

# ALERT

CALIFORNIA CHAMBER OF COMMERCE

VOLUME 32, NUMBER 3 • JANUARY 27, 2006



## Chamber Co-Chairs Coalition to Stop Tax Hike Initiative

*Reiner Measure Creates Government-Run Preschool*

The California Chamber of Commerce, leading business organizations, preschool educators, taxpayer advocates, seniors and community groups have launched a formal campaign to oppose an initiative that increases taxes to create a government-run preschool system.

The initiative, sponsored by actor/director Rob Reiner, has qualified for the June primary ballot.

### New Government Bureaucracy

“With all the real and pressing problems facing this state, the last thing we need to do is raise taxes \$2.4 billion to create a new government-run bureaucracy to replace our current system of pre-schools,” said Allan Zarembeg, president

of the Chamber and co-chair of the Stop the Reiner Initiative coalition.

“Encouraging more children to go to preschool is a laudable goal, but this is simply not a good time to create a new government bureaucracy, with no accountability to parents and taxpayers. Opinion leaders and voters are just starting to wake up to this flawed initiative. Once we take the time to educate all Californians, we anticipate voters will soundly reject the measure in June,” Zarembeg said.

### Small Businesses Hit

The Reiner initiative proposes a 1.7 percent tax increase on incomes over

*See California: Page 4*

## New Foundation Focus: to Analyze Public Policy Impacts on Jobs, Economic Base



Loren Kaye

The California Foundation for Commerce and Education (CFCE) launched its new focus this week: filling the information void in California public policy about the effect of proposals on the California

business and investment climate.

### Objective Policy Studies

“The California Foundation for Commerce and Education is dedicated to ensuring accurate, objective study of public policy proposals that have an impact on California’s ability to create and retain jobs and to attract investment to our state,” said Loren Kaye, CFCE president.

“It is essential that policy makers be armed with unbiased analysis that focuses specifically on the California jobs, economic base and investment climate. We aim to elevate the policy debate and improve policy decisions.”

### Non-Partisan Analysis

The CFCE is a non-profit, 501(c)(3)

*See New: Page 4*

## Chamber Outlines Priority Issues for Press



Presenting the California Chamber’s priority issues for 2006 at a January 12 press briefing are (from left) Dominic DiMare, vice president, government relations; Allan Zarembeg, president and chief executive officer; Jeanne Cain, senior vice president; and Valerie Nera, director, agriculture, resources and privacy. The briefing kicks off the annual release of the Chamber’s *Business Issues and Legislative Guide* (see story on Page 6).

### Inside

Chamber Leads Coalition on Climate Change Impacts: Page 3

## Labor Law Corner

# Discretionary Bonus Not Part of Calculation for Overtime Payments



**Gary Hermann**  
Labor Law Consultant

*What is a discretionary bonus as it relates to the regular pay rate in the computation of overtime?*

The regular pay rate is the basis for calculating any overtime due the employee. The regular rate, however, is not necessarily limited to an employee's

normal hourly rate or salary.

### 'Regular Rate' Definition

"Regular rate" is a term used to mean all remuneration for employment paid to or on behalf of the employee. The regular rate must reflect all payments the employer and employee have agreed shall be received regularly.

Once the parties have agreed upon the amount of wages and mode of payment, the determination becomes a matter of mathematical computation. Any sum paid for hours worked or for performing a duty must be included.

### Discretionary Bonuses

A discretionary bonus is one where the amount is not determined by the hours an employee has worked, any production he/she has achieved or any goals of efficiency he/she has attained. The payment of this type of bonus is at the sole discretion of the employer and is treated as a

gratuity given over and above the regular wages.

Discretionary bonuses include:

- sums paid as gifts;
- year-end bonuses; or
- payments made on other special occasions as rewards for service that are not measured by or dependent upon hours worked, production achievement or efficiency.

Discretionary bonus amounts are *not* subject to the calculation of a regular rate for the payment of overtime, unlike a non-discretionary — or performance — bonus, which is based on a percentage of production or some formula that can be computed based upon a level of achievement.

### Performance Bonuses

A performance bonus is determined by the hours an employee has worked, production the employee has achieved or goals of efficiency he/she may have attained. This type of bonus, as with any other wage based on time worked or task accomplished, is subject to overtime computation.

To find the regular rate for a performance bonus, one would divide the bonus amount by all the hours worked, including any overtime hours, throughout the period in which the bonus was earned.

