

ALERT

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CalChamber: Fix Inequity in Electricity Cost Offsets



The California Chamber of Commerce is calling on the Legislature to correct an inequity in how the state

will attempt to mitigate the higher electricity costs that ratepayers face due to California's AB 32 greenhouse gas cap-and-trade program.

The unfair treatment of a significant portion of electricity customers is due to language enacted in a budget trailer bill, **SB 1018** (Committee on Budget and Fiscal Review), which excluded certain customers from receiving credit offsets to increased electricity rates from the

sale of utility sector AB 32 cap-and-trade allowances.

The flawed approach will hit customers such as K-12 schools, local governments, courts, hospitals, prisons, mass transit, agricultural entities, colleges, universities, large employers and commercial businesses. Together, these customers use more than half the electricity provided by California's investor-owned utilities.

All electricity customers will bear the responsibility of paying for the greenhouse gas cap-and-trade program beginning January 1, 2013. Nevertheless, when approving SB 1018, the Legislature specified only some categories of customers as being eligible to receive

See CalChamber: Page 4

CalChamber Battles Increased Liability for California Employers



"Job killer" bills increasing employer exposure to discrimination litigation were the focus of two new installments of CalChamber News released as legislators

returned to Sacramento this week following the summer break.

The California Chamber of Commerce is urging members to ask senators and members of the Senate Appropriations Committee to **oppose AB 1450 (Allen; D-Santa Rosa), AB 1999 (Brownley; D-Santa Monica) and AB 2039 (Swanson; D-Alameda).**

Danger in Workplace

The first CalChamber News segment focused on AB 1450, which essentially prohibits employers from legitimately inquiring into an applicant's most recent employment history, due to fear that such an inquiry will ultimately lead to penalties and costs on the basis that the applicant was discriminated against because of his or her status as unemployed.

"The Legislature of California is preventing an employer from determining whether or not a new employee is going to be dangerous or a hazard," says CalChamber President and CEO Allan Zaremborg of AB 1450.

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Employers Lobby Against Pension Mandate



Photo by Megan Wood

CalChamber Vice President of Government Relations Marc Burgat (left) recaps concerns with SB 1234 by Senator Kevin de León (at podium) mandating private sector pensions. See story on Page 4.

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Foam Food Container Ban Returns: Page 5

Labor Law Corner

Termination Over Perceived Conflict of Interest Requires Careful Review



Dana Leisinger
HR Adviser

I have an employee who has formed his own company doing business outside our hours that competes with our business. Can I terminate him for this activity?

California law is very protective of an employee's right to engage in what is called "lawful conduct," and moonlighting is considered an example of lawful conduct.

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Employer Rights

Under Labor Code Section 96(k), the state Labor Commissioner can bring a claim against an employer if there is an allegation the employer has taken action against an employee for engaging in lawful conduct.

Nevertheless, an employer has the right to a duty of loyalty from its employees, and employees have the duty to act solely for the benefit of the employer when engaging in any conduct that relates to the employment.

Additionally, these laws do not override employment contracts that protect the employer against conduct that is actually in direct conflict with the employer's essential interests if the conduct would disrupt the employer's operation.

Conflict of Interest

The trickier situation arises when the employee takes a second job that appears to be in conflict, but is not. There is little case law interpreting these laws on lawful conduct, and the conflict must be very real, not an appearance of conflict.

In the question posed above, there

must be an analysis to determine if the new business the employee has started is actually in direct conflict.

For example, if the employee works for a beer distributorship and starts up a wine distributorship, there would be no real conflict. Therefore, unless "moonlighting" creates an actual conflict of interest, the employee is free to work other jobs simultaneously.

Review the Situation

Employers should not allow their own personal interests to interfere with any lawful outside activities of their employees. Any "moonlighting" policies should be carefully evaluated to ensure they do not prohibit conduct protected by Labor Code Sections 96(k) and 98.6. A review of any such policies should be conducted by experienced employment law counsel.

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.

CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Labor Law

Conducting Effective Performance Appraisals Webinar. CalChamber. August 16. (800) 331-8877.

Professionals In Human Resources Association (PIHRA) Annual Conference & Exposition. August 27-29, Anaheim. (310) 416-1210, ext. 810. Special pricing for CalChamber members.

Employee Discipline Webinar. CalChamber. September 20. (800) 331-8877.

FMLA/CFRA Webinar. CalChamber. October 18. (800) 331-8877.

Conducting Workplace Investigations Webinar. CalChamber. November 15. (800) 331-8877.

International Trade

Hong Kong Food Expo. Hong Kong Trade Development Council. August 16-20,

Hong Kong, China. (310) 973-3175. Access China. World Trade Center San Diego. September 5-13, Xiamen, China. See *CalChamber-Sponsored: Next Page*

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CalChamber Battles Increased Liability for California Employers

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In the video, Zaremborg says the bill puts “everyone at risk” because employers could not properly screen potential employees.

Cumulative Impact

The second CalChamber News segment discussed AB 1999 and AB 2039, which would add significant burdens to California employers. AB 1999 expands the Fair Employment and Housing Act to create a new protected

classification for family caregivers. AB 2039 increases the number of employees who can take protected leave under the California Family Rights Act.

“When you look at the cumulative impact that all of these leaves have on employers, it is significant,” said Jennifer Barrera, CalChamber policy advocate and employment law expert.

Zaremborg said: “These kinds of situations don’t exist anywhere else in the country. When you have increased exposure to liability you think twice

before you invest in California.”

Action Needed

Although all three bills were placed on the Senate Appropriations suspense file on August 6 pending a review of their fiscal impact, they will be considered at the committee’s next meeting.

Contact your senators and members of Senate Appropriations to urge them to **oppose AB 1450, AB 1999 and AB 2039.**
Staff Contact: Jennifer Barrera

CalChamber-Sponsored Seminars/Trade Shows

From Previous Page

Nanjing, Changzhou, and Shanghai, China. (619) 615-0868, ext.118.
Pan African Global Trade Conference. Africa-U.S. Chamber of Commerce. September 6–7, Carson. (626) 321-7041.
Global Trade Expo 2012. U.S. Global Business Forum. September 6–9, Anaheim. (714) 493-1948.
Green Construction Trade Mission to Brazil. Bay Area CITD. September 9–15, São Paulo and Rio de Janeiro, Brazil.
New Markets: Exporting to Colombia/Panama. Institute of the Americas. September 10, La Jolla. (858) 453-5560.

The Americas Business Forum. Los Angeles Area Chamber of Commerce. September 12–13, Los Angeles. (213) 580-7570.
Expoalimenteria 2012. Exporters Association, Ministry of Agriculture, Ministry of External Relations, Prom Peru. September 19–21, Lima, Peru.
Trade Mission to the UK. U.S. Commercial Service. October 15–17, London.
Eco Expo Asia 2012. El Camino College Center for International Trade Development (CITD). October 26–30, Hong Kong, China. (310) 973-3132.

CA Cleantech Company Trade Mission to China. El Camino College CITD. October 30–November 11, China. (310) 973-3161.
Nagoya Export Trade Mission 2012. Aichi Prefectural Government, City of Nagoya, and Nagoya Chamber of Commerce and Industry. November 7–10, Nagoya, Japan. (310) 732-3838.
Trade Mission to South Africa and Zambia. U.S. Commercial Service. November 26–30, Lusaka/Ndola, Zambia, and Johannesburg/Cape Town, South Africa. (202) 482-2054.

Video Highlights Reasons to Contribute to ChamberPAC

CAJobKillers.com offers more than updates on “job killer” bills identified by the California Chamber of Commerce. It also provides an easy way to make one-time or ongoing contributions to help the campaign to elect more pro-jobs legislators through ChamberPAC.

As CalChamber President and CEO Allan Zaremborg points out in a video on the website: “We need to have a Legislature that’s responsive to the number one issue in America, and that’s creating jobs and moving our economy forward.

