California Promise: Opportunity for All
YOU DON’T DO THAT.

SO WHY DO THIS?

Don’t drive intoxicated. Don’t drive intexticated.

A sobering message from AAA

Distracted driving kills an average of 9 people and injures over 1,000 every day in America. Put down your phone. Lives depend on it.

AAA.com/DontDriveDistracted
Tell us why you #DontDriveIntexticated

*Average daily claims from annual 2015 data collected by NHTSA. Copyright © 2018 Auto Club Enterprises. All Rights Reserved.
AAA Cares.

We’re hands-on when it comes to caring for our community. That’s why AAA is proud to support the California Chamber of Commerce.
Dear Reader:

The state’s continuing economic good fortune seems to guarantee ease in keeping the California Promise: Opportunity for All. But a number of signs point to a nagging question: Can Californians afford California?

The high cost of housing, the high cost of energy and the higher cost to do business here all create upward pressures on the cost of living in California. The California Chamber of Commerce offers solutions to address these issues in this annual Business Issues and Legislative Guide.

Keeping in mind that California companies must compete in a global marketplace, our policy recommendations include:

• Steps to moderate the supply-induced housing affordability squeeze and improve highway and transit capacity;
• Developing in-state energy sources to moderate rapid growth in energy costs;
• Maintaining fiscal discipline in anticipation of an eventual economic downturn;

To help CalChamber members and others interested in speaking out on solutions to the state’s complex challenges, we have launched an updated, mobile-friendly grassroots website at impact-california.com. It features easy-to-edit sample letters and tools to help you tell lawmakers how policy proposals will affect business in California. Please sign up to be notified when your actions will have the most impact on deliberations in Sacramento.

Your support and active involvement is essential. Please join us in making California a better place in which to live, work and do business.

Mark Jansen
Chair, Board of Directors

Allan Zaremberg
President and Chief Executive Officer
Moving mobility forward.

Helping travelers get there faster, easier and safer is what we do. And we’re doing it by building the world’s largest mobility platform. The future of transportation is coming, and we’re making it available for everyone.

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Pictorial Rosters of Elected Officials

The pictorial rosters of state elected officials and the California congressional delegation are available as downloadable PDF files at www.calchamber.com.

Issue Updates

Updates on issues are available via the CalChamber Alert app. More information at www.calchamberalert.com/app.

To Order Additional Business Issue Guides

Additional copies of this Guide are available for $20 each. Mail checks to California Chamber of Commerce, P.O. Box 1736, Sacramento, CA 95812-1736, Attn: Business Issues. Download a free electronic copy at www.calchamber.com/businessissues.
California Promise: Opportunity for All

2020 Issues
SPECIAL THANKS TO OUR

CalChamber

CORNERSTONE MEMBERS
Can Californians Afford California?

By many important measures, California has never been better off. Our state enjoys unprecedented wealth, employment and health.

Our economy created 3.4 million jobs in the 10 years since the worst of the Great Recession, a 24% growth spurt, driving the unemployment rate to a record low 3.9%. Our job growth has accounted for one out of every seven new U.S. hires. This rising tide has lifted every county with increased employment and income, although with great variation.

Measured by per capita income, California is the fifth-wealthiest state in the country.

The nine-county Bay Area would itself be the nation’s richest state. Coastal Southern California would be the nation’s seventh richest state. On the other hand, the San Joaquin Valley and Inland Empire together would rank 48th among all states in wealth.

California continues to improve its health outcomes, ranking 12th among all states, compared with a ranking of 25th in 1994. Credit our low rates of smoking, obesity and occupational hazards, high physical activity, and enviable clinical care.

If you’re looking for a job or a healthy lifestyle, California remains a dream come true. But there’s a problem…

Many Californians aren’t moving far. Mostly they are headed to western states, with Texas and our western neighbors accounting for nearly half of California movers. More troubling is not the “where,” but the “who.”

Academics have produced some evidence that high income taxes are chasing out some very wealthy individuals, but the dominant domestic migration trend is what you would expect in an expensive state: families with lower incomes move out; families with higher incomes move in.

Californians with the option to move are finding it harder to reconcile the bountiful opportunities with the cost to live here.

INCOME ABOVE U.S. AVERAGE

It’s not as if residents cannot earn a decent income in California.

Between the end of the recession in 2011 and 2017 (most recent year with complete data), average household incomes in California increased by about 25%, well above the average increase nationally of 19%. The California benefit was reflected at every income level. With the exception of Oregon, all our neighboring states and Texas lagged California in income growth, and no other western state had the absolute levels of income as high as in California.

LOOSING PEOPLE

In 2019, California lost more residents to other states than it gained from both foreign and domestic immigration combined. This continues a worrisome trend of California losing residents to domestic migration for each of the last 19 years. Since 2000, 2.3 million more persons left California for other states than moved into California. Were it not for our birthrate (which is falling) and international migration rate (which also is falling), California would be experiencing the unthinkable—losing population.
VOTER ANXIETY

Where our state is losing the competitive edge is in the ability to make ends meet, especially for lower- and middle-income Californians. Californians recognize this, even if their leaders have been slow to provide remedies.

In opinion surveys conducted for the California Chamber of Commerce over the last several years, voters have evinced their anxiety about California’s cost of living. (See Business Issues article “The People’s Voice”)

• Two of three voters with children at home say their children would have a better future if they left California.
• Nine in 10 voters say earning enough to enjoy a middle-class lifestyle is nearly impossible in California. More than half strongly agree with this statement.
• Two out of three renters say owning a home is a high priority, and most of them would move out of state in order to make that possibility a reality.

Half of the state’s registered voters admit to having given serious (24%) or some (28%) consideration recently to leaving California. The high cost of housing (71%) is the most common reason given by voters for wanting to leave California.

Governor Gavin Newsom recognizes that “the state’s affordability crisis continues to threaten working families,” with a burdensome cost of living, especially for health care and housing.

How can state leaders reverse these trends? Quite simply: address the causes and consequences of affordability, especially for middle- and working-class Californians.

HOUSING CRISIS

California’s infamous housing crisis lies at the center of much of the state’s ills, from our high poverty rate to intractable homelessness and flight of middle-class workers and jobs. Lack of affordable housing remains one of the largest threats to California’s otherwise booming economy.

California renters pay 40% more in median rent than the rest of the United States, and median home listings are double the U.S. average. California has the lowest housing vacancy rate in the nation, and a third of young adults, aged 25–29, are living at home with their parents.

Solutions: Elected leaders can moderate the supply-induced affordability squeeze by capping local housing fees, reinstating tax increment financing for targeted economic development to help pay for local infrastructure and housing, reshaping state-local tax sharing to reduce disincentives to approve new housing, quashing further attempts at rent control, reforming the California Environmental Quality Act (CEQA) to remove litigation cost premiums on new housing, and improving highway and transit capacity for new housing to ease the commute for homeowners unable to afford expensive coastal or urban housing.

HIGH COST OF UTILITIES

Californians are paying the highest and fastest-rising residential electricity costs in the nation. Our residential electricity costs are 42% higher than the national average, and since 2011 have increased more than twice as fast as the rest of the nation. Costs to residents in other western states tend to be below the national average and have increased only slightly since 2011.

California is also an outlier for electricity costs for commercial customers: 47% higher than the national average, increasing more than four times faster than costs nationally.
TAX RATES
Californians pay among the highest rates for many general taxes, including the steepest and most progressive personal income tax, very high state and local sales taxes, high gasoline and diesel taxes, and steep local business and utility taxes.

Taken together, these tax rates propel per capita state and local collections in California far above national averages and our neighboring states. Although the income tax falls mostly on high-income earners, all other state and local taxes do not discriminate on the basis of income and wealth. The consequence of the proliferation and growth of state and local taxes is to burden working Californians with more costs simply to live, drive, work and consume in the state.

Solutions: Elected leaders can moderate rapid growth in Californians’ energy costs by throttling back the sprint toward costly CO2 reductions whose costs have landed on ratepayers and motorists, but whose benefits have been difficult to measure, and by permitting development of in-state energy sources that are clean and price-competitive, or that would simply be replaced by dirtier or less secure offshore sources.

LONG COMMUTES
Owning, operating and spending time in a car is a major expense for California workers. Even after decades of investment in alternative options, more than eight out of 10 California workers drive to work alone in a private automobile. About 75% of commuters drive alone, 10% use an automobile to carpool, while about 5% each regularly use public transit, use other nonautomobile options, or work from home. Commute modes vary substantially depending on where the commuter lives and works.

Commute times are much longer in California than elsewhere. Drivers spend about 25% more time to get to work in California, than the average of other western states. Four of the 10 longest commutes in the country are in California—notably driving to and from outlying regions to the Bay Area or Southern California job centers.

Long commutes by automobile mean substantial fuel consumption. Californians continue to lead the nation in purchasing and using cars that use alternative fuels—for good reason. The cost of gasoline in California persistently tops the nation, no matter when on the oil price cycle.

For the last nine years for all grades of gasoline, California’s price per gallon averaged 12% higher than other West Coast states, and 25% higher than Rocky Mountain states.
OVERVIEW

**Solutions:** State leaders must maintain fiscal discipline, especially in anticipation of an eventual economic downturn. They also should secure the long-held doctrine that local special taxes be approved by a two-thirds majority, in light of pressure by special interests to undermine this taxpayer protection in the courts, ensure that non ad-valorem property taxes apply uniformly to all classes of taxpayers and not discriminate based on the use of the property, and oppose other discriminatory or targeted taxes, including a split roll property tax, and targeted taxes on consumer products, industrial practices or high wealth.

MODIFY POLICIES

Sadly—but fortunately—many of the challenges California faces are self-inflicted. By summoning their collective will and overcoming entrenched interests, the Governor and Legislature can modify the policies that have burdened their voters and families with high and rising costs.

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January 2020
The People’s Voice
Affordability, Public Order Concerns Creating Voter Anxiety

California voters are anxious. Reports of steady growth and low unemployment cheer political leaders, but voters are disturbed by decaying public order and unaffordable cost of living, according to the CalChamber poll, The People’s Voice, 2019.

HOMELESSNESS
Top of mind for voters is the erosion of public order.

Central to that perception is homelessness. Fully half of voters say they see homeless people on the street more than five times a week. Three out of four voters say homelessness has gotten worse in California, and their perception is not much better in their own communities, where 64% of voters say homelessness has gotten worse.

Although voters generally prefer solutions created by officials closer to home, they are so frustrated with lack of action that Californians now put responsibility for solving the homelessness problem on state officials over local officials, by a 62%–38% margin.

ACTIONS SUPPORTED
Voters support a mix of compassionate and no-nonsense actions. They most strongly supported:

• More mental health and homeless service centers specifically focused on serving homeless populations (91% support; 60% strong support).

• Involuntary commitment of homeless individuals who have severe mental/behavioral issues that may be a danger or harm to themselves or others in the community (89% support; 49% strong support).

• Build more homeless shelters (86% support; 50% strong support).

• Allow law enforcement to arrest homeless people who use dangerous and illegal drugs (82% support; 49% strong support).

PERSONAL SAFETY
Another take on public order is growing unease over personal safety. 79% agree (41% strongly) that homelessness and criminal behavior have become rampant throughout California. 73% agree (37% strongly) that street crime, shoplifting and car theft have become rampant throughout California. And 60% agree (25% strongly) with the statement, “I no longer feel safe because of the danger and disorder in society today.”

ECONOMY/JOBS
Voters are also anxious about the economy. Job creation has been strong over the past decade, and voters have recognized this. About two-thirds of voters, the same as last year, have a positive impression of job creation.

The major differences are regional. Voters in the San Francisco Bay Area and San Diego/Orange/Los Angeles counties perceive very strong job creation, while inland voters in the Central Valley and Inland Empire are more pessimistic.

Indeed, when it comes to the quality of jobs, a strong majority of Bay Area voters believe most new jobs “lead to higher pay and middle class,” while significant majorities in the Inland Empire and Central Valley disagree, believing new jobs “tend to be dead ends and do not lead to middle class.”

A slight majority of voters statewide perceive new jobs as “middle class,” but that feeling is trending downward from 2018.
ANXIETY ABOUT AFFORDABILITY
The central anxiety for voters is affordability.
Nine of 10 voters agree that “earning enough to enjoy a middle-class lifestyle is becoming almost impossible in my part of California,” with 52%—an absolute majority—strongly agreeing with that statement.
Most sobering, a record high 2 out of 3 voters with children living at home say their kids “will have a better future if they leave California.” This is a 5 percentage point jump from 2018. More than a third (36%) strongly agree with this statement—a 9 percentage point jump from 2018. This should be a flashing caution sign to policymakers to address affordability issues for rising generations of Californians.

A RECORD HIGH 2 IN 3 WITH KIDS AT HOME SAY THEIR CHILDREN WILL HAVE A BETTER FUTURE IF THEY LEAVE CALIFORNIA

Source: CalChamber, The People’s Voice, 2019

OPPOSITION TO TAXES
One of the not-so-surprising consequences of this anxiety: voters are reluctant to embrace new taxes to pay for even popular ideas.
The bellwether for California tax attitudes is Proposition 13, and after more than four decades, California voters maintain their attachment to this historic reform. 80% of voters have a favorable view of Proposition 13, including 46% who are strongly favorable. Three-quarters of renters have a favorable view of Proposition 13, as do young people and Democrats. Strong support for Proposition 13 has remained consistent for many years.

Property taxes are not the only forbidden territory marked out by voters. Recent interest in applying the state sales tax to services used and paid by businesses is not shared by voters.
By a 71% to 29% margin, voters rejected extending the sales tax to business services. Opposition was widespread in all demographic groups: renters and low-income groups were strongly opposed; Democrats opposed by 2 to 1.

CLIMATE CHANGE
Voters continue to strongly agree that climate change is happening at present, and that the state of California must act now. But that agreement does not extend to taxing cars and gasoline to achieve those goals.
Convincing majorities oppose (60%, with 35% strongly opposed) increasing taxes on automobiles that run on gasoline or diesel to discourage their use. A similar majority oppose (58%, with 35% strongly opposed) increasing taxes on gasoline or diesel to discourage use of internal combustion engines.

VOTER EXPECTATIONS
California voters have high expectations that their elected leaders address housing, climate change, homelessness, education and infrastructure issues. But they also demand solutions that go beyond the predictable and expensive tax-and-spend-and-regulate template.

POLL METHODOLOGY
The CalChamber poll was conducted by PSB Research with online interviews from September 24 to 28, 2019, with 1,000 online interviews of likely 2020 general election voters. The margin of error for this study is +/- 3.1% at the 95% confidence level and larger for subgroups. This was the fifth year CalChamber published a voter survey.

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January 2020
Choosing Winners and Losers
The Consequences of Banning Energy Sources

California is known nationally and internationally for its leadership in setting ambitious climate goals and spurring innovation that has evolved how the world thinks about energy production, efficiency, and transmission. With each new legal and regulatory enactment, California policy should remain technology-neutral to protect jobs, encourage innovation, and maintain growth while looking at ways to reduce greenhouse gas (GHG) emissions.

To that end, California passed the first-of-its kind cap-and-trade program, applicable to stationary sources and transportation fuels, including oil and gas production, manufacturing, and electricity generation, allowing market prices to drive down emissions while maintaining its strong economy. This approach is prudent since California contributes only 1% to global GHG emissions.

In the energy field, California utilizes a Renewable Portfolio Standard, setting a percentage goal for renewable energy while allowing electric utilities to undertake long-term Integrated Resource Planning to figure out how to transition the energy grid to accommodate a growing portfolio of renewable sources. California also is the leading regulator of automotive emissions in the country, pioneering limits on tailpipe emissions and control technologies years before federal requirements. This balanced approach has likely led to California maintaining its leadership in the global economy and energy world, and has served as a model that California should continue to follow.

FORCING THE MARKET
On the other hand, the California Legislature is not immune to the urge to force the market to adopt specific technologies or services through means such as an outright ban on certain energy sources, through setback requirements, or mandates on a certain energy mix.

For example, in 2019, AB 345 (Muratsuchi; D-Torrance) proposed imposing a state minimum 2,500-foot setback requirement on new oil and gas development, as well as on redrilling or rework of any existing oil and gas infrastructure. The 2,500-foot setback requirement was in effect a domestic ban jeopardizing new and existing infrastructure necessary for in-state production to continue.

The California Chamber of Commerce tagged the proposal as a job killer and the bill ultimately was held in the Assembly Appropriations Committee. Also for two years in a row, bills attempting to ban all combustion engines in the state were introduced—AB 1745 (Ting; D-San Francisco) in 2018 and AB 40 (Ting; D-San Francisco) in 2019—but both failed to garner sufficient votes in committee.

All the while, regulations at the California Air Resources Board (CARB) are making an end-run around legislative directives on issues such as transportation emissions and infrastructure issues, with CARB failing to conduct and report on bills. For example, SB 498 (Skinner; D-Berkeley) directed CARB to work with stakeholders and the Institute of Transportation Studies of the University of California to look at all state board programs and report on a comprehensive approach. This study was due to the Legislature on July 1, 2019, but has never been provided despite multiple requests from legislators and stakeholder groups.

Despite state leadership in reducing GHGs, California’s economy still relies on fossil fuels. As the state transitions away from this traditional fuel source to renewable energy, the Legislature must account for the effects on consumers, motorists, and residents’ quality of life that come with legislated bans and mandates. Renewable energy and fossil fuels should not be viewed as diametrical opposites. A mix of both is required to maintain a secure energy grid and protect jobs. An appropriate balance can be struck to set forth a model for other states and the world to follow.

THE POLICY ISSUES

- Combustion Engine Bans Have Disproportionate Impact on Poor and Working Class Californians. Transportation accounts for a large portion of California’s GHG inventory.
Legislators have introduced bills to ban combustion engines in each of the last two years, and no doubt will continue to sponsor similar legislation in the future. Although banning combustion engines is certainly one strategy to reduce GHG emissions, a targeted ban disproportionately harms poor, minority, and middle class workers who commute long distances in older vehicles due to the high housing costs in California’s major metropolitan areas. Most working Californians cannot afford and do not choose to purchase electric vehicles. Solutions need to be developed that are even-handed and take into account all the costs of climate policy.

California lays claim to the country’s most developed electric vehicle market in the nation. As California leaders push for even more purchase and use of electric cars, the blessings of fewer GHG emissions are limited by the serious logistical challenges brought on by economy-wide electrification. For example, electric vehicles may be unusable following a natural disaster or during public safety power shutoff, when electric service may be unavailable for several days or weeks. Additionally, evacuation distances for those escaping wildfires or other natural disasters may exceed the range of an electric vehicle on a single charge, or charging stations may become inaccessible.

• Picking Winners and Losers Hinders Innovation. California policy makers have historically preferred and provided financial and market incentives for solar and wind energy over other renewables, hindering innovation by narrowly defining “renewable” as a list of preferred options. This makes other emerging technology less cost competitive in California. California also cannot rely 100% on solar and wind—it requires storage when the sun stops shining and wind stops blowing, or requires a reliable backup generation.

Battery storage technology often is touted as the response to concerns over reducing the role of natural gas as a clean, fast-ramping resource. However, sufficient battery storage is not yet available at a level that is necessary to maintain power after dark or when the wind is low, currently constituting less than 1/10th of 1% of defined renewables in use in California. After the closure of California’s last nuclear generating facility, the state’s remaining reliable backup generation will be natural gas. California is lagging on energy storage, and if the state also bans or limits natural gas, Californians will be left with nothing to keep the lights on, a real possibility we are facing at peak energy usage starting in 2021. Legislators must be sure to keep the physics of the grid top of mind when enacting energy policy.

Nuclear energy, for example, once was heralded as the clean and green option. France, for instance, is the world’s largest net exporter of clean electricity and provides Switzerland, Italy and Belgium with loads of cheap energy by relying heavily on nuclear power. Back home, Californians have had an ambivalent and inconsistent relationship with energy generation technologies. The flirtation with nuclear power was brief, and the skepticism over costs, unanswered safety issues, and unresolved concerns over waste disposal overcame the obvious advantages that nuclear generation represents for climate health.

California was a world leader in moving generation from coal and oil to natural gas, creating some of the greatest improvements in air quality in the country while making significant progress in GHG emissions. But that progress was already banked by the time that serious climate policy was debated in the last decade, leaving policy makers the choice of standing still or seeking the next big thing in generating clean electricity. California legislators continue to introduce bills mandating procurement of wind and solar, despite the impracticability of doing so, thereby limiting innovation and technology in other areas of energy production.

• Renewables Are Just Part of the Mix. Legislators should consider the negative social and environmental externalities of picking one technology over another.

For example, many solar panels installed over the last several decades are reaching the end of their useful lives. As the number of in-state permitted hazardous waste facilities declines, California is forced to ship this hazardous waste to states or nations with fewer environmental regulations, in effect shifting our problems onto others.

Batteries too cause unforeseen externalities. Like many of our consumer electronics, batteries use precious metals that are mined in countries without the rights granted to California workers, without environmental regulations, and where massive amounts of GHGs are emitted during the mining and transport process. The world also has a limited supply of lithium, which currently is used to fuel these batteries.

Our energy future cannot be a one-size-fits-all approach that chooses a single technology and discourages innovation in other fields.

• California Industries Rely on Natural Gas. For the last few years, legislators and agencies have targeted natural gas production and use, imposing regulatory moratoriums on new gas hookups without first studying the effects, and introducing bills to ban or curtail the use of this reliable and flexible power source.

It is important to remember that certain industries cannot continue to operate in California if natural gas is banned. For instance, clay roof tile manufacturers, asphalt companies,
mortuaries, and some food production facilities require massively high heating units. Natural gas is the most efficient, and sometimes only source that will allow kilns, ovens and stoves to reach the appropriate temperature. Banning gas means these companies must move out of state, or close all together, requiring more imports and thus more GHG emissions from transport into the state. Given the already-soaring cost of housing, increasing the cost of building materials seems unwise.

While the Legislature may recognize this concern, natural gas hookup bans are proliferating at the local government level in an inconsistent and sometimes unthoughtful approach. Even some environmental justice groups are pushing back on these bans, which, where energy security is the main concern, dramatically affect the lives of those living in disadvantaged communities.

- **Banning Natural Gas and Oil Production in the State Means More Imports.** Proponents of energy policies that ban in-state natural gas and oil production fail to acknowledge unintended consequences such as increased oil and gas imports, higher energy costs for residents, less tax revenue for the state, fewer in-state jobs, and negative environmental and labor impacts.

For example, California residential electricity rates are the fifth highest in the nation. Commercial and industrial ratepayers in California pay as much as 50% to 70% above the national average for electricity. California regularly ranks as having the most expensive gasoline in the United States with prices averaging at least 60 cents per gallon higher than the national average. This cost discrepancy is due to factors including California’s state excise taxes, costs passed on from climate change regulations (cap-and-trade and the low carbon fuel standard), a reduction in the number of refineries operating in California, and the absence of interstate pipelines, such that transportation fuel can be imported only via ship or truck.

Despite having the most stringent environmental policies in the country, California’s fuel consumption is still at its highest level since 2009 (see California Energy Commission, Retail Fuel Outlet Annual Reporting). Oil and gas remains the leading energy source powering California’s economy. Californians will continue to rely on fossil fuels for the foreseeable future, as the state is home to 40 million residents, 35 million registered vehicles, 145 airports, 32 military bases, and 11 public ports, including three of the nation’s “megaports” (Los Angeles, Long Beach and Oakland).

Given California’s declining in-state production and declining imports from Alaska, the state will inevitably rely on more imports from foreign countries. This is evidenced by the year-after-year increases in foreign crude oil imports. California has increased crude oil imports from foreign countries year after year, with as little as 5% of crude imported in 1992, to approximately 57.5% of crude being imported in 2018—a 52.5 percentage point increase (see California Energy Commission, Crude Oil Supply Sources to California Refineries). By importing approximately 369 million barrels of crude oil in 2018, California spent more than $23 billion annually to buy crude oil from foreign oil producers (the Brent spot price for oil was around $62.52/barrel as this article was written).

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<th>CRUDE OIL SUPPLY SOURCES TO CALIFORNIA REFINERIES</th>
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Instead of over-regulating domestic oil production and then having to buy crude from foreign oil regimes with weak environmental and labor laws, California could invest in domestic oil and gas production facilities. California oil and gas facilities provide very high-paying jobs under the world’s most stringent environmental and labor laws. Yet, the state is doing exactly the opposite. In November 2019, Governor Gavin Newsom announced an immediate moratorium on all new permits for steam-injected oil drilling and a requirement that all pending applications to conduct hydraulic fracturing be reviewed independently prior to approval.

