

ALERT

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CalChamber Sponsors Flexible Workweek Bill



A California Chamber of Commerce-sponsored bill that will help employees

and employers achieve greater flexibility in work schedules by allowing workers to request and employers to mutually agree to a four-day compressed workweek will be considered in a Senate committee on April 29.

SB 187 (Benoit; R-Bermuda Dunes), a CalChamber “job creator” bill, simplifies the establishment of an alternative workweek schedule so that individual workers can achieve much-needed flexibility.

Employers have told the CalChamber that they want California law to permit flexible workweek schedules such as four-day workweeks for individual workers desiring to find a balance

between work and personal lives.

Specifically, SB 187 establishes a voluntary, employee-driven process where the employees can request and their employer may mutually agree, to a four-day compressed workweek schedule. If the employer agrees to the proposed four-day workweek schedule, the four-day workweek will be paid at straight time rates. Any work performed beyond the compressed work schedule would remain subject to current California overtime requirements.

Current Law Inflexible

Although recent statutory changes adopted in the 2009 budget process are helpful once the scheduling has been approved in the election, these changes do not address the complexity of the process, or the liability that employers face in the secret ballot election process.

Current state law requires overtime

See CalChamber: Page 4

Opposition Stops Bill Hampering State Energy/Water Supply



Strong **opposition** from the California Chamber of Commerce and local chambers of commerce has stopped legislation that would have hurt the reliability

OPPOSE

of the state’s energy grid while increasing rates for California consumers and businesses.

On the morning of the bill’s first scheduled hearing April 21 before a legislative policy committee, Senate Energy, Utilities and Communications Chair Alex Padilla (D-Pacoima) announced that the author was turning **SB 42 (Corbett; D-San Leandro)** into a two-year bill, meaning no further action on the proposal would be pursued this year.

In its current form, SB 42 would have depressed business growth and vitality, threatening California’s core energy supply and inhibiting the construction of desalination plants.

Senator Padilla said during the committee meeting that he was committed to working with Senator Ellen Corbett to conduct an informational hearing between legislative sessions on the State Water Resources Control Board’s progress in phasing out the use of the once-through cooling process for

See Opposition: Page 4



Chuck Todd
NBC News Political Director
Chief Washington Correspondent

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Inside

- Commentary: No More Business as Usual: Page 3
- New Job Creator: Page 7

Cal/OSHA Corner

Make Vaccination 'Available' for Employees Exposed to Hepatitis B



Mel Davis
Cal/OSHA Consultant

Are all employees who have been exposed to hepatitis B required to be vaccinated?

General Industry Safety Orders Section 5193, Bloodborne Pathogens, applies to all occupational exposure to blood or other potentially infectious materials (OPIM). Subsection (f) is specific to the employer's responsibilities should an employee incur an "occupational exposure" incident.

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An "occupational exposure" is defined as a reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other OPIM that may result from the performance of an employee's duties. The employer is to make available the hepatitis vaccine and vaccination series to the affected employees within 24 hours of the occurrence. There also shall be post-exposure and follow-up evaluations.

'Make Available'

The key statement within subsection (f)(1)(A) is "make available," because the regulation further states that an employee may "refuse to consent to a post-exposure evaluation and follow-up from the employer-healthcare professional."

When consent is refused, the employer is to make available to the exposed employee a confidential medical evaluation and follow-up from a health care professional other than the exposed employee's employer.

Subsection (f)(2)(A) states that hepatitis B vaccine shall be made available after training and information criteria contained in subsection (g)(2)(G)(9) has been met, and within 10 working days of initial assignment of all employees who have occupational exposure.

The employer does not have to provide the employee the vaccine when the employee has already received the complete vaccination series, antibody testing reveals the employee is immune, or the vaccine is contraindicated for medical reasons.

The employee may decline to accept the hepatitis vaccination offered by the employer. The employer shall make available the hepatitis B vaccination series, however, should the employee, while still covered by this regulation, decide to accept the vaccination series.

If the employee elects to decline the vaccination series, the employee is to sign a statement acknowledging being given the opportunity to receive the vaccination series, that he/she will continue to be at risk, and that he/she can be vaccinated at a future date at no charge.