“Before we can be successful on

the policy, we have to be successful on the politics. We have to put the right politicians, the right leaders, the right public officials in office.”

More information is available at www.CAJobKillers.com.

CAJobKillers.com

Updates, news links, videos, contributions link

Employers Oppose Bill Mandating Private Sector Pensions



OPPOSE

Steinberg; D-Sacramento).

SB 1234 mandates private non-unionized employers that do not offer a retirement plan to enroll their employees in a government-created program.

The bill subjects employers to significant cost, fiduciary responsibilities and liability with no commensurate benefit to employees by requiring employers without a retirement plan to enroll their workers in the new “California Secure Choice Retirement Savings Program” or pay a penalty of \$250 per employee.

In testimony to the Assembly Appropriations Committee, CalChamber Vice President of Government Relations

The California Chamber of Commerce highlighted problems August 8 with the private sector pension mandate in **SB 1234 (DeLeón; D-Los Angeles/**

Marc Burgat noted that SB 1234 sets up an appointed commission and then turns over authority to that commission for establishing the new “retirement savings” program. He recommended that unanswered questions about the program and its ramifications be resolved before legislators move forward on the plan.

In effect, the legislation could force low-wage workers to choose between being forced to set aside money for retirement and current pressing obligations, including paying the rent and high-interest credit debt.

The new risks mandated by SB 1234 (which applies to employers with as few as five workers) could be particularly harmful to small businesses that can’t afford the added liability, including the duty to properly educate employees about the retirement options available so the employees can make an informed decision.

It appears the author is attempting to eliminate both state and business liability for the new program while exempting employee participants in the new savings plan

from protections in the federal Employee Retirement Income Security Act (ERISA). ERISA was enacted in 1974 to protect participants in non-government-sponsored (private) retirement plans. It sets minimum standards for private plans, including significant fiduciary responsibilities for employer participants that include filing annual reports and actuarial valuations.

The author and supporters of the bill contend the entire cost of the California Secure Choice Retirement Savings Program would be supported by the plan’s contributions and investment income.

Other analysts, however, say the supporters have significantly underestimated the costs and the potential shortfalls that will result if investment returns fall short of projections.

Action Needed

Contact legislators and ask them to **oppose SB 1234**. The mandate is at odds with efforts to make the state more business friendly.

Staff Contact: Marc Burgat

CalChamber: Fix Inequity in Electricity Cost Offsets

From Page 1

credit in the form of offsets to increased electric rates from revenues the state will receive from selling utility sector AB 32 cap-and-trade allowances.

SB 1018 specifies that residential, small business and emissions-intensive trade-exposed customers will receive the credit offsets. No other categories of customers are specified as eligible for this credit.

To leave some customers behind is unfair and could result in adverse economic consequences such as reduced public services, lost private sector jobs, and public resistance to important environmental programs.

Cost Containment Critical

The California Air Resources Board (ARB) allocation of AB 32 cap-and-trade allowances for the benefit of electric utility customers and ARB’s support for returning allowance auction revenue to those customers is one of the most important customer protection features in the AB 32 cap-and-trade program. This approach facilitates a smooth transition to

a low-carbon economy.

Returning allowance auction revenue to all customers in proportion to their AB 32 cost responsibility is the only mechanism to assure fairness. If the language SB 1018 placed in the Public Utilities Code is left uncorrected, certain customers will be excluded from receiving any cost mitigation. That exclusion will hinder customer acceptance of the cap-and-trade program while hurting the California economy and consumers.

AB 32 Investment Significant

Returning utility allowance revenue to all affected customers in proportion to their AB 32 cost burden recognizes the impact that meeting the goals of AB 32 (reducing the state’s greenhouse gas emissions to 1990 levels by 2020) will have on all customers.

In addition to the costs of the cap-and-trade program itself, customers have been and will continue to pay for other AB 32-related programs, such as increased renewable energy, distributed generation and energy efficiency, as well as trans-

mission and distribution upgrades associated with integrating renewable resources and the traditional electricity source.