The employee would be entitled to additional half time of the bonus regular rate amount for any overtime worked during the bonus earning period and additional straight time of the bonus regular rate amount for any double time worked during the bonus earning period.

*The Labor Law Helpline is a service to California Chamber 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 e-mail: [helpline@calchamber.com](mailto:helpline@calchamber.com).*

#### California Chamber Officers

**Donna F. Tuttle**  
Chair

**Russell Gould**  
First Vice Chair

**Edwin A. Guiles**  
Second Vice Chair

**Frederick R. Ruiz**  
Third Vice Chair

**Eugene J. Voiland**  
Immediate Past Chair

**Allan Zaremborg**  
President

*Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$199 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.*

*POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate: Trina Filan. Art Director: Andrew Larsen. Graphics Assistant: Jason Untalan. Capitol Correspondent: Christine Haddon.*

*Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.*

*E-mail: [alert@calchamber.com](mailto:alert@calchamber.com).  
Home page: [www.calchamber.com](http://www.calchamber.com).*

## Seminars/Trade Shows

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Tech Start-Up and Angel-Funded Jobs. Wilcox Miller & Nelson. February 14, North Sacramento. (916) 977-3700.

### Labor Law

Labor Law Update Seminar. California Chamber of Commerce. January 30 - Oakland; January 31 - Santa Clara; February 7 - Sacramento. (800) 331-8877.

Labor Law Web Seminar. California Chamber of Commerce. February 21. (800) 331-8877.

**California Business Legislative Summit**  
April 25, Sacramento

Registration information at [www.calchamber.com](http://www.calchamber.com)



# Chamber-Led Coalition Seeks Balance in Greenhouse Gas Reduction Plans

*SEE California Urges Weighing Impacts on Jobs, Economy, Environment*

The California Chamber of Commerce has launched a new coalition to address climate change impacts on California in a reasonable and responsible way and ensure that efforts to reduce California greenhouse gas emissions take into account direct impacts on California jobs, economy and the environment.

## Balancing Economy, Environment

“Improving California’s environment and reducing greenhouse gas emissions to protect California from adverse effects of climate change is everyone’s goal,” said Chamber President Allan Zaremborg, a member of the Sustainable Environment and Economy in California (SEE California) coalition.

“However, we must ensure that California’s ability to create and retain jobs is not compromised through this process,” Zaremborg continued. “With this in mind, we encourage the Governor and the Legislature to ensure that any greenhouse gas reduction programs are consistent with the principles of our coalition.”

The coalition will focus its efforts on a number of areas throughout this important process, including providing input at various hearings and analyzing data and analyses released by the Climate Action Team (CAT).

## Concerns on Draft Assessment

The coalition is focusing efforts on the draft Economic Assessment recently released by the CAT. The draft assessment provides little data or information on the economic assumptions studied for its findings. SEE California also has concerns regarding the model used in the analysis.

In order to allow for proper analysis of the economic study, the coalition is asking for the immediate release of economic assumptions and supporting data from the CAT and an extension of the comment deadline. The comment period is currently scheduled to end on January 31.

## SEE California SUSTAINABLE ENVIRONMENT & ECONOMY for CALIFORNIA

### Guiding Principles

- I. California is the national leader in both energy efficiency and the use of alternative and renewable fuels. Any new greenhouse gas policies should provide flexibility and incentives that will build on this leadership role and place California at the forefront as a technology provider for helping the global community address climate change.
- II. Addressing climate change is a global issue and the burden should not fall disproportionately on California businesses or consumers.
- III. Any new greenhouse gas policies must provide tangible solutions that will be effective for the long-term and significantly mitigate impacts of climate change on California.
- IV. The true economic impacts and individual costs of climate change policies should be quantified, known and shared by all Californians.
- V. SEE California opposes greenhouse gas policies that are based on new taxes, fees or rationing.
- VI. New greenhouse gas policies must benefit California’s citizens, its economy and ensure that California remains competitive in U.S. and global markets.
- VII. Greenhouse gas policies must not endanger the reliability of our energy supply system or increase our dependence on foreign resources.

## Coalition Members

The coalition currently includes the Chamber, California Farm Bureau Federation, Western Growers, California Nevada Cement Promotional Council, Western States Petroleum Association, Rubber Manufacturers Association and the Alliance of Automobile Manufacturers.

