disclosures by government, according to the General Accounting Office. As a result, the use of the numbers is regulated by an inconsistent patchwork of state and federal laws.

Feinstein Proposal

Feinstein's bill would:

- prohibit the sale or display of Social Security numbers to the general public;
- remove Social Security numbers from government checks and driver licenses; and
- require Social Security numbers to be removed from public records published on the Internet.

A second bill would:

- define as personal data an individual's Social Security number, driver license number, state identification number, bank account number or credit card number;
- require a business or government entity to notify an individual when it appears that a hacker has obtained unencrypted personal data;

- levy fines by the Federal Trade Commission of \$5,000 per violation or up to \$25,000 per day while the violation persists; and

- allow California's privacy law to remain in effect, but provide that federal law would preempt conflicting state laws.

Feinstein expressed concern regarding the lack of regulation governing personal data shipped overseas for processing. She is joining with Senator Bill Nelson (D-Fla.) to develop legislation to deal with outsourcing information.

California

California has enacted more than 30 privacy laws over the last few years. The laws are so recent that their full impact remains to be seen.

The California Chamber believes a uniform national standard would be preferable to the existing varied and sometimes contradictory patchwork of state and federal laws, and will be commenting on the federal legislation as it develops.

Staff Contact: Valerie Nera

International Chamber Sets Up Fund to Aid Businesses Hurt by Tsunami

The International Chamber of Commerce (ICC) has set up a fund to assist in the reconstruction of small businesses in South Asia that were devastated by the December 26, 2004 tsunami.

The fund will be used to aid small and medium-sized enterprises in the most affected areas.

The aftermath of the tsunami continues to cause hardship for businesses in a region that already was suffering economic distress. The huge loss of life and the devastation of large areas of coastland have caused severe loss to many small businesses.

Reconstruction will be the next essential step in the recovery process. Among those hit hardest by the disaster are the many small and medium-sized



enterprises in the region's fishing, tourism, industrial and service sectors. Such enterprises are critical to the economic base of their countries.

Donations from chambers of commerce and their members will be transferred to the ICC national committee and/or relevant national chamber of commerce within the areas that are seeking such assistance for small

local businesses.

The ICC is a global business organization that represents business views to intergovernmental organizations on issues that directly affect business operations. The Paris-based organization covers a broad spectrum of activities, from arbitration and dispute resolution, to making the case for open trade and the market economy system, business self-regulation and combating commercial crime.

Those interested in making a donation to help businesses hurt by the tsunami should e-mail anthony.parkes@iccwbo.org.

Staff Contact: Susanne Stirling

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