Exception

Section (f)(1)(A) has an exception that employers do not have to offer

pre-exposure hepatitis vaccine. This applies if the first-aid provider's primary assignment is not the rendering of first aid and any first aid rendered by such persons is rendered only as a collateral duty responding solely to injuries resulting from workplace incidents, generally at the location where the incident occurred.

The requirement for providing the hepatitis B vaccination, however, is triggered by the employee's rendering of assistance in any situation involving the presence of blood or OPIM, regardless of whether an exposure incident, as defined in the standard, occurred.

The exception to subsection (f)(1)(A) should be reviewed for additional conditions and 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.hrcaifornia.com.

Heritage Club Entries

The California State Fair is seeking applications for induction into the California Agricultural Heritage Club, an elite centenarian business association.

Each year the California State Fair conducts an extensive search for farms, ranches and companies that have called California home for 100 years or more.

Any agricultural business or affiliate, including farms, ranches, equipment dealers, accountants, trade or marketing organizations, universities/colleges, irrigation districts and others, are invited to apply.

The entry deadline is May 1. For application information, contact Teresa McEntire at (916) 263-3598, TMcEntire@calexpo.com.

CalChamber Calendar

Business Summit:

May 18-19, Sacramento

Board of Directors:

May 19, Sacramento



No More Business As Usual



Last week, the California Chamber of Commerce released our annual list of job creator bills. This list (found at www.calchamber.com/jobcreators) includes proposed

legislation that will reduce costs to employers, provide sensible regulatory policies, reform an out-of-control legal climate, create more construction jobs and spur investment in California companies. Currently the list includes 14 proposals, but we hope to add many more bills as the legislative session continues.

About the same time that our job creator list was released, new unemployment data came out showing that California's unemployment rate is 11.2 percent, with the pace of job loss in this recession occurring at a deeper and faster rate than during any of the other recessions in the past three decades.

Jobs/Economic Impact?

While many things about this recession are out of our control, it is clear that California has suffered more than most other states. Not only is it about time legislators took notice, but it is time for meaningful action.

Whenever an issue is before the Legislature or the Administration, the first question should always be whether the solution presented will have a positive impact on jobs and the economy. If not, let's all look for alternatives. In today's severe recession, the economy and jobs must be *the* litmus test in which to measure any and all solutions.

Needed: Commerce Experts

CalChamber's job creator list, alongside the devastating unemployment news, makes it clear there are several things we need to do to make the return of economic vitality real in our state.

In addition to passing job creating legislation like the bills outlined on our list, the Legislature should invest in recreating the Department of Commerce to give the administration staffing and tools to help businesses create and

“In today’s severe recession, the economy and jobs must be the litmus test in which to measure any and all solutions... Legislators must end the lip service that is paid to job creation and economic recovery efforts in the Capitol.”

maintain private sector jobs.

Creating a team of experts to facilitate the resolution of both state and local government issues in an expedited time frame is needed now more than ever. The ability of government to drive commerce, rather than to act as an adversary to business, will be key to more jobs here in the future.

Commentary By Allan Zarembeg

Economic Impact Committee

In addition, the Legislature should create an “Economic Impact Committee” that would review all bills that pass policy committees to determine if a proposal has an impact on the economy and would cost jobs.

Currently, both the Assembly and

Senate have Appropriations committees that review the fiscal impact of proposals on government and reject legislation that the government can't afford.

Because cost is the most important indicator of whether a business will add future jobs here or somewhere else, why not have a similar process to shine a light on bills that our economy simply cannot afford?

Next month, CalChamber will release our annual list of job killers—legislative bills that are simply too costly for employers and our economy to withstand.

Our hope is that the job killer list will be short and the job creator list long. Legislators must end the lip service that is paid to job creation and economic recovery efforts in the Capitol. Tough decisions must be made. Now is not the time for business as usual.