Curtailing oil and gas production in California while continuing to import more oil does not lead to lower global emissions or a cleaner environment—it merely shifts California’s oil and gas supply and greenhouse gas emissions to less environmentally regulated and less worker-friendly countries. Policies banning in-state production create greater negative externalities by increasing greenhouse gas emissions elsewhere, reducing high wage in-state jobs; funding foreign regimes known for human rights violations; increasing the chances of oil spills correlated
with longer transportation routes; and reducing tax revenue for California that could be used to fund schools, infrastructure and many other social services.

Such policies also jeopardize the state’s energy resource adequacy, as highlighted by a recent California Public Utilities Commission decision directing load serving entities to procure 3.3 gigawatts of capacity beyond baseline resources in order to meet a potential resource adequacy shortage beginning in 2021.

2020 LEGISLATION

Lawmakers have already introduced bills aimed at banning the sale of nonzero-emission combustion engines by 2040, specifying energy procurement sources, offshore oil production bans, and building and appliance electrification standards. Outright bans, without accounting for the full economic and environmental impacts of what will happen, miss the whole picture, potentially damage our economy, and do not necessarily contribute to a reduction in global GHGs or a cleaner environment.

Although we anticipate additional legislation targeting in-state oil and gas production, the CalChamber is committed to working with legislators so that they better understand the implication of these policies on California’s economy and environment.

CALCHAMBER POSITION

Energy policy is complex, with known and unknown externalities every time a bill is proposed picking energy winners and losers. The Legislature should be careful to evaluate each policy within the broader system of energy, economy, and the environment. If it does, California can continue to be a leader in global climate change and have the strongest economy in the nation and world. It can work with other states and countries to develop new strategies and technologies. It can allow the bipartisan processes, such as the extension of cap-and-trade, to work. It can continue to support the more than 300,000 jobs directly or indirectly related to the oil and gas industry, all while imposing the toughest environmental laws and regulations in the country.

For years California focused inward and is on track to achieving its ambitious energy goals. We can now focus outward and be a model for stability.

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January 2020
Energy Policy
Smart Choices Balance Climate Change, Renewables, and Energy Stability

California energy policy is a complex interaction of economics, technological challenges, and environmental considerations, all of which must work together to create a reliable and cost-effective system for delivering energy to millions of homes and businesses across California. Those responsible for the energy grid must balance these considerations while accounting for a constant stream of electrons across the entire West—all of which is interconnected between and among the western states to form the Western Interconnection shown at right. Every electron produced in California—whether renewable, nuclear, natural gas, or otherwise—must be carefully integrated into a complex series of wires, switches, and transformers before flowing into your home or business. All these maneuvers come together to ensure you can turn on the lights when you hit a switch, but also that your toaster doesn’t burst into flames. Energy rates resulting from these decisions affect every California consumer, whether directly through your home energy bills or through increased prices of goods and services. Smart and planned integration of renewables into this complex system of interconnected electrons must be evaluated carefully and not reduced to tag lines.

**THE BASICS**
- California Energy Grid Is Hybrid Federal and State System. All the electricity in the Western Interconnection is tied together and, by design, must operate at a constant frequency of 60 hertz (Hz). This complex series of interconnections is managed by a series of balancing authorities, the largest of which, the California Independent System Operator (CAISO), is located in California and encompasses part of California and Nevada.

  The legal authority to regulate the energy grid across the United States is split between the state and federal government. The federal government, through the Federal Energy Regulatory Commission (FERC) governs transmission of energy, as molecules of energy do not respect state boundaries and travel in interstate commerce, which the U.S. Constitution deems a federal issue. The states control decisions such as power plant siting, procurement, and in-state retail sales—the end use to homes and businesses. FERC retains governance over the CAISO and balancing authorities to the extent they transmit energy across power lines.
• Renewable Portfolio Standards and Integrated Resource Planning. While FERC governs transmission of energy, California retains jurisdiction to make decisions regarding wholly in-state production and retail sales of energy. California’s energy portfolio uses a mix of energy sources that allows use of California’s abundant natural resources when the wind is blowing and the sun is shining, but still allows for sufficient power to ensure that you can turn on your lights at night or charge your electric car when these natural resources are scarce.

To that end, natural gas, large hydroelectric plants, nuclear, and minor amounts of coal are still in the portfolio mix. The largest portion of renewables (approximately 70%) consists of solar. While solar is a vast resource during the daytime, it also can be an unpredictable and intermittent energy resource. In response to growing climate change concerns, California adopted the Renewable Portfolio Standard (RPS) program in 2002, requiring first private utilities, and then public utilities, to procure a certain percentage (20% at the time) of “renewable” energy resources. Categories of resources that qualified as “renewable” initially included things like solar, wind, municipal waste combustion, and small, existing geothermal plants.

Over the last 17 years, the Legislature has fussed with the definition of renewable. In 2018, the Legislature passed SB 100 (de León; D-Los Angeles), which increased the goal from 60% to 100% by 2045. California’s utilities are currently on track to meet the increased RPS requirements.

THE POLICY CONCERNS

• Peak Energy Usage Has Changed. As each new bill pushes the renewable energy threshold, regulators, utilities and ratepayers alike have to decide how to meet and pay for demand to maintain the complex grid described above. At peak sunlight, California produces too much energy and must curtail (shut down) production at solar and wind facilities. At the same time, California must ramp up its production at peak energy usage.

Over the years, as a result of many factors, including electrification of buildings, cars, and increases in population, California’s peak energy usage has shifted slightly later, after sunset. Therefore, solar cannot provide the power needed to meet peak demand. Fast-ramping, responsive resources must be available to meet this demand if Californians are going to continue to keep the not-so-proverbial lights on.

The CAISO maintains a real-time look at the sources of energy supply and current renewables at www.caiso.com/TodaysOutlook/Pages/supply.aspx.

In 2019, the CAISO predicted a significant shortfall in reliability capacity at peak usage (when solar cannot help) starting in the summer of 2021. Historically, natural gas has been used to handle the shortfall and to keep the lights on, but these facilities have been closing in increasing numbers due to legislative and regulatory targets on fossil fuels. (See Business Issues article on “Choosing Winners and Losers” for a discussion of the problems with banning certain resources.) Solutions must keep sight of cost-effective mechanisms to meet short- and long-term reliability demands.

• Storage Technology Is Still in Its Infancy. Environmental groups have targeted natural gas plants in California, either by sponsoring legislation to ban all fossil fuel energy production, or banning new natural gas hookups in construction. Bills introduced each year attempt to ban natural gas power production, or limit new natural gas connections, increasing reliance on intermittent resources. Natural gas remains our go-to for reliability and peak usage because natural gas is cleaner burning than coal and is “fast-ramping,” meaning that we can easily turn up or turn down the volume as needed when renewables are not available to meet demand. Reliability depends upon flexible resources that can be summoned on demand.

Much interest surrounds development of storage solutions, with studies to evaluate batteries, pumped hydro or kinetic storage (where water or heavy objects are hoisted up a hill using cheap and abundant solar electricity during the day until peak demand, where gravity is holstered to create energy when the water or objects are allowed to move back downhill), conversion of hydrogen to natural gas, and other technology.

Storage solutions are discussed as if they are already in place, waiting to be utilized. The problem arises because this technology has not fully developed to the extent that it constitutes a significant portion of California’s energy mix. Batteries currently make up less than 1/10th of 1% of renewables in California. What happens if we rely primarily on solar and batteries as backup, but the sun doesn’t shine for several days in a row, or wildfire smoke covers solar panels?

California does not yet have energy storage at anything approaching the scale necessary to meet peak energy demand and still needs natural gas to keep the lights on. Even if planned energy storage projects are pursued, they take years to obtain proper permits, build and become operational. Relying too heavily on one technology over another caused this reliability shortfall. California must take actions that encourage, not discourage, public and private investment in new and varied solutions. We must make thoughtful choices to avoid blackouts if there is a reliability shortfall as predicted in 2021.
• **Rates Are High and Increasing.** Every energy policy decision the state and federal government make has a direct impact on California ratepayers. Utility companies must comply with these mandates, and these costs are passed along to California ratepayers by the California Public Utilities Commission. The U.S. Energy Information Administration, which conducts independent analysis of energy data, notes that California has the nation’s sixth highest retail price of electricity in the residential sector. In 2018, industrial consumers paid an average retail price of 13.2 cents per kilowatt hour (kWh)—compared with 6.92 cents nationally—and commercial ratepayers paid more than 16 cents—compared with 10.27 nationally.

In debating sound energy laws, policymakers throw around different statistics on California energy rates. For instance, it often is touted that Californians use less in terms of kWh than residents in many states, which is true largely because of the shift toward electrification and end-user conservation efforts. However, California rates per kWh remain among the highest in the nation—even in states that similarly use little to no coal.

**LEGISLATIVE ACTION IN 2020**

The requirement adopted in 2018 that utilities obtain 100% of energy from renewable sources (which is limited by definition mostly to wind and solar) by 2045 increases the challenges to integrate existing and future renewables into the energy grid, encourage development of a broad array of storage technology, and avoid crises when wind and solar cannot meet our state’s energy demands.

The California Chamber of Commerce expects legislation may include issues surrounding reliability procurement—the additional power the state must obtain if forecasted demand exceeds predicted power available—and how to deal with renewable goals as traditional utilities continue to change in California.

**CALCHAMBER POSITION**

Legislation that continues to push the renewable threshold without consideration of grid capacity, pricing, or energy stability misses the whole picture. The CalChamber supports legislative and regulatory solutions that bring new businesses to California and help employers and the state reduce greenhouse gas emissions in the most cost-effective, technologically feasible manner while allowing flexibility to ensure a stable energy future. California cannot achieve its stated goals as a leader on climate change if it cannot demonstrate a sustainable balance between renewable integration, grid reliability, and cost containment.

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Greenhouse Gas Regulation
Market-Based Approach Will Have Broadest Impact

California is regarded both nationally and internationally as a leader in climate policy. It is important to remember, however, that California makes up a mere 1% of global greenhouse gas (GHG) emissions, sometimes referred to generically as “carbon” emissions. Where California can make the most impact in further reducing GHG emissions is by serving as a model for a robust, cost-effective cap-and-trade system that encourages linkage with other jurisdictions. This system requires buy-in from all parties—not just government and environmental groups, but from the businesses and industries that will support and implement these regulations.

THE BASICS
In 2017, California enacted AB 398 (E. Garcia; D-Coachella), reauthorizing and expanding the California Global Warming Solutions Act of 2006, which first authorized the creation of a market-based cap-and-trade system. A bipartisan bill supported by the California Chamber of Commerce, AB 398 solidified California’s future as a leader in the market-based approach to climate solutions.

Under California’s cap-and-trade, launched in 2013, GHGs are “capped” at a total overall limit, which declines over time. Entities subject to cap-and-trade are subject to individual emission limits (called “allowances”). They then either sell allowances (in the case of fewer emissions) or buy them (in the case of higher emissions) to meet regulatory requirements. In this manner, emissions are both capped and any excess emissions are priced. Proceeds from the sale of these excess allowances are funneled into the Greenhouse Gas Reduction Fund, which is intended to fund GHG reductions in other sectors of the California economy.

AB 398 extends the cap-and-trade system through 2030, which provides market certainty and encourages investment. The Legislature also made improvements to the cap-and-trade system, directing the California Air Resources Board (CARB) to evaluate and address carbon credit banking rules to avoid speculation, and to provide additional industry assistance to California businesses that are most susceptible to “leakage”—the climate change parlance for the unfortunate fact that environmental regulations sometimes push businesses to relocate out of state, instead causing emissions in a less-regulated state.

AB 398 also sought to set a price ceiling on carbon credits, such that businesses could be assured that additional credits would not be astronomically high in future years. In doing so, AB 398 sought to strike a balance between ensuring continued economic growth in California while achieving measurable, tangible GHG reductions.

The CARB was directed to create regulations to implement...
AB 398. CARB finalized the cap-and-trade regulations on December 13, 2018. Over many objections by the business and civil rights community, CARB set price ceilings and market speedbumps for the cap-and-trade auction at a level that is inconsistent with “best available science,” and arguably inconsistent with AB 398’s bipartisan mandate. Price ceilings are designed to stabilize markets, prevent runaway costs, encourage additional governments to join our cap-and-trade system, and minimize leakage of California businesses.

Concerns have become increasingly evident as one of our trading partners—Ontario—withdraw from our cap-and-trade market in 2018. It is important to maintain stability of the market as we move forward with cap-and-trade.

THE POLICY CONCERNS

• Avoiding New Duplicative Legislation. AB 398 and its companion bill, AB 617 (E. Garcia; D-Coachella), sought to address a large swath of air quality concerns. AB 398 seeks to place a cap on emissions from entities constituting approximately 80% of specified emission sources in California and put a price on carbon. Where AB 398 addresses emissions that are more global in nature (GHGs), AB 617 created a community-based process to address air quality concerns that tend to be more local in nature.

Despite these far-reaching laws, California continues to enact piecemeal bans and procurement requirements for utilities, agriculture, and energy producers. For example, a bill introduced in 2018 sought to curtail all natural gas electricity production in California, despite cleaner natural gas being used to reduce overall emissions and provide for energy stability (which is in short supply) when solar or wind is unavailable. AB 398 attempted to address some of this duplication, banning local air districts from adopting or implementing an emission reduction rule for a stationary source that also is subject to cap-and-trade. Duplicative legislation hinders economic expansion in this state, and provides a disincentive for businesses to support wide-ranging market-based approaches in the future.

• Efficient Use of Greenhouse Gas Reduction Funds. Profits from the credits produced in the cap-and-trade auction have generated more than $9 billion in funding to state agencies for emission reduction programs and projects. The Legislature left flexibility in determining appropriate projects to state agencies. However, AB 398 established GHG reduction fund spending priorities, including:

  • Air toxic and criteria air pollutants from stationary and mobile sources.
  • Low- and zero-carbon transportation alternatives.
  • Sustainable agricultural practices that promote transitions to clean technology, water efficiency and improved air quality.
  • Healthy forests and urban greening.
  • Short-lived climate pollutants.
  • Climate adaptation and resiliency.
  • Climate and clean energy research.

The bill also contained certain reporting and oversight requirements to ensure market performance and track progress on emission reductions to ensure California meets its ambitious climate change goals. The Legislature should ensure that GHG reduction funds are directed toward projects that create measurable and substantial reductions in GHG emissions, which is the goal of the cap-and-trade program.

LEGISLATIVE ACTIVITY IN 2020

The Legislature will continue to advance climate policies, including introducing bans or limits on industries already subject to the cap-and-trade laws. It is important to maintain economic stability of the market-based program. If California is to be a leader in climate change, it must successfully balance scientifically proven GHG emissions with economic growth.

We expect continued debate over the use of cap-and-trade funds, which should be directed to programs that demonstrate cost-effective and significant GHG reductions.

CALCHAMBER POSITION

The CalChamber supports climate change laws and regulations that are cost-effective, technology-neutral, and promote the use of market-based strategies to reduce GHGs. The Legislature should ensure that any changes to California law safeguard the economy while having a demonstrable impact on GHG reduction and attract private capital to the state.

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Skilled Workforce Is Key to Growth
Filling ‘Skills Gap’ and ‘People Gap’ Essential for Long-Term Prosperity

For the first time in recent memory, California has more job openings than residents looking for work. As the economic recovery extends into record territory, one of the key threats to continued prosperity is the lack of skilled workers for growing businesses.

California has the fifth-largest economy in the world but needs to produce an additional 1 million career-ready college graduates by 2025 to meet employers’ needs.

The reality is that most of our students face a different future. Only 40% of the state’s 2.2 million young adults (ages 25–34) hold an associate’s degree or higher and many lack the skills needed for workforce success. In fact, only 8% of students graduate from high school prepared for college success. The reality is bleaker for underrepresented students: less than 1 in 10 of California’s low-income adults hold a postsecondary degree, and even fewer have jobs that pay a sustaining wage. Similar gaps in attainment exist for students of color. Unless trends are reversed, California’s standing as a vibrant, global economy is at risk.

Some business leaders call this a “two-gap” problem: a skills gap—too many people lack the skills or credentials they need to compete for 21st century jobs; and a people gap—too many businesses can’t find the workers they need, when and where they need them.

Both these gaps threaten California’s long-term growth and competitiveness, and they will require different but overlapping policy solutions.

SKILLS GAP
Addressing the skills gap is truly the low-hanging fruit of California economic policy. Increasing skills is not only good for employers, it’s the key to economic and social mobility for workers.

The Public Policy Institute of California (PPIC) recently found that college graduates have better labor market success than less-educated adults, including substantially higher wages and lower unemployment rates. The typical full-time worker with a bachelor’s degree earned $81,000 in 2017, compared to $36,000 for those with only a high school diploma.

But not all Californians have the same chance to experience these benefits, according to PPIC. Low-income, first-generation, Latino and African American students—who make up most of the state’s public high school students—are less likely to graduate from high school, enroll in college, and graduate from college than their peers.

State leaders have directed billions of dollars to K–12 education since the end of the recession, but outcomes are still disappointing. To improve K–12 education, policymakers should re-impose rigorous accountability in schools, more choice for families, and greater collaboration between stakeholders.

The goal should be to ensure that every student graduates from high school prepared for the next step—whether that’s college or career. Although college can provide the most immediate boost to mobility, graduates can profit from postsecondary choices other than a four-year college. For example, PPIC estimates that one-third of all jobs in California require some college, but not a full bachelor’s degree, and see this share holding steady in the future. In addition, work-based learning, such as apprenticeships, as well as credentialing and certificate programs, also can provide fulfilling careers.
BUSINESS INVOLVEMENT

Businesses must play a role in filling California’s skills gap by working with educational programs to identify the skills that California’s economy needs to grow and to help students develop those skills.

For example, successful high schools often use Linked Learning programs, integrated curriculum, and partnership academies that use standards-based, rigorous, career-oriented academic and career technical education (CTE) courses to increase student engagement and performance. To ensure the effectiveness of these programs, schools engage employers as partners to offer work-based learning opportunities, such as internships, mentorships, job shadowing and other workplace exposure experiences.

In 2018, the California Chamber of Commerce supported a successful legislative effort (AB 1743; O’Donnell; D-Long Beach, eventually AB 1808; Committee on Budget) to reauthorize and provide new funding for the Career Technical Education Incentive Grant Program, which will enable high schools to provide high quality CTE programs linked to career pathways. CalChamber also successfully supported targeted funding (SB 1243; Portantino; D-La Cañada Flintridge, eventually AB 1809; Committee on Budget) to community colleges to improve the recruitment of students into science, technology, engineering and mathematics (STEM) pathways.

In 2019, CalChamber supported successful legislation (AB 1240; Weber; D-San Diego) to encourage California’s high schools to prepare students with both college preparatory courses and CTE courses.

Employers also can take the lead to apply business principles to better align skills with jobs. Rather than waiting for training and workforce agencies to deliver prospects with hoped-for skills, companies should treat their workforce needs like they would any supply chain. Companies should project workforce demands, identify and clearly define the necessary skills, and partner with education or training providers, who then develop curriculum tailored to specific jobs. This coordination allows people to enter these training programs knowing that they will lead to employment and employers can rely on a steady pipeline of talent, ready to fill open positions.

PEOPLE GAP

But functioning educational pipelines will not solve California’s labor needs—we simply need more workers.

Demography and politics are the two greatest impediments to increasing the sheer number of workers in our economy. More than a thousand baby boomers leave the California workforce every day, and this trend will continue for another decade. But workers don’t generally have an expiration date. We should make it easier for our most experienced employees to stay on the job.

At the opposite generational end, many of California’s young people aren’t in school or employed. These youth—more than a half million in California—have a lifetime of opportunity ahead of them that should be inspired, not squandered.

Additional hundreds of thousands of Californians are sidelined by addiction and incarceration. Many of them can become societal contributors with guidance and the right job opportunities.

California’s high cost of living and lack of affordable housing present two more hurdles for all workers—regardless of education—to be able to fill these critical jobs and thrive in California.

IMMIGRATION POLICY

But the biggest missed opportunity is the nation’s continuing refusal to develop commonsense immigration policies.

The nation needs a comprehensive national program that addresses border security, temporary worker programs, employment verification and enforcement, as well as a path to legal status. Border security shouldn’t be at the expense of trade and commerce, which must continue between Mexico and California. Temporary worker programs should be reformed to meet the needs of employers for high- and low-skilled jobs that cannot be filled by U.S. workers.

CALCHAMBER POSITION

Besides the weather, California’s greatest competitive advantage is our skilled workforce. But unlike the weather, inattention to nurturing this workforce will squander that advantage. For the sake of economic growth, social cohesion, and personal fulfillment of individual Californians, California’s leaders must address the skills gap and the people gap as top public policy priorities.

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Endangered Species
Balanced Reforms Need to Consider Science, Economic Stability

Endangered species protection continues to confront and confound business activities in California. Housing, transportation, agriculture and basic infrastructure needs—including water, gas, electricity and alternative energy sources like wind and solar—are complicated by encroaching environmental laws like the federal and state endangered species acts. It becomes a balancing act to provide basic human needs and species protections while trying to invigorate business productivity that adds to a stable economy.

BACKGROUND
The federal Endangered Species Act (ESA) of 1973 protects a wide variety of wildlife species that are threatened with extinction. Since the beginning of the Trump administration, the President has stated repeatedly that the ESA is ineffective and that new regulations would be introduced to roll back the Obama-era regulations. California legislators proactively responded with legislation in 2018—SB 49 (de León; D-Los Angeles)—that among other topics required immediate protection for any federally listed species under California’s Endangered Species Act (CESA) should a federal rollback occur.

SB 49 failed in the Assembly, but was reintroduced in 2019 as SB 1 (Atkins; D-San Diego). SB 1 was very controversial, pitting the environmental community against the business and agricultural communities. Negotiations were heated, lasting through the last week of session. Governor Gavin Newsom vetoed the bill, saying he disagreed about the efficacy and necessity of SB 1 but wrote in his veto message: “I look forward to working with the Legislature in our shared fight against the weakening of California’s environmental and worker protections.” (See Business Issues article on “Voluntary Water Agreements” for discussion of a related concern.)

CURRENT LAW
California is one of a handful of states that is subject to regulation by three endangered species laws—the federal ESA, the California Endangered Species Act, and the California Fully Protected Species Act. Endangered species laws require that no activity be allowed which threatens the well-being of the listed species unless permission to “take” the species is granted. “Take” is defined in Section 86 of the state Fish and Game Code as “hunt, pursue, catch, capture, or kill, or attempts to hunt, pursue, catch, capture, or kill.” Unlike federal law, California does not list insects.

In California, the Department of Fish and Wildlife may authorize individuals to take an endangered species for scientific, educational, or management purposes and may require mitigation measures. Fully protected species may not be taken or possessed at any time, and no licenses or permits may be issued for the take, except for collecting these species for necessary scientific research and relocation of bird species to protect livestock.

The federal ESA has similar provisions for take. In addition, federal law requires critical habitat designations within one year of a species being listed as threatened or endangered. Critical habitat is a “specific geographic area(s) that contains features essential for the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include an area that is not currently occupied by the species, but that will be needed for its recovery.”

The process for listing a species as endangered or threatened generally begins with the species being placed on the candidate list while undergoing consideration. Once information has been collected, a decision is made to either start the process to list the species as endangered/threatened or leave the species on the candidate list because not enough information is available to list it, or the species is found not be endangered/threatened and should be removed from the candidate list.

FEDERAL ACTIVITY
In August 2019 the U.S. Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) announced...
that they were pushing through changes to the ESA. These changes do not change the letter of the ESA, but they do change how the federal government will enforce it. New language deals with adding species to or removing species from ESA protections and designating critical habitat; revises some definitions to provide more clarity and consistency; rescinds a blanket rule that automatically gives threatened species the same protections as endangered species in most cases but allows discretion and allows use of economic impacts information though not in the determination to list a species. The new rules do not apply to species already listed, only to prospective listings.

Numerous environmental groups and state attorneys general stated that they will sue the federal administration over the changes, alleging they are illegal because they’re not grounded in scientific evidence. California Attorney General Xavier Becerra said, “We don’t look to pick a fight every time this administration decides to take an action. But we challenge these actions by this administration because it is necessary.”

Industry groups ranging from gas companies to utilities to ranchers praise the new rules, saying they lead to “the reduction of duplicative and unnecessary regulations that ultimately bog down conservation efforts.”

CALIFORNIA ACTIVITY: THE ISSUE—ARE BEES FISH?
California law defines candidate species as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that the Fish and Game Commission has formally noticed as being under review by the Department of Fish and Wildlife for addition to either the list of endangered species or the list of threatened species, or a species for which the commission has published a notice or proposed regulation to add the species to either list.”

