Transportation Needs Long-Term Solution Now

Following is the text of a letter sent to the Legislature this week.

The damage to our roads and bridges from California’s most recent storms merely highlights and underscores the need to invest in our crumbling transportation infrastructure. The bond revenue from 2007 has run out. The federal stimulus money from the Obama administration has been spent. And, the buying power from gas tax revenues has been cut in half since it was last raised in 1993.

Raising additional revenues for transportation is not an easy vote, but doing nothing will endanger our critical transportation system necessary to move people and goods. Options to raise revenues include those proposed by the Governor and legislative leaders of the transportation committees.

In order to be effective, the revenue must be a long-term, reliable stream to complete multiyear projects and should not be diverted from transportation spending. Additionally, the voters are skeptical that existing revenues are spent as efficiently as possible, so any new revenues must be accompanied by reforms that ensure new and existing transportation revenue are invested more effectively and efficiently.

Gas taxes and registration fees are those revenues that cannot be diverted away from transportation by virtue of the protections in the California Constitution. That doesn’t

Survey Results Underscore Importance of Immigration to California Economy

California Chamber of Commerce members have a strong sense of the importance of immigration—whether legal or undocumented—to the California economy, according to the recently completed survey.

The online survey, conducted from February 16 through February 28, showed that most CalChamber members either strongly agree (57.4%) or somewhat agree (24.6%) that U.S. immigration policy needs comprehensive reform.

Employer access to workers will be affected if border security is significantly tightened along the southern border without comprehensive reform of other elements of immigration policy, a sizable percentage of CalChamber members say.

The top impact identified was to the agricultural industry with 27.9% saying there would be a labor shortage for the agricultural industry and 13% saying access to legitimate H-2A visas for agricultural workers would be among the

Governor Brown Announces Infrastructure Plan

On February 24, Governor Edmund G. Brown Jr. announced a series of immediate and longer-term actions to bolster dam safety, improve flood protection and fix the state’s aging transportation and water infrastructure.

“We are gratified that Governor Brown is committed to expanding investment in California’s infrastructure—in both the short and long term,” said CalChamber President and CEO Allan Zaremberg. “Damage caused by the recent storms underscores the need for better water storage, flood control, and delivery in the state, but also highlights other areas where we are falling short.”

Water

The Governor visited the Incident Command Post at the Oroville Dam last week and surveyed the regional flood control system, including areas recently impacted by flooding. This followed the state of emergency the Governor declared and the presidential emergency declaration the Governor secured to bolster the state’s response.

In a February 24 news release, the Governor announced a four-point plan to bolster dam safety and flood protection:

See Survey Results: Page 5

See Transportation: Page 5

See Governor Brown: Page 4

Inside

Employee Walkout: Page 3
These are all common terms used by employees to request time off from work after the birth of a child, or placement of a child for adoption or foster care. Only employers with 50 or more employees are required to comply with the federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) requirements of providing a leave of absence for baby bonding, continuing the employee’s group health benefits during the leave and returning the employee to his or her job at the expiration of the leave.

Employers are not required to pay the employee while on baby bonding leave under FMLA/CFRA. However, an employee may apply for Paid Family Leave (PFL) benefits through the California Employment Development Department (EDD) and receive a partial wage replacement while on leave.

San Francisco Ordinance

However, employers that fall under a newly adopted ordinance in San Francisco may have to pay eligible employees during baby bonding leave.

In 2016, the City of San Francisco adopted a new ordinance, known as the San Francisco Paid Parental Leave Ordinance (SF PPLO). The PPLO requires covered employers to provide “supplemental compensation” to employees who are off work for baby bonding and are receiving PFL benefits. The required supplemental compensation is the difference between the amount of the PFL benefits the employee receives and the employee’s normal gross weekly wages so that employees receive up to 100% of their weekly wages, subject to a weekly maximum cap.

An employer is not required to pay the compensation during the one-week waiting period before PFL benefits begin, and an employer may, at its discretion, apply up to two weeks of the employee’s unused accrued vacation time to cover the cost of the supplemental compensation.

