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Finance Director Presents Budget Proposal Highlights Resiliency Plus One-Time Funds for Priority Issues



We are in extraordinary times right now, but that is punctuated by a lot of uncertainty, California Finance Director Keely Martin Bosler commented this week to a luncheon audience of more

than 100 business leaders at the California Chamber of Commerce

With an easy manner but commanding the details, Bosler covered five areas in Governor Gavin Newsom's budget proposal of interest to the business community: budget resilience, education, paid family leave, housing, and federal tax conformity. Highlights of the January 14 presentation are included in the latest CalChamber Capitol Report video.

'Budget Resiliency'

"... the up and down of the stock market toward the end of the year and into the new year, as well as the federal shut down and everything that's happening Washington, D.C.—all of those things give myself and my economist and those who forecast my revenues some pause about what we are going to see in the future," Director Bosler told the luncheon group as a preface to her presentation.

The budget allocates \$13.6 billion to building "budgetary resiliency" and paying down the state's unfunded pension See Finance Director: Page 4



California Finance Director Keely Martin Bosler covers Governor Gavin Newsom's 2019–20 budget proposal at the CalChamber Luncheon Forum. See highlights in the latest CalChamber Capitol Report video, *www.calchamber.com/videos*.

Governor Unveils Carrot-and-Stick Approach to Boost Housing Production



"The number one driver of cost of living is housing—housing is *the* issue. Unless we get serious about it, the state will continue to lose its middle class and the dream will be

limited to fewer and fewer people." —Governor Gavin Newsom

During his campaign, candidate Newsom laid out ambitious goals for housing production—3.5 million new housing units by 2025, implying a production rate nearly four times faster than in recent years.

In his just-released budget, Governor Newsom made his first official housing policy statement and related substantive proposals. The goals are still ambitious, although the results will not be apparent for many years.

The Governor recognized that most new housing must be produced by the private marketplace, and that one of the key stumbling blocks is local government approval.

His budget reminds us that "Local governments have a key role in ensuring the building of adequate numbers of housing units to meet local needs. They have primary control over land use and *See Governor Unveils: Page 7*

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Labor Law Corner In California, All Time Worked Must Be Paid, Even If It's Only Minutes



Barbara Wilber HR Adviser

Our nonexempt employees answer texts and calls after-hours. Is this work time and how much time would we pay for a 5-minute call, for example?

Yes, in most instances, answering short calls, texts, and emails would meet the definition of hours worked found in the Industrial Welfare Commission Orders, Section 2:

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Email: alert@calchamber.com. Home page: www.calchamber.com. "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

De Minimis Time

These small increments of time are difficult to track and frequently are disregarded as "*de minimis*" time that is insignificant. In fact, the federal Fair Labor Standards Act allows employers to disregard small amounts of time as *de minimis* time. Disregarding these small increments is no longer advisable in California.

California Law

In 2018 the California Supreme Court held that the *de minimis* rule has not been adopted by California laws. According to the court, don't allow employees to routinely work for minutes off the clock without being paid—because California labor laws require pay for "all hours worked."

Even when the time is hard to track, time records should reflect all time worked, including any time worked after an employee's regular hours. Develop a policy advising employees how to report all off-the-clock work time. When it is not necessary that employees answer after-hours calls, employers may prohibit employees from working off the clock. Have a clear policy advising employees not to make calls or respond to any inquiries or to perform any off-the-clock work. It is good practice to train managers to refrain from contacting employees before or after their shift. Managers also should review time records and confirm that employees are following the policy.

When employees happen to work in violation of your policy, be sure to pay for the time, but disciplinary action is an option.

Consult with legal counsel about paying for small amounts of time worked beyond the regular schedule. Also review the helpful information in the timekeeping and recording guidelines on *www*. *hrcalifornia.com*.