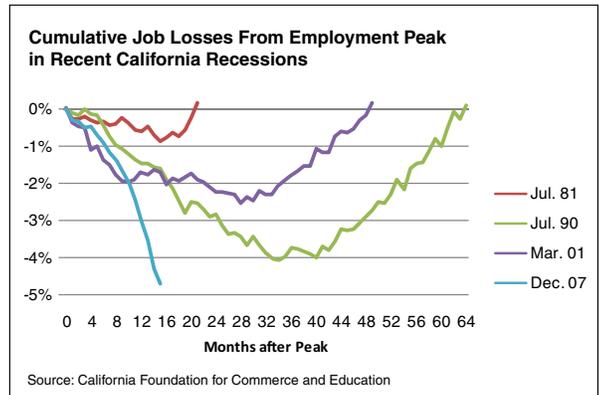
Allan Zarembeg is president and chief executive officer of the California Chamber of Commerce.

Recession Job Loss Steeper than Previous Ones

A comparison of job losses for this recession with the three previous recessions by the California Foundation for Commerce and Education shows that California job losses (as a percentage of total non-farm employment at the peak of the cycle) have been deeper and accelerated faster than during any of the previous recessions.

Since the start of this recession, only private education and health services, and the state and federal government sectors, have seen any job growth. The federal stimulus package should result in major

increases in employment in all levels of government employment. Last month, in a small blip of good news, the information sector saw some growth.



CalChamber Sponsors Flexible Workweek Bill

From Page 1

compensation to be paid for work performed by an hourly employee who works in excess of eight hours in a single day or more than 40 hours in a single workweek. Due to California's strict overtime premium pay requirements, however, employers do not usually permit a four-day compressed workweek schedule because the last two hours of each 10-hour workday would have to be paid at time-and-a-half wage rates.

Complex Law

Currently, in order for employees to adopt an alternative workweek schedule, an employer must conduct a secret ballot election with two-thirds of employees in the work unit approving the proposal. The process is complex, and any misstep by the employer could lead to costly lawsuits.

Under current (and very detailed) Industrial Welfare Commission wage orders, employers may institute alternative work schedules only if a supermajority of affected employees agree to the arrangement in writing and by secret ballot. Employers must hold discussion meetings at least 14 days before secret ballot voting. Two-thirds of the company's employees must agree to the change. Any deviation from the rigidly controlled process voids the election and subjects the employer to potential lawsuits that can seek up to three years of back overtime pay for affected workers, along with huge penalties and fines.

Moreover, variances in schedules or the use of more than one schedule—unless it was offered in the secret

ballot election—are prohibited without repeating the voting process. This in effect eliminates most employers and employees from choosing schedule options such as compressed workweeks.

Employees/Employers Benefit

In the current economic environment, many employers cannot afford to provide raises, bonuses and enhanced benefits. It makes sense to allow employers to provide flexible work schedules as an employee benefit to increase morale and allow employees to reap the benefit of an extra day off per week.

Working a compressed four-day workweek provides for up to 50 extra days each year for the average full-time employee. That will be time for the employee to spend with family, attend children's school activities, take care of dependent elders, go to medical appointments, go back to school or attend to other private matters that usually cannot be accomplished on a weekend.

Environmental Benefits

A report released in 2005 by the state Department of Health Services shows that employees in the state spend up to 100 hours per year commuting. More employees working an alternative workweek schedule could lead to fewer cars on the road during peak rush hours and less traffic congestion. With employees commuting at different times of the day, easing traffic congestion will lessen commute time as well.

Employee Protections

SB 187 contains several important

employee protections:

- The bill does not affect workers covered by collective bargaining agreements. Employees covered by collective bargaining agreements in both the private and public sector are exempt from daily overtime—these include all state, county and city employees, such as those employed by school districts, water districts and a multitude of other governmental agencies.
- The employee must request the alternative schedule in writing.
- The employee or the employer may terminate the schedule agreement in writing at any time.
- The Division of Labor Standards Enforcement will enforce the new rule and adopt or revise regulations to implement it.
- The bill prohibits any employer from offering an employment benefit to an employee as an incentive to seek flexible schedules.
- The bill prohibits retaliation against an employee who does not seek a flexible schedule.
- The bill also prohibits an employer from forcing an employee to work more than eight hours in a workday without overtime pay.

Action Needed

SB 187 will be heard in the Senate Labor and Industrial Relations Committee on April 29.

The CalChamber urges members to ask committee members to **support SB 187**.

A sample letter is available at www.calchambervotes.com.