Phased Implementation

This law went into effect for employers of 50 or more employees on January 1, 2017; for employers of 35 or more employees it will go into effect on July 1, 2017; and for employers of 20 or more employees on January 1, 2018.

All employees of a company are counted to determine whether the company is a covered employer and all employees—whether full-time, part-time, temporary or seasonal—must be counted whether they work in San Francisco or not. Government entities are excluded.

In order for an employer to be required to pay this supplemental compensation an employee must satisfy all of the following requirements:

• Work for a covered employer for 180 days prior to the start of receiving California PFL benefits;
• Work at least 8 hours per week for the covered employer;
• Work in San Francisco for at least 40% of their weekly hours for a covered employer; and
• Apply for and receive California PFL benefits.

More Information

Covered employers should familiarize themselves with this new law so that they are in compliance.

The City has developed a useful website where employers may download the ordinance, the claim form, the required notice to be posted, view a slide webinar, see common questions and answers, etc. This information is available at [http://sfgov.org/olse/paid-parental-leave-ordinance](http://sfgov.org/olse/paid-parental-leave-ordinance).

Employers also may call the City’s Office of Labor Standards Enforcement at (415) 554-4190 with questions.

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).
Employee Walkout? Work It Out

Quite a few news reports discuss recent employee walkouts across the country in protest of federal policies, such as the recent “Day Without Immigrants” protests.

Employers are obviously concerned about how these protests might affect their business operations and what they should do. Employers want to be able to ensure productivity and maintain attendance policies. The situation can be tough to navigate.

Despite these legitimate concerns, employers should exercise caution before taking disciplinary action against an employee who fails to show up to work because of a protest. In some, but not all, circumstances, the employee’s behavior may be legally protected.

If you have concerns that employee walkouts will disrupt your ability to operate, the best course of action is to seek advice of counsel.

Possible Protections

The National Labor Relations Act (NLRA) protects the rights of employees to engage in “protected concerted activity,” which the National Labor Relations Board (NLRB) generally defines as two or more employees taking action relating to terms and conditions of employment for their mutual aid or protection (Sections 7, 8(a)(1)). This right applies to both union and nonunion employees. In fact, the NLRB often enforces this right in nonunionized settings.

In some circumstances, when employees get together to specifically protest working conditions or job issues, such as wages, the NLRA protects those activities. For example, protests for a higher minimum wage are related to improving the employees’ working conditions and may be entitled to NLRA protection.

In other circumstances, the question is more difficult. Not all protests zero in on a specific issue of improving workplace conditions. If workers walk off the job to participate in a general rally opposing the current administration, it’s less likely they are organizing to improve working conditions. NLRA protections might not apply to the employees’ behavior.

It’s not going to be easy for an employer to make a split-second decision as to whether the workers’ activity is protected. Caution on the employer’s part and consultation with counsel is warranted before taking any disciplinary action. Also, blanket statements that the employees cannot participate without jeopardizing their jobs may not pass legal muster.

Loss of Protections

Employees can lose any protections to which they are entitled. For instance, the NLRA does not protect employees who engage in certain acts of misconduct, such as planning the destruction of property or threatening or engaging in violence.

Employees also may lose protection for reoccurring walkouts. Workers who strike multiple times, especially in the same labor dispute, can lose the NLRA's protections and face discipline or termination. The NLRB, in some situations, has found that intermittent strikes are not protected.

Slowdowns, where the workers stay at work but don’t do anything, also may be unprotected.

Immigration Protections

California provides several protections against immigration-related discrimination and retaliation, laws that are stronger than even federal protections. Both California and federal laws also protect workers from national origin discrimination. These laws may come into play with protests or walkouts.

In California, all individuals, regardless of immigration status, who applied for employment or were employed in the state are entitled to all protections, rights and remedies available under state law, except any reinstatement remedy prohibited by federal law.

