

# ALERT

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## Local Governing Boards May Gain New Tax Authority

## CalChamber-Backed Bill Protecting Business Transactions Passes Committee



### OPPOSE

Over the objections of the California Chamber of Commerce and a coalition of business groups, a Senate committee has approved legislation

dramatically changing the state's tax structure by granting new tax authority to counties and school districts.

**SB 653 (Steinberg; D-Sacramento)** authorizes the governing boards of any county, city and county, or school district, subject to voter approval, to impose and/or increase a local personal income tax, sales and use tax, vehicle license fee tax, and excise tax on any product or service, including alcoholic beverages, cigarette and tobacco products, sweetened beverages and oil extraction.

### Barrier to Job Creation

"No business will have any certainty or be able to plan on what its tax liability will be in the future," said CalChamber President and CEO Allan Zarembeg. "The type of tax imposed under this bill would be limited only by the imaginations of a local government and the special interests. It's a real barrier to job creation and investment in California."

Until now, California has limited local government taxing authority to general or special taxes in the form of a sales and use tax, property tax, and/or utilities and hotel charges.

With 58 counties and approximately 1,130 school districts that would be provided taxing authority under SB 653, the combination of different types of taxes as well as different tax rates that could be imposed under SB 653 is virtually unlimited.

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### SUPPORT

A California Chamber of Commerce-supported bill that allows the collection of personal information including zip codes

in legitimate business transactions, won unanimous approval from an Assembly committee this week.

**AB 1219 (Perea; D-Fresno)** stems from the case of *Pineda v. Williams-Sonoma Stores, Inc.*, in which the California Supreme Court deemed zip codes to be personal information under the state credit card regulations, thus prohibiting collection even if used for fraud prevention.

### Song Beverly Credit Card Act

The bill makes clarifying changes to a provision of the Song Beverly Credit Card Act of 1971. One section of that act defines certain information as "personal identification information" (PII) and limits when PII can be collected as part of a credit card transaction.

AB 1219 makes clear that the restrictions on collecting PII apply when the cardholder physically presents an electronically readable credit card to an

*See CalChamber-Backed: Page 4*

## Environmental Review Process Streamlining Wins Assembly Policy Committee Approval



Legislation that will create jobs and expedite the environmental review process for

certain projects passed the Assembly Natural Resources Committee this week with bipartisan support.

California Chamber of Commerce-supported **AB 880 (M. Pérez; D-Coachella)** streamlines the California Environmental Quality Act (CEQA) approval process for certain projects by

allowing industries subject to greenhouse gas (GHG) regulations under AB 32 to undergo an expedited review through a focused environmental impact report (EIR).

By allowing the expedited process for energy efficiency projects/installs of certain entities subject to GHG compliance, AB 880 will have the dual benefit of facilitating job creation while ensuring environmental integrity.

### Ambitious Goals

California is working aggressively to meet the ambitious environmental goals

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## Labor Law Corner

# Check Job Protections for Employee Who Becomes Ill at Work



**Sunny Lee**  
HR Adviser

● *I have an employee who says that she does not feel well. What should I do?*

If an employee is not feeling well, it may be minor or serious depending on the circumstances and should be investigated immediately.

### Ask Employee

Ask the employee how she is feeling. Ask if anything happened, such as a fall,

exposure to chemicals, or an allergic reaction or if this has ever happened before.

If it has happened before, ask her to follow her doctor's advice and ask if she needs any assistance.

If she is feeling light-headed, there are some basic first aid tips that may be followed, including having her lie down, elevating her feet so that blood flows to her head and loosening clothing around her neck. Elevating the feet will cause blood to flow to the head, so do not elevate her feet unless you are sure that the employee has not suffered a head injury or trauma to the head.

If the employee is not responding or has fainted, is experiencing chest pains, has difficulty breathing or is nauseated, call 911 immediately; stay with her and follow the medical adviser's instructions. Check to see that she is breathing and if not, see if anyone is able to administer cardiopulmonary resuscitation (CPR).

If the employee just wants to go home, make sure that the employee is able to drive home. If she is nauseated or not doing well, consider calling someone to come and pick her up.

If the employee is sneezing or coughing or has a runny nose, it may be allergies or it may be a cold or the flu. Employers have the obligation to provide a safe and healthy workplace and should be concerned about the spread of airborne illnesses.

To prevent the spread of the flu at work, many employers have adopted the policy of not allowing employees with flu-like symptoms to remain in the workplace.

