

ALERT

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Economic Stimulus, Reform Part of Final State Budget

Some Employee Scheduling Flexibility Now Available



Economic stimulus measures and good government reforms are included in the final state budget package approved by the Legislature on February 19.

The budget compromise for closing an estimated

\$42 billion state budget deficit includes \$15 billion in spending cuts, \$12.5 billion-\$12.8 billion in temporary tax increases and \$11.4 billion in borrowing. About \$1 billion is set aside for a budget reserve.

California Chamber of Commerce President Allan Zaremberg called the adopted budget “a painful but necessary response to the economic recession and years of living beyond our means. California needed this plan to avoid going

over a financial cliff.”

The compromise plan, he said, is “a balanced approach that includes deep cuts and does not use new revenue to grow government. In fact, this solution will shrink state government and roll back state spending to 2006 levels.”

Economic Stimulus

Economic stimulus measures in the budget package include:

- **Employee scheduling flexibility.** Legislation in the budget package offers greater flexibility in employee scheduling by permitting an employee, with the employer’s approval, to move from one alternative workweek menu option to another on a weekly basis. The legislation also states that a “work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this section is met.”

See Economic: Page 6

State Share of U.S. Economic Recovery Bill: Early Estimates Show Wide Range of Funding



Early estimates are that California will receive a sizable share of the \$787 billion federal economic stimulus package signed by President Barack Obama on February 17, but less than its share of the nation’s

gross domestic product (GDP).

The White House website devoted to

explaining the economic package and its impacts (www.recovery.gov) estimates the legislation will create or save 396,000 jobs in California in the next two years.

Following are estimates of some areas of California funding in the federal package, based on news releases from U.S. Senators Dianne Feinstein (D-San Francisco) and Barbara Boxer (D-Greenbrae) and a report from the U.S. Department of Education.

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Budget Reform Is Centerpiece of Upcoming Special Election

The recently enacted budget deal includes more than three dozen bills; however, key elements of the compromise have been left to the voters to sort out.

In May 2009, the people of California will have the opportunity to vote on six measures that Governor Arnold Schwarzenegger and a bipartisan coalition of legislators, business leaders, public safety officials and labor representatives believe are critical to the state’s long-term economic health and will protect California from its perpetual budget problems.

Many believe that if these measures had been in place 10 years ago, California would have had more than a \$9 billion reserve to help face this year’s difficult budget crisis.

“California’s budget roller coaster creates instability that has far-reaching impacts on our business climate,” said California Chamber of Commerce President and Chief Executive Officer Allan Zaremberg. “These measures give Californians the opportunity to put into place reforms that will go a long way toward getting California’s economy moving forward again.”

Propositions

Propositions 1A, 1B, 1C, 1D, 1E and 1F, put on the ballot by a supermajority

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Labor Law Corner

COBRA Notice, Reimbursement Changes Part of Federal Stimulus Law



Jessica Hawthorne
Employment Law
Counsel

I understand there were changes to Consolidated Omnibus Budget Reconciliation Act (COBRA) notification requirements in the federal economic stimulus package. What were they?

It is not often you hear stimulus and COBRA in the same sentence, but consider that a gift from the federal government.

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President Barack Obama signed the American Recovery and Reinvestment Act of 2009 on February 17. It is a 600-plus page new law intended to stimulate growth and jobs in light of the economic downturn. Part of the law directs the creation of **Recovery.gov**, a website that will be updated with the new requirements, including issuance of contracts needing new employees.

For employers and human resource professionals specifically, Title III of the Act—Health Insurance Assistance for the Unemployed—provides offsets for COBRA coverage to employees who have been involuntarily terminated (fired or laid off, unless terminated for gross misconduct) between September 1, 2008 and December 31, 2009.

Passed in 1986, COBRA gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce and other life events. COBRA permitted employers to require that individuals qualifying for the continuation health coverage pay the premium.