Column based on questions asked by callers on the Labor Law Helpline, 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 at *www.calchamber.com/events*. *Labor Law*

- 2019 Employment Law Updates. Cal-Chamber. Note: All locations sold out. Call to be added to waiting list or sign up for webinar. January 24, Los Angeles; January 28, San Francisco; January 30, Sacramento; January 31, Webinar. (800) 331-8877.
- HR Boot Camp. CalChamber. February 22, Modesto; March 29, San Diego; April 12, Oakland; April 26, Costa Mesa; May 9, Sacramento; June 14, Walnut Creek; August 22, Pasadena; September 12, Sacramento. (800) 331-8877.
- Leaves of Absence: Making Sense of It All. CalChamber. March 8, Sacramento; June 21, San Diego; August 16, Oakland. (800) 331-8877.

International Trade

Annual Export Conference. National Association of District Export Councils. May 21–22. SelectUSA Investment Summit. SelectUSA. June 10–12, Washington, D.C. (800) 424-5249

Next Alert: February 1

Quick Answers to Tough HR Questions





Major Free Trade Agreements Pending



As the new year begins, a number of international trade agreements are pending between the United States

and major trading partners.

Trade agreements can ensure that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.

U.S.-Mexico-Canada Agreement

First is the 2018 negotiated U.S.-Mexico-Canada Free Trade Agreement, with the objectives to eliminate barriers to trade, promote conditions of fair competition, increase investment opportunities, provide adequate protection of intellectual property rights, establish effective procedures for implementing and applying the agreements and resolving disputes, and to further trilateral, regional and multilateral cooperation.

The California Chamber of Commerce actively supported the creation of the North American Free Trade Agreement (NAFTA) among the United States, Canada and Mexico, comprising 489.5 million people with combined annual trade with the United States being around \$1.139 trillion in 2017.

In August 2018, the U.S. and Mexico reached a preliminary agreement, while the U.S. continued separate negotiations with Canada. In October, Canada and the U.S. came to an agreement, reassuring the deal would remain trilateral. The pact was rebranded the United States-Mexico-Canada Agreement (USMCA).

CalChamber support for the USMCA is based on an assessment that it serves the employment, trading and environmental interests of California, the United States, Mexico and Canada, and is beneficial to the business community and society as a whole. The CalChamber is hopeful that Congress will approve the new USMCA agreement, following the objectives and procedures of the Trade Promotion Authority.

U.S.-European Union

In October 2018, President Donald J. Trump announced his intent to enter into trade negotiations with three new markets, one of which is the European Union.

The trans-Atlantic economic partnership represents the largest, most integrated and longest-standing regional economic relationship in the world.

The EU market represents more than 511 million people, and has a total gross domestic product (GDP) of \$17.28 trillion, as of 2017 (World Bank).

Presuming the United Kingdom exits the European Union in March 2019, the EU will consist of 27 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Mediterranean Island of Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

California exports to the EU were \$31.29 billion in 2017. California is the top exporting state to the EU, with computers, electronic products, chemical manufactures, and transportation equipment as the state's leading export sectors to the region. EU countries purchase roughly 18% of all California exports.

The CalChamber is hopeful that the U.S. and EU will further free trade agreement negotiations in 2019 to deepen the world's largest trading and investment relationship, with a focus on trade and investment initiatives.

U.S.-United Kingdom

The U.S. maintains a deep trade and investment relationship with the United Kingdom, the fifth largest economy in the world. Presuming the U.K. leaves the European Union in March 2019, the two countries will be able to enter into formal free trade agreement (FTA) negotiations.

Two-way trade between the United States and the United Kingdom was \$109.4 billion in 2017 and the U.K. was the fifth largest importer of U.S. goods with a total value of \$56.3 billion.

The United Kingdom is California's 10th largest export destination, with more than \$5 billion in exports. Top categories are computer and electronic products, transportation equipment, second-hand merchandise and chemicals.

In 2017, imports into California from the United Kingdom were approximately \$5.5 billion, with the top categories being transportation equipment and chemicals.

British investment is especially vast in California, where it supports approximately 105,000 jobs and the number of U.K. subsidiaries exceeds 1,000. (British Consulate General, San Francisco, 2012).

The U.K. contributes 19% of foreign direct investment (FDI) into California, more than double that of any other country.

The CalChamber supports the goal of strengthening the trading and investment relationship between the two countries, with a focus on securing open market access.