● *If she misses work, am I required to hold her job or can I terminate her?*

Most employers have a sick leave policy that provides limited time off work for the employee to use for illness, medical appointments and treatments.

Beyond the company policy or practice of allowing time off work for illness, the employee may be protected by other laws that allow an employee to be off work and require that the employer return the employee to his/her job.

### Work-Related Illness?

Employers also need to be aware of the potential for a work-related illness.

Workers' compensation coverage is required of all employers and provides medical treatment and lost wage replacement to employees injured at work.

For example, if the employee fell at work, was working with chemicals or there were airborne particles in the air and the employee was having a hard time breathing, the employee's job may be protected due to a work-related illness.

If the work environment does have hazardous chemicals or airborne substances, the employer should be mindful of those effects on employees and consider that the illness may be work-related.

In addition to the work-related job protections, an employer also needs to be aware of the protections provided under federal and state laws, such as the federal Americans with Disabilities Act and Family Medical Leave Act, the state disability protection law, pregnancy disability and the California Family Rights Act.

Before ever terminating an employee who is ill, the employer should be aware of all the protections that an employee may have under company policy, practice and applicable laws, and proceed with caution and legal advice.

*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](http://www.hrcalifornia.com).*

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# Coalition Asks State Water Board to Revise Storm Water Requirements

The California Chamber of Commerce and a coalition of business, taxpayers and local governments are asking the state's water agency to change its new storm water permit requirements, which will increase costs with no proven environmental benefits.

Thousands of California school districts, local governments, recycling facilities, truckers, manufacturers and other businesses currently comply with an Industrial General Storm Water Permit that requires them to manage storm water runoff through best management practices.

The State Water Resources Control Board (SWRCB), however, has proposed a revised storm water permit establishing several new requirements beyond U.S. Environmental Protection Agency (EPA) mandates for these public agencies and businesses.

## Increased Costs

The coalition, united under the name Workable Approach to Environmental Regulation (WATER), estimates the new numeric limits could result in increased costs ranging from tens of thousands of dollars at small businesses and schools to hundreds of millions of dollars at ports and large industrial facilities.

The coalition is urging the board to support an industrial general storm water permit without numeric limits. Such a permit will protect water quality while minimizing costs to the public agencies and private companies that must comply with it.

## Expert Panel

The SWRCB convened a panel of experts to address questions about imposing "numeric limits" in storm water permits. The panel suggested that the board needs to re-examine existing data sources and collect new data before it even considers imposing numeric limits.

The state water board staff acted on none of the recommendations before proposing the new permit.

Moreover, in violation of California and federal law, the state water board has



scheduled a hearing on the revised storm water permit and set a final comment deadline even though the notice for the rule states that it is "currently not in its complete form."

State law requires that a number of factors be analyzed before development of such a regulation, including measuring its water quality benefits and calculating the cost of compliance.

The state water board staff, however, appears to have written the rules for the permit before doing the analysis.

## Coalition Concerns

In addition to voicing concerns with the process the SWRCB has followed so far in promulgating the proposed permit, the coalition has cited several substantive concerns with the proposal itself:

- Arbitrary numeric limits increase costs without proven water quality benefit.
- Unsound regulation invites costly lawsuits.
- Duplicative regulations don't take into account cumulative impacts. The

cumulative cost of regulations already is a burden for California businesses and public agencies. In fact, the permit would duplicate many existing regulations already in place to address storm water controls.

- Prohibits group compliance, such as participating in a Group Monitoring Plan, which adds a layer of compliance review, streamlines the reporting process and significantly reduces the costs associated with regulatory compliance.

## Better Way

Coalition members believe there is a better way to address storm water management. The coalition supports efforts to improve water quality and coalition members are willing to take reasonable and measured steps toward this end. Sudden, new, unproven and expensive programs are not appropriate at any time, especially during a period of economic recovery.

The coalition asks that California "not embark on an experiment that puts its businesses at serious risk." Instead, the coalition urges the state "to take a more tried and true approach that provides the level of protection recognized as sufficient" by the U.S. EPA.

**Staff Contact: Valerie Nera**



"Many years of involvement with the California Chamber of Commerce has totally convinced me of its incalculable value as a successful advocate for small business and small business values in California."

JOHN W. KOEBERER  
CHIEF EXECUTIVE OFFICER AND PRESIDENT  
THE CALIFORNIA PARKS COMPANY, RED BLUFF

## CalChamber-Backed Bill Protecting Business Transactions Clears Committee

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employee in order to complete his or her transaction.