This includes state labor, employment, civil rights and employee-housing laws. You cannot inquire about a person’s immigration status except when necessary by clear and convincing evidence to comply with federal immigration law. These laws are found in several overlapping California statutes (Civil Code Section 3339; Labor Code Section 1171.5; Health and Safety Code Section 24000; Government Code Section 7285).

California also has strong protections for immigrant workers who complain about unfair wages or working conditions (Labor Code Section 1019). For instance, an employer may not threaten to contact, or contact, immigration authorities because an employee complained that he/she was not paid minimum wage.

Critically, it’s unlawful in California to report or threaten to report the suspected citizenship or immigration status of an employee, former employee, prospective employee or a member of the employee’s family because that person exercised a right under the Labor Code, Government Code or Civil Code (Labor Code Section 244). This is a broader protection than just protecting complaints about wages and hours; it also covers other rights, such as bringing a discrimination or harassment complaint under the Government Code.

Best Practices

If you are affected by walkout activity, keep the following in mind:

• Plan ahead if you know that employees are going to engage in walkouts.
• Don’t automatically take disciplinary action or threaten disciplinary action without legal consultation.
• Apply company policy consistently and fairly.
• Train managers and supervisors to be mindful of employee protection issues.
• Never ask employees to reverify their eligibility to work (by completing a new Form I-9) simply because the employees are involved in political activity relating to immigration issues or because the employer is now suspicious that the employee is undocumented. The Form I-9 should have been completed at the time of hire.
• Remember that lawful off-duty activity also is protected under Labor Code Section 96(k).

Staff Contact: Gail Cecchettini Whaley
Governor Brown Announces Infrastructure Plan

From Page 1

- Invest $437 million in near-term flood control and emergency response actions by redirecting $50 million from the General Fund and requesting a $387 million Proposition 1 appropriation from the Legislature as soon as possible.
- Require emergency action plans and flood inundation maps for all dams.
- Enhance California’s existing dam inspection program.
- Seek prompt regulatory action and increased funding from the federal government to improve dam safety.

According to the Governor’s office, even with the February 24 action, California has nearly $50 billion in unmet flood management infrastructure needs. To address these needs, the Administration will continue to work with the Legislature through the budget process on solutions, including potential changes to Proposition 218, which continues to prevent local government from fixing core infrastructure.

Transportation

The Governor’s Office notes that recent storms have not just damaged the state’s flood control system; they also have hammered the state’s roads and bridges. During the storm season alone, Governor Brown’s emergency declarations have enabled the California Department of Transportation to begin more than $595 million in repairs to the state’s roads and bridges damaged by erosion, mud and rock slides, sink holes and flooding.

“California needs solid reforms that will improve the integrity of our roads, highways and bridges to improve transportation and goods movement and reduce traffic congestion,” Zaremberg said. “Sound infrastructure is a key component of maintaining and improving California’s economy for everyone’s benefit. We look forward to working with the Administration and the Legislature to address California’s short- and long-term infrastructure issues.”

Beyond the current storm season, California faces a broad array of transportation infrastructure challenges: $59 billion in deferred maintenance on highways and $78 billion on local streets and roads, according to the news release. To fix these roads and bridges, Governor Brown and legislative leaders are currently working to meet the goal they set to complete a transportation funding package by April 6.

As mentioned in his State of the State address, Governor Brown is committed to working with Washington, D.C. to invest in California’s infrastructure. Governor Brown sent a letter to the President on February 24 seeking expedited environmental review under Presidential Executive Order 13766. This request covers 10 projects: nine high-priority transportation projects and reconstruction of the Oroville Dam spillways.

The February 24 request to the President includes projects on the initial list of 51 priority infrastructure projects, which California submitted to the federal government earlier in February. The Brown administration is reviewing additional projects to submit for expedited review.

For additional information on the Governor’s four-point plan to bolster dam safety and flood protection, and on California’s ongoing flood management, see the fact sheets at www.gov.ca.gov.

