

ALERT

Governor Newsom Vetoes Threat to Water Reliability



Governor Gavin Newsom vetoed job killer legislation last week that threatened California's water supply, and would have created regulatory uncertainty

and litigation.

"SB 1 posed a major threat to California's water supply and reliability, and the Governor has shown outstanding leadership in announcing his veto of this measure," said California Chamber of Commerce President and CEO Allan Zaremberg.

The CalChamber labeled **SB 1 (Atkins; D-San Diego)** a job killer because it would have undermined current state efforts to move forward with

Voluntary Agreements through a rigid approach to water management that fails to appreciate science-based decision making to manage and provide reliable water supplies for California and protect, restore and enhance the ecosystems of the Bay-Delta and its tributaries.

SB 1 would have further increased the potential for costly litigation by forcing a federal agency to operate the Central Valley Project subject to the California Endangered Species Act when that state law is preempted by the federal Endangered Species Act. It further would have created significant regulatory uncertainty and litigation risks to regulated entities by giving certain state agencies authority to adopt rules and regulations

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CalChamber-Supported Wildfire Prevention Bills Signed by Governor



Two California Chamber of Commerce-supported bills that will help prevent wildfires are among bills signed this week by the Governor to improve the

SUPPORT

state's wildfire prevention, mitigation and response efforts.

The CalChamber-backed bills are:

- **SB 190 (Dodd; D-Napa)**, setting up a program to educate the public about defensible space; and
- **SB 632 (Galgiani; D-Stockton)**, a temporary California Environmental Quality Act (CEQA) exemption for fire prevention activities.

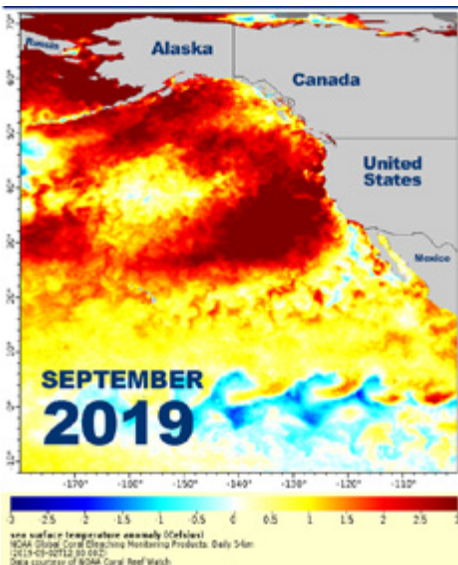
Defensible Space Education

SB 190 requires the State Fire Marshal to produce educational and application tools that will increase public awareness and implementation of vital fire safety measures that will help California residents maintain adequate defensible space around their structures.

Although the state has strict defensible space laws that significantly increase the probability of a structure surviving a wildfire, many owners of residential and nonresidential buildings do not maintain a defensible space.

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The Blob: Wet or Dry Year in 2020?



The Blob is back in the Pacific Ocean. The Blob is a massive pool of water that is warmer than normal in the Pacific Ocean and runs from Alaska past Southern California down to Baja.

It's caused by persistent high-pressure ridges in the atmosphere above the ocean's surface. The lack of wind allows the sun to warm the water's surface while at the same time preventing waves that help churn and mix cooler water up from the ocean's depth to reduce the overall temperature.

The last time it appeared was during the 2012 to 2016 drought. There was considerable scientific speculation about its role in the extreme weather of those times.

Which came first? The Blob or the drought?

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Labor Law Corner

When Foster Care Leads to Adoption, Just One Family Leave Applies



Sunny Lee
HR Adviser

I have an employee who is going through counseling to become a foster parent. Is she eligible for the federal Family Medical Leave Act (FMLA) only after she gets custody of the child? Also, she is considering adoption if all goes well during the foster care. Does she get 12 weeks FMLA leave for the foster parent and an additional 12 weeks next year for FMLA if she adopts the child?

Both the FMLA and the state California Family Rights Act (CFRA) allow an eligible employee to take leave for foster care.

Provided your company is covered by the FMLA, to be eligible for the leave, an employee would need to have been employed by you for one year and have worked 1,250 hours during the 12 months prior to the request for a leave.