U.S.-Japan

In October 2018, the United States and Japan announced negotiations toward a potential U.S.-Japan FTA. Japan is the third largest economy in the world, the fourth largest importer of U.S. goods, and the fourth largest source of imports into the U.S. It also is the third largest investing country into the U.S.

California continues to be the top exporting state to Japan, accounting for 18.9% of total U.S. exports. Japan has remained California's fourth largest export market since 2010, after Mexico, Canada and China.

California exports to Japan totaled \$12.85 billion in 2017; computers and electronic products accounted for 20.3%. Imports into California from Japan were \$40.5 billion; transportation equipment accounts for more than half.

California is the top importing state in the United States for products from Japan and buys more products from Japan than any other country besides China and Mexico.

The U.S. and Japan will begin FTA negotiations in 2019 with the goal of expanding bilateral trade in a mutually beneficial way to achieve freer and more balanced trade, as well as encourage economic development.

On October 16, 2018, the U.S. Trade Representative notified Congress that the Trump administration intended to start negotiations following the completion of necessary domestic procedures. This began a congressionally mandated 90-day consultation period under Trade Promotion Authority before the launch of negotiations.

Staff Contact: Susanne T. Stirling



Finance Director Presents Budget Proposal Highlights

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liabilities. This includes:

• \$4 billion to eliminate all outstanding budgetary debt as well as deferrals;

• \$4.8 billion to build reserves, bringing the state's rainy day fund to more than \$15 billion this year (the largest amount ever) and nearly \$20 billion over four years;

• \$4.8 billion to pay down unfunded retirement liabilities.

The budget's remaining spending prudently charts the path toward building a long-term fiscal foundation, Bosler explained. More than 86% of the new spending in the budget is for one-time purposes, and in each of the out-years the budget has a positive operating balance, she said. The budget also more than quadruples the size of the state's safety net reserve, strengthening programs that provide the first line of defense for families during an economic downturn.

"We are almost 10 years into the longest economic expansion in history, and all of those who study, and look at these things know about, know we have these things called 'business cycles' and what goes up, does eventually come down at some point," said Bosler. "All of these things are the reason why we've put together the budget we've put together that really starts with a very strong foundation."

Rainy Day Fund

Working on all the prior work from the administration of Governor Edmund G. Brown Jr., the Newsom administration plan for 2019–20 proposes significant investment in the state's rainy day fund.

Bosler projects that the fund will have \$15.3 billion by the end of the budget year, and that the amount will grow to approximately \$19.4 billion by 2022–23, absent an economic downturn.

Director Bosler explained that the Newsom administration has a legal opinion which states that deposits made into the rainy day fund from the end of the Brown administration do not count toward the constitutionally mandated 10% savings rate. The Newsom administration agrees with the legal findings. Therefore, the state will not be meeting the state constitutional target until 2022 or 2023, which means that the state will continue to make mandated deposits into the reserve for the foreseeable future.

"We think that's a really good thing

for helping the state weather the next economic scenario," Bosler said.

Paid Family Leave

Director Bosler affirmed that the administration is committed to expanding the Paid Family Leave program with the goal of ensuring that all newborns and newly adopted babies can be cared for by a parent or a close family member for up to the first six months.

"This is a proposal that we don't have a fleshed-out plan on," Bosler said. "This is a conversation that the Governor wants to start and this is a high priority for him, and it's one that we look forward to having with you all."

The budget proposes to adjust the reserve requirement for the fund that supports the Paid Family Leave program. This change will enable the state to make a down payment in expanding Paid Family Leave in the upcoming budget year while maintaining an adequate reserve.

Housing

To address California's housing crisis, the budget includes a \$1.3 billion onetime General Fund allocation and a new approach to spur housing development to address the state's affordability crisis and promote economic growth. The budget also expands state tax credits to further develop both low- and moderate-income housing, and proposes new innovative housing on excess state property.

"When we talk about affordability in the state, the single largest thing we are talking about is housing," Bosler said. "I think that really impacts every one of us."

The Governor is making a sizable one-time investment to really get local governments doing things differently, Bosler said. Local governments that meet regional housing goals will receive additional funds, but those that don't meet those goals may eventually see transportation dollars diverted elsewhere in the state, Bosler explained.