In June 2019, environmental groups petitioned the Fish and Game Commission to list the Crotch bumblebee, Franklin’s bumblebee, Suckley cuckoo bumblebee, and the Western bumblebee as endangered under the California Endangered Species Act for protection, claiming that increased agricultural activity has resulted in increased use of crop-protection materials and competition with managed honeybees. The petition included a list of proposed remedies, such as permanently leaving farmland untilled (fallowed), restricting grazing, and restricting herbicide and pesticide usage—all of which are measures that jeopardize the viability of agricultural operations. By June 2020 the Department of Fish and Wildlife must submit a written report indicating whether the action is warranted. Several agricultural organizations have already sued, claiming the commission lacks the authority to list the bees on the precedent set in 1980 regarding butterflies, as discussed below. The lawsuit hinges on whether bumblebees are fish.

In 1980, the Fish and Game Commission tried to list two butterfly species as endangered using the following reasoning:

• The definitions of endangered and threatened species expressly include fish.
• Section 45 of the Fish and Game Code expressly defines “fish” to include invertebrates.
• Insects are invertebrates.
• Insects are therefore fish.
• Insects may be listed.

The Office of Administrative Law rejected the reasoning that insects are fish and the Fish and Game Commission did not pursue the listing. Agricultural groups are pursuing the same argument: bees aren’t fish.

ANTICIPATED ACTIVITIES IN 2020
The Fish and Game Commission and the Department of Fish and Wildlife continue to accept petitions to list various plants and animals as endangered. Six more species were listed as endangered or threatened and five species were listed as candidates in 2019. The department will be gathering information on the candidate species to form its report.

Every effort should be made to provide economic impact information of proposed listings to the department as early as possible. Attendance and participation at Fish and Game Commission hearings is crucial to provide testimony and information about the real effects of regulations.

CALCHAMBER POSITION
The California Chamber of Commerce supports reforms to state and federal laws that achieve a balanced approach between environmental protection and social economic progress. Environmental regulations should be based on sound science, subject to peer review. Economic impacts should be evaluated to ensure that the benefits outweigh the social costs of imposing mitigation measures.

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Hazardous Waste Operations
Can Legislature Bring More Certainty with Department Overhaul?

The extraordinary time and costs associated with the permitting process in California make in-state processing of hazardous waste economically uncompetitive with out-of-state hazardous waste processing facilities. Yet permitted hazardous waste facilities in California are a vital component of the state’s economy and perform essential functions relating to military defense, recycling of hazardous waste, remediating contaminated sites and protecting public health. This article examines the current state of hazardous waste management in California and summarizes seminal recent legislative and regulatory developments that will have an impact on California’s hazardous waste management for years to come.

BACKGROUND

The federal Resource Conservation and Recovery Act (RCRA) of 1976 is the primary law governing the disposal and treatment of hazardous waste. RCRA is a comprehensive “cradle to grave” regulation that imposes stringent recordkeeping and reporting requirements on generators, transporters, and operators of treatment, storage and disposal facilities handling hazardous waste. The California Department of Toxic Substances Control (DTSC) regulates the handling, management, and remediation of hazardous substances, materials, and waste and administers the federal RCRA program in California.

Over the last several years, DTSC has struggled with significant public relations issues, including decreased stakeholder confidence and public trust. The issues arose out of the mishandling of hazardous waste facility permitting and enforcement, which resulted in contamination and neglected cost-recovery efforts for cleanups across the state. The neglect led to an accumulation of 1,661 projects totaling almost $194 million in uncollected cleanup costs dating back 26 years.

DTSC, the former Brown administration, and the Legislature took several actions over the last few years to try to restore public confidence in DTSC. These efforts have included budget augmentations and numerous statutory changes aimed at helping DTSC fulfill its mission to protect California’s people and environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

Some of these reforms have imposed additional unnecessary costs and burdensome requirements on permitted hazardous waste facilities operating in good faith and in full compliance with California law. The number of hazardous waste facilities in California is declining steadily each year. Today, just 80 facilities have permits to manage the waste of 40 million Californians. More than 1.8 billion pounds of California hazardous waste is disposed of in California facilities each year.

ELIMINATION OF FLAT FEE LEADS TO SUBSTANTIAL COST INCREASES TO PERMITTED FACILITIES

Historically, hazardous waste facilities seeking to obtain a hazardous waste permit had two options. They could either pay DTSC a flat statutory fee or enter into a reimbursement agreement where DTSC would be paid by the hour for staff time spent on processing the application.

In an effort to recoup the costs associated with processing RCRA permit applications, DTSC proposed budget trailer language in 2016 to eliminate the flat fee option for applicants and to instead require a reimbursement agreement in all circumstances. That budget trailer language, labeled a job killer by the California Chamber of Commerce, was later inserted into SB 839 (Committee on Budget and Fiscal Review), the natural resources budget bill, which the Legislature passed and Governor Edmund G. Brown Jr. subsequently signed. From the
CalChamber’s perspective, DTSC’s proposal is akin to handing the department a “blank check” to process permit applications that will discourage these facilities from further modernizing and improving their infrastructure. In addition, there is uncertainty whether DTSC can charge applicants for the agency costs to handle fee disputes—a serious disincentive to questioning the agency’s oversight fees.

As the regulated community predicted, the DTSC proposal led to intractable disputes, additional delays in the permitting process, and unpredictable costs that have driven many facilities to close. Today, there are only 80 permitted hazardous waste facilities left operating in California, including the seven facilities operated by the military, and 28 Post Closure Facilities (closed and going through final remediation), that provide for the treatment, storage, or disposal of substances regulated as hazardous waste under federal and state law for all of California.

Compare that to 2006 when there were 137 permitted hazardous waste facilities operating in the state. At this closure rate, California is on a trajectory to have an inadequate number of permitted operating hazardous waste facilities to process the almost 2 billion pounds of hazardous waste produced each year. When there are inadequate permitted hazardous waste facilities in-state, California entities ship their hazardous waste to neighboring states or even other countries, like Mexico, where regulations are far less stringent and hazardous waste often is treated as garbage.

DTSC REGULATIONS IMPLEMENTING SB 673 WILL FURTHER COMPLICATE AND INCREASE COSTS FOR PERMITTED HAZARDOUS WASTE FACILITIES

In October 2015, Governor Brown signed into law SB 673 (Lara; D-Bell Gardens; Chapter 611, Statutes of 2015). SB 673 was enacted in response to public and legislative concerns regarding DTSC’s shortcomings in implementing the hazardous waste facility permitting program in California and to prevent the recurrence of administrative failures. The Legislature required DTSC to adopt regulations establishing or updating criteria used in determining whether to issue a new or modified hazardous waste facilities permit, or to renew a permit, which may include criteria for denying or suspending a permit.

DTSC chose to implement SB 673 by dividing the regulations into two tracks. Track 1 regulations were approved by the Office of Administrative Law on October 24, 2018 and went into effect January 1, 2019, while regulations for Track 2 are still in draft concept. The regulations adopted and developed under both tracks are controversial for the regulated community.

- Under the Track 1 regulations, DTSC created new permit criteria that assessed a facility’s compliance history, data for a community profile, financial responsibility, training for facility personnel, and a health risk assessment for facility operations before granting a new permit or permit renewal.

Although the Violations Scoring Procedure (VSP) regulations were supposed to establish a systematic process for evaluating and characterizing a hazardous waste facility’s compliance by assigning numerical scores, the VSP is unlikely to provide clear and objective criteria for making permit denial and revocation decisions. The VSP scores are inherently subjective in nature despite DTSC’s attempts to give the appearance of empiricism. Although the result of the VSP process would be a numerical value output, the process itself is flawed because it is based on a cascading series of subjective DTSC decisions. The process of evaluating the nature of past violations—especially when viewing how such violations should affect a facility’s ability to continue operating—is an extraordinarily complicated, technical and data-driven inquiry that will have the unintended consequence of dissuading permittees from ever settling with the agency.

- Under Track 2, DTSC is developing regulations that create additional permit criteria to address cumulative impacts on vulnerable communities. Under these proposed regulations, DTSC proposes to establish minimum setback distances from locations, such as schools, daycare centers and hospitals, as well as a process to place additional restrictions on facility operations based on cumulative impacts.

While the CalChamber supports reducing cumulative public health and environmental impacts from multiple sources of pollution on vulnerable communities in California, the regulations attempt to mitigate impacts driven by unrelated sources or socio-economic stressors that are independent of facility operations but otherwise contribute to overall community vulnerability. Permitted hazardous waste facilities should be responsible for mitigating environmental and human health impacts related to their facility operations and within their control to mitigate.

The regulations already adopted under Track 1 and currently being pursued under Track 2 could discourage renewal of hazardous waste facility permits or lead to additional hazardous waste facility closures in California. As more California hazardous waste facilities close, a larger volume of California’s non-RCRA hazardous waste will be exported to other states where it will be managed as ordinary solid waste, or worse, illegally dumped.
ENVIRONMENTAL REGULATION

PERMIT STREAMLINING FOR ‘GOOD ACTOR’ HAZARDOUS WASTE FACILITIES FAILS

In 2018, the CalChamber led a coalition to support AB 2606 (Fong; R-Bakersfield), which would have directly addressed the unsustainable permit fees that are forcing California’s permitted hazardous waste facilities to close by requiring DTSC to process permit renewal applications for “good actor” hazardous waste facilities in an expedited manner. AB 2606 received strong support from the U.S. military, which operates seven hazardous waste facilities in California, and bipartisan support in the Legislature. Unfortunately, AB 2606 was held in the Senate Appropriations Committee after DTSC stated it would need to hire 22 full-time employees, a statement the CalChamber disputed.

In 2019, Assemblymember Vince Fong introduced AB 655, a substantially similar version of AB 2606. Unfortunately, due to insufficient support, the author tabled the bill before it even reached its first committee hearing. It is unclear whether the author plans to try to move AB 655 in 2020.

OVERHAULING DTSC THROUGH CREATION OF A BOARD?

Numerous legislative attempts have tried to revamp DTSC into a more transparent and accountable organization. These legislative attempts have failed somewhere along the legislative path, never to be signed into law. But 2020 could be the year that DTSC is overhauled substantially.

Governor Gavin Newsom recently announced in his proposed 2020–2021 budget overhauling DTSC by installing an oversight board to set fees and hear appeals of agency decisions. The five-member board would be funded with $3 million from the General Fund and have the authority to set fees that companies pay for managing hazardous waste and toxic substances.

Similarly, Assemblymember Cristina Garcia (D-Bell Gardens) and a dozen other lawmakers have proposed a legislative overhaul to DTSC under AB 995, which also creates a five-person board that would serve as the policy-setting body for DTSC and have the power to decide permit appeals and be the public interface for the DTSC. AB 995 would make a number of statutory changes to permitting deadlines, improve the department’s financial assurances requirements, and create a fee task force led by the Secretary of the California Environmental Protection Agency (Cal/EPA) that would be charged with making a comprehensive evaluation of DTSC’s fee structure to identify a funding structure that would provide sufficient resources for DTSC to carry out its statutory mandates. Although it is too soon to know whether the creation of an oversight board will ultimately lead to a more accountable and efficient DTSC, all stakeholders probably agree that the status quo is not working.

CALCHAMBER POSITION

The CalChamber supports treating, storing, and disposing hazardous waste in California. The California protocols dealing with hazardous waste are more rigid than those of any other state, resulting in the processing of more hazardous waste into nontoxic form and sending less hazardous materials into landfills. To this end, the CalChamber endorses California’s policy of managing its own hazardous waste and not exporting it to other states or nations where protocols are either nonexistent or far less stringent, resulting in less environmental protection.

The CalChamber supports policies that ensure DTSC issues hazardous waste permits in a timely and cost-effective manner and that permit applicants are subject to clear and predictable procedures. Conversely, the CalChamber opposes policies that exacerbate the closure of California hazardous waste facilities by creating unpredictable permitting criteria and unnecessarily increasing costs.

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Rate Review Mandate

Increases Cost of Health Care for Insurers, Employers, Employees

Access to health care is a primary concern for everyone. Politicians have various ideas about how to ensure each person has access to health care, but all theories lead back to one main issue: affordability. With costs being the central issue, AB 731, a new law that establishes a rate review process for large group health care contracts will have an impact on affordable health care and bears consideration. The ramifications of this new law loom over large group health plans and ultimately employers, who will bear the burden of higher health care costs. A close look at the benefits of large group health plans and the effects of AB 731 is imperative before the Legislature considers any further cost increases in 2020.

LARGE GROUP HEALTH PLANS

Many California businesses have created large group health plans for their employees. Under these plans, businesses with more than 100 employees can bring their size into play and negotiate directly with insurance and health care providers on the types of plans they offer. Businesses can then personalize health plans for the specific needs of their employees. This allows for a variety of plans to be offered with coverage and pricing options.

RAMIFICATIONS OF AB 731

AB 731 (Kalra; D-San Jose; Chapter 807, Statutes of 2019) mandates rate review of large group contracts, such as those between health plans/insurers and large employers with 100 or more employees. It requires health plans and insurers to potentially file more than 17,000 contracts with the Department of Managed Health Care (DMHC) or California Department of Insurance (CDI). These are contracts that have been thoroughly negotiated and accepted by both parties to the agreement—the plan and the employer.

Starting in 2020, DMHC and CDI now must review all of these contracts and filings to determine whether the policy rate is unreasonable or if all the required data was not provided. The departments do not have authority to deny a rate or guarantee a decrease in health care premiums. Under the new law, insurance companies are required to notify large employer or union trust funds when state regulators deem rate increases to be unreasonable or unjustified.

AB 731 will likely make health care coverage more expensive for employers by establishing an unnecessary and burdensome rate review process for large group health care contracts. The measure will burden health plans and insurers, as well as the DMHC and the CDI, with an increased workload—all without providing a substantial benefit for purchasers.

This bill guarantees that there will be increased administrative costs for health plans and insurers, as well as increased operating costs for the DMHC and CDI. DMHC’s operating costs are funded by health plans, which means employers and employees will be hit twice: once by shouldering the increased premiums resulting from increased administrative costs to health plans directly, and again since the operating costs for DMHC are funded by health plans as well.

Achieving universal health coverage was the reason the Assembly Select Committee on Health Care Delivery Systems and Universal Coverage was formed in 2017. The goal was to understand California’s current health care delivery systems and to identify the path toward universal health coverage. One of the several takeaways from the series of hearings in 2017 and 2018 was the need to reduce health plan administrative costs. The irony of AB 731 is that the law will significantly increase health plan administrative costs, even though a report following five hearings included a recommendation to reduce such costs.
HEALTH CARE

FEDERAL AND STATE LAW PROVIDE ADEQUATE PROTECTION
Current law in California already requires health plans and health insurers for the large group market to file detailed rate information with the DMHC and the CDI at least 60 days prior to making any rate change.

Additionally, AB 1163, which took effect in 2011, provides transparency and review for unreasonable rate increases in the individual and small group market, indirectly helping large employers negotiate better rates for themselves. Covered California actively negotiates with plans and insurers on behalf of individuals and small businesses, with the benefit of the information provided by AB 1163, and has significant leverage in rate negotiations. The rates provided on the exchange are yet another reference point for employers seeking to secure the best rates possible for themselves when negotiating with large group health plans. SB 546, which was signed into law in late 2015, requires significant disclosures by the large group health insurance market, DMHC or the CDI.

Furthermore, Congress purposefully did not require rate review for large group contracts when enacting the Affordable Care Act because employers generally have significant negotiating power and choice in the marketplace, allowing them to secure better rates than individuals can. Even during the regulation drafting process, the U.S. Department of Health and Human Services specifically stated that regulation for rate review would apply only to individual and small group markets because “purchasers in the large group market have greater leverage than those in the individual and small group markets, and therefore may be better able to avoid imposition of unreasonable rate increases.”

LARGE GROUP PREMIUM INCREASES LOWER THAN OTHER GROUPS
Large group contracts were highly sought after by health plans and insurers and fully negotiated by large employers. Those competitive pressures have kept premium increases in the large group market historically lower than the small group and individual market in California; large group market premium increases are less than half those of the individual market.

In fact, large group premium increases are significantly lower than small group and individual premium increases, which are currently subject to rate review, even though the large group market is not. For reporting years 2016 and 2017, the average premium increase for the individual and small group market was 10.6%, whereas the average premium increases for the top seven health insurers in the large group market was 4.8%.

CALCHAMBER POSITION
There is no disagreement that health care costs are rising and making it more difficult for employers and their employees to afford quality, accessible care. Maintaining a viable health insurance market that provides individuals with an opportunity to obtain health insurance is important.

The California Chamber of Commerce will continue to promote efforts to contain health care costs and improve access to high-quality health care by supporting a system that is affordable and improves the overall health of California citizens.

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Accessibility to health care has become a main focus of the 2020 presidential campaign. Many Democratic presidential candidates came out early supporting a single-payer health care model, while others support universal health care. This national discussion may motivate some legislators to push for single-payer health care in California again, even though a prior version stalled in the Legislature due to its exorbitant cost. A recent CalChamber poll found that voters preferred keeping their own health insurance rather than switching to a government-run program by a 3 to 1 margin. Given the costs associated with single-payer health care, and Californians’ preference for their private insurance, the Legislature should tread carefully in this debate.

**SINGLE-PAYER HEALTH CARE DEFINED**

In an authentic single-payer health care system, private and employer-provided health insurance is nonexistent. Rather, health care is delivered through public or private hospitals and health care providers. The expenses associated with the care are paid for by public financing, which means the government obtains the money by taxing employers, employees and individuals. While the health care is typically delivered at low-to-no cost at the point of use, it is in no sense “free,” since higher taxes and consumer copays foot the bill for the care.

**PROBLEMS WITH SINGLE-PAYER HEALTH CARE**

A single-payer health care system naturally engenders multiple problems. The system typically requires a general practitioner, or primary care provider, to be the initial point of contact. In a general sense, HMOs (health maintenance organizations) operate similarly. However, the current multi-provider system offers variety in relation to coverage, meaning that not all patients rely on a primary care provider to be their initial point of contact—for example, PPO (preferred provider organization) patients. This leads to tremendous scheduling and wait time issues, and patients receive very little interaction with their provider.

Furthermore, the “free” health care services often are overutilized since the general practitioner is the primary point of contact, which may lead to government rationing of health care services. Personal freedom and choice also are precluded in a single-payer system, forcing every resident to use an assigned system or physician rather than a health plan or physician of their choosing. Additionally, a single-payer health care system can result in decreased quality of care since competition is eliminated and rates are set by the government. Under such a system, each type of health care provider is designated a set payment amount. Therefore, there is no incentive to provide a higher quality of care or be innovative in the care provided.

**CALIFORNIA EMPLOYERS CANNOT SUSTAIN AN ADDED TAX BURDEN**

In 2017, the Senate Appropriations Committee’s analysis on SB 562, the single-payer proposal passed by the California State Senate that summer, found that the cost of a single-payer system in California would be approximately $400 billion. These estimates include a funding shortfall of $200 billion. This means that, even if all public funds were rolled into a single-payer system, California still would need $200 billion to fund this model. This estimate is uncertain, however, as federal waivers would have to be obtained for all federal programs that provide funds for payment of health care services, such as Medicare and Medicaid.

Even if all current employer and employee spending on health care were shifted over to a single-payer system, there still would be a shortfall of $100 billion, which is where a proposal for an additional 15% payroll tax estimate comes in when looking at the Senate Appropriations Committee’s analysis.
HEALTH CARE

SIGNIFICANT JOB LOSS
A payroll tax increase would be the most likely source of funding for a single-payer health care system. Vermont attempted to enact a single-payer system in 2011, but the efforts were derailed when an 11.5% payroll tax on businesses and an individual income tax increase of up to 9.5% were proposed. As stated above, the Senate Appropriations Committee included a 15% payroll tax estimate when calculating the system’s costs in California.

A payroll tax increase such as the one needed to finance single-payer health care would not only have a detrimental impact on businesses already in California, but it would also likely discourage companies from locating and establishing businesses here. In addition, payroll tax increases would likely lead to job layoffs, as existing businesses and employers would be forced to cut costs to sustain the new tax burden.

Obviously, private health insurance jobs would be annihilated under a single-payer system. However, these positions would not be the only ones affected by transitioning to a single-payer scheme. The construction industry would likely suffer as well, since provider rates will include payments for provider capital improvements only if the provider is a nonprofit or governmental agency—and only with prior approval. This would lead to a massive reduction of capital improvement by for-profit hospitals, medical groups and others, leading to construction job losses.

GOVERNMENT-RUN HEALTH CARE ALREADY REJECTED BY CALIFORNIANS AND LEGISLATURE
California voters have twice rejected a government-run health care system—once in 1994 and again in 2004. Past focus groups and numerous opinion polls on health care reform have reinforced that California residents do not want a single-payer, government-run system.

After passing the California State Senate in the summer of 2017, SB 562 stalled in the California State Assembly. Assembly Speaker Anthony Rendon (D-Lakewood) referred to the proposal as “woefully incomplete.” The legislation did not disclose how it would cover the estimated $400 billion price tag, nor did it address a strategy to secure federal waivers needed from the federal administration.

CONSTITUTIONAL AND FEDERAL CHALLENGES
The constitutional barriers to a single-payer system include the Proposition 4 appropriations limit and the Proposition 98 education finance guarantee. The Proposition 4 limit constrains overall state spending to growth based on population and inflation factors. The large tax increase required by a single-payer system would push spending above the limit. Proposition 98 creates a school finance formula that requires a portion of any new general revenues to be dedicated to schools. The tax increases necessary to pay for single-payer health care would require a companion amendment to the California Constitution that exempts the new revenues from both the Proposition 4 appropriations limit and the Proposition 98 school finance formula. The constitutional amendment would require voter approval.

Even if constitutional amendments were approved, California would have to obtain approval from the federal government to allocate federal Medicare and Medicaid funding to a California government-operated, single-payer health care system. Yet receiving approval from the current federal administration would be highly unlikely. Without the necessary federal funding, California could not afford to proceed with a single-payer system.

CALCHAMBER POSITION
Californians need to have access to affordable, quality health care—and currently, it appears this ideal is being met. Not counting undocumented immigrants, 97.6% of Californians have health insurance. In addition, California now offers health benefits to undocumented immigrants who are ages 19 to 25 (see Business Issues article on “Universal Health Care”).

A $200 billion tax increase and complete restructuring of the health care system seem to be an excessive approach to providing health insurance to the small percentage of Californians not covered today. Such a system abrogates the freedom individuals have to pursue health care of their choosing. Exorbitant taxes will be required to fund such a system, and the necessary public financing will have a detrimental impact on all the employers and employees of this state.

Single-payer health care does not equate to free health care, and the costs associated with this system will systemically eradicate new jobs while driving out existing industries. The consequences associated with adopting a single-payer health care model should give the Legislature serious pause in pushing forward any proposal in California.

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Universal Health Care

Core of the Debate: Who and What Does the System Cover?

As the 2020 Presidential race steams toward its fever pitch destination, health care has morphed from a talking point to a party line policy promise. Calls for single-payer and universal health care have dominated the election landscape, with the terms being used interchangeably. However, the concepts are fundamentally different. Conflating these theories has hindered productive dialogue since it leads to the unreasoned conclusion that the only way to achieve universal health care is through the utilization of a single-payer model. Thus, it is essential to clarify what these concepts involve and explore how California is proactively attempting to achieve the goal of universal health care.

UNIVERSAL HEALTH CARE AND THE SINGLE-PAYER MODEL

Universal health care, distilled down to its core, is the ability of all citizens and legal residents to access affordable and appropriate health care. A multitude of methods facilitate this ideal, including health insurance, a single-payer system, an insurance mandate or socialized medicine.

The primary vehicle used in California, and the United States as a whole, is a multi-payer model. This method allows for health care to be paid for through a combination of sources, including employers, individuals and the government. Other countries utilize the single-payer model, in which the government, through tax revenue, bears the financial burden for individuals’ health costs. Both models are intended to achieve the goal of universal health care.

UNIVERSAL HEALTH CARE DOES NOT EQUATE TO FREE HEALTH CARE

Universal health care does not equate to free health care, which is a misnomer borne of the “universal” slogan. The term “universal” simply refers to individuals whose health care costs are covered. It does not define the type of care and extent of expenses that are covered.

• For example, the United Kingdom provides public health care through the National Health Service. This public health care system is funded through taxation and is available to all legal residents. While most services are provided free of charge to residents, there are charges associated with dental treatment and prescription drugs. Additionally, general practitioners are considered the primary point person in relation to care. Therefore, appointments are typically short, lasting an average of 8–10 minutes.

• Health care in Sweden is considered universal and is publicly financed by employees and employers paying into a public fund. While the health care is publicly funded, there are fees associated with many services. This includes fees for hospital stays, primary care visits, specialist visits and prescriptions.