### ***Pineda v. Williams-Sonoma***

In *Pineda*, the California Supreme Court ruled that a zip code constitutes PII under the Song Beverly Credit Card Act. According to the decision, a retailer may violate the act by requesting and recording a customer's zip code in conjunction with a credit card purchase.

Since the *Pineda* decision was handed down in February, more than 150 class action lawsuits have been filed against retailers in California. Many of those retailers were collecting zip codes for legitimate reasons that should be

allowable under the law.

For example, some retailers have been sued for collecting zip codes when the customer placed an order online and the zip code was needed for delivery. Others have been sued when they were collecting the zip code only in order to reduce the likelihood of fraud or identity theft.

The purpose of AB 1219 is to continue to limit the collection of PII while still allowing and recognizing the legitimate business need for a retailer to use PII to appropriately process and complete all components of a customer transaction. AB 1219 also will help to address the potential for identity theft in situations where the person or functioning card is not present.

### **Key Vote**

AB 1219 passed the Assembly Banking and Finance Committee on May 2, 11-0.

**Ayes:** Achadjian (R-San Luis Obispo), Eng (D-Monterey Park), Fletcher (R-San Diego), Fong (D-Cupertino), Gatto (D-Los Angeles), Harkey (R-Dana Point), Hernández (D-West Covina), Lara (D-Los Angeles), Morrell (R-Rancho Cucamonga), Perea (D-Fresno), Torres (D-Pomona).

**Absent/abstaining/not voting:** C. Calderon (D-Montebello).

**Staff Contact:** Valerie Nera

## CalChamber-Sponsored Seminars/Trade Shows

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

### **Business Resources**

Small Business Advantage. Internal Revenue Service. May 18, Webinar. (916) 974-5281.

Small Business Resource Summit. U.S. Small Business Administration Sacramento District Office. May 26, Citrus Heights. (916) 735-1700.

### **International Trade**

Black Markets: The Dark Side of the Global Economy. World Affairs Council. May 9, Sacramento. (916) 691-4713.

National Export Initiative Update with Congressman Farr. Monterey Bay International Trade Association (MBITA). May 18, Monterey. (831) 335-4780.

Los Angeles Economic Development Corporation International (LAEDC) Trade Outlook. LAEDC. May 18, Los Angeles. (213) 622-4300.

Export 101. Northern California District Export Council. May 18, San Jose; June 15, Oakland.

Futurallia Kansas City 2011. El Camino College Center for International Trade Development. May 18-20, Kansas City, Missouri. (310) 973-3173.

### **Labor Law**

Exempt—When You've Properly Classified. CalChamber. On Demand. (800) 331-8877.

How to Hire Employees and Reduce Liability. CalChamber. May 12, Webinar. May 25, On Demand. (800) 331-8877.

How to Conduct Effective Performance Evaluations. CalChamber. June 9, Webinar; June 20, On Demand. (800) 331-8877.

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Investigations. CalChamber. July 14, Webinar; July 25, On Demand. (800) 331-8877.

### **Workplace Safety**

Heat Illness Prevention—How to Comply with New Rules. CalChamber. May 12, Webinar; May 21, On Demand. (800) 331-8877.

## CalChamber Opposes Sweetened Beverage Tax



Photo by Megan Wood

CalChamber Policy Advocate Mira Guertin points out that targeted taxes such as AB 669 (Monning; D-Carmel) impede economic growth and jobs. The bill taxes sweetened beverages to fund childhood obesity programs, creating a new government program. AB 669 is stalled in the Assembly Revenue and Taxation Committee.

## Senate Committee Passes Legislation Undermining Employers' Rights



### OPPOSE

and Industrial Relations Committee.

**SB 829 (DeSaulnier; D-Concord)** establishes new requirements in Cal/OSHA citation appeals that would increase costs to the Cal/OSHA Appeals Board and to employers. The bill makes sweeping changes to the procedures of the board, disadvantaging employers that appeal citations.

#### Right to Appeal

All employers have the right to appeal a Cal/OSHA citation and proposed penalty for any number of reasons. The appeals process was designed to allow an employer to be able to represent itself in an appeal, or to be represented by an attorney.

In creating overly complex requirements, the provisions of the bill disincentivize employers from appealing citations, and easily penalize employers when they do appeal.

Employers need certainty, but SB 829 creates a system in which employers never know when the process is final, or what they can expect. By allowing anyone to participate as a party and hold

A California Chamber of Commerce-**opposed** bill that undermines employer rights in Cal/OSHA citation appeals has passed the Senate Labor



Photo by Megan Wood

**CalChamber Policy Advocate Marti Fisher (left) and Kevin Bland, representing the District Council of Iron Workers/California Iron Worker Employer Council and Western Steel Council, urge the Senate Labor and Industrial Relations Committee to reject SB 829, which undermines employer rights in Cal/OSHA citation appeals.**

employers potentially liable for excessive fees and costs, certainty and fairness for employers are severely compromised.