FMLA/CFRA would apply, not just to the time after the child is placed in the home of your employee, but also for preliminary foster care program requirements.

Becoming a foster parent in California involves a lengthy review process that may take up to six months or more before a child is placed. Program requirements include applying for a foster care home license, passing a thorough criminal background check and medical examination, having a home inspection and meeting minimum space and safety requirements, meeting with placement counselors and other professionals

involved in the process, attending orientation and completing a 12-hour pre-certification training, etc.

Federal Regulation

FMLA clearly addresses this issue in the following federal regulation: **29 CFR § 825.121 Leave for adoption or foster care.**

(a) General rules. Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (e.g., whether

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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

HR Boot Camp. CalChamber. October 10, Costa Mesa - Sold Out; December 12, Oakland. (800) 331-8877.

HR Symposium. CalChamber. November 8, Huntington Beach. (800) 331-8877.

International Trade

Exporting Mechanics Webinar Series II: Advanced Letters of Credit. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. October 8, Webinar. (202) 466-0222.

Annual Pan African Global Trade and Investment Conference. Africa-USA Chamber of Commerce. October 15-17, Sacramento. (626) 243-3614.

Trade Expo Indonesia. Indonesian Ministry of Trade. October 16-20, Banten, Indonesia.

Global Trade in a Changing World. World Trade Center, Northern California. October 24, Sacramento. (916) 447-9827.

U.S.-U.A.E. Business Council Trade

Mission to the U.A.E. U.S.-U.A.E. Business Council. October 21-23, United Arab Emirates.

Business Conference. GetGlobal. November 5, Long Beach.

China International Import Expo. China International Import Expo Bureau. November 5-10, Shanghai. +86-21-9688888.

Global Trade Awards Gala. Women Leaders in International Trade - Los Angeles. November 7, Manhattan Beach. (213) 545-6479.

Hong Kong International Wine and Spirits Fair 2019. Hong Kong Trade Development Council. November 7-9, Hong Kong.

Exporting Mechanics Webinar Series II: Duty Drawback and Refunds. National

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The Workplace

Benefit Trends That Keep Employees Engaged at Work



With open enrollment just around the corner, employers may be wondering what types of benefits to offer their employees

besides the traditional health and dental options.

In [Episode 31](#) of The Workplace, CalChamber Executive Vice President and General Counsel Erika Frank and employee benefits expert Vinny Catalano discuss trends in employee benefits that are low in cost to employers, but high in value to employees.

Benefit Trends

Finding an employee benefits program that works for everyone can be challenging given that the U.S. workforce is highly diverse, with as many as five generations working at the same time, Catalano, senior vice president of Gallagher Benefit Services, tells Frank.

Previously, the trend in employee benefits focused on employee “wellness” in order to lower costs, he says. That concept has now changed to a focus on holistic “well-being.”

“Organizations have always struggled with using the wellness vehicle as a way to curtail health care costs,” Catalano explains. “Now, that has evolved into the word ‘well-being’ and so well-being now not just applies to physical well-being, we’re talking about emotional well-being, career well-being, financial well-being. So we’re trying to look at employees now for a more holistic perspective because younger generations are worried about their financial health.”

For example, concerning career well-being, people nowadays want to see a path to success, Catalano says. To keep people around longer, employers should show their employees a path to long-term growth within the company, showing

them a future they can work toward.

People also want to be educated, Catalano tells Frank. Investing in a continuing education credit, e-learning courses or workforce development training is another benefit that would be low-cost, but is of high value to an employee.

Additionally, providing mental health resources, like employee assistance programs, is a great way for employers to provide support for their workers’ mental and physical well-being.

“If you are providing an employer-paid life and long-term disability program, that insurance carrier will provide a free EAP [Employee Assistance Program] along with that,” says Catalano. “...At the end of the day, people want to know they have resources to help them access mental health and other areas of their life.”

Show Benefit Investments to Employees

In order for employees to get the most out of their benefits, it is important for employers to develop a strategy to inform employees about all that is offered.