• In Norway, health care is a universal, tax-funded, single-payer system. Policy is controlled centrally through the Norwegian National Insurance Scheme. However, the responsibility for providing health care is decentralized. In this system, Parliament determines what is covered, although there is no defined benefit package. Copayments are required for general practitioner visits, specialist visits, outpatient hospital care, same-day surgery, physiotherapy, prescriptions, radiology and laboratory testing. Out-of-pocket payments finance about 14% of total expenditures.

• Canada has a publicly funded health care system that is financed with general revenue raised through federal, provincial and territorial taxation, such as personal and corporate taxes, sales taxes, payroll levies and other revenue. Provinces also may charge a health premium on their residents to help pay for publicly funded health care services. Services not covered under this plan include dental care, vision care, limb prostheses, wheelchairs, prescription medication, podiatry and chiropractics. Additionally, ambulance services are not fully covered.
Taiwan has a single-payer system with an insurance mandate to buy the public insurance option. Preventative medicine, screenings and physicals are not covered and have to be paid for out-of-pocket. Taiwan has a fee-for-service health care model, which means physicians are paid per visit. As such, medical appointments generally are limited to 5 minutes and subsequent visits are made if all treatment cannot be completed in the first 5 minutes. If patients visit their physician too often, the government sends an official from the Bureau of National Health Insurance to inquire and discuss the overuse of the system in an effort to reduce costs.

CALIFORNIA CLOSING IN ON UNIVERSAL HEALTH CARE
California’s population is approximately 39.78 million people. Approximately 7%, or 2.7 million people, are uninsured. Of the 2.7 million Californians without health care coverage, approximately 1.8 million are undocumented residents. The remaining 900,000 uninsured are legal residents. In a vast majority of cases, countries offering universal health care do not provide coverage to undocumented residents. Therefore, when comparing California’s insured population to other countries, the rate of insured legal residents should be used as the baseline since most countries only insure that demographic. As such, comparing California’s insured population to the rest of the world reveals this state is closing in on achieving universal health care, with an insured population of 97.6% of its legal residents.

THE FISCAL IMPACT OF MEDI-CAL’S EXPANSION
The anticipated means that California would utilize to achieve “health care for all” is the expansion of Medi-Cal. The proposed expansion, which was announced on Governor Gavin Newsom’s first day in office, would cover any undocumented young adult who is otherwise eligible for Medi-Cal. The bipartisan Legislative Analyst’s Office (LAO) estimated the cost of Medi-Cal expansion to young adults would grow to, potentially, slightly less than $300 million net general fund. This is significant because Governor Newsom’s budget proposal to provide full-scope Medi-Cal coverage to undocumented immigrants, ages 19 to 25, put program costs at $194 million net general fund expenditure for 2019–2020. Interestingly, the LAO estimated costs for 2019–2020 was $60 million lower due to a redirection of current funding for county health activities, which would offset the cost of this program. Expansion of the program is expected to provide health coverage to approximately 138,000 undocumented adults in its first year.

LEGISLATION IN 2020
When Governor Newsom originally took office, he outlined an agenda that included a single-payer health care system. But as of 2017, the goal requires an estimated $400 billion per year in funding, which would be derived primarily from re-allocating senior Californians’ Medicare payments into state rather than federal cash boxes (see Business Issues article on “Single-Payer Health Care”). If the fiscal re-allocation wasn’t a large enough impediment, then President Donald Trump and any Republican—as well as several Democrats, for that matter—will likely oppose these efforts.

Given these hurdles, Governor Newsom appears to be acting incrementally. In 2019, California saw sweeping legislation that pushed the universal health care agenda. Most notably, the state now offers health benefits to undocumented immigrants who are ages 19 to 25. This trend will likely continue in 2020 given the national debate, and Californians can expect to see bills aimed toward expanding Medi-Cal.

CALCHAMBER POSITION
Universal health care schemes do not equate to free health care. When analyzing universal health care countries, it’s evident that patient costs are covered by tax-funded public financing. These corporate and individual taxes do not cover all health care...
Although access to health care may be considered a fundamental right, the method in which individuals pay for that health care must be allotted ample thought and consideration. The “Universal Health Care” slogan places form above substance, and Californians need to recognize how their health care will be paid for under such a model.

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expenses, which means patients are left personally paying for partially covered and exempted services despite being charged the equivalent of a health care premium under the guise of an all-encompassing tax. These services include care and treatment Californians expect to have covered under their health insurance, such as preventative care, prescription medication, ambulance transport, and physical, occupational and speech therapy.
California Housing Crisis
Comprehensive Reforms Needed to Remove Construction Obstacles

California’s housing shortage remains a classic example of a supply-demand mismatch that is driving home and rental prices to all-time highs. California employers face an ever-increasing shortage of skilled workers as the high cost of housing, especially in coastal areas, drives lower- and mid-skilled workers out of California and in search of more affordable states. A significant lack of affordable housing remains one of the largest threats to California’s otherwise booming economy.

THE CALIFORNIA EXODUS

A recent Edelman Trust Barometer survey found that 53% of California residents overall, and 63% of California millennials specifically, are considering leaving the state because of the high cost of living. The Fifth Annual California Chamber of Commerce “People’s Voice 2019” survey found similar pessimism among likely voters, with about 2 in 3 voters saying their kids would have a better future if they left California. A record-high share (68%) of Californians say the affordability of housing is a big problem in their region in the most recent Public Policy Institute of California survey.

Data from the U.S. Census Bureau’s “American Community Survey” shows a California exodus has already been happening since at least 2007. Over the last decade, approximately 6 million residents have fled California for a net loss of 1 million residents when considering domestic migration, or about 2.5% of the state’s total population, and the state has forfeited approximately $26 billion in annual income. The Joint Center for Housing Studies of Harvard University ranks California among the top three states with the largest net domestic outflow of residents.

California businesses also struggling with unaffordable housing are having to make difficult investment decisions. Some companies, after decades of operating in California, have recently decided to move out. Jamba Juice, for example, moved its headquarters from Emeryville to Texas after 25 years of operating in California. The North Face, founded in San Francisco in 1966, left the Bay Area in 2018 to move its headquarters to Denver, Colorado.

Even tech giants like Amazon, Facebook and Oracle have recently chosen to expand in cities outside of California. Facebook invested $1 billion in a suite of five data centers located in Fort Worth, Texas. Oracle is building a new campus in Austin, Texas that will be as large as 10 football fields. Amazon is building a $5 billion second headquarters in Northern Virginia after a nationwide search that left just one California city on the company’s short list.

Recognizing the historic housing crisis and the impact unaffordable housing has had on their workforce, tech companies have recently committed to investing billions of dollars in affordable housing projects in California. Apple announced $2.5 billion in affordable housing investments, Facebook and Google each announced $1 billion commitments, and Airbnb plans to invest $25 million in affordable housing in California, just to name a few. Yet, even with these significant private investments,
California desperately needs substantially more housing constructed on a scale and at a pace not seen in decades in order to truly bring affordable housing to all areas of the state.

2019 CALIFORNIA HOUSING LEGISLATION

The Governor did help to push through a budget that included approximately $2 billion in funding for housing and related infrastructure, including $750 million for short-term planning and infrastructure, $500 million to support low- and moderate-income housing, a $500 million increase in the state's housing tax credit, $20 million for legal assistance to renters and $650 million for emergency shelters and permanent supportive housing.

However, the 2019 legislative session saw very limited legislation focused on removing barriers to housing construction or providing incentives necessary to achieving the Governor's goal of 3.5 million new homes by 2025.

- SB 330 (Skinner; D-Berkeley) was a rare supply-focused housing bill that made it out of the Legislature and was signed by the Governor in 2019. SB 330 aims to reduce permitting costs and expedite housing approvals by providing certainty on development impact fees, standardizing the number of hearings a city can hold to approve projects, and banning cities from downzoning or otherwise removing zoned capacity. Unfortunately, SB 330 is valid only for a period of five years.

- Accessory Dwelling Unit Bills. California lawmakers were able to continue their prior year successes and get six new Accessory Dwelling Unit (ADU) bills signed by the Governor: AB 68, AB 881, SB 13, AB 671, AB 587 and AB 670. These bills aim to remove local barriers and spur more ADU development in order to help provide more affordable housing.

- SB 50 (Wiener-D; San Francisco) was arguably the most reformatory, yet controversial, supply-side piece of housing legislation in 2019. SB 50 proposed eliminating some zoning restrictions near major transit lines and job centers that likely would have resulted in de facto upzoning and thus more dense housing in transit-rich housing areas. The bill was held in the Senate fiscal committee and is expected to return in 2020 with some additional amendments.

- AB 1482. Assemblymember David Chiu (D-San Francisco) and several tenant advocacy groups made AB 1482 the key priority in their 2019 legislative agenda. Supporters framed AB 1482 as an anti-rent gouging bill creating a new, statewide standard prohibiting rent increases above 5% plus the Consumer Price Index (CPI) and requiring just-cause evictions. The Governor threw in his support early for the bill and signed it into law. Despite this statewide rent control bill being signed into law, the proponents of Proposition 10 in 2018 plan to have another rent control initiative on the 2020 ballot.

HOUSING ISSUES LEGISLATURE SHOULD ADDRESS IN 2020

- CEQA Abuse. The California Environmental Quality Act (CEQA) is not the sole cause of the housing shortage, but it often is a major impediment to housing development in California. CEQA requires local governments to conduct a detailed review of discretionary projects prior to their approval. CEQA protects human health and the environment by requiring lead agencies to analyze the impacts of projects and then require project developers to mitigate any potentially significant environmental impacts.

   But unlike most environmental laws and regulations in California, CEQA is enforced through private litigation and therefore, ripe for litigation abuse that can substantially slow or even stop housing projects when opponents do not want added density in their neighborhood.

   CEQA can add significant cost and time to the housing development process. Even the threat of litigation can discourage developers or substantially raise the costs to develop housing, as developers expend significant resources preparing for and defending their projects from opponents. And because housing costs are borne ultimately by future home buyers, CEQA inevitably increases housing prices in California even if the project is unchallenged.

   It may be no coincidence that California's cost of housing began to increase significantly the same decade in which the California Legislature passed CEQA and increased community resistance to new homes got stronger. Between 1970 and 1980, California home prices went from 30% above U.S. levels to more than 80% higher, according to a report from the Legislative Analyst's Office.

- Local Finance Structures Favoring Commercial Development. Different types of developments (for example, commercial, residential, industrial) yield different amounts of tax revenues and service demands. California's local government finance structure provide cities and counties with a much larger fiscal incentive to approve nonresidential development or lower density housing development.

   For example, commercial developments like major retail establishments and hotels often yield the highest net fiscal benefits for cities and counties, as increased sales and hotel tax revenue that a city receives usually more than offsets the local government's costs to provide public services. In contrast, housing developments generally do not produce sales or hotel tax revenues directly and the state's cities and counties typically receive only a small...
portion of the revenue collected from the property tax. As a result, cities and counties often incentivize commercial developments by zoning large swaths of land for these purposes and by offering subsidies or other benefits to the prospective business owners.

• Lowering Development Fees. California local jurisdictions have relied increasingly on development impact fees to fund local services, such as school, parks and transportation infrastructure. Although these fees can and often do finance necessary infrastructure, many local jurisdictions levy overly burdensome fees that can limit housing construction by impeding or disincentivizing new residential development, especially affordable residential development. Development impact fees inevitably raise the cost of housing construction, which then increases housing costs.

SB 330 was arguably the only significant piece of legislation signed into law in 2019 aimed at addressing sky-high development impact fees in California. While the bill did not preclude a local jurisdiction from setting at the outset the development impact fee, it did prevent local jurisdictions from raising the fee mid-way through the permitting process. Unfortunately, the bill was watered down to sunset after just five years. Any positive impact SB 330 might have on providing developers with fee-certainty is only temporary.

• Community Resistance to New Housing. Community resistance to new housing construction also exacerbates the housing shortage. Local communities often fear that increasing housing density will change their neighborhood character, increase traffic congestion, lower their home values, and bring new crime. Local residents often place significant pressure on local officials to use their land use authority to suppress new development.

As a result, approximately two-thirds of cities and counties in California’s coastal metros have adopted growth control ordinances that limit housing development. These growth control ordinances are effective at limiting growth and consequently increasing housing costs. One study found that each additional growth control policy a city adopted had a 3% to 5% correlated increase in home prices.

And even where local officials do not bend to community pressure, California’s initiative process provides active residents with the ability to circumvent their local officials and intervene in local land use decisions via the initiative and referendum process.

• Directly Address Homelessness Through Additional Shelters and Mental Health Facilities. The CalChamber’s “People's Voice 2019” survey also found that 75% of respondents said homelessness is getting worse in California and 64% said homelessness is getting worse in their own neighborhood.

The People’s Voice survey is supported by data from a recent report by the Council of Economic Advisers that found almost half (47%) of all unsheltered homeless people in the United States live in the State of California. This equates to about four times as high as California’s share of the overall U.S. population. The report notes that severe mental illness, substance abuse problems, histories of incarceration, low incomes, and weak social connections each increase an individual’s risk of homelessness.

California must pass policies that not only substantially increase the overall housing stock throughout the state, but also add homeless shelters and mental health facilities to more directly address the growing number of homeless Californians.

CALCHAMBER POSITION
California’s housing crisis is driving many residents and businesses out of state and discouraging new investments from coming in. Unaffordable housing also forces many Californians into extra-long commutes, adding more air pollution, more traffic congestion, and reduced worker productivity.

Comprehensive reform of environmental and zoning laws is necessary to remove obstacles that hamper housing construction and raise new home prices. A comprehensive re-evaluation and reform of CEQA is one critical step to spurring housing development in California. Maintaining CEQA’s legacy of protecting human health and the environment is not incongruent with more streamlined housing development.

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January 2020
Export-Import Bank of the U.S.
Reauthorization Enables Continued Support for U.S. Exports

• From 2014 to 2019 helped 589 California exporters with a value of $9 billion.
• More than 80% of exporters helped in California in 2018 were small businesses.
• In the last decade, Ex-Im has supported more than 1.8 million U.S. jobs in all 50 states.

BACKGROUND
The Export-Import Bank of the United States (Ex-Im Bank) is the official credit export agency of the United States. The Ex-Im Bank’s mission is to assist in financing the export of U.S. goods and services to international markets. The bank enables U.S. companies—large and small—to turn export opportunities into real sales that help to maintain and create U.S. jobs and contribute to a stronger national economy.

Ex-Im Bank does not compete with private sector lenders but provides export financing products that fill gaps in trade financing. The bank assumes credit and country risks that the private sector is unable or unwilling to accept. The bank also helps to level the playing field for U.S. exporters by matching the financing that other governments provide to their exporters.

Ex-Im Bank provides working capital guarantees (pre-export financing); export credit insurance; and loan guarantees and direct loans (buyer financing). No transaction is too large or too small.

IMPACT
With more than 80 years of experience, Ex-Im Bank has supported almost $600 billion of U.S. exports, primarily to developing markets worldwide.

In addition to supporting U.S. jobs, the Ex-Im Bank is a self-sustaining agency that operates at no net cost to the taxpayers. Ex-Im Bank pays for itself by charging fees or interest to its customers for loans, credit insurance and loan guarantees that they receive. In fiscal year 2017, the Ex-Im Bank generated more than $118 million in excess revenue for U.S. taxpayers.

The Ex-Im Bank has a proven record of success, and the myths questioning its need and effectiveness have no basis in fact. Far from being a burden on the taxpayer, the Ex-Im Bank turns a profit for the U.S. taxpayer. In the 2018 fiscal year, however, due to the continued lack of a quorum, the bank was unable to generate sufficient excess cash inflows to fully self-finance program and administrative costs.

Nor does Ex-Im Bank help only big business. In fact, more than 90% of the Ex-Im Bank’s transactions in fiscal year 2019 directly supported small businesses; further, these small business transaction figures are in addition to the tens of thousands of small and medium-sized businesses that supply goods and services to large exporters.

California has received an estimated $27.4 billion value of Ex-Im assisted exports from 2008 to 2018.

2019 LEGISLATIVE ACTIVITY
President Donald J. Trump’s nominations to the Ex-Im Bank Board, which included Kimberly Reed to serve as president/chair, were finally approved in a bipartisan vote in May 2019 that once again restored a quorum to the board after four years. In 2018, the bank authorized more than $3.3 billion of short-term export credit and working capital guarantees, $2.2 billion of which was for small businesses, to support an estimated $6.8 billion of U.S. exports and an estimated 33,000 jobs.

The charter of the Ex-Im Bank expired on September 30,
2019, but was temporarily renewed through a stop-gap spending bill that extended the charter into November 2019. The U.S. House of Representatives passed a reauthorization bill in mid-November 2019, but it was dead on arrival in the U.S. Senate due to a lack of Republican priorities, such as provisions to ban the bank from dealing with state-owned enterprises in China and Russia, being included in the bill. The authorization for the Ex-Im Bank was then expected to be carried by short-term government funding bills. In mid-December, however, the charter of the Ex-Im Bank was extended for seven years as part of a spending package, which included more restrictions on the bank's lending regarding China.

**ANTICIPATED ACTION**

The California Chamber of Commerce is hopeful that the Ex-Im Bank will finally be able to return to business as usual now that the quorum and the charter has been restored for the future.

The spending package that renewed the charter of the Ex-Im Bank for seven years included tougher restrictions on the bank's lending regarding China. The bill created a goal of reserving 20% of the bank's exposure authority to support exports of high-tech products and other U.S. exports that compete directly with Chinese exports. The bill also includes updated reporting requirements to assess transactions of $25 million or greater that involve entities controlled by the Chinese government.

The Ex-Im Bank Board lacked a quorum from 2016 until May 2019; without a quorum, the bank could not approve transactions of more than $10 million. This represented numerous lost opportunities for U.S. businesses and their workers. The bank's inability to approve transactions exceeding $10 million extends the profound impact of the lapse to larger exporters, the thousands of smaller companies that supply them, and the hundreds of thousands of workers whose jobs depend on exports.

Effects on U.S. businesses and workers from a lack of domestic political support for Ex-Im are exacerbated by the extraordinary steps other countries are taking to support their own exporters and national interests. Export credit agencies (ECAs) abroad are expanding product offerings allowing exporters to compete more aggressively, and more countries are opening new ECAs of their own.

Moreover, the hundreds of workers at large businesses are not the only ones affected by lost U.S. export transactions; there are strong ripple effects on the many small and medium-sized enterprises throughout their supply chains. The United States is home to some of the largest supply chains in the world. Sales and employees in these supply chains depend on exports of larger clients, financed by Ex-Im. Uncertainty for large clients means diminished purchasing, which means fewer sales and has a direct impact on jobs in cities and towns across the country.

**CALCHAMBER POSITION**

The CalChamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

Staff Contact

**Susanne T. Stirling**
Vice President, International Affairs

[Contact Information]

January 2020
Indo-Pacific Initiative
Advancing a Shared Vision of Economic Prosperity

- The U.S. announced $113.5 million to seed new strategic initiatives in the region.
- Region has seen an average annual economic growth rate of around 6% over the last 5 years.
- The U.S. has made investments of nearly $2 trillion into the region.
- In 2018, cumulative U.S. investment in ASEAN was $271 billion, more than U.S. foreign direct investment in China and Japan combined.

BACKGROUND

The Indo-Pacific region stretches from the United States' west coast on the Pacific Ocean to the west coast of India in the Indian Ocean, connecting the two oceans through Southeast Asia. The region is made up of 14 countries: Australia, Bangladesh, Burma, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Taiwan, Thailand, and Vietnam. The Indo-Pacific region is one of the greatest current and future engines of the global economy.

The Indo-Pacific is the most populous, fastest growing and most economically dynamic part of the world. By 2030, it will represent 66% of the world's middle class, and 59% of all goods and services sold to middle class consumers will be sold in the Indo-Pacific. Developing nations in the region will need about $1.5 trillion in investment every year for the next decade in order to develop the infrastructure necessary to sustain their growth.

Despite the Indo-Pacific region's growth, over the last decade growth in U.S. exports to Asia have lagged behind overall U.S. export growth. The United States is gradually losing market share in trade with Asian countries. Meanwhile, Indo-Pacific countries have signed more than 150 bilateral or regional trade agreements, while the United States has just four free trade deals in the Indo-Pacific region—with Australia, Singapore, South Korea, and the newly negotiated deal with Japan.

IMPACT

Two-way investment and trade in the Indo-Pacific region has grown by almost 6% to a record of nearly $2 trillion, supporting more than 3 million jobs in the United States and 5.1 million jobs in the Indo-Pacific in 2018. The region contains seven of the world’s 30 freest economies—Singapore, Australia, New Zealand, Taiwan, Malaysia, South Korea and Japan. The sea routes of the Indo-Pacific facilitate 50% of world trade.

The U.S. has made foreign direct investments of $1.4 trillion into the Indo-Pacific region. The U.S. doubled the amount of security assistance it provided to the Indo-Pacific nations, totaling more than $500 million. The BUILD Act, which President Donald J. Trump signed in October 2018, provides for development finance capacity up to $60 billion. The Indo-Pacific Transparency Initiative received an additional $68 million for...
INTERNATIONAL TRADE

new programs to support allies, partners and regional institutions in advancing shared principles of combating corruption and promoting good governance.

PAST ACTIVITY

President Trump in 2017 outlined his vision for a free and open Indo-Pacific at the Asia Pacific Economic Cooperation (APEC) CEO Summit in Vietnam. President Trump has aimed to reinvigorate private business interest in the region. Since the beginning of the Trump administration, the U.S. government has invested more than $2.9 billion to support the economic portion of the Indo-Pacific Initiative.

From its launch in July 2018, the initiative has invested nearly $600 million to date to support digital connectivity and cyber-security, promote sustainable infrastructure development, and strengthen energy security and access.

The Trilateral Partnership for Infrastructure Investment in the Indo-Pacific, formed by the United States, Australia and Japan in July 2018, announced its inaugural joint projects, which included projects collectively worth $400 million. The first ministerial meeting of “The Quad”—the U.S., Australia, India and Japan—took place in September 2019. Ministers affirmed commitments to cooperating on maritime security, quality infrastructure, and regional connectivity, and discussed priorities in counter-terrorism and cyber security with the goal of advancing a free, open market and including Indo-Pacific.

ANTICIPATED ACTION

The California Chamber of Commerce is hopeful that the Trump administration will continue to develop the Indo-Pacific Initiative in 2020 and strengthen partnerships within the region.

The U.S. Department of Commerce, through its Access Asia Program, plans to dedicate many events to the region, including continuing its flagship trade mission to connect U.S. firms with the Indo-Pacific market in 2020.

CALCHAMBER POSITION

The CalChamber supports expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

The Indo-Pacific region represents nearly half of the Earth’s population, one-third of global gross domestic product (GDP) and roughly 50% of international trade. The large and growing markets of the Indo-Pacific already are key destinations for U.S. manufactured goods, agricultural products, and services suppliers.

Following the U.S. withdrawal from the Trans-Pacific Partnership, a highlighted Indo-Pacific Vision is welcomed, as this is a key area in geopolitical, strategic, and commercial terms.

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January 2020
U.S.-China Relations
Preliminary Deal Lays Groundwork for Further Trade Solutions

• Approximately 1.5 million U.S. jobs at risk by China trade battle.
• U.S. currently has tariffs on $550 billion of Chinese goods versus China’s tariffs on $185 billion of U.S. goods.

BACKGROUND
According to the U.S. State Department, China has been one of the world's fastest-growing economies over the last several years, and its efforts to reform and modernize have helped transform China into a large trading economy.

U.S.-China trade has risen rapidly over the last several decades. Total trade between the two nations increased from $4.8 billion in 1980 to $659.82 billion in 2018 compared to $635.96 billion in 2017. The increase is due to U.S. companies increasing imports from China in expectation of tariffs on products. U.S. exports to China fell in 2018 to approximately $120.15 billion from almost $130 billion in 2017.

China was the second fastest-growing source of total Foreign Direct Investment (FDI) stock in the United States in 2018, with a total of $60 billion of Chinese FDI in the U.S. Chinese FDI was up only slightly from the 2017 total of $58 billion due to greater security in Beijing over outbound investment flows and tougher U.S. regulatory reviews of inbound acquisitions through the Committee on Foreign Investment in the U.S. (CIFUS). The main industries receiving Chinese FDI are: software and information technology services, electronic components, industrial equipment, communications, and automotive original equipment manufacturer (OEM) and components. The United States invested $7.6 billion into China in 2018, down from $14 billion in 2017.

Hong Kong gross domestic product (GDP) per capita is comparable to other developed countries. The United States has substantial economic ties with Hong Kong. A 2018 U.S. State Department report indicates that there are more than 1,300 U.S. firms and approximately 85,000 U.S. residents in Hong Kong.