The very significant investment in greenhouse gas reduction measures being made by electricity customers can at least be partially mitigated in a fair manner by returning utility allowance revenue to all customers in proportion to their AB 32 cost burdens. This allocation approach is critical to help ensure a smooth transition to a low-carbon economy and customer acceptance of these AB 32 programs.

Action Needed

The CalChamber is urging businesses to contact legislators and ask them to amend the SB 1018 language to enact a fair and equitable policy that ensures all electric customers are eligible to receive AB 32 allowance revenues to mitigate the actual AB 32 costs borne by all customers. Revenues from auctioning greenhouse gas allowances should be allocated in proportion to the actual AB 32 costs that customers incur.

Staff Contact: Brenda M. Coleman

Author Brings Back ‘Job Killer’ Bill to Ban Foam Food Containers



A California Chamber of Commerce-opposed “job killer” bill that threatens thousands of manufacturing jobs within the state through a polystyrene food container ban is back and awaiting action by the full Assembly.

The CalChamber highlighted **SB 568 (A. Lowenthal; D-Long Beach)** in an updated CalChamber News video released this week.

SB 568 failed to pass the Assembly in the closing days of the 2011 legislative session.

The “job killer” bill inappropriately bans all food vendors from using polystyrene foam food service containers, ignoring the numerous environmental benefits associated with polystyrene products.

Higher Costs

In the news video, owners of a Sacramento café talked about how the proposed ban would drive up costs and require them to increase menu prices, something they had tried to avoid in a down economy because it could drive away customers.

Polystyrene food service packaging requires less energy and resources to manufacture than comparable paper-based products, leaving a lighter footprint.

For example, a polystyrene foam cup requires about 50% less energy to produce—and creates significantly fewer greenhouse gas emissions (GHG)—than a similar coated paper-based cup with its corrugated sleeve. Because these packaging products weigh less than their alternatives, they also result in fewer GHG emissions during transportation.

Problems with Ban

In testimony and letters, CalChamber Policy Advocate Brenda M. Coleman warned that the polystyrene food container ban in SB 568 threatens manufacturing jobs within the state.

Problems the CalChamber highlighted with SB 568 included:

- SB 568 creates an unfair and shortsighted recycling mandate for just polystyrene containers. California’s bottle deposit program includes beverages packaged in glass, aluminum and plastic; a similar approach should be used when addressing take-out food packaging. The CalChamber would welcome a recycling discussion provided no one material is put at a competitive disadvantage.

- Establishing an arbitrary 60% recycling rate in such a short time frame is not only unrealistic, but puts the fate of industry in the hands of local government.

- Thousands of good-paying manufacturing jobs at California-based companies that make polystyrene containers will be in jeopardy if SB 568 is passed. Payroll and property taxes will diminish and goods and services provided by suppliers, vendors and others will decline as well.

- Restaurants, caterers, delis and other food providers will see their operating costs rise as polystyrene containers cost two to three times less than replacement products, which in some cases do not perform as well, especially for very hot and cold food and beverages.

- Focusing on a single material type does not reduce litter. The city of San Francisco banned polystyrene containers, but according to a 2008 litter audit conducted for the city, paper cup litter increased after the ban was enacted.

Action Needed

SB 568 awaits action by the entire Assembly. Please contact your Assembly representative and urge the Assemblymember to **oppose SB 568**.
Staff Contact: Brenda M. Coleman

CalChamber Signs Ballot Arguments Supporting Proposition 40



California Chamber of Commerce President and CEO Allan Zarembeg has signed the ballot arguments in support of Proposition 40,

the November ballot referendum on the Senate district maps drawn by the Citizens Redistricting Commission.

A “yes” vote will leave the commission-drawn Senate district maps in place. The sponsors of Proposition 40 filed a ballot statement in July saying they would not be seeking a “no” vote, which would prevent use of the commission-drawn Senate districts.