“One of the areas that we work with employers on is developing...an internal marketing communication strategy to help,” says Catalano. “An open enrollment meeting is one thing, but what are we doing all year around to engage the employees on all the factors of well-being? How are we training them to be mindful of their financial health? How are we training them to be mindful of their mental health?”

Frank recommends that just as many employers send out wellness communications — such as “Did you get your steps in?” — employers also should send out reminders such as “Did you look at your 401k?” or “Are you aware of our EAP program?”

Nice to Have vs. Have to Have

Engaging in an open conversation with employees about what benefits they need or want may bring surprising

answers. According to an annual study by MetLife, what employers think is important is different from what employees think is important when it comes to benefits, Catalano says.

“You have to tap into...the culture of your organization, what benefits are going to resonate with employees, but most importantly, frankly, how do we get people understanding what it is they have?” Catalano explains.

There are many benefits employers can choose from, but no matter what they pick, the employee’s needle is going to move only if benefits are well-communicated, Catalano stresses.

Previously on The Workplace

In a [previous episode](#) of The Workplace (No. 27), Catalano discussed with Frank how employers can best prepare for open enrollment season to both prioritize the well-being of their employees and stay within their budgets.

Catalano suggests that employers outline a comprehensive strategy ahead of time in order to mitigate potentially uncomfortable decisions over which benefits plans to pursue.

Employers should also communicate the price they are paying for their employees’ benefits, Catalano advises, by presenting benefit statements so that employees can see their complete annual reward packages.

Combined with pursuing programs that address the needs of their employees, these steps can help employers build loyalty and navigate the stresses of open enrollment season, Catalano says.

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To listen or subscribe, visit www.calchamber.com/theworkplace.

Poll Shows Dropping Support for Split Roll, Largest Tax Hike in History



Backers of an initiative for the 2020 ballot to increase business property taxes have changed their measure twice since introducing it in 2017. The main result of those tweaks:

up to a billion dollars a year of the new taxes will be sent right back to state and local governments for implementation, overhead, and existing state programs. That's a billion dollars a year that will be intercepted before they can be used

to hire any new school teachers, police officers or firefighters.

The Legislative Analyst found that the split roll measure “would increase state-wide property tax revenue by \$7.5 billion to \$12 billion annually in most years.” For commercial and industrial taxpayers, that’s about a 25% increase in business property taxes. This would be the largest tax increase in California history.

Even after making a third pass at trying to get it right, proponents have not abandoned Split Roll 1.0. Although twice demeaned and found wanting by its own creators, the original measure lingers in the ballot queue as a hedge against the proponents’ inability to qualify version 3.0.

Voters will have the last word, of course, and they are showing their skepticism. A just-released survey by the Public Policy Institute of California (PPIC) shows public support for a split roll sinking, with 47% of likely voters in support and 45% in opposition.

For the first time in a PPIC poll, support for a split roll initiative has dipped below 50%, even before facing a serious opposition campaign—and without any mention in the survey question that the initiative would alter Proposition 13, a landmark law most voters typically associate with popular residential tax protections.

Contact: Loren Kaye

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without any of the Administrative Procedure Act safeguards when the agency, in its discretion, determined that the federal rules and regulations in effect on January 19, 2017 are “less protective” than existing federal law.

In his September 27 [veto letter](#), Newsom underscored his commitment to safeguarding California’s natural resources and environmental protections.

“While I disagree about the efficacy and necessity of Senate Bill 1, I look forward to working with the Legislature

in our shared fight against the weakening of California’s environmental and worker protections,” he stated.

1 Job Killer Remaining

The final fate of just one of the 31 job killer bills identified this year remains undecided.

The remaining job killer bill, [AB 51 \(Gonzalez; D-San Diego\)](#), bans arbitration agreements made as a condition of employment. The bill is similar to legislation vetoed last year by Governor Edmund G. Brown Jr. for plainly violat-

ing federal law. If enacted, the bill would create more cost, litigation and uncertainty for employers, who would have to wait until a court definitively resolves the conflict with federal statute.

The CalChamber is asking members to contact the Governor and [urge a veto on AB 51](#). An easy-to-edit veto letter is available in the [CalChamber Grassroots Action Center](#) at www.calchamber.com/grassroots.