U.S.-CHINA TRADE WAR

<table>
<thead>
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<th>Date</th>
<th>U.S. tariffs</th>
<th>China tariffs</th>
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<tr>
<td>July 2018</td>
<td>$34 billion</td>
<td>$34 billion</td>
</tr>
<tr>
<td>Aug. 2018</td>
<td>$16 billion</td>
<td>$16 billion</td>
</tr>
<tr>
<td>Sept. 2018</td>
<td>$200 billion at 10%</td>
<td>$60 billion at 10%</td>
</tr>
<tr>
<td>May 2019</td>
<td>$200 billion at 25%</td>
<td></td>
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<tr>
<td>June 2019</td>
<td></td>
<td>$60 billion at 25%</td>
</tr>
<tr>
<td>Sept. 2019</td>
<td>$300 billion at 15%</td>
<td>$75 billion</td>
</tr>
<tr>
<td>Feb. 2020</td>
<td>$300 billion drop to 7.5%</td>
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</tr>
</tbody>
</table>

Sources: BBC, Peterson Institute for International Economics

Another 1 million people visited Hong Kong in 2017 from the United States. The latest available figures on U.S. direct investment in Hong Kong show investment at about $82.5 billion, making the United States one of Hong Kong’s largest investors.

Trade between the United States and Hong Kong has increased over the last decade, with a growth in U.S. exports from $26.6 billion in 2010 to $37.3 billion in 2018. Total trade between the United States and Hong Kong totaled $43.58 billion in 2018, according to the U.S. Department of Commerce.

California exports to Mainland China were $16.34 billion in 2018, making it the state’s third largest export destination. California exports to Hong Kong were $9.9 billion.
REGIONAL PARTNERSHIP NEGOTIATIONS

China is currently finalizing negotiations for the Regional Comprehensive Economic Partnership (RCEP), a proposed free trade agreement (FTA) with 10 Association of Southeast Asian Nations (ASEAN) member states—Brunei, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Vietnam—and the five states with which ASEAN has existing FTAs—Australia, China, Japan, South Korea and New Zealand.

India originally was included as a sixth ASEAN FTA state; however, the country decided to pull out of the RCEP agreement in November 2019. Now that India has removed itself from the RCEP, the agreement still includes more than 2.1 billion people. RCEP negotiations were launched in November 2012 and concluded in 2018; however, the deadline for signing the RCEP agreement has been pushed back for a second time. It now is expected to be signed in February 2020.

The RCEP would be expected to grow to more than $100 trillion by 2050, double the projected size of Trans Pacific Partnership-11 (TPP-11) economies. It would be the biggest free trade agreement in the world, but without the United States or any membership from the Americas.

PAST ACTIVITY

By the end of 2018, U.S. tariffs on Chinese goods totaled approximately $250 billion, while Chinese tariffs on U.S. products totaled $110 billion. Throughout 2019, U.S. and Chinese officials engaged in trade talks with the first meeting in January resulting in a 90-day truce ending March 1, 2019, but later extended. By spring 2019, trade talks were being called “productive” and the United States and China agreed to establish “enforcement offices” to monitor enforcement of a future trade deal.

In May 2019, President Donald J. Trump increased tariffs on $200 billion worth of Chinese goods from 10% to 25%, as the two sides failed to reach a deal after 11 rounds of trade talks. China promptly responded with retaliatory countermeasures. Trade talks resumed again a month later in June 2019, but in August 2019 the United States declared China a currency manipulator. The United States and China continued to place more tariffs on each other in the following weeks, with the U.S. placing tariffs on more than $125 billion worth of Chinese imports on September 1, 2019.

In October 2019, the two sides reached a “Phase 1” trade deal and agreed on a tariff rollback in November 2019. Following renewed difficulties on either side, negotiations regressed with a threat of more tariffs on December 15 that would hit almost all remaining Chinese goods. Luckily, a “mini-trade deal” expected to calm tensions was reached on December 12 in anticipation of the December 15 deadline. The Phase 1 trade deal requires China to increase purchases of U.S. farm goods within two years, as well as enact financial services and intellectual property commitments.

IMPACT

Although the business community recognizes there are serious issues with China’s trade policies and practices, the California Chamber of Commerce has deep concerns over the impact that increased tariffs could have on international trade and the state’s economy. The tariffs may have adverse consequences and fail to consider the impact on U.S. allies and trading partners.

Raising tariffs can result in higher prices to the consumer for the specific product protected and in limited choices of products for consumers. Further, it can cause a net loss of jobs in related industries, retaliation by U.S. and California trading partners, and violates the spirit of our trade agreements. The end result is that raising tariffs can cause a trade war.

ANTICIPATED ACTION

The CalChamber is hopeful that the Phase 1 trade deal will allow for China to make structural changes that will lay the groundwork for further negotiations and that both sides will begin rolling back tariffs. The CalChamber expects that in 2020 the Trump administration and its Chinese counterparts will be able to arrive at a conclusion and not continue to escalate the trade dispute between the two countries.

CALCHAMBER POSITION

The CalChamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business. International trade ensures that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.
U.S.–EU Free Trade Agreement
Huge Market Represents Many Opportunities

- European Union trade and investment supports an estimated 6.7 million jobs in the United States.
- The U.S. had a services trade surplus of $60 billion with the EU in 2018.
- EU countries buy about 18% of California exports.

BACKGROUND
The trans-Atlantic economic partnership is a key driver of global economic growth, trade and prosperity, and represents the largest, most integrated and longest-standing regional economic relationship in the world. The many reasons to support this relationship come from an economic perspective, a geopolitical perspective, a company benefit perspective, as well as regulatory cooperation, and technological innovation perspectives.

The EU market represents more than 513 million people, and has a total gross domestic product (GDP) of $18.75 trillion, as of 2018. The United States has 327 million people and a GDP of $20.49 trillion as of 2018 (World Bank).

With the United Kingdom now expected to exit the European Union in January 2020, 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.

The EU presidency rotates with each member country taking turns for six months at a time as chair of EU meetings and representing the EU at international events.

IMPACT
Total bilateral trade between the European Union and United States was nearly $1.3 trillion in 2018, with goods trade accounting for $807 billion. The United States exported $319 billion worth of goods to EU member nations. California exports to the EU were $31.75 billion in 2018. California is a top exporting state to the EU, with computers, electronic products, transportation equipment, and chemicals as the state’s leading export sectors to the region. EU countries purchase roughly 18% of all California exports. For California companies, the single market presents a stable market with huge opportunity.

The top five service exports from the U.S. to the EU are: professional, scientific, and technical; travel; information; finance and insurance; and royalties and licensing fees. The top five U.S. agricultural exports to the EU are: fruits and tree nuts, plant products, soybeans, vegetables, and feeds. The U.S. and EU are each other’s primary source and destination for foreign direct investment (FDI). In 2018, the U.S. invested $3.3 trillion in the EU and the EU invested $2.37 trillion in the U.S.

PREVIOUS ACTIVITY
Europe and the United States had been negotiating trade talks for a potential Transatlantic Trade and Investment Partnership (TTIP) to further the largest regional trading and investment relationship in the world before President Donald J. Trump took office. Upon his inauguration, however, President Trump put the TTIP negotiations into a “deep freeze” in 2017.
In October 2018, President Trump announced his intent to enter into trade negotiations with three new markets, one of which is the EU. President Trump’s goal by doing so is to open new markets for U.S. farmers and companies where they currently face significant barriers.

In January 2019, the U.S. Trade Representative released negotiating objectives for a U.S.-EU Trade Agreement and over the last year, President Trump has threatened to put a tariff on European auto imports. Implementation of that threat has now been delayed again until the middle of 2020. The U.S. and EU did reach some trade agreements in 2019, including an agreement to ease the export of U.S. beef into the EU.

In October 2019, the World Trade Organization ruled that the U.S. could impose $7.5 billion in tariffs on imports as an enforcement mechanism because the EU had failed to end subsidies for the Airbus. The tariffs took effect in October, hitting aircraft with a 10% tariff and other goods, including wine and cheeses, with a 25% tariff.

In July 2019, France passed a new digital sales tax aimed at tech companies that generate significant revenue in France, requiring those companies to pay a 3% tax on their French revenue. The EU sought to install a similar digital services tax; however, every member country would have to approve the new tax, making it hard to pass, so the French went forward with their own legislation. In late August 2019, the United States announced a compromise on the tax that largely affects mostly U.S. companies. France agreed to get rid of the tax once the Organisation for Economic Co-operation and Development (OECD) identified a way to properly tax tech companies in countries where they operate and would eventually refund companies that may have overpaid previously according to the new OECD rules. In December 2019, however, following a U.S. Trade Representative report, President Trump proposed retaliatory tariffs on $2.4 billion of French products, including wines and cheeses.

**ANTICIPATED ACTION**

The California Chamber of Commerce is hopeful that the United States and European Union will begin free trade agreement negotiations in 2020 to deepen the world’s largest trading and investment relationship, with a focus on trade and investment initiatives. The CalChamber supports the following issues being discussed during negotiations:

- eliminating tariffs on trans-Atlantic trade in goods;
- establishing compatible regulatory regimes in key sectors to address regulatory divergences that unnecessarily restrict trade;
- a bilateral investment agreement;
- liberalizing cross-border trade in services; and
- bilateral expansion of government procurement commitments.

Progress has been slow as to whether to include agriculture and tariffs in the negotiations.

**CALCHAMBER POSITION**

The CalChamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

Strengthening economic ties and enhancing regulatory cooperation through agreements with our top trading partners that include both goods and services, including financial services, is essential to eliminating unnecessary regulatory divergences that may act as a drag on economic growth and job creation.

Agreements like this 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.

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January 2020
U.S.-Japan Free Trade Agreement

New Limited Pact Will Lead to More Opportunities

- New high-standard digital trade agreement meets the gold standard on digital trade rules.
- Japan has one of the highest per capita income levels in Asia and middle class consumption that ranks second only to the United States.
- Japan is the third largest source of foreign direct investment into the U.S. and supports more than 860,600 jobs.

BACKGROUND

In October 2018, the United States and Japan announced negotiations toward a potential U.S.-Japan free trade agreement (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.

At the beginning of his administration, President Donald J. Trump withdrew the United States from the Trans-Pacific Partnership (TPP) in which the U.S. and Japan were leaders. Japan took the lead in passing TPP in the remaining 11 countries, rebranding it the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11). The agreement is in effect as of 2019 and eventually may include other nations.

The TPP-11 will reduce tariffs in countries that together amount to more than 13% of the global economy, and $10 trillion in gross domestic product (GDP). With the United States, the pact would have represented 40% of the global economy. Even without the United States, the deal will span a market of nearly 500 million people, making it one of the world’s largest trade agreements.

IMPACT

The United States is a large supplier of chemicals, transportation equipment, and computer and electronic products to Japan. Japan is also one of the largest U.S. foreign markets for agricultural products. U.S. exports to Japan were $75.22 billion in 2018, making it the fourth largest export destination for the U.S. Imports from Japan to the United States were $142.6 billion, with transportation equipment accounting for 42.7%.

According to the most recent figures, U.S. direct investment to Japan totaled $125 billion in 2018, largely in financial, software and internet services. Foreign direct investment (FDI) from Japan into the United States was $488.7 billion in 2018, making...
it the third largest source of FDI in the U.S. In 2018, Japanese FDI in the U.S. supported 860,000 jobs and contributed $8 billion to research and development, as well as another $86.6 billion to expanding U.S. exports. The top industry sectors for Japanese FDI are: auto components, industrial machinery, automotive original equipment manufacturer (OEM), metals, and software and information technology services. (Select USA)

California continues to be the top exporting state to Japan, accounting for more than 17% of total U.S. exports. Since 2010, Japan has remained California’s fourth largest export market, after Mexico, Canada and China. California exports to Japan, the world’s third largest economy, totaled $13 billion in 2018. Computers and electronic products accounted for 17.7% of total exports. Imports into California from Japan were $33.6 billion, with transportation equipment accounting for almost half of total imports. California is currently the top importing state in the United States for products from Japan. In addition, California buys more products from Japan than any other country besides China and Mexico.

PREVIOUS ACTIVITY
In October 2018 the U.S. announced its intent to enter into free trade agreement (FTA) negotiations with Japan. The first round of U.S.-Japan trade talks began in April 2019 and by September 2019 a limited free trade agreement was reached. In early December 2019, Japan’s upper house of parliament approved the limited trade deal. Since no approval is needed by the U.S. Congress, the deal went into effect on January 1, 2020.

The limited agreement opened market access for certain U.S. agricultural and industrial goods in Japan. Once the agreement has been fully implemented, more than 90% of U.S. food and agricultural products imported into Japan will either be duty-free or receive preferential tariff access. The agreement will give U.S. farmers and ranchers the same advantages as CPTPP countries selling into the Japanese market. In return, the U.S. will reduce or eliminate tariffs on agricultural and industrial imports from Japan.

There also was a separate agreement between the United States and Japan on high-standard digital trade. The agreement contained prohibitions on imposing customs duties on digital products sent electronically, as well as ensuring barrier-free cross-border data transfers in all sectors, among other things. The U.S.-Japan Digital Trade Agreement was approved by Japan’s Diet concurrently and also went into effect on January 1, 2020.

ANTICIPATED ACTION
The limited trade deal with Japan has moved very quickly with the understanding that there would be a more comprehensive deal signed with Japan in the near future in a second stage of negotiations. Now that the deal has passed, the White House announced that both governments will begin consultations early in 2020 to further negotiations on a broader trade agreement.

The goals for negotiations continuing into 2020 will remain the same: expanding bilateral trade in a mutually beneficial way to achieve freer and more balanced trade, as well as encourage economic development. It is hoped that the U.S. and Japan will continue to expand areas of cooperation and deepen their understanding of each other’s views and positions.

CALCHAMBER POSITION
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Agreements like this 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.

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January 2020
U.S.-Mexico-Canada Agreement
Swift Passage Can Help Spur Economic Growth

• Trade with Mexico and Canada supports nearly 14 million U.S. jobs.

• Since NAFTA entered into force, trade with Canada and Mexico has nearly quadrupled to $1.23 trillion.

• NAFTA helped U.S. agriculture exports to Canada and Mexico to increase by 350%.

• Canada and Mexico buy more than one-third of U.S. merchandise exports.

BACKGROUND
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 $1.23 trillion in 2018. In 2018, goods exports topped $565.2 billion while goods imports totaled nearly $665 billion.

President Donald J. Trump announced his intent to renegotiate NAFTA in May 2017. The negotiations started shortly thereafter, going through many rounds. In August 2018, the U.S. and Mexico reached a preliminary agreement, while the U.S. continued separate negotiations with Canada. In October 2018, Canada and the U.S. came to an agreement right before a self-imposed deadline, reassuring the deal would remain trilateral. The pact was rebranded the United States-Mexico-Canada Agreement (USMCA). The USMCA was signed on November 30, 2018 as President Trump called it the “most modern, up-to-date, and balanced trade agreement in the history of our country”.

2019 WHERE THE AGREEMENT IS NOW
Following steps outlined by the Trade Promotion Authority (TPA), the U.S. International Trade Commission released a report on how the new agreement will affect jobs and the economy in April 2019. The report estimated that the USMCA would increase U.S. gross domestic product (GDP) by 0.35% or $68.2 billion and raise employment by 176,000 new jobs. The trade commission report also estimated that the agreement would have a positive impact on all broad industry sectors within the U.S. economy and that manufacturing and services would receive large gains.

In mid-December 2019, an agreement on the USMCA finally was reached in the U.S House of Representatives. The updated deal was signed in Mexico by the three countries on December 10, 2019. The agreement then was voted on in the House on December 19, 2019 and was passed by a vote of 385-41.

In June 2019, Mexico was the first country to ratify the new USMCA deal. However, since updates were made to the USMCA, Mexico had to re-approve the deal. Mexico’s Congress promptly took up the updated agreement, and again passed the USMCA on December 12, 2019. Meanwhile in Canada, the original bill was introduced in Canadian Parliament in May 2019; however, Canada has stated that it will move forward with the ratification process in tandem with the United States.
The USMCA implementing bill will officially repeal NAFTA, while it will only “suspend” the U.S.-Canada Free Trade Agreement in case the USMCA is terminated as part of a sunset review that begins six years after the agreement takes effect.

**BENEFITS AND GOALS**

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 objectives of the USMCA are 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.

**ANTICIPATED ACTION**

The USMCA deal is pending in the U.S. Senate where it is expected to pass in early 2020. It is hoped that Canada will join Mexico in approving the USMCA in 2020, making the updated agreement and renewed trilateral partnership official.

**CALCHAMBER POSITION**

The CalChamber understands that the original NAFTA was negotiated more than 25 years ago, and, while our economy and businesses have changed considerably over that period, NAFTA has not. We agree with the premise that the United States should seek to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under the new USMCA.

The provisions of NAFTA with Mexico and Canada have been beneficial for U.S. industries, agricultural enterprises, farmers, ranchers, energy companies and automakers.

The CalChamber originally actively supported the creation of NAFTA among the United States, Canada and Mexico.

The CalChamber’s longstanding support for NAFTA is based upon an assessment that it serves the employment, trading and environmental interests of California and the United States, as well as Canada and Mexico, and is beneficial to the business community and society as a whole. Since 1993, trade among the three NAFTA countries has nearly quadrupled.

Mexico and Canada are California’s largest and second largest export markets. A final approval of the new USMCA will benefit the California economy and jobs.

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January 2020
U.S.-U.K. Free Trade Agreement
Great Potential to Strengthen Ties with Important Ally

- The United Kingdom is the single largest investor into the United States with more than $597 billion invested.
- The U.S. is the single largest investor into the U.K. with almost $757 billion invested.
- More than 1.2 million Americans work for British companies in the U.S.
- California is one of the top five states for number of jobs connected to investment by a U.K. company.

BACKGROUND

The United Kingdom is the fifth largest economy in the world, with the U.S. being the first. The U.S. maintains a deep trade and investment relationship with the U.K. Once the U.K. leaves the European Union, which it is now expected to do January 31, 2020, the two countries will be able to negotiate a formal free trade agreement (FTA).

In the general election held in the U.K. on December 12, 2019, the Conservative Party won a majority, the largest since Margaret Thatcher’s 1987 victory, keeping Boris Johnson as the leader of the party and Prime Minister. This landslide conservative victory is set to make it easier to push through Brexit by the current scheduled date.

IMPACT

Two-way trade between the United States and the United Kingdom was $129 billion in 2018 and the U.K. was the fifth largest importer of U.S. goods with a total value of $66.2 billion.

The United Kingdom is California’s 11th largest export destination, with more than $5.2 billion in exports. Computer and electronic products accounted for approximately 31.3% of exports—more than $1.63 billion. Transportation equipment brought in $652 million, or 12.5%; while chemicals and second-hand merchandise accounted for 8.7% and 7.3%, respectively.

In 2018, imports into California from the United Kingdom were approximately $5.5 billion, with the top categories being transportation equipment and computer and electronic products.

According to the U.S. Department of Commerce, the U.S.-U.K. investment relationship is the largest in the world, valued at more than $1 trillion in 2016 and creating more than 2 million jobs, about 1 million in each country. The U.K. contributes 19% of foreign direct investment (FDI) into California, more than double that of any other country.

More than 42,000 U.S. firms export to the U.K. Annual U.S. exports to the U.K. are valued at more than $100 billion.

British investment is key in the United States. More than a million Americans go to work every day for British companies. Similarly, 1 million Britons go to work for U.S. companies every day. 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).

U.K. FDI in the United States contributed $8.9 billion to research and development and an additional $46.5 billion to
expanding U.S. exports. The top industry sectors for British FDI in the United States are: business services, software and information technology services, financial services, communications, industrial equipment, and textiles. (Select USA)

PREVIOUS ACTIVITY
In July 2017, U.S. Trade Representative Robert Lighthizer and U.K. Secretary of State for International Trade Dr. Liam Fox created the U.S.-U.K. Trade and Investment Working Group, which focuses on providing commercial continuity for U.S. and U.K. businesses, workers, and consumers as the U.K. leaves the European Union. The working group has laid the groundwork for future FTA negotiations as it has explored ways the two countries can collaborate to promote open markets and freer and fairer trade around the world.

The U.S. Trade Representative published U.S.-U.K. Negotiating Objectives in February 2019, when it was expected the U.K. would leave the EU on March 31, 2019. The objectives include developing new approaches for digital trade and financial services.

The sixth meeting of the U.S.-U.K. Working Group in July 2019 focused on strengthening the trade and investment relationship, laying groundwork for a potential future trade agreement once the U.K. leaves the EU, and cooperating on global issues.

ANTICIPATED ACTION
The California Chamber of Commerce is hopeful that the U.S. and U.K. will begin FTA negotiations as soon as the U.K. formally exits the European Union, which is now expected to occur on January 31, 2020.

The CalChamber supports the goal of strengthening the trading and investment relationship between the two countries, with a focus on securing open market access. The CalChamber supports the following issues being discussed during negotiations:

• market access for goods;
• data protection and data transfers;
• financial services;
• intellectual property rights;
• movement of labor; and
• regulatory cooperation.

CALCHAMBER POSITION
The CalChamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

Strengthening economic ties and enhancing regulatory cooperation through agreements with our top trading partners that include both goods and services, including financial services, is essential to eliminating unnecessary regulatory divergences that may act as a drag on economic growth and job creation.

Agreements like this 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.

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January 2020
World Trade Organization
Reform of Dispute Settlement System Major Topic in 2020

• Support the removal of trade-distorting practices to foster a level playing field.

• Appellate Body will lack a quorum in 2020; solutions are needed to restore the dispute settlement system.

• Services trade is expanding faster than trade in goods, growing an average of 5.4% per year for the last 15 years.

BACKGROUND

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations, and ratified or approved in their parliaments or legislatures. The goal is to help producers of goods and services, exporters and importers conduct business.

In 1994, the U.S. Congress approved the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT). The agreement liberalized world trade and created a new WTO, effective January 1, 1995, succeeding the 47-year-old GATT.

The GATT had been created in 1948 to expand economic activity by reducing tariffs and other barriers to trade. The Uruguay Round agreements built on past successes by reducing tariffs by roughly one-third across the board and by expanding the GATT framework to include additional agreements.

The WTO is a multilateral treaty subscribed to by 164 governments, which together account for the majority of world trade (with more than 20 nations negotiating their accession).

TRADE IN GOODS GROWING MORE SLOWLY THAN TRADE IN COMMERCIAL SERVICES

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WTO FUNCTION

The basic aim of the WTO is to liberalize world trade and place it on a secure foundation, thereby contributing to economic growth and development, and to the welfare of people around the world. The functions of the WTO are:

• administering WTO trade agreements;

• providing a forum for trade negotiations;

• handling trade disputes;

• monitoring national trade policies;

• offering technical assistance and training for developing countries; and

• cooperating with other international organizations.

The ultimate goal of the WTO is to abolish trade barriers around the world so that trade can be totally free. Members have agreed to reduce, over time, the most favored nation duty rates to zero—along with abolishing quotas and other nontariff barriers to trade. Currently, there are more than 60 agreements dealing with goods, services, investment measures and intellectual property rights.
INTERNATIONAL TRADE

Part of the Uruguay Round agreements creating the WTO requires the White House to send a report to Congress evaluating U.S. membership in the organization every five years. Following the report, members of Congress may introduce legislation opposing U.S. membership.

IMPACT
Successful multilateral negotiating rounds have helped increase world trade, while the WTO estimates that the 1994 Uruguay Round trade deal added more than $100 billion to world income. The World Bank estimates that new successful world trade talks could bring nearly $325 billion in income to the developing world and could lift 500 million people out of poverty. Other studies have shown that eliminating trade barriers would mean $2,500 per year in increased income to the average U.S. family of four. Trade liberalization can create new jobs, higher incomes and economic growth for countries around the world.

For U.S. businesses, successful implementation of WTO negotiations would translate to:
• expanded market access for U.S. farm products;
• expanded market access for U.S.-manufactured goods;
• reduced cost of exporting to some countries; and
• improvement in foreign customs procedures that currently cause shipment delays.

PAST ACTIVITY
The WTO remained under scrutiny by President Donald J. Trump in 2019, as President Trump threatened to pull the United States out of the WTO. Although the U.S. has considered the prospect of blocking passage of a WTO budget to dismantle the global trade organization, the U.S. has successfully used the WTO’s consensus principle, which requires all 164 WTO members to agree on any decision, to block all new appointments to the Appellate Body. As a result, when the terms of two members of the Appellate Body came to an end in mid-December, the body no longer had a quorum.

Trump administration spokespersons have said the WTO’s dispute settlement system threatens U.S. sovereign rights and has strayed from its original mandate. U.S. Trade Representative Robert Lighthizer stated that the dispute settlement system allowed nations to gain concessions that they never would have been able to get at the negotiating table.

The European Union and other major nations have come together to develop a new broad appeal-arbitration agreement, calling for a revamp of the WTO. Countries have supported the United States’ drive for greater transparency and discipline within the WTO, but also have stated it is important to uphold the global commercial order under growing tensions, not dismantle it.