She remarked that California just isn't seeing housing permits at the level needed to keep up with the natural growth of the state. She estimated that there were maybe 113,000 units granted permits statewide when California needs 200,000 built every year.

"So we have a long way to go," she observed. "I think the Governor is under no illusion that this is going to be easy, but he wants to put money on the table and get together with local governments and figure out how to move the needle here."

The Governor also is proposing to conform state tax law to the new federal opportunity zone provisions, which would provide relief from some capital gains taxes for investments in affordable housing and green technologies in newly designated Opportunity Zones.

Federal Tax Conformity Package

Director Bosler explained that California continues to work through a lot of changes to the federal tax laws to relieve the administrative burdens of compliance. The Governor has proposed a more-thandoubling of the state earned income tax credit, but is considering making up for the lost tax revenues by conforming some Californian corporate and income tax provisions to changes made in 2017 by federal tax reform.

A few of the large tax conformity items the state is considering are the limitation on pass-through losses for non-corporate taxpayers, limiting fringe benefit deductions, and like-kind exchanges, plus conforming accounting rules for small business.

K–12 Schools

The funding guarantees for K–12 schools and community colleges in 2019– 20 is \$80.7 billion—a new all-time high with per-pupil expenditures now nearly \$5,000 higher than just seven years ago, Bosler explained.

"Overall this budget provides around \$500 per pupil more than last year," Bosler said.

The budget funds critical work to build a longitudinal data system to better track student outcomes and increase the alignment of California's educational system to the state's workforce needs.

The budget also includes a \$750 million one-time General Fund expenditure to address barriers to full-day kindergarten. Bosler remarked that about onequarter of students enrolled in kindergarten do not have access to a full-day kindergarten program.

To address the rising costs of pensions in the California State Teachers' Retirement System (CalSTRS) and provide immediate relief to districts, the budget *See Finance Director: Page 7*



Successes help employers, jobs and the economy

CAPITOL WATCHDOG

Each year CalChamber tracks more than 3,000 legislative proposals on behalf of member businesses.

GRASSROOTS ACTION

Comments from employers yield results. See hot issues at www.calchambervotes.com.

ABOUT US

CalChamber is the largest broad-based business advocate, working at the state and federal levels to influence government actions affecting all California business. As a not-for-profit, we leverage our front-line knowledge of laws and regulations to provide affordable and easy-to-use compliance products and services.



2018 Major Victories

California Promise: Opportunity for All

The California Chamber of Commerce is the voice of California businesses of all sizes, expert at promoting pro-job policies and advising employers on the practical impact of state laws and regulations in the workplace. We track more than 3,000 legislative proposals every year, speaking up when a bill will hurt employers and the economy, and working to win support for legislation that will help the jobs climate. Policymakers listen to CalChamber policy advocates, knowing that we represent more than 14,000 member businesses that together employ a fourth of the state's private workforce and reflect the diversity of the California business community.

Strengthening our message are the thousands of individuals who use our web-based grassroots center, **www.calchambervotes.com**, to express their views to their elected representatives. Each year, website visitors use the grassroots center to send some 200,000 letters about state and federal issues affecting business operations.

Read on to learn how CalChamber advocacy in 2018 helped employers. See the **Advocacy Return on Investment** sheet for estimates of employer savings on some of these victories.

Stopping All Job Killer Bills

CalChamber policy advocates joined forces with other business groups and pro-jobs legislators to stop all 29 job killer bills from becoming law as originally proposed. Below is a sampling of job killers stopped or amended before they passed the Legislature. More information at *www.calchamber.com/jobkillers*.