Staff Contacts: Amy Mmagu, Valerie Nera

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law
Keeping Criminal Background Checks in Check. CalChamber. March 16, Live Webinar. (800) 331-8877.
HR Boot Camp. CalChamber. March 23, Pasadena; May 11, Sacramento; May 25, San Diego; June 6, Santa Clara; August 24, Thousand Oaks; September 6, Beverly Hills. (800) 331-8877.
Leaves of Absence. CalChamber. April 3, Sacramento; April 25, Oakland; June 22, Huntington Beach. (800) 331-8877.
Preventing Discrimination in the Workplace. CalChamber. May 18, Live Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. August 18, Sacramento. (800) 331-8877.

International Trade
SelectUSA 2017 China Road Show. SelectUSA. March 13–23, Changchun, Jianan, Zhengzhou, Kunming, Xiamen and Nanjing, China.

Transportation Needs Long-Term Solution Now

From Page 1

mean that other sources can’t be considered, but they should have constitutional protections as well, either taking advantage of existing provisions or amending the Constitution to protect new revenues.

For example, charges on alternative fuel vehicles could be protected as a highway maintenance fee under Proposition 26 if based on vehicle miles traveled. Such a user fee could be passed with a majority vote, though the revenue could only be spent on maintenance for streets and roads. Other new taxes would require additional amendments to the Constitution.

What is the correct amount for new revenue? Is it $3.5 billion in annual revenue as the Governor has proposed, or should it be more, as proposed by the Legislature? At this point, it’s any amount at or above the Governor’s proposal that builds enough consensus to pass the Legislature as quickly as possible.

Finally, a vote to raise revenues is difficult enough. No proposal should be weighed down by additional, unnecessary provisions, such as language that will impair port modernization.

According to Allan Zaremberg, president and CEO of the California Chamber of Commerce, “Our transportation infrastructure is critical to California’s economy. The California Chamber of Commerce supports new revenue to repair and maintain our roads and bridges and to expand congestion management. Every day California drivers experience more delays, more potholes and more frustration. We urge the Legislature to immediately move forward with a long-term solution.”

Staff Contact: Amy Mmagu
Read more about transportation infrastructure at www.calchamber.com/transportation.

Survey Results Underscore Importance of Immigration to California Economy

From Page 1

impacts from tighter southern border security without comprehensive immigration reform.

A labor shortage for the hospitality industry was identified as an impact by 15.8% of respondents and a labor shortage for the construction industry by 15.6% of respondents.

H-1B Visa

A sizable portion of CalChamber members say a cutback in the H-1B visa program will have either a strong negative impact (7.5%) or some negative impact (15.4%) on their company’s access to workers.

The largest number of companies saying an H-1B visa program cutback would have a negative impact come from the manufacturing industry, closely followed by business/personal services, health care, information/communications/networks and construction.

The companies citing the negative impact from an H-1B visa program cutback were located throughout the state and had workforces of all sizes, from small (20 or fewer employees) to medium (51–100 or 101–250) to large (501–999 and 1,000 or more).

Criteria to Stay in U.S.

In identifying the criteria that undocumented/illegal workers should meet in order to be allowed to remain in the United States, CalChamber members were consistent in the relative ranking of the criteria between today and in the 2006 survey responses.

Topping the list is passing a national security and criminal background check, according to 80.7% of members responding, an increase of more than 7 percentage points from the 73% choosing that option in 2006.

In the same vein, 74.8% of respondents this year said workers should have no criminal convictions (this choice was not listed in the 2006 survey).

In descending order, other important criteria according to the survey are (2006 response in parentheses):

- Paid all federal and state taxes: 72.3% (68%);
- Demonstrated a knowledge of the English language and American civics requirements: 49.9% (59%);
- Lived in U.S. for at least 5 years: 43.9% (43%);
- Worked a minimum of 3 years in the U.S.: 38.3% (40%);
- Paid a reasonable fine, in addition to required application fees: 35.9% (34%);
- Be an immediate family member of a documented/legal worker or legal resident: 28.4% (23%);
- Registered for military selection service: 24.4% (27%);
- There was a 10.3 percentage point drop in those who said undocumented/illegal workers should not be allowed to remain in the U.S. under any circumstances—13.7% today versus 24% in 2006.