ANTICIPATED ACTION
In 2020, the European Union along with China, Brazil, Australia, Japan and other major nations will propose their plans for the dispute settlement body, hoping to revamp the WTO. The EU has suggested a multi-party “interim appeal arbitration” initiative, while Australia and Brazil are pushing for a “plurilateral initiative,” which would be more responsive to U.S. concerns. Although the United States has already rejected reform proposals, the lack of a quorum in the Appellate Body may force members to address the problems within the current system.

The California Chamber of Commerce is hopeful the major trading economies can come to a consensus on a reform of the WTO in 2020. The revamp should address the functioning of the Appellate Body, encourage greater transparency and enhance discipline for members who fall behind on their reporting obligations.

The Twelfth WTO Ministerial Conference is expected to be held in Kazakhstan from June 8 to June 11 in 2020. Modernization and reform of the trading system will be a major topic.

CALCHAMBER POSITION
The CalChamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

The WTO is having a tremendous impact on how California producers of goods and services compete in overseas markets, as well as domestically, and is creating jobs and economic growth through expanded international trade and investment.

The WTO gives businesses improved access to foreign markets and better rules to ensure that competition with foreign businesses is conducted fairly.

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January 2020
Assembly Bill 5
Independent Contractors Need Holistic Approach Reflecting Modern Workforce

AB 5 (Gonzalez; D-San Diego), signed by Governor Gavin Newsom on September 18, 2019, is touted as one of the most significant pieces of California legislation affecting employment classifications in decades. AB 5 codifies the recent California Supreme Court decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (Dynamex), and extends the application of Dynamex to several additional California employment laws while creating industry-specific exemptions. Governor Newsom, as well as the author of AB 5 and its proponents (mainly labor unions), have indicated that there is more work to be done on this issue. Additional legislation is therefore expected in 2020.

BACKGROUND
Before Dynamex, California courts and state agencies had long applied what is known as the Borello test for determining whether a worker was an independent contractor or employee for labor and employment purposes (S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations (1989) 48 Cal.3d 341). This flexible, multi-factor approach looked primarily at whether the hiring entity had a “right to control” the manner in which the worker performed the contracted service.

Despite the Borello test being used for nearly three decades, the California Supreme Court in Dynamex made a surprising and unprecedented departure and announced a significant change in the law, adopting the “ABC” test for determining whether an individual is an employee under the Wage Orders.

Per Dynamex, and now AB 5, a worker is presumed to be an employee unless the hiring entity establishes all three of the following conditions:
A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
B. The person performs work that is outside the usual course of the hiring entity’s business.
C. The person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

Because of the rigidity of the ABC test—specifically factors “B” and “C”—most individuals who control their own schedule, projects or tasks, and the way in which they perform these projects or tasks will likely lose existing contracts and work opportunities. The reason is that if the worker performs work which is similar to that of the business entity retaining the worker’s services and/or is not in an independent business or trade of the same work being performed, the workers will be classified now as an employee per the ABC test.

Although the Dynamex ruling applied only to California’s Wage Orders and therefore was limited to minimum wage, overtime, and meal period and rest break liability, AB 5 is more expansive. Per AB 5, misclassified workers also are eligible for workers’ compensation coverage, unemployment insurance and various other benefits. Additionally, because hundreds of thousands of workers now will be considered employees, those workers may assert their civil rights protections and, potentially, their ability to unionize.

OCCUPATIONS EXEMPTED FROM ABC TEST
While AB 5 does expand the application of Dynamex in many instances, it also provides some much-needed relief by creating more than 35 exemptions.

Certain occupations are exempted from the ABC test, including but not limited to:
• persons or organizations licensed by the Department of Insurance;
• doctors, surgeons, dentists, podiatrists, psychologists and veterinarians;
• lawyers, architects, engineers, private investigators and accountants;
• securities broker-dealers and investment advisers;
• direct salespersons;
• specified commercial fishermen; and
• specified newspaper carriers and distributors.

**Other Industries**

Other industries are exempted under the professional services contract exemption. These industries are exempt only if specific criteria are met. These industries include:

• human resources administrators, travel agents, marketers; graphic designers, grant writers, fine artists, payment-processing agents, enrolled agents licensed by the U.S. Treasury, certain photographers or photojournalists, certain freelance writers, editors and newspaper cartoonists.

• Other professional exemptions carry additional conditions. For example, estheticians, electrologists, manicurists, barbers and cosmetologists are exempt, but only if they set their own rates, are paid directly by clients, schedule their own appointments and follow several other requirements more akin to independent workers than employees.

AB 5 also provides specific exemptions and requirements for a real estate licensee, repossession agency, those subcontracting in the construction industry, construction trucking industry, referral agency relationships and a motor club exemption.

While these occupations have specific exemptions created by AB 5, the business community must keep in mind that, even if a worker appears to fit the criteria of one of these exemptions, it does not mean that the worker is automatically deemed an independent contractor. In these instances, the determination of employee or independent contractor status simply reverts back to the prior test adopted in *Borello*.

**BUSINESS-TO-BUSINESS EXEMPTION**

There also are concerns that *Dynamex*, and now AB 5, not only affects independent contractor relationships but also vendor relationships by usurping the joint employer analysis, allowing employees of a vendor to claim they are employees of the contracting business based on the ABC test, or even allowing the owner of a separate business to claim the owner is actually an employee of the hiring entity under the ABC test. Several lawsuits are pending on this issue.

In an effort to address this concern, AB 5 includes an exemption for business-to-business relationships; however, the exemption is extremely narrow and requires that the business retaining a contractor meet 12 specific requirements. Among these, the business-to-business exemption requires that the contractor provide the same or similar services to other clients (potentially interpreted to mean during the entire duration of the contractual relationship), and that the contractor provide services directly to the business, not to the business’s customers.

These two requirements alone are difficult to meet because contractors/vendors often are hired to provide services directly to a customer (for example, a Basque translator for a patient in a hospital). While AB 5 acknowledges that a bona fide business-to-business relationship should be exempted from the ABC test, the burdensome requirements codified in AB 5 will make it difficult for many contractual relationships to continue.

In a letter to the California Assembly’s *Daily Journal*, the author of AB 5 stated that the business-to-business provision is not intended to suggest that business service providers are necessarily employees if the requisite criteria are not satisfied. She further stated that AB 5 is “not intended to replace, alter, or change joint-employer liability between two businesses. AB 5 is focused upon the determination whether an individual is an employee or an independent contractor.”

**RETOACTIVITY**

AB 5 itself is not retroactive, but it does provide differing retroactive and prospective applications in certain areas. AB 5 is prospective for violations of the Labor and the Unemployment Insurance codes (beginning January 1, 2020) and for violations of workers’ compensation (beginning July 1, 2020). However, AB 5 explicitly states that the exceptions apply retroactively “to the maximum extent permitted by law,” ensuring specific industry carve outs. The bill also states that it does not change, “but is declaratory of, existing law” with regard to the Industrial Welfare Commission Wage Orders and “violations of the Labor Code relating to wage orders” (although it is unclear which Labor Code sections are “related” to the wage orders. In a May 2019 opinion letter, the Division of Labor Standards Enforcement explained that it would be appropriate to apply the ABC test to any claim, including Labor Code violations, that rest on an employer’s obligation under a wage order, including minimum wage, overtime, reporting time pay, recordkeeping violations, meal and rest periods, and others.).

In other words, AB 5 does not change existing law related to the wage orders, most notably the *Dynamex* decision.

But the issue of the *Dynamex* decision’s retroactivity is still unsettled. In May 2019, the Ninth Circuit in *Vazquez v. Jan-Pro Franchising International, Inc.* concluded that *Dynamex* did apply retroactively. Then, in July 2019, the Ninth Circuit issued an
order granting a petition for panel rehearing, withdrawing its decision in Vazquez, and stating that it would certify the question of whether Dynamex applies retroactively to the California Supreme Court. The California Supreme Court on November 20, 2019 agreed to answer the Ninth Circuit’s certified question. At the time of this article, the opinion is still pending.

WHAT TO EXPECT IN 2020

AB 5 is one of the most significant and far-reaching bills enacted during the 2019 California legislative session. The author and supporters of the measure, along with Governor Newsom, have all agreed to continue negotiations over the statutory language put in place by AB 5. The California Chamber of Commerce anticipates numerous bills addressing provisions of AB 5 in 2020 as the business community pursues additional exemptions for specified lines of business, as well as the broader business-to-business exemption to allow more companies to qualify for the statutory language. Some other items that may come up are revising the Borello standard and clarifying how the joint employer analysis interacts with the ABC test.

Additionally, a ballot initiative was filed by multiple rideshare and delivery companies in October 2019. The ballot initiative clarifies that app-based drivers and couriers are independent contractors if certain conditions are met. The ballot measure would provide several benefits to drivers, including but not limited to: guaranteed minimum earnings of at least 120% of the minimum wage; $0.30 per mile for expenses; health care subsidies; occupational accident insurance, automobile accident and liability insurance; protection against discrimination and sexual harassment; and mandatory safety training.

The initiative is well-funded, with approximately $90 million already committed, and therefore will likely receive a sufficient number of signatures to qualify for the November 2020 ballot.

CALCHAMBER POSITION

The current workforce values flexibility, which is why the Dynamex decision is so detrimental to millions of California workers. Failing to further amend AB 5 to provide additional industry exemptions and broaden the business-to-business exemption has the potential to eliminate the vast majority of independent contractors in California.

Although the CalChamber appreciates the recognition in AB 5 that the Dynamex decision is not one-size-fits-all and agrees the professions identified should be exempted under AB 5, the Legislature should not stop with selecting just a few professions and not others that are similarly situated. What’s needed is a more progressive and holistic approach to applying Dynamex that reflects today’s modern workforce.

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January 2020
Paid Family Leave
California Should Incentivize Additional Leave Instead of Adding Mandates

California has championed the issue of paid family leave for the past decade, being the first state in the nation to implement a paid family leave program. The National Conference of State Legislatures has highlighted California as one of the states providing the most family-friendly programs and protected leaves of absence.

Despite the significant advances in California on this issue, as well as the myriad family-friendly leaves California offers, there continues to be a push for additional family leave and protections. As part of his 2019 budget proposal, Governor Gavin Newsom committed to expanding California’s 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 the first 6 months of life. Since Governor Newsom is focused on providing care for newborns, this article covers leave laws related to maternity, paternity and baby bonding leave.

The California Chamber of Commerce certainly supports a work/family balance, and several distinct laws already ensure protections for maternity, paternity and baby bonding leave in the Golden State. The leaves of absence provided under these various laws is not the concern. The main issue of contention is leaving it to plaintiffs’ attorneys to determine whether the leave was offered appropriately or administered by including a private right of action. If the Paid Family Leave program were to create new stringent, mandatory, protected leaves of absence imposed on California employers, it could disrupt the workplace and create an avenue for costly litigation.

**LEAVE OF ABSENCE OPTIONS**

Below is a brief overview of each type of leave currently provided in California. State Disability Insurance (SDI) and Paid Family Leave (PFL) are state-run programs that do not provide job protection but do provide wage replacement during the leave. Generally, the other leaves listed provide job protection during the leave, but the leave is unpaid. During these unpaid leaves of absence, however, an employee has access to wage replacement from SDI/PFL.

- **State Disability Insurance (SDI).** Established in 1946, the California SDI program is a partial wage replacement insurance plan for California employees that is state-mandated and funded through employee payroll deductions. SDI provides short-term, financial benefits to eligible employees who suffer a loss of wages when unable to work due to a non-work-related illness or injury or when medically disabled due to pregnancy or childbirth.

  The usual disability period for pregnancy is up to four weeks before the expected delivery date and 6 to 8 weeks after delivery, depending on the type of delivery. SDI is not a job-protected leave of absence. Employees unable to work because of a non-work-related disability may also be eligible for job-protected leave under the federal Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), New Parent Leave Act (NPLA) and Pregnancy Disability Leave (PDL).

- **Paid Family Leave (PFL).** PFL is a wage replacement program within the SDI program, funded through employee payroll deductions and administered by the Employment Development Department (EDD). PFL covers employees at organizations of any size. Currently, PFL provides employees with partial wage replacement for up to 6 weeks in any 12-month period while absent from work for care of a seriously ill or injured family member, bonding with a minor child within 1 year of the child’s birth, or placement in connection with foster care or adoption.

  On June 27, 2019, Governor Newsom signed SB 83, which will extend the duration of PFL benefits from the current 6-week limit to 8 weeks starting July 1, 2020.

- **California Family Rights Act (CFRA) and Family and Medical Leave Act (FMLA).** CFRA and FMLA leaves apply to employers with 50 or more employees and provide a qualifying employee with 12 weeks of job-protected, unpaid leave during a 12-month period for his/her own medical condition or the medical condition of his/her spouse, child or parent, or for the birth, adoption or foster care placement of a child. CFRA and
FMLA leaves do not apply to all employers. Specific requirements must be met for CFRA and FMLA leaves to apply to both the employee and the employer. Although CFRA and FMLA often overlap so that the two leaves run concurrently, there are significant instances in which the two leaves may not run concurrently. For example, any pregnancy-related disability is considered a “serious medical condition” under FMLA, but not CFRA. Accordingly, a pregnant employee in California can take 12 weeks of leave under FMLA for pregnancy-related disability, and then an additional 12 weeks of protected leave under CFRA for bonding after the baby is born.

- **Pregnancy Disability Leave (PDL).** PDL applies to employers with 5 or more employees and provides up to 4 months of job-protected leave for pregnancy, childbirth or related conditions. This leave runs concurrently with FMLA, but not CFRA. Therefore, an employee could take up to 4 months for pregnancy disability/FMLA leave, and still have another 12 weeks of job-protected leave under CFRA for bonding with a new child or to care for the employee’s/family members’ serious medical condition. Generally, an employee who is on PDL can receive wage replacement through SDI.

- **New Parent Leave Act (NPLA).** The NPLA requires employers with 20 or more employees to provide eligible employees with up to 12 weeks of unpaid, job-protected leave to bond with a newborn child, or a child placed through adoption or foster care. NPLA is available only to employees who are not subject to both the federal FMLA and the state CFRA. NPLA leave does not run concurrently with PDL. Thus, after utilizing PDL, an eligible employee is entitled to 12 weeks of NPLA leave, for a potential combined total of 7 months of job-protected leave.

**BURDEN OF LEAVES OF ABSENCE ON EMPLOYERS**

All these leave laws interact with one another, but they must be patchworked together by employers in order to determine the proper amount and type of leave an employee may take. While most of these leave laws are not limited to time off for childbirth, maternity leave provides a good example of the complexity of these laws. With regards to pregnancy-related leaves of absence, one employee could utilize SDI, PFL, PDL, NPLA or CFRA and FMLA—all for one pregnancy.

For example, a mother may be eligible for PDL because she is disabled by pregnancy/childbirth; then, after she is no longer disabled by pregnancy/childbirth, she may be placed on FMLA and/or CFRA leave. Before placing the employee on FMLA and/or CFRA leave, the employer needs to confirm that the employee is actually eligible for FMLA and/or CFRA leave and that FMLA and/or CFRA applies to that specific employer. In addition, the employer must remember that PDL runs concurrently with FMLA; however, it does not run concurrently with CFRA. If the employee is not eligible for FMLA and/or CFRA, the employer needs to confirm whether NPLA applies. During this time, the employee can utilize SDI and then PFL for wage replacement.

Besides the burden of keeping track of the applicable leaves and providing extensive job protection when necessary, a leave of absence, especially if job-protected, imposes several other burdens on employers:

- First, each protected leave of absence brings with it a potential threat of litigation. For example, if an employee is terminated or disciplined in proximity to a recent request or taking of a leave of absence, there is a significant risk of a lawsuit claiming retaliation or wrongful termination. Basically, the allegation is that the personnel action taken against the employee was a result of the employee’s leave of absence, rather than the reason stated by the employer for the termination or discipline. Litigation damages can include back pay, compensatory damages, statutory penalties, injunctive relief, declaratory relief, punitive damages and attorney’s fees.

- Second, many of the protected leaves of absence require the employee to be returned to either the exact same position or a comparable position upon the conclusion of the leave. This requirement often causes a dispute regarding what is “comparable,” if the exact same position is unavailable.

- Third, there is an administrative burden of obtaining the necessary documentation from an employee to certify the need for the leave. Generally, each separate leave has a unique list of acceptable documentation an employee can provide to justify the leave. FMLA and CFRA are especially document-intensive, as employers may obtain proper certification from medical providers regarding the basis for the employee’s leave, as well as the duration. This documentation can be ongoing depending on the specific situation of the employee.

- Fourth, an employer must track the employee’s time while on leave. This may seem straightforward; however, many of these leaves of absence provide for “intermittent” leave, which allows the employee to take sporadic leaves of absence in time increments as small as 30 minutes.

- Finally, an employer must allow the qualified employee to take the protected leave, regardless of the employer’s current business condition. For example, an employer could already have several employees out on other protected leaves of absence, but still would be required to provide a statutory leave of absence to
another employee, thereby making management of the workforce extremely difficult.

In addition to the leaves discussed above, California also has the following list of additional protected leaves of absence: military spouse leave, organ donation leave, bone marrow leave, paid sick leave, school activities leave, school appearance leave, domestic abuse/sexual assault/stalking leave, and kin care.

**EXPECTED ACTIVITY IN 2020**

The issue of PFL was one of the first topics of interest in 2019 for Governor Newsom and many legislators. As previously mentioned, Governor Newsom approved the expansion of PFL from 6 weeks to 8 weeks. (See SB 83, Committee on Budget and Fiscal Review, 2019.) Currently, the administration has a task force considering different options to increase participation in the PFL program and to phase in additional program expansions.

Senator Hannah-Beth Jackson (D-Santa Barbara) also sought to expand job-protected leaves of absence with SB 135. The bill, a CalChamber job killer, would have made significant changes to CFRA, such as: lowering the employee threshold from 50 to 5; expanding the scope of individuals an employee can take leave for, including a “designated person” of the employee’s choosing; and increasing the duration of protected leave an employee could take by creating a potential of 10 months of job-protected leave for pregnancy-related conditions for large employers and seven months for small employers.

SB 135 proposed an aggressive change to CFRA that would have greatly impacted small businesses and provided extensive job-protected leaves beyond baby bonding, maternity and paternity leave. The bill was placed on the Senate Inactive File at the author’s request. However, considering the administration’s interest in PFL, and given the pattern of the Legislature over the last several years, a bill for some issue-specific type of employee family-related leave will likely be introduced in 2020.

**CALCHAMBER POSITION**

The CalChamber certainly supports work/family balance; however, any new proposed leave of absence for employees should be considered in light of the existing leaves of absence employers already are required to provide in California. Although such leaves certainly do not address every potential personal situation that may arise, this does not mean that additional, statutory protected leaves of absence are necessary in California.

Rather, the CalChamber believes that such individual issues are more appropriately addressed between an employer and employee, taking into consideration the needs of the employee and the workforce demands of the employer. California cannot jeopardize the growth of the business community by burdening employers with any additional, mandatory leaves of absence that the employer must accommodate regardless of its existing business and workforce needs.

Finally, adding a private right of action as the enforcement mechanism for each leave of absence simply increases litigation, adds unnecessary costs to employers and primarily benefits trial attorneys instead of the employee.

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January 2020
Paid Sick Leave
State/Local Mandate Differences Create Compliance Confusion

California’s paid sick leave law, the Healthy Workplaces, Healthy Families Act (Act), went into effect on July 1, 2015. The law requires all employers, regardless of size, to provide employees who have worked in California for 30 or more days with paid sick leave, at an accrual rate of 1 hour for every 30 hours worked.

After the 90th day of employment, employees are allowed to utilize their paid sick leave to care for themselves or a family member. Any unused sick leave accrued in the preceding year is carried over to the next year, but may be capped by an employer policy. Exempt, nonexempt, part-time and full-time employees are all entitled to paid sick leave. Temporary, seasonal and even out-of-state employees can be covered too, if they spend enough time working in California.

While the Act is well-intentioned, employers in this state struggle with proper compliance for several reasons.

SICK LEAVE USED AS VACATION

Since the implementation of the Act, suspected abuse of the law by employees is common and the Act’s ambiguities have become more prevalent, leaving employers uncertain about proper compliance and, at times, understaffed. The Act does not require an employee to provide any specific amount of advance warning for an “unplanned” illness. The Act also is silent as to whether employers may request documentation for an illness. However, there are concerns that requesting a doctor’s note could expose employers to liability for interfering with an employee’s right to sick leave.

Due to this ambiguity, employees can and likely have used paid sick leave as vacation. Anecdotal examples of this abuse have been provided, such as in the airlines industry, in which last-minute “no shows” during the holiday season have occurred and can leave passengers who are trying to fly home to see their own families stuck on the ground. The intended purpose of the Act was to provide employees time off from work when they are sick or a family member is ill, not for vacation.

CHALLENGES WITH LOCAL ORDINANCE OVERLAP

The biggest compliance hurdle for California’s employer community is that the Act allows local cities and counties to adopt different sick leave mandates. Currently, seven cities/counties have their own paid sick leave laws in addition to California’s own nuanced law (Berkeley, Emeryville, City of Los Angeles, Oakland, City of San Diego, San Francisco and Santa Monica). Notably, this does not include two ordinances applicable to hotel workers only.

Continuing to authorize these local ordinances creates inconsistency and confusion for California employers who operate in multiple jurisdictions because each city or county may have vastly different requirements, and the employer must ensure that any employee who works in those local jurisdictions is provided the protections afforded by the specific local ordinance as well as California law.

Below is a brief summary of how the Act differs from the specific local ordinances and creates compliance burdens for employers:

- Permitted Use of Verification or Documentation. As indicated above, while California’s Department of Industrial Relations has suggested that requiring documentation (that is, a doctor’s note) could be considered interference with an employee’s right to take leave under the Act, the Act itself is silent on the issue. However, verification or documentation is permitted under some local ordinances. For example, Los Angeles, Oakland, San Diego and San Francisco all allow documentation to be requested for absences exceeding three consecutive work days. Because these local ordinances explicitly allow for documentation, but California’s sick leave law is silent on the issue, employers are left confused with what is permissible regarding documentation and verification of sick leave.

- Accrual Method. Even the basic methods of accruing sick leave differ. The local ordinances and the Act each require an accrual of 1 hour for every 30 hours worked in the state or the prescribed city. However, the Act offers other accrual method options that differ from the local ordinances. For example, under
the Act, an employer can alternatively use a front load method rather than an hourly accrual method. This requires the employer to provide 24 hours or 3 days of paid sick leave upfront.

The local ordinances have more complex options for accrual methods. For example, San Francisco’s paid sick leave law states that the employer may front load any sum of paid sick leave at the start of each employment year, calendar year or 12-month period, so long as the employee can accrue additional paid sick leave after working enough hours to have accrued the amount allocated upfront.

If that is not confusing enough, Emeryville, Los Angeles, Oakland, San Diego and Santa Monica all differ from San Francisco—some saying that, if the employer utilizes a front loading option, the employer must provide 40 hours at the start of the year, while others require 48 hours and others specify an amount of paid sick leave equal to the applicable accrual cap (that is, 40, 48 or 72 hours) depending on each local city ordinance’s accrual cap

• Accrual Use Cap. The accrual caps are not much clearer. The Act states employers may cap the amount of paid sick leave an employee can accrue in a year to no less than 48 hours or 6 days, whichever is greater. However, Berkeley, Emeryville, Oakland, San Francisco and Santa Monica all base the accrual cap on the number of employees the employer has, and each city has a different employee threshold. For example, in Berkeley, if you have 24 or fewer employees, the annual accrual cap is 48 hours; however, if you have 25 or more employees, then the annual accrual cap is 72 hours.

On the other hand, in the neighboring city of Oakland, the annual accrual cap is 40 hours for nine or fewer employees and 72 hours for 10 or more employees. Thus, if the employer has locations throughout California, the employer will need to comply with and keep track of conflicting methods just for the annual accrual cap.

• Use Increments. The Act and most local ordinances state that an employer cannot require that paid sick leave be used in increments longer than 2 hours. However, Berkeley differs in that the employer cannot require use in increments longer than an hour for the initial hour, or longer than 15 minutes thereafter. Oakland and San Francisco do not allow employers to require that paid sick leave be used in increments longer than 1 hour, and Santa Monica does not address use increments at all.

• Covered Employees. This is where the local ordinance issue becomes even more burdensome on employers that have employees who work in different cities. For instance, in order for the paid sick leave laws of Berkeley, Emeryville, Los Angeles, Oakland, San Diego and Santa Monica to apply to the employee, the employee needs to work in the city only for 2 hours in 1 calendar week and be entitled to minimum wage.