The CalChamber believes the provisions of SB 829 create an unfair system designed to penalize employers and discourage them from exercising their rights to file an appeal.

#### Key Vote

SB 829 passed Senate Labor and

Industrial Relations on April 27, by a vote of 5-0.

**Ayes:** DeSaulnier (D-Concord), Leno (D-San Francisco), Lieu (D-Torrance), Padilla (D-Pacoima), Yee (D-San Francisco).

**No vote recorded:** Runner (R-Antelope Valley), Wyland (R-Escondido).

SB 829 will be considered next by the Senate Appropriations Committee.

**Staff Contact: Marti Fisher**

## Environmental Review Process Streamlining Wins Committee Approval

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set forth by AB 32, The California Global Warming Solutions Act of 2006.

As regulations are being adopted to reduce California's GHG emission levels, companies subject to compliance with these regulations must make significant modifications to existing facilities in order to achieve emission reductions required by the law. Since by law, all GHG regulations will take effect by January 1, 2012, companies have a short time frame in which to be AB 32 compliant ready.

In order to make infrastructure changes, these companies must go

through the necessary CEQA permitting process before construction of significant project modifications/upgrades can begin.

Because the CEQA process can be arduous, often resulting in delay and great expense to business, it is important that the state look for ways to streamline this process to help industries meet their AB 32 goals in a timely manner.

The CalChamber believes AB 880 provides a "win-win" situation by facilitating the ability of California businesses to comply with GHG emission reductions under AB 32 while also providing the benefits of jobs in the state.

#### Key Vote

AB 880 passed Assembly Natural Resources on May 2, 8-1:

**Ayes:** Brownley (D-Santa Monica), Chesbro (D-North Coast), Dickinson (D-Sacramento), Grove (R-Bakersfield), Halderman (R-Fresno), Huffman (D-San Rafael), Knight (R-Antelope Valley), Monning (D-Carmel).

**Noes:** Skinner (D-Berkeley).

AB 880 will be considered next by the Assembly Appropriations Committee.

**Staff Contact: Brenda M. Coleman**

## Local Governing Boards May Gain New Tax Authority

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The uncertainty and inconsistency that could be created by SB 653 will harm businesses located in California and will certainly discourage any out-of-state businesses from locating to California.

### Concerns

The CalChamber and coalition have highlighted critical problems with SB 653:

- **Provides the authority for unlimited excise taxes, which are both regressive and inequitable.** SB 653 will allow counties, cities and counties, or school districts to impose excise taxes specifically on alcoholic beverages, cigarette and tobacco products, sweetened beverages, and oil extraction.

SB 653 specifically states, however, that local governing boards are not limited solely to these products, thereby providing such localities with the leeway to impose an excise tax on virtually any product or service. Such excise taxes could place a greater burden on lower- and middle-income taxpayers to obtain necessary products and services.

This is especially so for an oil severance tax, which will increase oil production costs that will undoubtedly be passed along to California consumers at the pump.

- **Causes compliance problems with**

**local income taxes.** Local-imposed personal income taxes would place a significant record-keeping and compliance burden on employers, who would be obligated to withhold and remit personal income taxes on behalf of their employees.

There is no doubt that employers will struggle in tracking and complying with the numerous local personal taxes imposed through SB 653 by either a county or school district as well as the various rates of such taxes.

There will also be an administrative burden of trying to determine residency of a taxpayer for purposes of sourcing the appropriate local personal tax rate that should be applied to the income.

- **Allows county, city and county, or school district to exceed existing transactions (sales) and use tax rate limits.** SB 653 authorizes counties, cities and counties, or school districts to impose transactions (sales) and use taxes beyond the 2 percent local rate limitation currently authorized by law. Each county or school district could exceed the existing tax rate limit, thus recreating a problem the Legislature fixed after cities began imposing different tax rates in the 1940s. California currently has the highest sales and use tax in the country. Excessive tax rates on sales and use of

tangible property will put the state at a competitive disadvantage.

- **Higher vehicle license fees hurt the economy.** SB 653 allows the imposition of a local vehicle license fee up to 1.35 percent. This will raise costs for the state for administering potentially different rules county to county or district to district, and will have a direct impact on vehicle sales, thereby hurting an industry already hit hard by the recession.