“We look forward to working with the Governor, the Legislature and members of the Climate Action Team to reduce greenhouse gas emissions in California by implementing programs that will help California continue to thrive as the sixth largest economy in the world,” concluded Zaremborg.

**Staff Contact: Jeanne Cain**

## New Foundation Focus: Analyze Policy Impacts on Jobs, Economic Base

*From Page 1*

organization whose board comprises members of the board of the California Chamber of Commerce. The CFCE is supported primarily by grants and contributions from foundations, corporations and individuals.

The Foundation is strictly non-partisan and non-political and takes no positions on pending legislation, ballot measures or any other policy proposals.

### Expert Policy Leadership

Appointed this month, Foundation President Loren Kaye has devoted his

career to developing, analyzing and implementing public policy issues in California, with a special emphasis on improving the state's business and economic climate.

Kaye served in senior policy positions for Governors Pete Wilson and George Deukmejian, including Cabinet secretary and undersecretary of the California Trade and Commerce Agency. Kaye also has represented numerous private sector interests, managing issues that affect specific business sectors to promote an improved business climate or to resist further regulation or costs on business.

The Foundation is currently working on various research projects. The focus, subject and content of those projects will be released in the coming months.

### Foundation Fills Niche

"The need for the Foundation and the analysis it will produce is clear. There is no other entity in California that is charged with providing impartial, objective analysis of public policy proposals for their effects on California's jobs and the economy," said Chamber President Allan Zaremberg.

**Foundation Staff Contact: Loren Kaye**

## California Chamber Co-Chairs Coalition to Stop Tax Hike Initiative

*From Page 1*

\$400,000 for individuals and \$800,000 for couples. Small businesses will be especially hard-hit by the tax hike, given that 80 percent of California businesses pay taxes through the personal income tax, according to the California Taxpayers' Association.

According to the non-partisan Legislative Analyst, 66 percent of preschool-age children already attend preschool in California. The government preschool measure seeks to raise taxes on many

small businesses and individuals to bring that number to 70 percent — at a cost of \$2.4 billion per year on top of the \$3 billion the state already spends subsidizing preschool for lower-income families.

The initiative contains a specific provision stating that if revenues from the higher personal income taxes are not sufficient to fund the program, the Legislature can impose new fees on parents of preschoolers, or the Legislature could always raise taxes to fill the funding gap.

Preschool experts have voiced con-

cerns that existing quality, cost-effective programs tailored to different needs of parents and kids will be replaced with a one-size-fits-all state-run bureaucracy that is not accountable to local parents. Private preschool providers currently serve 70 percent of all preschool children in the state.

More information is available at [www.StopReiner.org](http://www.StopReiner.org).

**Staff Contact: Jeanne Cain**

## Chamber Comments on Transportation Infrastructure Funding

Dominic DiMare, vice president of government relations for the California Chamber of Commerce, testifies before the Senate Transportation and Housing Committee on the importance of transportation infrastructure investment to the state's economy, particularly measures to reduce traffic congestion and air pollution in the vicinity of California ports.



# U.S. District Court Delays Enforcement of Restrictions on Fax Communications



On January 23, a federal judge further delayed enforcement of a California Chamber of Commerce-opposed law that places onerous restrictions on fax communications.

U.S. District Judge Morrison England originally had imposed a stay on the new California law (**SB 833-Bowen; D-Re-dondo Beach; Chapter 667**) in December.

After holding a hearing on the merits of the law, Judge England extended the stay until February 27, but said he expects to issue an order before that date.

## Pre-Empted by Federal Law

The plaintiffs in the case, the U.S. Chamber of Commerce and Xpedite Systems, Inc., are seeking to permanently bar enforcement of SB 833. The plaintiffs argue that the federal Junk Fax Protection

Act of 2005 pre-empts SB 833 because the act specifically allows fax advertisements without prior express consent where an established business relationship exists.

Although the federal law allows receivers to opt out of receiving faxes, the California Junk Fax Act requires receivers to opt in.

## Interstate Commerce Burden

The plaintiffs also argue that SB 833 is unconstitutional because it violates the U.S. Constitution's commerce clause by imposing an undue burden on interstate commerce.

In the case of businesses in California sending faxes out of the state, the state law places a real burden on those sending faxes, with little or no benefit being realized by other Californians; any benefit is felt outside the state.

In the case of businesses outside of California sending faxes into the state, the plaintiffs argue that any benefit is minimal and the burden substantial because the law contains no exceptions for

pre-existing relationships.