Changes

Some of the specifics in the federal stimulus legislation include:

- Employers must either amend or include an additional notice with COBRA notifications to employees. The law specifies the content of this notification but requires the U.S. Department of Labor and other agencies to coordinate efforts to prepare model notifications within 30 days of February 17. The California Chamber of Commerce will track these notices and ensure our forms are updated accordingly.

- The bill provides COBRA payment assistance for up to 65 percent of the premium for employees involuntarily terminated by their employers, starting March 1, 2009. The payment will be offset through payroll taxes. The law outlines which entities are eligible for reimbursement by the federal government.

If an individual has paid the full COBRA premium for the first 60 days after February 17, 2009 (the date of the bill's enactment), employers must reimburse the individual for any premium paid in excess of 35 percent or provide a credit to the individual to reduce one or more of the individual's premium payments. These employers will be reimbursed by the federal government.

Cal-COBRA Impact

- Employers with two–19 employees covered by Cal-COBRA are affected by this new law as well. The premium repayment, however, will be handled through your insurance carrier instead of through your payroll system.

These new requirements have implications for the Internal Revenue Code, Employee Retirement Income Security Act (ERISA) and other federal laws that are complex with detailed requirements. In addition, a full analysis of these new requirements is not yet complete, so there is significant confusion in this area.

Given the complexities, it is imperative that you consult with a specialist in this area to fully understand your obligations under this new law.

Employers with two–19 employees that are covered by Cal-COBRA should be sure to get assistance from legal counsel regarding how these changes may affect their business.

Staying Up-to-Date

The CalChamber is advising employers to:

- Monitor **Recovery.gov** for federal updates on the stimulus initiative.
- Keep an eye on **HRCalifornia.com** and the **HR Watchdog** blog regarding release of new COBRA forms.
- Contact your benefits provider for more details regarding compliance with these new requirements.

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.



E-Verify Program Amendments Excluded From Stimulus Package



The recently passed federal stimulus package, also known as the American Recovery and Reinvestment Act of 2009, involved two sets of key immigration amendments.

One set of amendments dealt with mandates of the experimental Basic Pilot program, also known as E-Verify and the other with H-1B Visas. The stimulus package that came out of conference and was signed by President Barack Obama on February 17 effectively removed the E-Verify mandates and included an amendment under the H-1B Visa program.

E-Verify Mandate

The U.S. House of Representatives version of the stimulus package contained a requirement that every contractor receiving funds under the stimulus package bill enroll in the Basic Pilot/E-Verify program. It was later removed from the U.S. Senate version and ultimately taken out of the final package.

The Web-based E-Verify program is currently voluntary and allows employers to check the legal status of employees by

matching their name and Social Security number against databases maintained by the Social Security Administration and Department of Homeland Security (DHS).

The program has come under scrutiny because it has been plagued by serious problems that include misidentifying U.S. citizens as not authorized for employment. In 2007, for example, the DHS commissioned an independent study which concluded that “the database used for verification is still not sufficiently up to date to meet the requirements for accurate verification.” The error rate was nearly 10 percent for foreign-born U.S. citizens.

H-1B Visas

U.S. Sens. Charles Grassley (R-Iowa) and Bernie Sanders (Ind-Vermont) introduced an amendment prohibiting firms receiving money under the stimulus bill from hiring any foreign worker under the H-1B Visa program. After the amendment was changed to allow hiring of H-1B workers, if the employer overcame additional restrictions, the language was kept in the final stimulus package.

The new requirement sunsets in two years and the restrictions, particularly that the employer does not lay off any

similarly employed U.S. worker within 90 days before or after applying for an H-1B worker, serves as a bar to most corporate recipients of money under the stimulus bill from using the H-1B program.

Contractor Requirement Delayed

In addition to the news as it relates to the stimulus package, an executive order scheduled to go into effect in March that would require all federal contractors to use E-Verify was recently delayed. According to Homeland Security Secretary Janet Napolitano, the Obama Administration plans to delay the rule until May 21 “to see what needs to be done to increase the capacity for the E-Verify system.”