### Key Vote

SB 653 passed the Senate Governance and Finance Committee on May 4, 6–2:

**Ayes:** DeSaulnier (D-Concord), Hancock (D-Berkeley), Hernandez (D-West Covina), Kehoe (D-San Diego), Liu (D-La Cañada Flintridge), Wolk (D-Davis).

**Noes:** Huff (R-Diamond Bar), LaMalfa (R-Richvale).

**No vote recorded:** Fuller (R-Bakersfield).

### Action Needed

SB 653 will be considered next by the Senate Appropriations Committee. The CalChamber is urging businesses to contact their senators and committee members to voice **opposition** to **SB 653**.  
**Staff Contact:** Jennifer Barrera

CalChamber

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# CalChamber Backs Pilot Program to Settle Cross-Border Trucking Dispute with Mexico



The California Chamber of Commerce is supporting a federal proposal to reinstate a pilot program to help resolve the cross-border trucking dispute with Mexico.

The dispute arose from the United States' failure to adhere to provisions in the North American Free Trade Agreement (NAFTA) granting Mexican trucks access to U.S. highways.

The U.S. Department of Transportation (DOT) proposed initiating a "Pilot Program on NAFTA Long-Haul Trucking Provisions" in a *Federal Register* notice on April 13. The department is accepting comments for a month from that date.

The CalChamber commends the effort of the U.S. DOT to end this long-standing dispute with Mexico and empower U.S. workers and farmers to become more globally competitive, including in the critical Mexico market.

## Background

The United States began a pilot program to grant Mexican trucks access to U.S. highways in 2007. The program operated successfully until Congress ended it in the 2009 Omnibus Appropriations Bill.

In response, starting in March 2009, the Mexican government imposed retaliatory tariffs on U.S. exports to Mexico, California's largest export market, resulting in lost jobs.

Mexico's retaliation imposes tariffs on products from 40 states, ranging from dental floss to Christmas trees. The targeted California agricultural products include fresh and processed products from grapes and almonds to wine, as well as printed matter and mechanical equipment.

A dispute-settlement panel unanimously ruled that the blanket exclusion of Mexican trucking firms violates U.S. obligations.

## Pilot Program

The latest proposed pilot program permits Mexican-domiciled carriers to operate in the United States for up to

three years. It is an important step toward ending retaliation against U.S. products.

Mexico and the United States have agreed that when an agreement on the U.S. DOT proposal is signed, 50 percent of the retaliatory tariffs currently in place will be suspended.

The remaining 50 percent of the added tariffs are to be suspended when the first Mexican carrier is authorized to operate under the pilot program. The tariffs will be terminated, following the pilot program, when Mexican carriers are eligible to receive permanent standard authority to operate within the United States.

Road safety is the single most important issue raised by the current proposal. The proposed pilot program requires participating Mexican-domiciled carriers to meet every regulatory and safety requirement imposed on U.S. carriers, plus additional measures imposed only on Mexican carriers.

The previous pilot program demonstrated the high levels of safety maintained by the types of carriers that are likely to participate in the current program.

The new pilot program, for up to three years, represents a critical step toward meeting the long-standing U.S.

commitment to allow cross-border delivery of international cargo by Mexican-domiciled carriers from Mexico into the United States, access already provided to Canadian carriers.

In a recent meeting with Mexico President Felipe Calderón, President Barack Obama pledged that the United States would start taking the necessary steps to begin fulfilling its commitment to grant access to U.S. highways for Mexican trucks.

On March 3, the White House announced agreement on a "path forward" on the cross-border trucking dispute with Mexico, with reports citing a long-term resolution as soon as late summer.

## Action Needed

Joining the CalChamber in supporting the pilot program is the California Coalition for Free Trade, a broad-based group of companies and business organizations working to secure a national free trade agenda

The CalChamber is urging businesses to submit comments in support of the pilot program by May 13 at [www.regulations.gov](http://www.regulations.gov).

**Staff Contact: Susanne Stirling**

## Hungarian Ambassador Stops by CalChamber



A visit from Hungarian Ambassador to the United States Gyorgy Szapary (left) provides an opportunity to discuss Hungary's role as president of the European Union for the first half of 2011. With the ambassador are (from left) CalChamber President and CEO Allan Zaremborg; Susanne Stirling, CalChamber vice president, international affairs; Nicholas Bartsch, honorable consul, Hungarian Consulate in Sacramento; and Dr. Gabor Kaleta, consul, Hungarian Consulate in Los Angeles.



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