Staff Contact: Marti Fisher

Opposition Stops Bill Hampering State Energy/Water Supply

From Page 1

cooling power plant equipment. The process involves drawing water from a local body of water, using it to condense the steam from the turbine and absorb heat, then discharging it to the original water body at an elevated temperature. Concerns have been raised about the impact of this process on creatures and organisms living near the water intake and output locations.

By prohibiting the use of once-through cooling, SB 42 would have led to the pre-

mature retirement of California plants using the process, thereby having an immense impact on the state's ability to meet crucial peak energy demand and potentially leading to significant rate hikes.

SB 42 also would have hurt the state's ability to obtain more water supplies during the drought due to the bill's impact on desalination plants, which are most effective when collocated with power plants because the water used to cool the turbines can be desalinated. Desalination,

the process of removing excess salt and other minerals from water, is a viable tool to obtain more water supplies. Technological advances have made it an affordable option. Environmental safeguards can be taken to minimize any adverse effects, including water quality, discharge and the monitoring of brine levels.

The CalChamber believes the state should take a comprehensive approach to climate change, renewable energy and meeting the demands of the environment.
Staff Contact: Amisha Patel

Governance of Prime State Water Source Focus of Myriad Legislative Proposals

Retooling Delta Governance Necessary Prelude to Developing Water Bond

Reworking the framework for making decisions affecting the Sacramento-San Joaquin Delta—the crux of the state’s water delivery system—is the prime task now for a working group that includes the California Chamber of Commerce and numerous stakeholders.

The working group—including representatives from agriculture, water districts, cities, counties, builders, planners and environmentalists, among others—is fleshing out legislative proposals to revamp governance in the Delta.

Governance Before Bond

Establishing the new governance structure is critical to the state’s water future because Senate President Pro Tem Darrell Steinberg (D-Sacramento) has said governance issues must be settled before lawmakers develop a water bond to fund infrastructure needed to assure a reliable water supply for Californians.

In past years, as many as 200 agencies have shared jurisdiction over various activities in the Delta, such as pumping water to meet the needs of users south of the Delta estuary, improving the levees

or restoring habitat. The complications from that patchwork of involved and competing government agencies and other parties prompted the Delta Vision Committee to recommend an overhaul to establish a comprehensive governance structure that provides authority in the Delta region.

The committee was part of the Delta Vision process, begun by a September 2006 executive order from Governor Arnold Schwarzenegger. The assignment for the Delta Vision Blue Ribbon Task Force and Delta Vision Committee was to find common ground on the two coequal goals of improving water supply and protecting the fragile resources of the Delta.

The final Delta Vision report was released on December 31, 2008 (see January 16, 2009 *Alert*).

Delta Governance Legislation

Legislation being developed to implement the Delta Vision recommendations includes the following. Working groups are meeting weekly and details of the proposals are fluid.

- SB 12 (Simitian; D-Palo Alto) establishes the new primary agency of authority in the Delta, the Delta Ecosystem and Water Council. SB 12 grants broad sweeping authorities to the council, including the ability to raise and spend money, impose fees on water diversion and exclusive power to authorize or deny projects in the Delta.

The bill passed the Senate Natural Resources and Water Committee on April 14 and is expected to be considered by the Senate Local Government Committee on April 29.

- SB 229 (Pavley; D-Agoura Hills), an alternative to the model proposed under SB 12, reorganizes and subsumes the California Water Commission within the California Resources Agency. The new commission would be responsible for developing and implementing a Bay-Delta Conservation Plan and for charging a fee for water diversion to be collected by the California State Board of Equalization.

SB 229 also passed Senate Natural Resources and Water on April 14 and is expected to be heard in the Senate Appropriations Committee on April 27 as it lacks any local government provisions.

- AB 13 (Salas; D-Chula Vista) is a more modest proposal creating the Sacramento-San Joaquin Delta Conservancy to “provide policy oversight, foster implementation of, and manage funds to implement the restoration and management of [Delta] habitat and lands.” The conservancy also would approve and support projects consistent with a Delta sustainability program.