Border Security

The percentage of members strongly agreeing that providing greater border security is important as a line of defense against illegal immigration has dropped significantly, from 62% in 2006 to 45.3% today, although the percentage somewhat agreeing with the statement remained about level—25% in 2006 versus 24.1% today.

One member commented that there is “better access via air and ocean already in existence.”

Deportation

The survey showed a shift in member sentiments about deportation. Today, 53.8% of members strongly agree with the statement: “It is financially unrealistic and logistically impossible to deport the estimated 11 million undocumented residents (about 2.67 million in California) currently in the U.S.” Another 17.7% somewhat agree with the statement.

In 2006, 45% of members strongly agreed with the statement and another 24% somewhat agreed with the statement.

General Comment

One comment neatly summarizes the attitudes of a majority of survey respondents:

“All employers need workers. We do not have enough people to do the jobs citizens do not want to do. The main point is that we need border security to fight against criminals and terrorism, but we need good workers too. Together we need to find a way for the country to provide for both needs. Deporting millions of people makes no sense whatsoever. It would be a logistical nightmare, cost a fortune, disrupt business, the economy and EVERYONE’s lives at all levels.”
CalChamber Participates in Capital Visit by Delegation of Mexico Senators

The California Chamber of Commerce recently participated in meetings with a small visiting delegation of senators from Mexico, all members of the Foreign Affairs Committee – North America.

The delegation was accompanied by several private sector representatives. Leading the delegation was Marcela Guerra Castillo, Mexican senator and chair of the North American – Foreign Affairs Committee. Private sector representatives were from the Economic Development Council of Mexicali and CaliBaja.

CalChamber Vice President of International Affairs Susanne T. Stirling attended a roundtable discussion held at the Consulate General of Mexico in Sacramento on Wednesday, February 15.

CalChamber Board member Frank Washington of Crossings TV was in attendance, and Board company Kronick Moskovitz Tiedemann & Girard also was represented. The delegation was later hosted by the California International Relations Foundation, of which the CalChamber is a member.

The meeting included a presentation by Jose Blanco, principal of the Central Valley Fund, outlining U.S.-Hispanic trends and the economic integration between California and Mexico.

ProMexico, represented by Oscar Franck Terrazas, also provided background information about the history of California and Mexico, with recent information focused on trade and investment statistics.

**Trade Relationship**

In the last 20 years, two-way trade in goods between Mexico and the United States increased dramatically from $81.4 billion in 1993 to $531.1 billion in 2015. Mexico has remained the United States’ second largest export market since 1995, with a total value of $236.4 billion in 2015.

Top export categories from the U.S. to Mexico included computer and electronic products, transportation equipment, chemicals, and nonelectrical machinery.

Mexico continues to be California’s No. 1 export market, purchasing 16.2% of all California exports. California exports to Mexico amounted to $26.8 billion in 2015, a 5.5% increase from 2014. Computers and electronic products remained California’s largest exports, accounting for 25.1% of all California exports to Mexico. Exports of transportation equipment and machinery from California to Mexico grew to total almost $5 billion, with chemicals and electrical equipment continuing to be strong export sectors as well.

Also in 2015, California imported $45 billion in goods from Mexico, with a total value of $235.5 billion. The top import categories included computer and electronic products, transportation equipment, chemicals, and nonelectrical machinery.

See CalChamber Participates: Page 7
CalChamber Seeks Nominations for Small Business Advocate Award

The California Chamber of Commerce is seeking nominations for its annual Small Business Advocate of the Year Award.

The award recognizes small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

“The award winners are living proof that one person can make a difference by speaking up,” said Dave Kilby, CalChamber executive vice president, corporate affairs. “We look forward to receiving many nominations of outstanding spokes-

persons for small business so that we can give statewide recognition to the advocacy that helps keep the community strong.”