As currently adopted, the rule applies to contracts if the company is providing work on the “prime [federal] contract” only. The threshold is \$100,000, but if the contract is “to furnish supplies or services for performance of a prime contract or a subcontract,” it is \$3,000. It is unclear how much responsibility and liability the prime contractor or subcontractor would have for the use of E-Verify by its own subcontractors.

Staff Contact: Jeanne Cain

Alternative Workweek Flexibility in New State Budget Package

Some flexibility in implementing alternative workweek schedules is included in the state budget package signed by Governor Arnold Schwarzenegger last week.

As part of the budget deal, Labor Code 511 is amended to allow employers to include in the proposed menus of work options a regular schedule of eight-hour days that are compensated outside

the scope of the alternative week, or normally.

Further, employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

The bill also defines “work unit” as a division, a department, a job classification, a shift, a separate physical location or a recognized subdivision

thereof. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this section is met.

The amendments take effect on May 22.

A step-by-step guide to implementing an alternative workweek schedule appeared in the June 20, 2008 *Alert*.

Belgium Consul General Reviews Trade/Investment with CalChamber



Consul General Geert M. Criel with the Consulate General of Belgium in Los Angeles, visits with Susanne Stirling, CalChamber vice president of international affairs, as part of a February 11 stop in Sacramento to meet with government officials, private sector companies and business associations to discuss trade and investment opportunities. California exports more than \$2 billion to Belgium with a 36 percent increase of computer and electronic exports last year. Brussels is also the capital for the European Community. More information is available at www.calchamber.com/international.

CalChamber-Sponsored Seminars/Trade Shows

For more information, visit www.calchamber.com/events.

Business Resources

Lower Colorado River Tour. Water Education Foundation. March 4–6, Las Vegas. (916) 444-6240.
Water 2009: Building on Change. Water Education Foundation. March 12–13, Sacramento. (916) 444-6240.
Central Valley Tour. Water Education Foundation. April 15–17, Bakersfield. (916) 444-6240.

International Trade

CeBIT 2009: Take Your Business to the Next Level. Hannover Fairs. March 3–8, Hannover, Germany.
Water China 2009. China Foreign Trade Centre Group. March 4-6, Canton (Guangzhou). contact@merebo.com.
Current Issues in International Transportation. East Bay Center for International Trade Development. March 13, Oakland. (510) 251-5942.
17th Convergence India. Exhibitions

India Pvt. Ltd. March 18–20, Pragati Maidan, New Delhi, India. (650) 740-6064.

Global Technology Symposium. San Francisco Global Trade Council and the U.S. Polish Trade Council. March 26-27, Stanford. info@globaltechsymposium.com.

World Affairs Council of Northern California Annual Conference. April 2–3, San Francisco. (415) 293-4626.

Global California. Monterey Bay International Trade Association (MBITA). April 3, Santa Clara. (831) 335-4780.

Asia Pacific Business Outlook Conference. University of Southern California. April 6–7, Los Angeles. (213) 740-7130.

63rd World Affairs Council Annual Conference. World Affairs Council of Northern California. April 2–3, San Francisco. (415) 293-4626.
Renewal Energy Conference. Center for

Northern Ireland Government Heads to Speak at CalChamber

The California Chamber of Commerce Council for International Trade will welcome the heads of the Government for Northern Ireland to an International Luncheon Forum on March 10.

First Minister Peter Robinson, MP, MLA, and deputy First Minister Martin McGuinness, MP, MLA of Northern Ireland will discuss building a new partnership between California and Northern Ireland.

The Northern Ireland power-sharing government was created to enable the leaders of the main Unionist and Nationalist parties to work together as a team jointly representing both communities. The leader of the largest party nominates the First Minister, and the leader of the next largest party, which is in the opposite designation, nominates the deputy First Minister.