The Governor has until October 13 to act on AB 51.

Staff Contact: Adam Regele

The Blob: Wet or Dry Year in 2020?

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That is unknown. The persistent high-pressure ridge above California exacerbated and prolonged the last drought. It is likely that the 2018–2019 water year, which ended September 30, will be recorded as an average to slightly wet water year though the southeastern part of the state has been dry. But what will 2020 be—wet, average, or dry?

West Coast Impacts

The last Blob negatively affected marine ecosystems and resulted in extensive commercial fishery closures across the West Coast.

It caused sea lions to forage farther out into the ocean, leaving their pups to wash up on beaches starving, and whales to forage into coastal waters and ulti-

mately to tangle in commercial fishing lines. It triggered the largest and most toxic algae bloom ever seen in the region.

According to the [National Oceanic Atmospheric Administration \(NOAA\)](#), this Blob is almost the same size as the prior one and is “the second largest marine heatwave in terms of area in the northern Pacific Ocean in the last 40 years.” A NOAA research scientist says it’s on trajectory to be as strong as the last Blob event.

A climate scientist at Stanford University said, “Very warm water over the northeast Pacific is a statistical predictor of circulation patterns that tend to promote warm, dry conditions here in California.”

However, science isn’t at the point where it is able to forecast drought a season ahead, so it is unknown at this time if 2020 will be a dry year.

No El Niño

What is different about this year as compared to the drought years is the lack of an El Niño, a warmer-than-normal large swath of water in the tropical Pacific Ocean. El Niños tend to have significant impacts on weather across the world. It is thought that the combination of the Blob and an El Niño made the drought so pervasive and deep.

More sophisticated forecasting tools are needed to efficiently operate water infrastructure and to plan for droughts. Until then, more water storage strategically developed around the state is needed to capture water from large storm events to be used in drier years.

This article first appeared as a Capitol Insider blog post.

Staff Contact: Valerie Nera

Labor Agency Secretary to Give Keynote at CalChamber HR Symposium



Julia A. Su

Julie A. Su, the Governor's Cabinet adviser on labor issues and employment programs, will deliver the luncheon keynote address at the California Chamber of Commerce 2019 HR Symposium on November 8.

The day-long event at the Hyatt Regency Huntington Beach will feature California-specific compliance insights on topics ranging from hiring in a competitive market to emerging workplace issues and investigations related to the #MeToo movement.

As Secretary of the California Labor and Workforce Development Agency, Su oversees the state departments and boards that enforce labor laws, including minimum wage and occupational safety standards; provide state disability and unemployment insurance benefits; fund workforce training and apprenticeship programs; combat wage theft; protect injured workers; and arbitrate public sector contract disputes.

She served as California Labor Commissioner from 2011 through 2018, enforcing the state's labor laws to ensure a fair and just workplace for both employees and employers.

"Secretary Su brings a wealth of

knowledge and a keen understanding of California's complex labor and employment laws," says Erika Frank, CalChamber executive vice president and general counsel. "Her insights will be both illuminating and invaluable to symposium attendees."

Symposium Agenda

The full day will open with an HR networking breakfast buffet, followed by expanded sessions on California workplace and compliance challenges:

- **Emerging Workplace Issues in the Wake of #MeToo.** Jennifer Shaw, founder of the Shaw Law Group, and Lisa Buehler, counsel, Shaw Law Group, will tackle emerging issues employers face in the wake of the #MeToo movement. Even with positive changes resulting from heightened awareness about sexual harassment, confusion and fear among employees are the new normal.

- **Who, What and Wear of Dress Codes in the Workplace.** Lisa V. Ryan, partner, Cook Brown LLP, and Erika Frank, CalChamber executive vice president and general counsel, will focus on trends, court decisions and new laws affecting workplace dress and appearance.

- **Drug Use in the Workplace—It's Not Just About Marijuana Anymore.** Patricia A. Matias, shareholder, Ogletree Deakins, will speak to the concerns employers have about maintaining a drug-free workplace without encroaching on the rights of employees.