- AB 39 (Huffman; D-San Rafael) is a planning measure that requires the California Delta and Ecosystem Water Council to prepare a plan to implement the Delta Vision Strategic Plan issued by the Delta Vision Blue Ribbon Task Force in October 2008, and to submit that plan to the Legislature before January 1, 2011.

Both AB 13 and AB 39 passed the Assembly Water, Parks and Wildlife Committee on April 14 and will be considered next in the Assembly

See Governance: Page 6

Fit Business Awards Applications Available



The California Task Force on Youth and Workplace Wellness program is accepting applications for the annual California Fit Business Awards.

The award recognizes employers for excellence in providing healthy eating and physical activity programs at their workplaces and supporting and encouraging employees in making healthy choices.

In 2007, more than 80 companies across the state applied for the award. This included a mix of public and private

sector companies, small local companies and California offices of national companies.

Two California Chamber of Commerce members received Gold Fit Business Awards in 2008: Cisco Systems Inc. and Sacramento Municipal Utilities District.

Employers demonstrating excellence in nutrition education, physical activity promotion and worksite wellness can apply for the Fit Business Award at www.wellnesstaskforce.org.

The application deadline is June 17, and winners will be announced in October.

For more information, contact Leah Cox, task force director, at wellnesstaskforce@yahoo.com or by calling (916) 760-7448.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Bill Ensures Greater Small Business Consideration in Regulatory Process



The California Chamber of Commerce is **supporting** legislation that would help reduce regulatory compliance costs for small businesses by giving them a greater voice in the regulatory development process and by requiring regulatory agencies to more carefully assess the economic impact of new regulations on small businesses.

SB 356 (Wright; D-Inglewood), a “job creator,” creates more accountability in the regulatory process by requiring state agencies to involve small businesses early in the drafting process so that the small business perspective is carefully considered as regulations are developed.

The bill also closes problematic loopholes that currently allow state agencies to declare that a proposed regulation has no significant economic impact without providing an explanation for that finding.

In addressing these loopholes, SB 356 would additionally require agencies to prepare and submit a small business economic impact statement and to justify their conclusions as to the regulation’s effect on small business.

Under the provisions of SB 356, agencies also would be required to more carefully explore reasonable regulatory alternatives that are less burdensome to small business and to provide an explanation for not pursuing an alternative if one does exist.

The combined impact of these provisions would be more cost-effective small business compliance with government regulations, all while

preserving the stated objectives of the relevant statutes being implemented.

Need for Bill

One of the biggest challenges facing small business today is the regulatory burden placed on it by government. In the majority of small businesses, an owner’s daily responsibilities include human resource manager, tax expert, accountant, sales agent, health and safety expert, and many other roles.

Unlike large corporations, small business owners typically do not have professional staffs to handle such responsibilities, which makes the added challenge of achieving compliance with new and complex business regulations more troublesome.

A 2005 study conducted by the U.S. Small Business Administration found that federal regulatory compliance cost small businesses (20 or fewer employees) 45 percent more than it did large businesses (500 or more employees). The release of a California-specific study mandated by AB 2330 (Arambula; D-Fresno; Chapter 232, Statutes of 2006) is expected imminently.

Action Needed

SB 356 is scheduled to be considered April 27 in the Senate Business and Professions Committee. Ask committee members and your Senate representative to **support SB 356**.

For a sample letter, visit www.calchambervotes.com.
Staff Contact: Robert Callahan

Governance of Prime State Water Source Focus of Myriad Bills

From Page 5
Appropriations Committee.

Delta Vision Foundation

To advance the strategies recommended in the Delta Vision report, members of the task force have formed the Delta Vision Foundation as

a non-governmental entity, with funding from the David and Lucile Packard Foundation.

CalChamber Board of Directors member Thomas V. McKernan, chief executive officer of the Automobile Club of Southern California, was a task force member and now is a member of the

Delta Vision Foundation.

More information is available at www.deltavisionfoundation.org.

For more information on CalChamber water activities, visit the water issues page in the Government Relations section at www.calchamber.com.

Staff Contact: Valerie Nera

Legislation Expanding Timeline for Workplace Lawsuits Moves



OPPOSE

California Chamber of Commerce **opposed** legislation imposing an unfair and unreasonable litigation burden on employers passed the

Assembly Judiciary Committee this week on a party-line vote of 7-3.