More Information

The deadline to sign up for the international luncheon forum is March 5 at noon. For more information and to sign up, visit www.calchamber.com/events or call (916) 444-6670, ext. 233.

International Trade Development. April 27–29, San Francisco. (858) 208-9227.

Labor Law

Employee Handbook Policies 201. Web Seminar, CalBizCentral. March 13. (800) 331-8877.

CalChamber Calendar

Fundraising Committee:

March 5, San Diego

Water Committee:

March 5, San Diego

Board of Directors:

March 5-6, San Diego

Council for International Trade:

March 6, San Diego

AB 32 Climate Change Policy Committee:

March 6, San Diego

International Luncheon Forum Featuring Heads of Government for Northern Ireland: March 10, Sacramento

Bureau of Reclamation Halts Central Valley Project Water to California Farms

The U.S. Bureau of Reclamation, the administrator of the Central Valley Project (CVP), announced February 20 that California farms will not be allocated any water from the massive system during 2009. This comes as California remains in one of the worst drought periods in recorded history with rainfall, reservoir levels and snowpack all well below normal.

The CVP was started by the federal government in 1935 to move water from Northern California to the dry parts of the Central Valley through a network of 20 dams and reservoirs, canals and other conveyance improvements. In ideal circumstances, the CVP delivers more than 80 percent of all water used by farmers in the Central Valley.

Farms Hit Hard

As the recession deepens, a lack of access to CVP water is expected to hit Central Valley farms hard.

“These are challenging times, and [the U.S. Bureau of] Reclamation will continue to explore all options within our authorities to minimize the impacts to those affected by this water shortage,” said Donald Glaser, regional director for the Mid-Pacific Region for the U.S. Bureau of Reclamation.

Elimination of water supplies in the Central Valley is expected to result in more than 800,000 acres of farmland being taken out of production—a loss of \$2 billion in annual farm revenue. A University of California study predicted that this could result in 60,000 to 80,000 lost jobs.

Stormy weather over the last two weeks is expected to partially replenish the state’s depleted reserves. As the state enters its third consecutive dry year, however, reservoirs currently remain at critically low water volumes. The mountain snowpack, a major source of state water, remains at roughly one-third of normal



Photo by Scott Monaco, California Farm Bureau

The Fresno County almond tree orchards of Robert and Tod Diedrich (shown above), and many others, have received little to no water from the Central Valley Project (CVP) this year. Robert and Tod have already been unable to plant tomatoes and use whatever water they do have to keep their almond trees alive. To see more on the Diedrich’s visit www.cfbf.com.

levels. Even with additional heavy rainfall in the next few weeks, farmers can expect no more than 10 percent of what they are seeking from the CVP.

Water Allocations

Due to persistent drought conditions, the Bureau of Reclamation issued a set of allocation guidelines for water contingent on total rainfall and other conditions. By law, owners of water rights, municipal and industrial users and certain elements of the environment are all guaranteed higher priority of allocation than agriculture.

The Bureau of Reclamation presently expects the dry scenario, including its contingent water allocation of 0 percent of normal. Under this scenario, hundreds of farmers’ water supply is eliminated. Under the best possible scenario, agricul-

tural users will receive only 10 percent of the water normally allocated for their use. The last serious drought period in 1992 only resulted in reduction of agricultural water to 25 percent.

Well drilling is one alternative for farmers in desperate need of water supplies, though it can cost between \$20,000 and \$1 million depending upon depth.

Additionally, underground water reserves may not be reliable or may be empty as a result of over-drilling and overuse.

In response to the water shortage, Governor Arnold Schwarzenegger is expected to announce emergency measures to confront the ongoing drought conditions early next week.