- Arbitration discrimination: Urged veto of ban on settlement agreements and arbitration agreements for labor and employment claims (AB 3080); and blocked ban on use of arbitration agreements for small businesses seeking financial investors (AB 2527).
- Unnecessary litigation costs: Secured amendments removing new stand-alone private right of action for failure to prevent harassment or discrimination (SB 1300).
- Tax Increases: Stopped targeted taxes on high earners (AB 2351) and contractors (AB 2560).
- Burdensome environmental regulations: Stopped proposals leading to substantial increase in energy costs (AB 893), ban on combustion engine vehicles (AB 1745), and increased costs for California Environmental Quality Act compliance (AB 2447).
- Economic development barriers: Prevented passage of proposal creating unworkable requirements for providing hotel worker panic buttons (AB 1761).
- Increased health care costs: Won amendments to and veto of proposal mandating medication-assistant treatment for opioid use disorders (AB 2384).
- Increased labor costs: Stopped bills imposing another layer of wage statement penalties (AB 2613) and exposing employers to costly litigation related to medical marijuana in the workplace (AB 2069).

Winning Approval of Job Creating Concepts

- Protecting employers/employees in sexual harassment cases: Sponsored bill signed into law to ensure sexual harassment victims and employers aren't sued for defamation for simply reporting and investigating harassment (AB 2770).
- Training students for careers: Extended and improved the Career Technical Incentive Grant program (AB 1808, AB 1743); and funded a grant program allowing selected schools to create public-private partnerships to prepare students for high-skilled, high-demand jobs in technology, manufacturing, health care and finance (AB 1809, SB 1243).
- Extension of film tax credits: Continued for another five years the program bringing more film and television production to the state (SB 871, SB 951, AB 1734).



Investing in State Transportation Infrastructure

Prevented repeal of 2017 legislation that is providing long-term revenues to fix roads, freeways and bridges across California, and putting more dollars toward transit and safety (Proposition 6).

Preventing Further Damage to California Housing Market

Encouraged voters to reject an initiative that would have made California's housing crisis worse, discouraged new construction and reduced housing supply and quality (Proposition 10).

Protecting Access to Kidney Dialysis Clinics

Supported voter rejection of initiative that set dangerous precedent of applying arbitrary government price controls on a health care service; could have increased costs by shifting treatment from dialysis clinics to more expensive venues, and led to clinic closures, thereby reducing patient access to critical care (Proposition 8).

Safeguarding Businesses' Ability to Innovate

- Stopped bill requiring manufacturers of electronics and appliances sold in California to provide any repair person with software, parts and tools to repair the products (AB 2110).
- Blocked effort to place ridiculous restrictions on use of bots (AB 1950).

Cleaning Up Onerous Consumer Privacy Law

Worked with members and other affected parties to negotiate clean-up language to consumer privacy law passed in 2018, including delayed enforcement and provisions clarifying that the private right of action applies only to additional liability for businesses after a data breach (SB 1121).

Preventing Meritless Lawsuits Against Manufacturers by Clarifying Businesses' Obligations

Supported signing of bill protecting consumer product and food manufacturers from lawsuits by clarifying package labeling requirements (AB 2632).

Supporting Workable Balance for Employee Accommodations

Secured amendments to bill signed into law that includes a hardship exemption in its requirements for providing lactation accommodations to employees (AB 1976) and backed veto of a second bill containing significant changes in requirements and penalties (SB 937).

Preserving Californians' Ability to Take Grievances Directly to Voters

Stopped attempts to prohibit a cost-effective method of gathering signatures for state or local initiatives, referendums or recall petitions, which would have made it harder to qualify ballot measures and eliminated an important check on government, while overburdening courts with unnecessary litigation (SB 1394, AB 1947).

Helping Businesses Find Trade/Investment Opportunities

Promoted two-way information exchanges on exports, the international landscape, and trade with Mexico, Chile and Canada; provided web-based portals compiling statistics and other resources about major California trade/investment partners; distributed weekly *Trade Update* e-newsletter digest of the latest news and information about trade policy.

2018 MAJOR VICTORIES

Capitol Insider

presented by CalChamber

The *Capitol Insider* blog presented by the California Chamber of Commerce offers readers a different perspective on issues under consideration in Sacramento. Sign up to receive notifications every time a new blog item is posted at *capitolinsider.calchamber.com*.





Finance Director Presents Budget Proposal Highlights

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proposes a \$3 billion one-time non-Proposition 98 General Fund payment to CalSTRS on behalf of schools. Bosler called this move "extraordinary." Overall, this payment is expected to provide immediate relief to school districts and will reduce the out-year contribution rate by half a percentage point.