During the hearing, the defendants argued that federal law does not pre-empt the California law because the opt-in requirement simply provides another layer of protection for consumers and because the burden placed upon fax senders is minimal.

The defendants asserted that states must have the right to provide additional protections to their citizens, and SB 833 is an example of a state trying to protect its citizens from, in this case, unwanted junk faxes.

Judge England is expected to rule — at least on the pre-emption issue — before a February 27 hearing. Because the bill does not contain a severability clause, if the court holds that any portion of SB 833 is unenforceable, the entire bill would be unenforceable.

## Chamber Position

The California Chamber applauds the actions of the court in this case and agrees with the reasoning used to challenge the merits of the new law.

**Staff Contact: Valerie Nera**

## Understand labor laws. Safeguard your company.

One of the best ways to protect your company from litigation, sexual harassment and countless other issues in the workplace is to be as informed as possible. And there is no better way than to subscribe to **Labor Law Update**, the CalBizCentral™ authoritative newsletter.

Each month you will receive this eight-page publication loaded with current trends in California HR, important court decisions and featured column "California At Work." Written in plain English, **Labor Law Update** makes ever-evolving labor law easy to understand while the timeliness keeps you up to date.

**\$99** 12-month subscription



**calbizcentral**™  
presented by the California Chamber of Commerce

To order, visit **www.calbizcentral.com** or call (800) 331-8877.

## California Chamber Annual Issues Guide on Way to Members

The 2006 edition of the California Chamber's *Business Issues and Legislative Guide* is in print and in the mail to Chamber preferred and executive members.

Online members and those who prefer electronic delivery of the *Guide* received e-mail notification this week that the *Guide* is available on the Chamber website.

This year's theme is "**Keeping California Open for Business: Agenda for Continued Economic Growth and Development.**"

Issues covered in the *Guide* fall into two categories. One consists of issues that benefit the economy and state as a whole and address long-term needs — such as education and other infrastructure. The other category is made up of issues having a direct impact on the ability of employers to manage their businesses in a cost-competitive manner — such as labor law, overtime rules, taxes and litigation.

New to the publication this year is a

section on the Chamber's efforts to recruit and elect pro-jobs public policymakers.

In addition to articles highlighting key issues, the *Guide* includes issue summaries on other areas where Chamber legislative advocates expect policy activity this year, brief biographies of the Chamber's legislative team, a guide to contacting legislators, glossary of government terms, state government organization chart, pictorial roster of state officials, the California Legislature and California congressional delegation, and



tips on talking with the media.

Additional copies of the hard copy *Guide* are available for \$10 each plus 7.25 percent sales tax (7.75 percent in Sacramento County) and \$3 shipping/handling per book. Please mail requests with payment to California Chamber of Commerce, P.O. Box 1736, Sacramento, CA 95812-1736, Attn: Business Issues.

PDF files of the articles in the *Guide* are available at

[www.calchamber.com/businessissues](http://www.calchamber.com/businessissues).

## Chamber Seminar Gives Update on New Laws, Court Decisions



Susan Kemp (left), senior labor law counsel for the California Chamber of Commerce, and Paul Schechter, Chamber employment law counsel, open a Chamber seminar update on new labor laws, regulations and court decisions. To date, more than 900 people have signed up for the half-day sessions, which end on February 7. A web version is scheduled for February 21. Registration information is available at [www.calbizcentral.com/lseminar](http://www.calbizcentral.com/lseminar) or by calling (800) 331-8877.

## China Trade Mission

# Visit Strengthens Chevron's Established Role in Chinese Energy Sector

Unlike many of the other corporate participants on Governor Arnold Schwarzenegger's November 2005 trade mission to China, Chevron was not looking to break into an untapped market or to introduce a new brand to China's retail market.

Instead, Chevron sought to reaffirm its commitment, not only to past and current business alliances, but to the future partnerships that will be key to meeting China's growing demand for oil and gas.

"Expanding the trading ties between China and California companies will bring economic and social benefits to the people of both China and California," said Jack Coffey, Chevron's Sacramento-based director of California government affairs, who represented Chevron on the trade mission.

## Longtime Partnership

The company's earliest partnership with China began close to 100 years ago. Both the country and the company have come a long way since then — Chevron in the breadth of its energy holdings, and China as a dominant player in the global energy arena.