Staff Contact: Valerie Nera

They won’t know unless you tell them. Write your legislator.
calchambervotes.com

Economic Stimulus, Reform Part of Final State Budget

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● **Incentives for job creation in California.** A permanent elective, single sales factor will allow companies to weight sales made in a state (versus property or payroll) to determine corporate taxes.

● **Environmental permit streamlining.** In addition to an exemption from the California Environmental Quality Act (CEQA), permit process streamlining is granted for \$1.4 billion in transportation projects through 2010 and for surplus state property.

● **Public-private partnerships.** These are allowed for transportation projects until 2017, enabling more jobs to be created more quickly.

● **Design-build authority.** This is permitted for 10 state transportation projects, five local transportation projects, five offices, courts and prison projects and 10 local redevelopment agency

projects, again meaning faster and more cost-effective construction of projects.

● **Tax incentives for television/movie production.** These will encourage projects to be produced in California.

● **Carl Moyer Program changes.** Changes will provide incentives for faster turnover of agricultural equipment.

Reforms

● **“Rainy day” fund/spending cap.** A constitutional amendment subject to voter approval sets aside a set percentage of annual general fund revenues, plus additional revenues from good times in a “budget stabilization fund” to be tapped in leaner times. The measure also caps spending based on a 10-year trend in revenue.

● **Open primary.** A constitutional amendment to be presented to voters for approval will permit voters to choose from among all candidates, regardless of party affiliation, on a primary election

ballot, with the top two vote recipients appearing on the general election ballot.

Other Provisions

Another constitutional amendment to be submitted to voters for approval will prevent state-elected officials from receiving pay raises during years when there is a budget deficit.

Revenue increases to protect essential and necessary services include temporary increases in broadly based taxes: the state sales tax, vehicle license fee and personal income tax, plus a reduction in the dependent tax credit.

The CalChamber has been advising policymakers for months to avoid targeted tax increases or extending the sales tax to services, noting that both would hurt the economy, the targeted industries and the ability of businesses to create jobs.

Staff Contact: Marc Burgat

Budget Reform Is Centerpiece of Upcoming Special Election



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of the Legislature, are outlined below:

● **Proposition 1A:** Would enact a mandatory “rainy day” budget reserve, salting away savings when the state can afford it,

including unanticipated revenue windfalls during very good times. Approval of this measure would also trigger a longer life for the new tax increases, as well as the Governor’s new mid-year budget correction authority.

● **Proposition 1B:** Would restore the funding for schools that was reduced due to the dramatic fall-off in state revenues over the last several years.

● **Proposition 1C:** Would authorize the Governor to package future State Lottery revenues into a security to sell for advance payments of up to \$5 billion this year and \$5 billion next year.

● **Proposition 1D:** Would temporarily authorize the diversion of funds from the tobacco tax approved in

Proposition 10 in 1998 to help address the budget deficit.

● **Proposition 1E:** Would temporarily authorize the diversion of funds from the special “millionaire’s” income tax bracket approved in Proposition 63 in 2004 to help address the budget deficit.

● **Proposition 1F:** Would prohibit salary increases to statewide elected officials and legislators whenever the state’s budget is projected to be in deficit.

In addition to these measures, Californians will have a second chance to enact important reforms. In June 2010, they will vote on a constitutional amendment to create open, or nonpartisan, primary elections for statewide and legislative offices.

Voter Information Guide Comments

California Secretary of State Debra Bowen has invited interested Californians to submit arguments to be included in the Official Voter Information Guide for the special election.

If multiple arguments are submitted for one proposition, state law gives

first priority to arguments written by legislators in the case of a legislative measure, and first priority to arguments written by the proponents of an initiative in the case of an initiative measure. Subsequent priority for all measures goes to bona fide citizen associations and then to individuals. No more than three signers are allowed to appear with an argument or rebuttal to an argument.

Ballot arguments cannot exceed 500 words and rebuttals to ballot arguments cannot exceed 250 words. All submissions should be typed and double-spaced. They may be hand-delivered to the Secretary of State’s Elections Division at 1500 11th Street, 5th Floor, Sacramento, California 95814 or faxed to (916) 653-3214. If faxed, the original copies must be received within 72 hours.