The Governor also is very focused on how the educational systems meet the needs of the state's workforce, Bosler said. "This is not just for today, but into the future."

She said there is going to be an investment into a longitudinal data system that tracks how children move from the local educational system and into higher education, and ultimately into the workforce.

"There is going to be a lot of discussion over the next few years about how we better connect the skills that you all need as employers in the state with what is being produced by both our K-12 system and also our higher education system too," Bosler told listeners.

Higher Education

Bosler said that Governor Newsom has learned a lot about California's higher education system since spending the last eight years sitting on the California State University Board of Trustees as well as the University of California Board of Regents.

She said the Governor has a lot of

"exciting and interesting ideas in this area."

The budget includes \$1.4 billion (\$942 million ongoing) for higher education to support increased enrollment, improved time to completion of a degree and a tuition freeze.

The budget also proposes funding for two free years of community college tuition for first-time, full-time students.

The idea behind this proposal, Bosler said, is that "we know an education is an important tool to a better life and higher wages and that continues to be his focus."

The budget also provides:

• University of California—\$240 million ongoing General Fund dollars for operational costs, student success, student hunger and housing initiatives. This also includes \$138 million one-time General Fund appropriation for deferred maintenance.

• California State University—\$300 million ongoing General Fund allocation for operational costs, increased enrollment, and for continued progress toward the equity goals of the Graduation Initiative 2025. The budget also includes \$247 million in one-time General Fund monies to expand on-campus child care facilities serving students and deferred maintenance, and \$15 million in one-time General Fund dollars for student hunger and housing initiatives.

• **Community Colleges**—\$402 million ongoing Proposition 98 General Fund allocation, including a 3.46% cost of living adjustment (COLA), enrollment growth, legal services for undocumented students and families, and providing a second year of free tuition.

Doom and Gloom

Director Bosler said it wouldn't be a Finance Luncheon without ending her presentation with a little "doom and gloom."

The department isn't predicting a recession, but is modeling one to understand how bad it could get, she said. The model shows a revenue decline that isn't as bad as the last recession, but a little bit worse than the recession in 2000–01. Bosler explained that the state will actually see a \$70 billion drop in revenues in just a three-year period, according to the forecast.

That's sobering, which is why we have...invested in building resiliency. Even under a slowdown of any magnitude, there would be a lot to navigate," Bosler said. "The key is going to be looking at all the indicators and all the revenue numbers...and then really making all the adjustments we need to make...."

The full summary of the Governor's budget proposal is available at *www.ebudget.ca.gov*.

Governor Unveils Carrot-and-Stick Approach to Boost Housing Production

From Page 1

housing-related decisions and enact policies that either encourage or discourage housing construction."

Regional Housing Goals

The centerpiece of the Governor's housing policy is to revamp regional housing needs and to begin to enforce local governments' obligations to meet those needs.

The administration will no longer simply advise local agencies on how to meet those needs, but now will "oversee and enforce regional housing goals and production."

The administration will provide incentives to accomplish these goals by allocating \$250 million in short-term grants to help local agencies improve their planning and permitting systems. If cities and counties deliver on their commitments, the administration will make another \$500 million available for general municipal purposes.

Along with these carrots, the Governor unveiled a stick: linking housing production to certain (not-yet-specified) transportation funds, and possibly other local economic development resources. This is potentially a serious attention getter and has already drawn opposition from local government and some legislators.

More Tools

In addition to his ambition to directly influence local planning, zoning and permitting of market-rate development, the Governor proposes more tools to encourage subsidized and "affordable" housing: • \$500 million for subsidized loans for mixed-income developments.

• Expanding by five-fold the state low-income housing tax credit, a key lever to motivate investment in subsidized housing.

• Providing access to state-owned property for private affordable housing projects.

• Easing approvals for long-term debt for local financing districts that want to provide infrastructure for housing and other economic development projects.

• Allowing local infrastructure districts to join with federally designated Opportunity Zones by providing similar capital gains tax benefits for investments in these zones in affordable housing and "green technology" projects. **Contact: Loren Kaye**

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