As one of the world's top 25 oil producers, China has an existing base of proven oil reserves that will help it meet future needs. The country also has begun to build a liquefied natural gas (LNG) infrastructure as part of its overall strategy to increase natural gas's contribution to energy consumption. To that end, Chevron and China are partners in a venture that will begin delivery of LNG from Australia's North West Shelf gas fields to a new terminal in the southern province of Guangdong at the end of April.

## Oil Production

Today, Chevron is one of China's long-standing partners, producing more than 104,000 gross barrels of oil per day (BPD) with the China National Offshore Oil Corporation



**Chevron is a partner in the offshore oil operations in Bohai Bay.**

*Photo Courtesy of China National Offshore Oil Corporation*

(CNOOC) and others.

In Bohai Bay, Chevron partnerships produce more than 54,000 BPD, while another partnership in the Pearl River Delta Basin yields another 50,000 BPD.

The fast-growing ranks of Chinese drivers can fill up at any of the 95 Caltex™-branded service stations in China, including those in Hong Kong and Macau. Each of these stations is equipped with a convenience retail store. Marketed under the Caltex, Delo, Havoline and Revtex brands, Chevron's lubricants business has sales and marketing, manufacturing and distribution operations throughout the country.

The products themselves are widely used by consumers and businesses in automotive and equipment applications throughout China. Chevron also operates an approximately 100,000-metric-ton-per-year asphalt terminal, which supplies high-quality products for highway and specialty surfaces such as airport runways.

Chevron is involved in chemicals, too; it built and operates a \$90 million polystyrene plant capable of producing 100,000 metric tons per year of the product, which is used for plastic consumer goods. The company also sells additives to Chinese lubricant-blending plants.

## Community Activities

A long-established community part-

ner, Chevron's relationship with China extends beyond its core businesses. As a supporter of several cultural and educational programs in China, Chevron's sponsorship sends Chinese public officials to a six-week international law training program conducted by the Academy of American and International Law. Outstanding Chinese industrial professionals come to the United States for customized two-month programs as part of the Eisenhower Exchange Fellowship program. Further, the company provides grants to non-profit organizations that meet local needs and improve educational opportunities.

As China looks to the future, its public officials are using the phrase "harmonious development" to describe the goals of the five-year-plan just completed by the Beijing Municipal Development and Reform Commission.

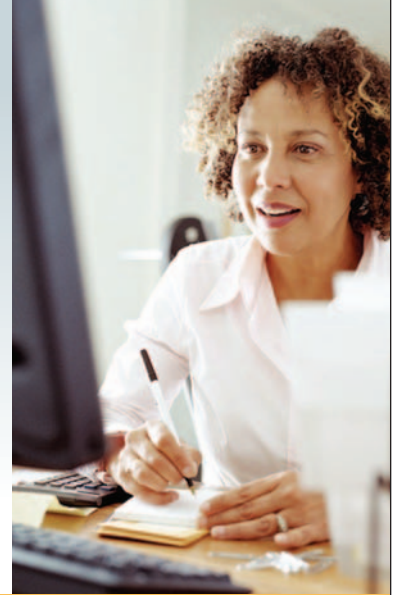
According to Chevron Global Gas President John Gass, harmonious development describes the strong and enduring relationships that connect regions, countries and companies. It's also a core Chevron value, he says, "that will remain the foundation of our business."

## Sexual Harassment Training Is Mandatory

Providing sexual harassment training to your supervisors is not just the law, it's good business. California law AB 1825 mandated two hours of sexual harassment training for supervisors before January 1, 2006, for companies with 50 or more employees. If you missed the deadline, training is still available.

*Preventing Harassment in the Workplace* online training helps you meet the mandatory requirements the easy way:

- Significant savings over in-person training
- Supervisors can train at their own pace
- Questions go directly to the course instructor, a legal expert
- Record-keeping tools track who has taken the course and automatically e-mail reminders to those who haven't completed it



To order, visit **[www.calbizcentral.com](http://www.calbizcentral.com)** or call (800) 331-8877.

ADDRESS SERVICE REQUESTED

Helping California Business Do Business™

P.O. BOX 1736 SACRAMENTO, CA 95812-1736  
(916) 444-6670 FACSIMILE (916) 444-6685  
[www.calchamber.com](http://www.calchamber.com)



CALIFORNIA CHAMBER OF COMMERCE

**ALERT**

Periodicals  
Postage  
PAID  
Sacramento, CA