The deadline to submit ballot arguments is February 23 by 5 p.m. and the deadline to submit rebuttals to the ballot arguments is February 25 by 5 p.m.

For more information and to view all of the special election ballot measures visit the Secretary of State’s website, www.ss.ca.gov.

New Water Bond Legislation Focuses on Water Supply, Conveyance, Delta Protection

With California in the midst of a historic drought, Sen. Dave Cogdill (R-Modesto) has introduced SB 371, the Safe, Clean, Reliable Drinking Water Supply Act of 2009.

The bill continues the work of many over the last several years to get comprehensive and needed reforms to fix California's broken water supply and delivery systems.

"CalChamber applauds Senator Cogdill's ongoing leadership in working to solve our state's long-neglected water crisis," said Allan Zaremborg, president and chief executive officer of the California Chamber of Commerce. "Enactment of SB 371 will be a major victory for California. Now, more than

ever, we need to pass a comprehensive plan that will increase storage, improve conveyance, provide important environmental protections and conserve resources."

Key Elements

The plan proposed in Cogdill's legislation calls for issuing \$9.98 billion in general obligation bonds to invest in the state's aging water infrastructure.

Key elements of the proposal include:

- building California's water supply and storage systems;
- providing for Delta sustainability;
- encouraging water conservation and water use efficiency; and
- improving water quality.

The plan also calls for implementation

of important river and watershed restoration projects.

"The water system that contributed to California's emergence as one of the world's major economic powers is faltering. Existing facilities are barely able to meet current public demand. The drought, environmental issues and the additional pressures on a broken-down system have put the critical issue of water infrastructure front and center," Zaremborg said. "The business community truly appreciates the commitment of Senator Cogdill in working for a comprehensive water package that invests in California's future."

Staff Contact: Valerie Nera

State Share of U.S. Economic Recovery Bill

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Infrastructure

● \$2.57 billion for California's highways, roads and bridges (\$1.722 billion to be given directly to California to fund projects at the state's discretion; half must be spent within 120 days, while \$771 million is allocated directly to local transportation agencies and \$77 million for transportation enhancements such as trails and roadside landscaping).

- \$1 billion for mass transit.
- \$1.3 billion for capital improvements to Amtrak (competitive).
- \$495 million for drinking water and wastewater infrastructure (\$160.2 million for drinking water, \$284.6 million for clean water, \$50 million for the CALFED Bay-Delta Program).
- \$324 million for California's affordable housing block grant.
- \$118.5 million for California's public housing.
- \$190 million for homeless prevention.
- \$190 million for weatherization assistance.
- \$127 million for community development block grants.

Health Care/Food Stamps

- \$10 billion to \$11 billion in Medicaid matching funds.

- \$1.6 billion for food stamps.

Fiscal Stabilization

- \$4.85 billion to \$5.96 billion.

Employment

- \$225 million for dislocated workers state grants.
- \$47 million to \$56 million for vocational rehabilitation.

Education

- \$1.1 billion to \$1.59 billion for Title 1 grants, based on formula.
- \$1.2 billion for IDEA (special education) grants.
- \$41 million for IDEA preschool grants.
- \$53.2 million for IDEA infants/families.
- \$2.8 billion for Pell grants (need-based grants to promote access to post-

secondary education for low-income students).

- \$70.8 million for education technology.
- \$20.65 million for federal work study.
- \$3.7 million for services to older blind people.
- \$1.623 million for independent living state grants.
- \$82.7 million for the Head Start/Early Head Start program.

Public Safety

- \$230 million for the Edward Byrne Justice Assistance Grant Program administered by the U.S. Department of Justice to support activities to prevent and control crime and improve the criminal justice system.

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MAY 18-19 2009
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