Application

The application should include information regarding how the nominee has significantly contributed as an outstanding advocate for small business in any of the following ways:

• Held leadership role or worked on statewide ballot measures;
• Testified before state Legislature;
• Held leadership role or worked on local ballot measures;
• Represented chamber before local government;
• Active in federal legislation.

The application also should identify specific issues the nominee has worked on or advocated during the year.

Additional required materials:

• Describe in approximately 300 words why nominee should be selected.
• News articles or other supporting materials.
• Letter of recommendation from local chamber of commerce president or chairman of the board of directors.

Deadline: May 1

Nominations are due by May 1. The nomination form is available at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.

CalChamber Participates in Capital Visit by Delegation of Mexico Senators

From Page 6

billion in goods from Mexico, a 9.2% increase from 2014. The top import categories were transportation equipment, computer and electronic products, agricultural products, and manufactured commodities. California is the second largest importing state for goods from Mexico.

According to a September 2014 report by Visit California, nearly 7.5 million people visited California from Mexico in 2013, spending nearly $3 billion. Mexico sends more visitors to California than any other country by a wide margin.

NAFTA

The discussion centered on the current relationship between the United States and Mexico, and California’s particular interest in relations with Mexico. All agreed on the importance of maintaining and nurturing a positive relationship between California and Mexico. In particular, continuing the trading and investment relationship was emphasized. There was discussion of future opportunities, specifically in the clean tech area.

The possibility of opening the North American Free Trade Agreement (NAFTA) also was discussed. The Mexican government is beginning an inclusive consultation process in which all sectors will be heard about the possible modernization of NAFTA. The Mexican Senate will be participating in these consultations and taking note of all the considerations presented as the body responsible for the analysis, leading a responsible discussion, and eventually assessing and deciding whether to ratify a modernized NAFTA.

By way of background, on December 17, 1992, the NAFTA was signed by President George H.W. Bush, Mexico President Carlos Salinas, and Canada Prime Minister Brian Mulroney. The framework agreement proposed to eliminate restrictions on the flow of goods, services, and investment in North America. The historic agreement, after passing through both the U.S. House of Representatives and the U.S. Senate, was signed into law by President Bill Clinton on December 8, 1993, and took effect on January 1, 1994.

Trilateral trade within North America is one of the largest economic relationships in the world, with more than $1 trillion in goods traded annually. In California alone, more than 1.6 million jobs depend on trade with Canada and Mexico, and more than $100 billion in goods and services are traded between the two countries and California each year.

The CalChamber actively supported the creation of NAFTA among the United States, Canada and Mexico. CalChamber support for NAFTA is based on an assessment that it serves the employment, trading and environmental interests of California, the United States, Canada and Mexico, and is beneficial to the business community and society as a whole.

Staff Contact: Susanne T. Stirling

Correction: One More Company for Healthiest Employers List

Edgewood Partners Insurance Center, an insurance retail brokerage and California Chamber of Commerce member, should have been included in the February 10, 2017 Alert story “33 Member Companies Recognized on Bay Area’s Healthiest Employers List.” Edgewood Partners was ranked at No. 16 in the “Midsize Employers” category for the 2016 Healthiest Employers special report, a joint project of the San Francisco Business Times and the Silicon Valley Business Journal.

Our apologies for the error and any issues it may have caused.
LIVE WEBINAR: THURSDAY, MARCH 16, 2017 | 10:00 - 11:30 AM PT

Keeping Criminal Background Checks in Check

While it’s not a crime for California employers to conduct background checks, strict rules govern when and how employers can check an applicant’s criminal background.

Join CalChamber’s employment law experts for an arresting review of legal requirements and issues relating to criminal background checks.

Find the balance between properly screening individuals before making employment decisions and the legal protections in place that could trigger litigation.

Cost: $199.00 | Preferred/Executive Members: $159.20

LEARN MORE at calchamber.com/march16 or call (800) 331-8877.