- **Effective Hiring Strategies in**

a Competitive Market. Scott Dicke, director of permanent services — VP of Robert Half Finance & Accounting, and Vinny Catalano, senior vice president of Gallagher Benefit Services, will share strategies for attracting top candidates in today's very competitive job market.

Register Today

The cost of admission is \$499 (\$399.20 for CalChamber Preferred/Executive members).

The event is approved for California recertification credits through the HR Certification Institute (HRCI), Professional Development Credits (PDCs) for the Society of Human Resource Management (SHRM), and Minimum Continuing Legal Education (MCLE) credits.

To register or for more information, visit www.calchamber.com/hrsym2019 or call (800) 331-8877.



CalChamber-Supported Wildfire Prevention Bills Signed by Governor

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According to the California Department of Insurance, the 2017 California wildfires damaged or destroyed more than 32,000 homes and 4,300 businesses, with nearly \$12 billion in insured losses.

The educational tools SB 190 requires the State Fire Marshal to develop include a Wildlife-Urban Interface Building Standards Compliance training manual (also to be made available on the internet) for use in training contractors and local code enforcement personnel; a guidance document for maintaining defensible space around structures; a handbook listing products and construction systems that comply with the state's wildland-ur-

ban interface building standards; and a model defensible space ordinance for optional use by local jurisdictions.

CEQA Exemption

SB 632 requires the state Board of Forestry and Fire Protection to certify a draft environmental impact report (EIR) for a vegetation treatment program by February 1, 2020.

The board proposed an EIR for the vegetation treatment program as part of a comprehensive fire prevention strategy 12 years ago, but threats of lawsuits and protracted litigation have prevented the EIR from being finalized.

The spate of wildfires in recent

years with the resulting losses from acres burned and structures destroyed are evidence of the need for the EIR to be certified so the vegetation treatment program can proceed.

In supporting SB 632, the CalChamber pointed out that the Governor already has proposed \$730,000 to support the board in certifying the EIR for the vegetation treatment program, and the state budget adopted for 2019–2020 provides increased funding of \$14.3 million for fire prevention, including the objective of certifying the vegetation treatment program EIR.

Staff Contacts: Adam Regele, Leah Silverthorn, Valerie Nera

Mastering Challenges of Running a Business in Era of Turbulence



Ideas on approaches that will help companies deal effectively with disruptions in the business and social climate are the focus of a presentation at a CalChamber Board of Directors meeting by CalChamber Board member Nils Behnke, partner at Bain & Company, and fellow expert Pete Hultman, also a partner at Bain & Company. Traits shared by companies that have managed change successfully, the two speakers report, include a focus on what the customer/client needs and company leaders being able to present employees with a compelling vision of the company's strategic direction.

When Foster Care Leads to Adoption, Just One Family Leave Applies

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from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

Any time that an employee is involved in foster care program requirements, FMLA would apply. If the employee needs time off during a work day, you may ask for advance notice or a schedule of the program requirements.

Trigger for Leave

Can an employee take 12 weeks FMLA for foster care and then take an additional 12 weeks after she adopts the child?

No, once the initial 12 weeks of FMLA leave has been used, the employee

is not entitled to a second FMLA leave.

FMLA regulations are clear that an employee is permitted to use one 12-week period for foster care or adoption when a child is initially placed with an employee.

The U.S. Department of Labor (DOL) also has specifically addressed this issue in Opinion Letter FMLA2005-1A dated August 26, 2005.

When a child is "newly placed" is the determining factor as to when FMLA is triggered and this Opinion Letter clearly indicates that the employee does not get two bites at the apple by having two leaves.

In this situation, there is one right to FMLA that begins with the foster

care. After those 12 weeks have run, the employee does not have a right to take a second FMLA leave if she later adopts that child.

The full DOL opinion letter may be accessed at the link below:
https://www.dol.gov/whd/opinion/FMLA/2005/2005_08_26_1A_FMLA.pdf.

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

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Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. November 12, Webinar. (202) 466-0222.

Exporting Mechanics Webinar Series II: ECCN Classification Numbers. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. December 10, Webinar. (202) 466-0222.

Exporting Mechanics Webinar Series II: Commodity Jurisdiction. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. January 14, 2020, Webinar. (202) 466-0222.