The CalChamber has long believed that fair redistricting is the key to meaningful political reform. This is why the CalChamber co-chaired the campaign in support of Proposition 11, the 2008 initiative to allow the citizens of California—rather than the legislators—to draw political districts, thereby eliminating the inherent conflict of interest in the system.

The Citizens Redistricting Commission adopted final political maps for the Assembly, Senate, Congressional and Board of Equalization districts on August 15, 2011. A group supported by the California Republican Party collected signatures to place a referendum challenging the Senate district maps on the ballot.

As explained in the ballot statement,

the sponsors of Proposition 40 aimed to make sure that the measure’s qualification for the ballot would stop the redrawn Senate district lines from being implemented in 2012. Once the state Supreme Court ruled that the commission’s district lines would remain in place for this year’s election “this measure is not needed and we are no longer asking for a NO vote,” said sponsor Julie Vandermost in the argument against Proposition 40.

The June 2012 primary election was the first to reflect the redrawing of districts that will be in place through 2020. The June primary also was the first to implement CalChamber-supported and voter-approved Proposition 14, the top two open primary system. Because

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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.

Proposal Leading to Higher Food Costs Moves to Senate Floor



A California Chamber of Commerce-**opposed** “job killer” bill that will increase food costs for consumers has moved to the Senate floor.

AB 1313 (Allen; D-Santa Rosa) drives up the cost of commodities to consumers by removing the existing overtime exemption allowed for agricultural employers.

After passing the Senate Labor and Industrial Relations Committee, AB 1313 was referred to the Senate Appropriations Committee. Senate Appropriations sent the bill on for a vote by the full Senate in accordance with a Senate rule that requires such action for a bill that does not appropriate money and is determined by the committee chair not to result in either significant additional state costs or a significant reduction in state revenues.

AB 1313 imposes costly new mandates on California farmers that will limit their ability to maintain their

operations and will place them at a competitive disadvantage.

Given the seasonal and unique nature of agriculture production, farmers are exempted under both state and federal law from the eight-hour workday so as to provide farmers with greater flexibility with scheduling employees.

Currently, farmers are required to pay overtime to their employees after 10 hours of work in any workday or after six days of work in any workweek.

AB 1313 would remove this exemption and force farmers to pay overtime rates to agricultural employees after eight hours of work in any workday or 40 hours of work in a workweek. Removal of this exemption will significantly increase farmers’ cost of doing business.

Action Needed: Contact senators and urge them to **oppose AB 1313**.

Staff Contact: Jennifer Barrera

Costly Heat Illness Bill on Suspense in Appropriations Committee



A California Chamber of Commerce-**opposed** “job killer” bill that burdens food growers with unnecessary new rules and increased costs was placed on the Senate Appropriations Committee suspense file this week pending a review of its fiscal impact.

AB 2346 (Butler; D-Los Angeles) could increase the price of food and force growers to move their crop production to other states and countries, thereby hurting California exports, by creating excessive, unnecessary new rules regarding heat illness prevention with unreasonable consequences for violations.

Since 2005, when California adopted heat illness regulations, employers have stepped up compliance efforts and successfully reduced the incidence of heat-related illness in outdoor workplaces. Agricultural employers made enormous strides in compliance and created unprecedented public-private partnerships.

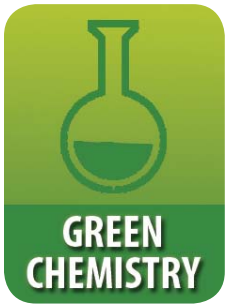
There is no reason for AB 2346. The enforcement provisions combined with fines and penalties are extraordinarily high and unwarranted. The opportunities for litigation are almost limitless: private rights of action and enormous awards of damages, bounty hunter provisions, joint liabilities and high penalties. The bill is filled with procedural traps nearly impossible to avoid. As such, the overly punitive fines for violations could be a disincentive for employers to remain in California.