That means, for some employees who travel for work, the employer must keep track of how long the employees are in each city. If the employee is there for at least 2 hours, then that employee may be entitled to the protections provided by the specific local ordinance.

In some instances, the employee will be entitled to the protections of all eight different local ordinances and California’s own paid sick leave law. Thus, the employer must navigate the nuances of each ordinance and ensure the employee is provided the most lenient protections of each separate ordinance.

To complicate things even further, San Francisco’s paid sick leave law has no durational requirement at all. This means that any employee in California who spends any time working in San Francisco may be subject to San Francisco’s paid sick leave law.

• Permitted Paid Sick Leave Use. Even the permitted use of paid sick leave may differ from city to city. While the Act states that permissible uses for paid sick leave are the medical need of the employee or employee’s family member or for purposes related to domestic violence, sexual assault or stalking suffered by the employee, Emeryville adds that the need to provide care of a guide dog, signal dog or service dog of the employee or family member also is a permissible use of paid sick leave.

The City of San Diego also differs by requiring that public health emergencies resulting in the closure of the employee’s worksite, childcare or a child’s school count as valid reasons to utilize paid sick leave. San Francisco adds bone marrow or organ donation as a permitted use.

• First Day of When Paid Sick Leave Can Be Used. Most local ordinances are standard with the Act with regards to the first day paid sick leave can be used, but San Diego differs in that paid sick leave cannot be used until the 91st day after employment begins. However, employers must remember to follow the Act since California is more protective of employees, allowing sick leave to be taken on the 90th calendar day after the employee begins work.

In addition to this long, complex list of nuanced differences, the local ordinances also differ in the application and requirements for how much paid sick leave can carry over from year to year, the amount of paid sick leave that can be used per year, the rate of pay for paid sick leave, whether the employer can require advance notice of paid sick leave usage, posting notice obligations, effect at rehiring, retaliation, and even enforcement
procedures. Because of the difficulty in keeping up with the all the different requirements, such ambiguity also creates litigation traps for employers who are actively trying to comply with all these conflicting laws.

LEGISLATION IN 2019
AB 555 (Gonzalez; D-San Diego) would have amended the Healthy Workplaces, Healthy Families Act to expand the number of paid sick days employers are required to provide from 3 days to 5 days. Although the proposed legislation did provide some state preemption, it was very limited, providing preemption only to specific provisions of the Act. Therefore, AB 555 would not have provided much compliance relief for employers. The California Chamber of Commerce anticipates that the author will propose similar legislation in 2020.

CALCHAMBER POSITION
While the CalChamber appreciates and understands the need for employees to stay home from work while they are sick, expanding another leave mandate that primarily harms small employers is concerning. Such an expansion also is challenging without clarifying amendments to the Act and preemption of local ordinances. The Act is already a huge financial and compliance burden on employers. Unscheduled absenteeism costs roughly $3,600 per year for each hourly employee. (See “The Causes and Costs of Absenteeism in The Workplace,” a publication of workforce solution company Circadian.)

Given the cumulative costs and existing protected leaves of absence with which California employers already are struggling, California should refrain from mandating additional sick days and instead allow employers and employees to manage the leave of absence policies as needed to accommodate both the employee’s and employer’s needs.

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Private Attorneys General Act
State Law Doesn’t Serve Employees; in Dire Need of Reform

California labor and employment laws are known for being complex and burdensome in comparison to the rest of the nation. There is no better example of California’s distinction in this area than the Private Attorneys General Act (PAGA), which allows an aggrieved employee to file a representative action on behalf of himself/herself, all other aggrieved employees and the State of California for alleged Labor Code violations. The California Chamber of Commerce is not aware of any other state that has such a law or is considering a similar proposal—and any state should take pause before seeking to mirror this unique law.

PAGA has had a significant litigation impact in California, with many questions left regarding how effective it has been in encouraging compliance with California’s burdensome labor and employment protections or compensating employees for alleged harm.

HUGE INCREASE IN PAGA LAWSUITS
PAGA lawsuits have increased more than 1,000% from the law’s first year in effect with the Labor and Workforce Development Agency (LWDA), receiving approximately 4,000 PAGA notices each year since 2014. See 2019 Budget Change Proposal, PAGA Unit Staffing Alignment, 7350-110-BCP-2019-MR (hereinafter PAGA BCP). This number is anticipated to grow to exceed 7,000 by 2022.

The popularity of these lawsuits is likely due to the significant monetary awards that can be leveraged against an employer. For example, in Price v. Uber Technologies, Inc., the plaintiff’s attorneys were awarded $2.325 million, while the average Uber driver was awarded $1.08. (See California Business & Industrial Alliance v. Becerra (Super. Ct. Orange County, 2018, No. 30-2018-01035180-CU-JR-CXC)).

Even the LWDA itself recognizes PAGA abuse. In its PAGA BCP, the LWDA stated “the substantial majority” of proposed private court settlements in PAGA cases reviewed by the PAGA Unit fell short of protecting the interests of workers and the state. The analysis continues: “Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, reflecting the failure of many private plaintiffs’ attorneys to fully protect the interests of the aggrieved employees and the state.”

Despite this failing grade from the LWDA, proponents of PAGA still maintain that it is an important enforcement tool that encourages compliance and protects employees.

WHY IS PAGA SO UNFAIR?
On the other hand, employers and legal counsel claim that PAGA is not working as intended. Rather, they believe the law is being utilized against employers as financial leverage to force employers into costly settlements for minor, innocent mistakes. Some of the most notable issues with PAGA are as follows:

- There is no requirement under PAGA that an employee actually suffers harm, such as unpaid wages, as a result of...
the violation. For example, the Labor Code requires a paystub state the legal entity that is the employer. So, if an employee’s paycheck says “XYZ, Inc.,” but the employer’s name really is “XYZ, LLC,” the employee can recover PAGA penalties even though the employee suffered no harm from this simple mistake.

• **PAGA has a unique standing requirement.** PAGA defines “aggrieved employee” as any person who was employed by the employer and against whom “one or more of the alleged violations” was committed. This language means that the representative employee pursuing a civil action for multiple Labor Code violations needs to have suffered only one of the alleged violations.

However, the employee can collect penalties for all the violations alleged and, under PAGA, retain 25% of those penalties. This means the representative employee receives penalties for Labor Code violations that he/she never encountered, thereby potentially taking away penalties for employees who actually were affected by the Labor Code violation.

• **PAGA penalties are imposed regardless of intent.** Thus, employers are held liable even if they make a good faith error.

• **PAGA applies to all employers regardless of size.**

• **Legal precedent has established that PAGA provides a “civil penalty.”** This means that employees can recover both the statutory penalty associated with the Labor Code provision at issue, as well as civil penalties under PAGA, thereby creating a stacking of penalties against the employer.

As an example: Employer provides its 100 employees with a quarterly bonus of $500, but fails to include that bonus as a part of its regular rate of pay calculation for purposes of overtime. This one mistake by the employer would create potential liability for: 1) unpaid overtime for the prior four years; 2) statutory penalties for incorrect paystubs; 3) interest; and 4) attorney fees. Under PAGA, the employer could also face the following statutory penalties (per alleged Labor Code violation):

- $100 for the first violation x 100 employees = $10,000
- $200 x 25 for each subsequent violation/pay period x 100 employees = $500,000

Total: $510,000 penalties

Due to one mistake by the employer of calculating a quarterly bonus into the hourly rate for overtime purposes, the employer could face a devastating lawsuit in which the penalties alone exceed half a million dollars for just one, alleged Labor Code violation. If this one mistake results in the violation of multiple Labor Code sections (incorrect paystubs, miscalculation of meal period or rest break premiums, payment of wages upon termination, etc.), this half million dollars in penalties can be doubled, tripled, etc.

• **PAGA lawsuits are a “representative action” rather than a class action** and, therefore, the aggrieved employee does not have to satisfy class action requirements. Thus, PAGA actions are much easier to file and it is easier to include much larger groups of employees than a class action. Additionally, the employee often files a PAGA action and a class action simultaneously so the employee can recover the PAGA penalties, but not allocate the correct amount owed to the LWDA.

As a result, critics allege the LWDA is not receiving its fair share of PAGA settlements, as the employees’ attorneys often allocate a small monetary amount for PAGA in the settlement agreement to minimize the amount of the settlement they have to share as penalties with the LWDA.

Governor Edmund G. Brown Jr. sought to address these issues in a budget “trailer bill,” SB 836 (2016–17). SB 836 requires that a copy of a proposed settlement be submitted to the LWDA. It is still too soon to determine the success of SB 836; hopefully, SB 836 will continue to raise awareness of this issue like those noted above in the PAGA BCP.

• **Another issue is the abuse of “draft” PAGA complaints.** Plaintiffs’ attorneys create draft PAGA complaints and send them to the employer. These litigation threats compel settlement before a PAGA complaint is filed. Since a PAGA complaint is not formally filed in these situations, and is probably never intended to be filed, the LWDA is not made aware of the dispute and never receives its share of the settlement.

• **PAGA also provides a statutory right to attorney fees for the employee’s attorney only,** thereby adding another layer of cost onto employers and providing an incentive for plaintiffs’ attorneys to file the case.

• **PAGA claims cannot be waived by an arbitration agreement:** thus, the employer is forced to settle the case or litigate the case in civil court.

Although there appears to be acknowledgment of PAGA abuse as noted by the LWDA in the PAGA BCP, there still is no appetite in the Legislature for major reform. A very small carve-out was created in 2018 when Governor Brown signed AB 1654 (B. Rubio; D-Baldwin Park), preventing employees in the construction industry from filing PAGA claims in which the employee is covered by a collective bargaining agreement that includes a grievance procedure and binding arbitration.

Nonetheless, bills introduced in 2019 proposing a more holistic approach to PAGA reform were never heard in the Assembly
Labor and Employment Committee. See AB 443 (Flora; R-Ripon) and AB 789 (Flora; R-Ripon). Since PAGA reform proposals have been unsuccessful with the Legislature, business organizations have gone as far as suing the state over PAGA. See *California Business & Industrial Alliance v. Becerra* (Super. Ct. Orange County, 2018, No. 30-2018-01035180-CU-JR-CXC)). While the success of the lawsuit is unknown and the case could take years to resolve, the last decade of legal decisions, as well as numerous examples of abuse, indicate that the current state of PAGA is in need of significant reform.

**CALCHAMBER POSITION**

PAGA is a primary concern of the employer community due to the financial leverage it provides to plaintiffs’ attorneys to pursue claims for minor violations of the California Labor Code. Questionable litigation that results in significant monetary settlements wherein the plaintiffs’ attorneys retain a majority of the money for fees and employees are provided a minimal amount is not fulfilling the stated intent of PAGA.

The CalChamber is supportive of any efforts to reform PAGA to ensure the goals of labor law enforcement are satisfied, and that it is not used as a vehicle to enrich trial attorneys.

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Californians are choosing to work full-time as independent contractors, and others are using the opportunity to supplement their income. In fact, California is estimated to have nearly 2 million residents who work as independent contractors. These numbers are conservative, as the 2018 U.S. Bureau of Labor Statistics Economic Release did not include the number of individuals who supplement their income with online platforms.

According to the Bureau of Labor Statistics Economic Release, 79% of independent contractors prefer this status over traditional employment. The top reasons that motivate individuals to pursue independent work include: 1) to be their own boss; 2) to choose when they work; 3) to choose their own projects; 4) to choose where they work; and 5) to earn extra money.

However, in April 2018, the California Supreme Court issued a significant decision in Dynamex Operations West v. Superior Court (2018) 4 Cal.5th 903 that completely changed how independent contractor status is determined under the Wage Orders. Dynamex upended nearly three decades of law by adopting a very restrictive three-factor “ABC” test to determine independent contractor status. Dynamex was then codified in September 2019 when Governor Gavin Newsom signed AB 5 (Gonzalez; D-San Diego). AB 5 expands the Dynamex decision beyond just Wage Order application while providing only a limited number of industry exemptions. (See Business Issues article on “Assembly Bill 5.”)

One of the main issues of debate over AB 5 during the legislative session was whether an individual working as an employee had the same flexibility as an individual working as an independent contractor. A limited review of some of California’s strict wage-and-hour laws that continue to grow each year illustrates the challenges employers have in providing employees with flexibility. From the inability to waive daily overtime and meal periods so that a working parent can leave early to make it on time for school pickup, to essentially eliminating the ability to engage in freelance work, California workers and employers are being forced into stringent, traditional work schedules that do not reflect today’s society and the modern workforce.

The following is an outline of just a few of California’s strict labor laws that significantly limit workplace flexibility.

**COMPLEXITY OF ALTERNATIVE WORKWEEK**

Unlike an independent contractor, an employee cannot simply dictate his or her own hours each day without the employer being penalized financially. California is one of only three states that requires employers to pay daily overtime after 8 hours of work and weekly overtime after 40 hours of work. Even the other two states that impose daily overtime requirements allow the employer and employee to waive this requirement through a written agreement. California, however, provides no such common-sense alternative.

Rather, California requires employers to navigate through a multi-step process to have employees elect an “alternative workweek schedule” that, once adopted, must be “regularly” scheduled. This process is filled with potential traps for employers that could easily lead to costly litigation, as one misstep may render the entire alternative workweek schedule invalid, leaving the employer legally responsible for claims of unpaid overtime wages.

To simply attempt to provide more employee flexibility by adopting an alternative workweek, the employer first must provide advance notice of the vote for a proposed alternative workweek schedule, then hold a meeting 14 days before the vote to discuss the proposed alternative schedule. Once that is complete, two-thirds of an entire work unit must agree by secret ballot to adopt and work the selected alternative workweek schedule. A work unit might be the entire company, or a single division or department within the company. Thus, alternative workweek schedules do not provide flexibility on an individualized basis and are not even meant for a handful of employees.
within a department who want flexibility; instead, these schedules are based on the wants and needs of the entire work unit.

The process becomes more onerous for employers because even if two-thirds of a work unit votes to adopt an alternative workweek schedule, the employer must then report the results to the Division of Labor Standards Enforcement (DLSE) within 30 days. Once the DLSE reports that the employer has adopted the alternative workweek schedule, however, there is no presumption that the employer did so properly, and the employer is not immune from liability.

Currently, there are approximately 38,141 reported alternative workweek schedules with the DLSE. According to the Employment Development Department’s calculations for the fourth quarter of 2018, there are approximately 1,584,626 employers in California. At best, about 2.4% of California employers are utilizing the alternative workweek schedule option. More realistically, however, given that the information in the database is according to work unit instead of employer, it is likely that less than 1% of employers in California are utilizing this process. And, again, it does not apply on an individual employee basis.

**LIMITATIONS OF MAKEUP TIME**

Labor Code Section 513 and corresponding Industrial Welfare Commission Wage Orders provide a makeup time exception to general overtime laws. Makeup time allows employees to request time off for personal obligations and make up the missed time without triggering the payment of overtime. This exception, however, has its own set of rigid requirements that employers and employees must adhere to in order to remain legally compliant.

If the employer chooses to allow makeup time, the following conditions must be met:

- The employee cannot work more than 11 hours on another workday, and not more than 40 hours in the workweek to make up for the time off;
- The employee must provide the employer with a signed, written request for each occasion that he/she desires makeup time;
- The employer cannot solicit or encourage the employee to utilize makeup time; and
- The missed time must be made up within the same workweek.

This last hurdle is the most difficult for employees because it means that the employee must come in early or stay late during the same workweek to meet this strict makeup time requirement. But what if a last-minute personal obligation arises on a Friday and the employee’s normal workweek is Monday through Friday? The employee has no ability to make up the time during that workweek or provide prior written notice for approval.

Or what if the employee has prior obligations and simply cannot come in early or stay late that week? Also, as discussed in more detail below, it is important to note that an employee cannot simply waive his/her meal breaks during that week in order to make up that time either.

In theory, the idea of makeup time sounds like a good option. But in practice, the makeup time exception does not allow employees the flexibility necessary to meet their ever-changing personal obligations and exposes employers to costly litigation if the rules are not followed meticulously.

**LACK OF MEAL PERIOD WAVERS**

The inflexibility of California labor laws is highlighted even more through its meal period requirement. Employers must provide nonexempt employees with an unpaid meal period of no less than 30 minutes for every 5 hours worked. (See Labor Code Section 512.) The meal period must be uninterrupted, the employee must be relieved of all duties, and the employer must not impede or discourage the employee from taking the break.

There is a small exception, however, for employees who work between 5 and 6 hours. These employees can choose to waive their meal periods by mutual consent of the employer and employee. Yet a similar alternative does not exist for employees who work a traditional 8-hour day. Even if the employee and the employer mutually agree that the employee can take an on-duty meal period, the law does not allow an employer to make this exception legally.

Many employees do not want to be forced to take an unpaid, 30-minute meal period if they can eat on duty and leave work 30 minutes earlier. However, an on-duty meal period is allowed only under very limited circumstances whereby three express conditions must be met. The most difficult element to satisfy is the “nature of the work” element because the employer is expected to find other capable employees who can perform the job duties during an individual’s 30-minute meal period, which might not be feasible depending on the job. Thus, the on-duty meal period exception very rarely applies.

**REPORTING TIME PAY AND SPLIT SHIFTS PREMIUMS**

Labor unions and plaintiffs’ attorneys historically oppose modifications to workplace flexibility laws, claiming that flexibility can be provided easily because employers can allow employees to simply show up to work whenever the employee wants. There are two main concerns with this concept: 1) it is realistically
impossible to run a business this way (what if no baristas showed up at a coffee shop at 5 a.m., but 20 of them showed up at 11 a.m. when the rush was over?); and 2) if more employees showed up than needed at a certain time, the employer would have to send them home, triggering reporting time pay.

Reporting time pay generally is required when an employee reports for work but is not put to work or is given less than half of the employee's usual or scheduled hours. When this occurs, the employer must pay reporting time pay (at least half of the hours the employee was scheduled for or usually worked, but never less than 2 hours' pay and never more than 4 hours' pay).

Then, if the coffee shop sent home 15 baristas at 11 a.m. and asked them to return later when they were needed, this may trigger a split shift premium, assuming these baristas are paid minimum wage. A split shift is any two distinct work periods separated by more than a one-hour meal period. If there is more than one hour between shifts, the employee must receive a split shift premium (one hour's pay at no less than the minimum wage rate for the time between shifts). If reporting time pay or split shift premiums are not meticulously tracked and paid properly, the employer may face potentially devastating litigation costs, including Private Attorneys General Act (PAGA) liability. (See Business Issues article on the “Private Attorneys General Act.”)

While it would be great in theory to provide employees complete flexibility with their schedules, it is simply not viable. However, a little more leniency within the law should be provided, especially considering that California voters clearly value flexibility and do not think that employers alike should have to be governed by stringent standards that have no exceptions. This was made evident by the voter approval of Proposition 11 on the November 2018 statewide ballot. Proposition 11 created an exception to a 2016 California Supreme Court ruling (Augustus v. ABM Security Services) that likely would have required emergency medical technicians (EMTs) and paramedics to be completely unreachable while on break, even in a 911 emergency call.

CALCHAMBER POSITION
California labor laws simply do not allow employers to accommodate individual employee requests for flexible work arrangements. Employers should be able to provide their employees more flexibility and negotiate through a written agreement, revocable by either party, the daily and/or weekly schedules that satisfy the needs of both employee and employer. Moreover, if a nonexempt employee wants to skip a 30-minute meal period and eat lunch on-duty in order to leave early, why should an employer be put in the awful position of telling the employee “no”?

California lawmakers should focus on policies that allow individuals the option to work as independent contractors and improve workplace flexibility for employees, while alleviating the threat of costly litigation for employers for accommodating workers’ desired schedules.

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Forest Management

State and Federal Cooperation Will Expedite Good Forest Health

Periodic wildfires are a part of the natural cycle of forests. The wildfires serve to clear out dead or dying trees, diseased trees or plants, and forest debris, allowing younger, healthier trees and shrubs to grow. Good forestry management practices mimic nature, mechanically clearing out underbrush and other forest debris, setting prescribed burns, and cutting and removing dead, infested or dying trees. Environmental regulations protecting species and their habitats severely restrict the ability of forest landowners and forestry companies to manage their lands in a way that reduce fuel loads leading to wildfires.

BACKGROUND

Nearly all of California’s 33 million acres of forested land are owned by the federal government (19 million acres or 57%), private timber companies (5 million acres) and tens of thousands of private landowners (9 million acres). The State of California owns less than 3% of the forested land. The traditional role of the state and local agencies in managing forests has been limited.

On nonfederal land, the state has regulated activities to minimize harm to the environment, principally through permits and mitigation activities for timber cutting, road and structure building, and conversion to agriculture. In addition, the state is responsible for fire suppression on private and state-owned land, as well as in certain local areas.

The U.S. Forest Service says that 6 million to 8 million of the 21 million acres it manages in California need immediate restoration. Other forestry experts say that at least 1 million acres need to be treated annually over a sustained period, according to Governor Gavin Newsom’s Wildfires and Climate Change Strike Force.

Millions of acres of forested lands are vulnerable to wildfires due to increased fuel loading and prolonged drought and climate change. The length of the fire season is estimated to have increased by 75 days across the Sierra and seems to correspond with an increase in the extent of forest fires across the state, according to the Department of Forestry and Fire Protection (CAL FIRE).

Over time, an increasing number of homes and commercial enterprises have been built on the urban fringe interfacing with forestlands and scrublands. Small rural communities exist within forested areas of the state supported by tourism, recreation or
the timber industry. Rapid growth in vineyards and wineries in Napa, Sonoma and Mendocino counties spurred corresponding growth in commercial and residential developments, again on the urban fringe bordering forested lands, which already had many vacation and retirement homes.

Structures on the fringe are vulnerable to wildfires and the cost of fighting them increases exponentially. Newer structures built under current building codes require use of noncombustible materials that are fire resistant. However, there are many older structures still in use. Structures unencumbered with loans do not have to carry fire insurance. Also, not everyone keeps defensible space clear of debris around structures to aid in firefighting.

California’s 2017 catastrophic wildfire season generated numerous legislative proposals. Unfortunately, major forestry management improvements in SB 901 (Dodd; D-Napa), signed September 21, 2018 (Chapter 926) by Governor Edmund G. Brown Jr., weren’t in time to reduce fuel loads that added to the devastation caused by 2018 wildfires.

**KEY POINTS OF SB 901 WILDFIRES BILL**

- $200 million annually for the next five years: $165 million from Greenhouse Gas Reduction Fund (Cap and Trade) to CAL FIRE for healthy forest and fire prevention programs and projects that improve forest health and reduce greenhouse gas emissions from wildfire; and $35 million from Cap and Trade to CAL FIRE to complete prescribed fire and other fuel reduction projects consistent with the recommendations in California’s Forest Carbon Plan and the operation of year-round prescribed fire crews, research and monitoring for climate change adaptation.
- Five-year extension for several of the state’s biomass facilities and allowance for monthly reporting for some contracts in exchange for additional fuel flexibility.
- Regulatory streamlining for prescribed fire, thinning and fuel reduction projects on federal lands if the state or local agency is conducting projects under federal Good Neighbor Authority.
- Conservation easements purchased with state funds now must be maintained and improved for forest health.
- Creation of a new Small Timberland Owner Program for landowners with fewer than 100 acres—a new timber harvest plan exemption.
- Expansion of the existing Forest Fire Prevention Pilot Program by allowing the construction of up to 600 feet of temporary roads for the purpose of treating and thinning forests.
- Improves the existing Non-Industrial Timber Management Plan and Working Forest Management Plan by clarifying that multiple land owners can work together to manage their lands and submit one plan as long as the total acres in the plan does not exceed a maximum number of acres.

Governor Newsom also took early action and assembled a strike force to lay out a strategy to reduce the number and severity of wildfires, including significant wildfire mitigation measures. CAL FIRE was directed to develop and recommend immediate, medium and long-term actions to help prevent destructive wildfires. CAL FIRE also accelerated 35 priority fuel reduction projects, encompassing 94,000 acres while acknowledging the chasm between this plan and the need.

The Governor’s 2019 budget allocated significant financial resources to mitigate the funding gap in forest management and added 393 more firefighters. The federal government instituted changes that will make it easier to reduce wildfire risk on federal lands, such as splitting fire suppression funds from forest management funds, streamlining certain small-scale forest management projects, improving collaboration with local parties, and further improving Good Neighbor Authority with state governments. The Good Neighbor Authority allows the U.S. Department of Forest Service to enter into agreements with state forestry agencies to do the critical management work to keep forests healthy and productive and promote growth in cooperative forest management.

**IMPACT ON BUSINESS**

Uncontrolled wildfires are costly. Business structures, residences of employees and business owners are at risk. Wildfires disrupt normal commerce for extended periods due to road closures, water damage, poor air quality, erosion (causing landslides), employee displacement and lack of basic amenities. Also, extended business interruptions with ensuing financial losses make it difficult for companies to rebuild their businesses.