Exporting Mechanics Webinar Series II: Drop Shipments and Routed Transactions. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. February 18, 2020, Webi-

nar. (202) 466-0222.
Exporting Mechanics Webinar Series II: Cultural Sensitivity Program. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. March 10, 2020, Webinar. (202) 466-0222.
2nd Medical Device Research & Development Summit. March 23-24, 2020. Tel Aviv, Israel. +972-3-5626090, ext. 3.

California Has One of Worst Lawsuit Climates in Country, Business Survey Shows



California has one of the worst lawsuit climates in the country, affecting companies' decisions on whether to do business in the state, according to a recent survey of senior U.S.

business executives.

The state comes almost last in the overall national ranking, at No. 48, in the *2019 Lawsuit Climate Survey: Ranking the States*, conducted for the U.S. Chamber Institute for Legal Reform by The Harris Poll.

The survey confirms that a state's litigation environment has an impact on important business decisions, such as where to locate or do business. In fact, 89% of survey respondents reported that a state's litigation environment is likely to affect important business decisions at their companies, which could have economic consequences for California.

Survey Findings

Survey respondents were asked to rank the state as a whole, rather than focus on specific cities or counties.

In an effort to pinpoint the states' strengths and weaknesses, the survey asked respondents about 10 key areas of state liability systems. These key element areas were then organized by the top five best and worst states.

California landed in the "Worst" category for 9 out of the 10 key areas; it did not land in any "Best" category. The state stands among the worst in: enforcing meaningful venue requirements; overall treatment of tort and contract litigation; treatment of class action suits and mass consolidation suits; damages; proportional discovery; trial judges' impartiality; trial judges' competence; juries' fairness; and quality of appellate review.

When asked to single out specific cities or counties that might affect a state's ranking, respondents identified 2 out of the 5 worst jurisdictions as being located in California: San Francisco and Los Angeles.

Methodology

The final survey results are based on interviews with a national sample of 1,307 in-house general counsel, senior litigators or attorneys, and other senior executives who are knowledgeable about litigation matters at public and private companies with annual revenues of at least \$100 million. The general counsel, senior litigators or attorneys, and other senior executives included in the study were involved in or are very familiar with litigation in the states they evaluated within the last five years. On average, each telephone respondent evaluated four states, and each online respondent evaluated seven states. As a result, these 1,307 individual respondents represent a total of 8,423 responses or state evaluations.

The sampling variation (or error) that applies to the results for this survey is plus or minus 2.7 percentage points.

Full Survey

To read *2019 Lawsuit Climate Survey: Ranking the States*, visit <https://www.instituteforlegalreform.com>.

Governor Signs Bill on Greenhouse Gas Reduction Fund



SUPPORT

Governor Gavin Newsom has signed a California Chamber of Commerce-supported bill that will improve accessibility of Greenhouse Gas Fund-eligible projects.

The bill, **AB 1237 (Aguiar-Curry; D-Winters)**, improves accessibility to Greenhouse Gas Fund-eligible projects and ensures transparency by requiring that each agency clearly post on its website eligibility criteria, application timelines, information on technical assistance, and contact information.

California's industry-leading cap-and-trade auction has generated more than \$8 billion in funding to state agencies

for emission reduction programs and projects. AB 1237 builds on **AB 398 (E. Garcia; D-Coachella; Chapter 135, Statutes of 2017)**, which established spending priorities, but left the agencies with flexibility in how to determine appropriate projects.

Increased transparency and accessibility is consistent with AB 398's mandate and benefits all members of the public.

Staff Contact: Leah Silverthorn



Helping Business In A Global Economy

www.calchamber.com/international

Goldie says, "Our labor law posters and pamphlets for 2020 include mandatory updates."



Your Loyal Compliance Companion (and HR's Best Friend)

Keeping on top of required updates to mandatory employment notices doesn't have to be "ruff"—not when CalChamber keeps you posted. Make sure you're ready for January 1, 2020. Your preordered posters, pamphlets and kits (shipping in mid-December) reflect the most up-to-date notices, so you know you're in compliance:

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- California Required Notices Kit (Poster and Pamphlets)
- California City and County Labor Law Posters
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