AB 793 (Jones; D-Sacramento) provides a virtually unlimited statute of limitations for many types of workplace lawsuits.

The bill revises the statute of limitations law for any workplace claim or lawsuit relating to compensation so that the statute of limitations is renewed each time an employee's compensation is "affected," including each time it is paid.

AB 793 is not limited to any particular statute, and thus would apply to any California law having an impact on employers, including but not limited to the Labor Code and the Fair Employment and Housing Act.

Reasons to Oppose

The CalChamber and a coalition of employer groups and companies cited the following concerns with AB 793:

- First, AB 793 could in effect eliminate the statute of limitations for lawsuits challenging any California

employer decision that has an impact on pay or benefits. This would encompass a broad array of workplace decisions, including hiring, job evaluations and promotions.

For example, if an employee believes that he or she was denied a pay increase at the time of an annual performance evaluation, each paycheck affected by that one decision would restart the statute of limitations, regardless of whether 10, 15 or 20 years has transpired.

- Second, AB 793 is far more expansive than federal law. Although AB 793 is modeled after the federal Lilly Ledbetter Fair Pay Act of 2009, enacted earlier this year, there are major differences.

One difference is that AB 793 applies to any California statute, while the federal law was limited to certain statutes. In addition, California's labor and employment laws are more expansive than federal laws. Thus, application of the federal "Ledbetter" law to California's statutory framework will result in far greater liability exposure for employers.

- Third, AB 793 violates the public policy behind statutes of limitations—which is to ensure that a defendant is not faced with stale claims that cannot be defended due to the passage of time and the dissipation of fresh and available evidence. In addition, statutes of limitation encourage employees and employers to address the alleged

wrongdoing when it first takes place.

- Finally, AB 793 is not limited to prospective claims and therefore could retroactively apply to pending cases.

If passed, AB 793 would further destroy the balance between employer and employee interests that should be maintained when the Legislature creates workplace laws. Ignoring this balance harms both employers and employees when the weight and cost of too much litigation causes employers to reduce workforces, close their doors or relocate to states with less hostile legal systems.

Key Vote

Voting aye on AB 793 were: Feuer (D-Los Angeles), Brownley (D-Santa Monica), Evans (D-Santa Rosa), Jones (D-Sacramento), Krekorian, (D-Burbank), Lieu (D-Torrance), Monning (D-Monterey).

Noes: Tran (R-Costa Mesa), Knight (R-Palmdale), Nielsen (R-Gerber).

Action Needed

AB 793 will be considered next by the full Assembly. Ask your Assembly representative to **oppose AB 793**.

For a sample letter, visit www.calchambervotes.com.

To be added to the opposition coalition letter, contact laurie.lively@calchamber.com.

Staff Contact: Kyla Christoffersen

Seminars/Trade Shows

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

International Trade

California Ag Export Training Series. Center for International Trade Development. Through June 18, various locations. (888) 638-7888.

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber. May 7, Los Angeles. (213) 580-7569.

Game Changers in the Supply Chain Infrastructure. U.S. Department of Commerce and the U.S. Department of Transportation. May 11, Washington D.C. (202) 482-1134.

8th Annual Maritime Leadership Symposium. California Association

of Port Authorities; California Marine Affairs and Navigation Conference. May 12-14. (916) 444-7158.

U.S. Business Mission to Vietnam. U.S. Vietnam Chamber. May 16-24, Ho Chi Minh City (Saigon). (202) 271-8200.

12th Annual Consular Corps Luncheon. Northern California World Trade Center. May 19, Davis. (916) 319-4262.

Busan International Machinery Fair. Busan Metropolitan City and others. Busan (South Korea), May 20-24.

California-China Trade and Investment Conference. Southern California Regional District Export Council. May 21, Los Angeles. (310) 235-7206.

New Job Creator

As a result of April 14 amendments, a new "job creator" bill has been added to the list:



AB 829 (Caballero; D-Salinas) Manufacturing Investment Incentive—Encourages investment and jobs in manufacturing by establishing a sales and use tax exemption for manufacturing equipment, beginning in 2013.

The bill is scheduled to be considered by the Assembly Revenue and Taxation Committee on May 5.

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