Action Needed: AB 2346 will be considered by Senate Appropriations when it meets next and could be voted off the suspense file and sent to the full Senate for consideration. Contact your senator and members of Senate Appropriations and urge them to **oppose AB 2346**.

Staff Contact: Marti Fisher

State Releases New Draft of Regulations to Manage Chemical Use in California

CalChamber: If Not Written Correctly, Rules Will Impede Innovation, Investment



The California Department of Toxic Substances Control (DTSC) has released the latest draft of regulations to implement the Green Chemistry Initiative, a massive chemicals management

system with the potential to affect nearly all firms that manufacture or sell consumer products in California.

CalChamber Concerns

In a statement issued after the July 27 release of the new draft rules, California Chamber of Commerce President and CEO Allan Zaremborg commented:

“Our concern has always been that if

not written correctly, these regulations will impede innovation, technology and investment in product development.

“We shouldn’t add a costly new California bureaucracy that duplicates much of the federal consumer and environmental protections taxpayers already pay for. Investors and innovators are faced with a new regulatory regime in California that has substantial power over, not just the existing marketplace of products, but also the development of alternatives.

“California consumers can’t afford a government agency interfering in the development of their necessary consumer products without regard to effectiveness and price.”

The CalChamber is in the process of carefully reviewing the latest regulations and will be submitting detailed comments to the DTSC before the public comment period expires.

Timeline

Attempts to adopt green chemistry rules failed in 2010. The DTSC hopes to have the rules adopted late this year.

Bipartisan legislation passed in 2008 aimed to create a science-based framework for regulating chemicals in consumer products. AB 1879 (Feuer; D-Los Angeles) and SB 509 (Simitian; D-Palo Alto) authorized the DTSC to identify “chemicals of concern,” study them, prioritize them and regulate certain products that contain these chemicals.

The CalChamber and a large number of business trade groups and companies formed an alliance that has been constructively commenting on the proposed green chemistry rules at every stage of the process.

Staff Contact: Brenda M. Coleman

CalChamber Signs Ballot Arguments Supporting Proposition 40

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the top two vote getters in the primary, regardless of party, will advance to the November general election, the open primary has helped create more competitive races and increased opportunities to elect more pro-jobs legislators.

Pro-Prop. 40 Ballot Arguments

Joining Zaremborg in signing the pro-Proposition 40 arguments are Jennifer A. Waggoner, president of the League of Women Voters of California, and David Pacheco, president of AARP California (formerly known as the American Association of Retired Persons).

Following are excerpts from the ballot arguments:

Yes on 40 protects the voter-approved independent Citizens Redistricting Commission.

Prop 40 is a simple choice between the voter-approved Citizens Commission and self-interested politicians.

Yes on Proposition 40 upholds the will of California voters.

California voters have voted three times in the last four years to have district maps drawn by an independent Commission, not the politicians:

- Yes on Proposition 11 (2008): created the independent Citizens Redistricting Commission to draw the maps for the State Assembly and State Senate ;

- Yes on Proposition 20 (2010): extended Prop. 11’s reforms to California’s Congressional districts; and

- No on Proposition 27 (2010): rejected politicians’ attempt to eliminate the independent Commission and give the power to draw their own legislative districts back to the politicians.

Yes on Proposition 40—Holds politicians accountable.

The passage of Proposition 11 and Proposition 20 and the defeat of Proposition 27 created a fair redistricting process that doesn’t involve Sacramento politicians!

...These redistricting reforms have put an end to political backroom deals by ensuring the process is transparent and open to the public. And, politicians are no longer guaranteed re-election, but are held accountable to voters and have to respond to constituent needs.

For more information on

Proposition 40, visit www.HoldPoliticiansAccountable.org.

HoldPoliticiansAccountable.org.

CalChamber Calendar

Environmental Regulation Committee:

September 6, Santa Monica

Water Resources Committee:

September 6, Santa Monica

Fundraising Committee:

September 6, Santa Monica

Board of Directors:

September 6–7, Santa Monica

Public Affairs Council Retreat:

November 13–15, Laguna Beach



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