Forest landowners suffer loss of long-term investments when their trees burn. It takes many years to grow a replacement crop, especially if owners are unable to clear the burned acres in a timely fashion due to strict forestry rules regarding salvage.

To date, the 2018 Camp Fire in Butte County is the most destructive fire in the state’s history. It burned 153,336 acres and destroyed 13,972 homes, 528 commercial structures, and 4,293 other structures. Further south, two other major fires, the Hill and Woolsey Fires, also caused considerable damage in 2018. The Woolsey Fire in Los Angeles and Ventura counties burned 96,949 acres, destroyed 1,643 structures and damaged another 364. The Hill Fire in Ventura County burned 4,531 acres, destroyed four structures and damaged two others.
Risk Management Solutions, a firm that predicts the economic impact of disasters, estimates the Camp Fire losses in property damage, automobile damage, interruption to business, and additional living expenses will cost the region between $7.5 billion to $10 billion and the Woolsey Fire losses range from $1.5 billion to $3 billion. The California Department of Insurance said that as of April 2019, insurance claims from the Camp and Woolsey fires in November 2018 already exceeded $12 billion.

The ultimate costs still are not known.

ANTICIPATED ACTIVITIES IN 2020

SB 901 included many improvements to forest management practices. It will take several years to fully implement all the changes. Legislation passed in 2019 to extend the effective time of Sustained Yield Plans, require development of a model defensible space program, and expedite completion and certification of a vegetation treatment program.

It is reasonable to expect additional legislation further easing forestry regulations to allow more salvage operations to clear the burn areas. There probably will be more attempts to expedite permitting requirements for thinning operations, clearing undergrowth and removing diseased trees on private lands to help stop rapid spreading of fires. Although SB 901 allows temporary roads, it did not relieve onerous permit or mapping requirements needed prior to approval of roads. Expect legislation to remedy that issue.

CALCHAMBER POSITION

The California Chamber of Commerce supports adequate fire prevention availability for all areas of the state, including the ability for forestland owners and timber companies to clear underbrush and other debris, as well as remove dead or dying trees. The CalChamber supports more inspections and stricter enforcement of defensible space regulations and use of ignition-resistant landscaping where applicable. SB 901 is an improvement in forestry management, but more cooperation between state and federal agencies will expedite good forest health.

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January 2020
California Consumer Privacy Act
Legislature Enacts Some Fixes, But Initiative Looms for 2020

The California Consumer Privacy Act (CCPA) is a sweeping privacy law that applies to businesses of all sizes across almost every industry. It was rushed through the legislative process in 2018 to avoid a then-pending ballot initiative, without the benefit of input from numerous crucial stakeholders. In 2019, the Governor signed several bills to fix some of the issues with the CCPA before it went into effect on January 1, 2020.

Weeks after the 2019 legislative session ended, a new initiative was filed to amend and expand the CCPA. The initiative will likely be considered by voters on the November 2020 ballot. The Attorney General also released proposed regulations for the CCPA in November 2019, adding another layer of complexity to this significant law.

PASSAGE OF CCPA IN 2018

In early 2018, a real estate developer spent about $3 million to gather enough signatures to qualify a consumer data privacy initiative for the ballot. His initiative was more than 33 pages long and had it been approved, the Legislature would have been virtually unable to amend it in the future. To avoid an expensive ballot fight, AB 375 (Chau; D-Monterey Park/Hertzberg; D-Van Nuys) was introduced and passed the Legislature in one week so the proponent could pull the initiative from the ballot. Given the time limitation, there was no opportunity for meaningful stakeholder input. The business community found itself in an untenable position: actively oppose AB 375 and risk being left with the initiative (which was far worse) or urge legislators to pass the bill and work on fixes in 2019. The business community opted to support AB 375 as the lesser of two evils.

After AB 375 passed, the business community assembled a large and diverse coalition of businesses to propose amendments to fix the numerous flaws with the workability of the CCPA and spent considerable time engaging privacy experts from around the country. Some positive changes were made in the designated cleanup bill, SB 1121 (Dodd; D-Napa). The California Chamber of Commerce actively engaged with lawmakers throughout the 2019 session to highlight and fix the worst aspects of this new and unprecedented state law, as set forth below.

WHAT THE CCPA DOES

The heart of the CCPA is the list of privacy rights it gives to California consumers. The CCPA defines a “consumer” as “a natural person who is a California resident.” Thus, a “consumer” need not have a customer relationship with a business in order to exercise rights under the CCPA. Consumers have the following CCPA rights, to be enforced by the Attorney General:

• The right to know the categories of personal information a business has collected about them and how.
• The right to access and obtain a copy of their personal information.
• The right to opt out of a business’ sale of their personal information.
• The right to request that a business delete their personal information.
• The right to not be treated differently by a business for exercising their rights under the CCPA.

The CCPA also created a private right of action that massively expands the liability of a business that has been the victim of a data breach. With this private right of action, no proof of injury is required, and a consumer can recover minimum statutory damages of $100 per person, per incident, and a maximum of $750. This unchecked liability will lead to a barrage of shake-down lawsuits, as companies facing such substantial liability will be leveraged into immediate settlement, regardless of the strength of their legal defense.

IS YOUR BUSINESS SUBJECT TO THE CCPA?
Currently, the CCPA applies to any company doing business in California that collects personal information about California consumers and meets at least one of the following criteria:
• Has gross annual revenue exceeding $25 million.
• Annually buys, sells or, for commercial purposes, receives or shares personal information of at least 50,000 or more consumers, households, or devices.
• Derives 50% or more of its annual revenues from selling consumers’ personal information (that is, data broker companies).

The CCPA does not apply just to “Big Tech” companies. The law does apply to large companies and data brokers, but there is a third, incredibly broad category of businesses—many of them small businesses—often left out of the discussions: any business that “alone or in combination, annually buys, receives for the business’s commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices.”

Personal information for 50,000 consumers sounds like a high number, but it is not given that the CCPA broadly defines “personal information.” This definition includes, for example, IP addresses (a numeric designation that identifies a computer’s location on the internet), and the burdensome requirements of the CCPA apply to any business that merely “receives” personal information as defined by the CCPA.

Thus, the CCPA applies to businesses with 50,000 yearly website visitors, and this includes ad-supported blogs. It’s not a high number. If a business has an average of 137 unique online visitors per day over the course of one year, it will hit the threshold. Businesses that receive 50,000 sales leads in a year must comply with the CCPA, and the same goes for businesses that receive 50,000 consumers’ credit card numbers while conducting sales transactions, as well as any businesses that have some combination of consumer personal information. For example, if 25,000 consumers visit a business’s website in a year and that business conducts sales transactions with 25,000 different consumers—that company must comply with the CCPA.

The International Association of Privacy Professionals estimates that more than 500,000 businesses are regulated by the CCPA, “the vast majority of which are small-to-medium-sized businesses.” Think of all the small businesses that easily conduct an average of 137 transactions per day—or approximately 12 transactions per hour in a 12-hour day—convenience stores, coffee shops, restaurants, tourist kiosks, etc. The CCPA treats these small businesses the same as large tech companies.

CHANGES TO CCPA MADE IN 2019
• Definition of “Personal Information” and Publicly Available Information. Before 2019, essentially every piece of data about a person could be classified as “personal information” under the CCPA. Most people think of personal information as a name, birthday, or Social Security number—that could identify someone. The CCPA originally defined “personal information” far more broadly as “information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.”

AB 874 (Irwin; D-Thousand Oaks) was signed by the Governor in October 2019 and adds a reasonableness standard to the definition of personal information, thus correcting a major drafting error. Before this fix, any information that could in theory be associated with a consumer or household was defined as personal information. For example, if a customer purchased items at a physical store and then made a CCPA request, that store would likely have been required to search security camera footage from the dates of those purchases to find where the customer appears on it—and provide that footage back to the customer or delete it—even if the store never linked that security camera footage back to anyone. Because the footage may have been capable of being associated with a consumer (but not reasonably capable), the store arguably would have been required to do so. This amendment limits the scope of information the company will have to search from when a consumer requests their personal information.

AB 874 also provided a fix to an unworkable—and possibly
unconstitutional—effect of the definition of “publicly available” information. Under the original CCPA, personal information did not include information that is lawfully made available by all levels of government as long as that information was being utilized for a purpose consistent with the purpose for which the information was maintained by the government. This limitation was concerning for businesses as determining whether the use of public information was consistent or compatible with the government purposes would have been anyone’s guess. It also presented some potential problems under the First Amendment. AB 874 removed this potentially unconstitutional limitation on the use of publicly available information.

- **Employee Data Exempt from CCPA Until January 1, 2021.** Because the CCPA definition of “personal information” was so broad, it was unclear whether employee-related information fell under the definition. The CalChamber argued that applying the CCPA to employee data was problematic for at least three reasons. First, the cost for businesses to operationalize the CCPA for employees would be exorbitant. Second, the law was designed for consumers, not employees. Application to employees could mean that in response to an employee’s access request, a business would have to scan every paper document associated with the employee, gather all the employee’s internet search history, produce all of the employee’s email archives, and much more. The employer would have been required to produce the information even if the business did not plan to use the information. Third, there were unintended consequences, such as allowing an employee to delete records regarding the employee’s objectionable conduct at work, such as engagement in sexual harassment.

As a temporary fix, AB 25 (Chau; D-Monterey Park) exempts from the CCPA, until January 2021, personal information collected by a business in certain limited employment-related contexts, including: job applicant information, emergency contact information, and information retained for the administration of benefits. Employers, however, are still required on January 1, 2020, to provide notice under the CCPA to employeest regarding personal information being collected.

- **Warranty and Recall Data.** A core consumer right under the CCPA is the right to request that a business delete their personal information. Before 2019, a consumer could make a data delete request and then consequently not receive important safety and recall notices from a vehicle manufacturer. AB 1146 (Berman; D-Palo Alto) provided a fix to this problem by exempting from the right to opt-out vehicle or ownership information between a car dealer and manufacturer.

- **Business to Business (B2B) Exemption.** The issue of data exchanged between two businesses also was resolved temporarily in 2019. Before the 2019 amendment, data exchanged between businesses during transactions would have been subject to the CCPA, thereby allowing a former employee who signed a contract or an invoice, to request deletion of that information. AB 1355 (Chau; D-Monterey Park) addressed this issue by exempting communications between businesses that are providing services or products to each other as well as the memorialization of such transactions. This exemption sunsets on January 1, 2021.

The bill further addressed a drafting error by clarifying that the definition of “personal information” does not include deidentified or aggregate data, and a technical fix to clarify that encrypted or redacted data is exempt from the CCPA’s private right of action.

- **1-800 Requirement Scrapped for Online Businesses.** AB 1564 (Berman; D-Palo Alto) removed the strict requirement that businesses allow consumers to make access requests via a toll-free telephone number. The bill allows online businesses to provide other methods for access requests. The toll-free requirement was problematic in settings where consumers interacted with a business on a website or app.

- **Private Right of Action Expanded.** Under AB 1130 (Levine; D-San Rafael), personal information will now include unique biometric data and government-issued identification numbers (for example, passport numbers). Expanding the definition of personal information to include these categories also expands the data upon which a trial attorney can pursue a class action lawsuit against a company in the event of a breach. The CCPA’s private right of action already creates significant class action litigation risk for data breaches.

**ATTORNEY GENERAL RELEASES CCPA REGULATIONS**

The Attorney General released his CCPA regulatory package in October 2019, with public comments being accepted until December 6, 2019. As this article was being written, the CalChamber had submitted written comments to the Attorney General, seeking clarification or amendments on several issues, including but not limited to, the “initial notice” to the consumer that must be provided at or before the point of collection of personal information. The CCPA requires this notice to tell the consumer which categories of personal information will be collected and for what purpose it will be used. The draft regulations require businesses to provide a notice and obtain explicit consent from the consumer before using any category of personal
information for an additional business or commercial purpose. The regulations also impose new requirements on what must be included in business privacy policies.

Additionally, the regulations appear to depart from the CCPA by adding new details on how businesses must respond to consumer “right to know” and “right to delete” requests, as well as how businesses must treat “user-enabled privacy controls” (for example, a browser plugin or privacy control) as a valid opt-out request. The regulations will be finalized in spring 2020 and effective in July 2020.

A report prepared for the nonpartisan California Department of Finance has keyed the upcoming CCPA rules as a “major regulation” with direct compliance costs estimated to be between $4 million and $16 million over the next decade (2020–30). But this estimate covers only costs associated with the CCPA regulations. Overall compliance costs are much higher.

The total cost of initial CCPA compliance, the report adds, is approximately $55 billion. Put another way, $55 billion is equivalent to approximately 1.8% of California’s gross state product in 2018. As mentioned above, small businesses also will be subject to the CCPA’s mandates and costs. The report notes that smaller firms are likely to face disproportionally higher compliance costs relative to larger companies. Compliance and overall costs are unlikely to remain static because, in part, an initiative to strengthen the CCPA could be coming in 2020.

2020 INITIATIVE COULD STRENGTHEN CCPA EVEN FURTHER
In September 2019, a new privacy initiative was filed that seeks to expand the CCPA. The initiative attempts to expand the CCPA in some of the following ways:

- A broad definition of “sensitive personal information.”
- Limitation on targeted advertising.
- Triple fines for violations involving personal information of consumers under the age of 16.
- Required disclosures of a business’s automated decision-making technology, which could potentially mandate the disclosure of trade secrets.
- The creation of a new state agency to enforce the CCPA.

As of the date of this publication, the proponent was still collecting signatures on the new initiative to qualify it for the November 2020 ballot.

CALCHAMBER POSITION
The CalChamber appreciates and understands the need and desire for consumer privacy. However, with anything, there must be balance. The CCPA, even after amendments in 2019, will still create significant challenges for businesses of all sizes to comply with and operationalize. Additionally, once the CCPA is implemented, there may be unintended consequences to consumers with regard to access to data, programs, apps, and advertising. With the pending initiative and regulations, this issue will remain a top priority for the Legislature to consider and review in 2020.

Article written by Gino Folchi, CalChamber law clerk.

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Single-Use Packaging
Balancing Economic Practicality with Perceived Environmental Benefits

Packaging serves several functions in modern economies beyond merely distinguishing one brand from its competitors. Packaging also protects products from damage, extends product shelf lives, provides more efficient means to move goods and allows companies to communicate directly with and provide important product information to customers. While packaging provides several critical functions in the market economy, when otherwise recyclable or compostable packaging is not properly disposed of, it becomes waste or pollution that could harm the natural environment.

BACKGROUND
In 2011, the California Legislature passed and Governor Edmund G. Brown Jr. signed AB 341 (Chesbro; D-North Coast; Chapter 476, Statutes of 2011), a law establishing a statewide 75% recycling goal through source reduction, recycling, and composting by 2020 and requiring all businesses and public entities that generate 4 cubic yards or more of waste per week to have a recycling program in place. In addition, multi-family apartments with five or more units are also required to form a recycling program.

Eight years later, California has failed to reach its AB 341 waste diversion goals. To reach the 75% target goal, California would need to reduce an additional 26 million tons annually.

In 2011, China shocked many in the western world by announcing its National Sword policy banning the imports of 24 categories of scrap materials, including low-grade plastics and unsorted mixed paper, and setting strict 0.5% contamination standards for allowable bales of recyclable material. China’s National Sword policy substantially disrupted California’s recycling markets because for decades, the state relied heavily on China to purchase much of California’s recyclable commodities. California exported approximately two-thirds of all curbside collected material to China and other foreign entities. In the last three years, exported recyclables have decreased in California by 1.8 million tons.

This new paradigm in the international recycling marketplace lowered the worldwide price of many scrap materials. What was once a net positive revenue stream for many California local jurisdictions quickly became a significant cost. In response, local jurisdictions raised curbside rates to counteract the declining international demand and value for certain scrap. Local jurisdictions cited China’s National Sword policy, rising labor and fuel costs, new infrastructure and compliance with SB 1383 (Lara; D-Bell Gardens; Chapter 395, Statutes of 2016), as the basis for having to raise curbside rates.

SB 1383 established targets to achieve a 50% reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020, and a 75% reduction by 2025. The law provided CalRecycle the authority to adopt regulations setting stringent organic waste disposal reduction targets and to establish...
PRODUCT REGULATION/RECYCLING

additional reduction targets for edible food. CalRecycle estimated the cost to implement and build the infrastructure necessary to meet the mandates in SB 1383 would be approximately $20.9 billion.

**SB 54 / AB 1080**

The Legislature responded in 2019 with the introduction of SB 54 (Allen; D-Santa Monica) and AB 1080 (Gonzalez; D-San Diego), two identical pieces of legislation that mandate unprecedented recycling, source reduction and composting rates for single-use packaging and service ware manufacturers, distributors and retailers.

SB 54 and AB 1080, titled the “California Circular Economy and Plastic Pollution Reduction Act,” were introduced as identical bills containing a plan to reduce and recycle 75% of plastics in California by 2030. Through the legislative process, the bills were amended to focus only on single-use plastic packaging and single-use service ware instead of all single-use plastic products. The bills were further amended to broaden the scope of what is regulated from single-use plastic packaging to all single-use packaging of any material type, rendering the bill material neutral.

The bills contain three primary mandates on manufacturers. First, all single-use packaging and single-use service ware sold or distributed in California must be recyclable or compostable by January 1, 2030. Second, all single-use packaging and single-use service ware sold or distributed in California must be recycled by 75% by 2030. Finally, all single-use packaging and single-use service ware sold or distributed in California must be source reduced to the maximum extent feasible.

The term “single-use packaging” is defined broadly to include all packaging material types, unless otherwise specified, that are placed into the California market (for example, sold, distributed, imported, etc.) and not intended to be refilled or reused by the manufacturer. It includes primary packaging (the material used to hold the product, such as an aluminum soda can), as well as secondary packaging (the material used to contain the primary packaging, such as a cardboard box for soda cans) and tertiary packaging (the material used for bulk handling, such as a palletized load).

The most onerous mandates on the regulated community are the mandated recycling rates and dates in the bills. SB 54 and AB 1080 require CalRecycle to develop regulations by January 1, 2024 requiring producers of single-use packaging and single-use service ware to meet the following phased in recycling rates:

- Not less than 30% for packaging and products manufactured on or after January 1, 2026.
- Not less than 40% for packaging and products manufactured on or after January 1, 2028.
- Not less than 75% for packaging and products manufactured on or after January 1, 2030.

Other requirements in the bill include providing CalRecycle with broad authority to establish Extended Producer Responsibility (EPR) programs and minimum recycled content requirements; requiring regulated entities to register with CalRecycle and report any data that the department “deems necessary” under the penalty of perjury and conditions of sale prohibiting retailers and wholesalers from offering for sale any packaging or products that are not in compliance.

For companies not in compliance, the bill offers the regulated entities a compliance pathway through “Corrective Action Plans” that may include actions such as shifting production away from packaging and product categories that do not meet the recycling rates, reaching a minimum content standard set by the department, or establishing a take-back system or deposit fee system for single-use packaging or priority single-use products that would increase the recycling rate of the material. For regulated entities that fail to enter into or comply with an agreed upon Corrective Action Plan, SB 54 and AB 1080 provide CalRecycle with authority to issue fines of up to $50,000 per day.

SB 54 and AB 1080 failed to pass off the Assembly and Senate Floors, respectively. The bills are anticipated to be brought back during the 2020 legislative session.

**LACK OF INFRASTRUCTURE AND FUNDING**

For decades, California’s reliance on international markets allowed it to operate with limited recycling infrastructure. The limited infrastructure for managing and recycling material was built largely based on the Beverage Container Recycling Program and each year shrinks as more and more California beverage container recycling centers close. For example, in 2019, California’s largest recycling redemption center operator shut down 284 facilities and laid off 750 employees. When the value of certain scrap materials on the international market collapsed and local jurisdictions and businesses struggled to turn a profit, the repercussions of an underdeveloped recycling infrastructure became glaringly apparent. Without downstream outlets for many otherwise recyclable materials, companies in California began stockpiling scrap materials as they sought to find acceptable markets for the material.

Tens of billions of dollars would be needed to build enough recycling infrastructure to process and divert 75% of all single-use material types. CalRecycle’s Standardized Regulatory Impact
Assessment (SRIA) calculated the estimated direct statewide costs to develop necessary infrastructure to process organic waste to be approximately $20.9 billion. With the scope of SB 54 and AB 1080 and the universe of material types implicated, the cost to build new recycling infrastructure may even dwarf CalRecycle’s estimates for short-lived climate pollutants.

Notably, neither SB 54 nor AB 1080 provide any funding mechanism nor direction to CalRecycle regarding new infrastructure. Without that funding and without permit streamlining for these facilities, the regulated entities will likely be unable to comply with the recycling rate mandate. Nevertheless, any funding to build recycling infrastructure would likely be provided through a new tax on single-use packaging. Although a fraction of a penny on all single-use packaging may appear to some to be nominal, the aggregation of fees across California’s massive entire economy would increase costs of living in California.

**NO STATEWIDE UNIFORMITY IN RECYCLING**

California is home to 482 local jurisdictions, all of which have local control over their waste management systems. Although many local jurisdictions offer single-stream curbside collection of recyclables, some do not offer any curbside recycling services. An increasing number of local jurisdictions also are passing ordinances banning certain materials, like expanded polystyrene and single-use plastic food ware.

The patchwork of local ordinances must be unified across the state. Companies can design for recyclability and compostability, but they cannot design packaging to comply with 482 different local jurisdiction ordinances. SB 54 and AB 1080 must standardize requirements of local jurisdictions throughout the state so that manufacturers can design for compliance and meet the 75% recycling rate.

**CONSUMER BEHAVIOR AND CONTAMINATION**

Manufacturers of single-use packaging lose autonomy over their product and packaging once the customer takes possession, making compliance with SB 54 and AB 1080 uniquely daunting. For manufacturers selling into California and wanting to comply with these bills, a number of steps entirely outside the manufacturers’ control must occur.

For example, manufacturers would have to rely on the local jurisdictions to provide curbside collection of all the materials, rely on the consumer to dispose of the material properly, rely on the consumer not to contaminate the material, and rely on the haulers to provide a material recovery facility. If any of these steps break down, manufacturers cannot comply. SB 54 and AB 1080 do not address California’s known contamination problem nor provide any consumer education component.

**CALCHAMBER POSITION**

The California Chamber of Commerce supports economically practical recycling programs that the regulated community can comply with and which yield environmental benefits. In making these statewide policy decisions about the management of California’s waste, the Legislature must balance a plethora of policy impacts on companies and consumers against the perceived environmental benefits. The CalChamber supports maintaining legislative oversight to ensure that any proposed regulations are balanced properly against other state goals and policies.
Proposition 65
Reforms to End Shakedown Lawsuits Can Improve How Public Is Warned

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, is the most far-reaching consumer “right to know” law in the nation. Proposition 65 requires California businesses with 10 or more employees to provide a clear and reasonable warning before knowingly and intentionally exposing individuals to chemicals known to the state to cause cancer and/or reproductive toxicity.

Unfortunately, the positive aspects of Proposition 65 have been overshadowed by some attorneys who use the law solely for personal financial gain. Proposition 65 contains a private right of action provision, which allows private persons or organizations to bring actions against alleged violators of Proposition 65 “in the public interest.” This has led to the growth of a multimillion-dollar cottage industry of “citizen enforcers” who often enrich themselves by using the statute’s warning label requirements as an excuse to file 60-day notices and lawsuits to exact settlements.

The business community’s concern regarding Proposition 65 litigation abuse is well-founded and supported by statistical data provided by the California Attorney General’s Office in its Annual Summary of Proposition 65 Settlements. The summary shows that the volume of settlements and settlement amounts is consistently rising each year. In 2018, there were a total of 829 in-court settlements amounting to $35,169,924, compared to just 352 settlements amounting to $17,409,756 in 2013.

**BASIC REQUIREMENTS OF PROPOSITION 65**

Although Proposition 65 also prohibits listed chemicals from being discharged to sources of drinking water, the law is best known for its broadly crafted warning requirement. In order to comply with Proposition 65’s warning requirements, a business must follow three basic steps:

- **Assess whether it releases, or its products contain, Proposition 65-listed chemicals;**
- **Determine whether individuals—consumers or bystanders—may be exposed to a listed chemical at levels that necessitate a warning (that is, “when” to warn); and**
- **Determine what the warning must say, if a warning is required (that is, “how” to warn).**

California allows a business to use a chemical without providing warning as long as exposure does not exceed a specified threshold level. To be clear, the mere presence of a Proposition 65-listed chemical does not trigger the warning requirement; instead, the threshold question is whether the chemical would expose persons at levels that would require a warning.

Of the approximately 900 substances that are on the list of chemicals known to cause cancer, birth defects or other reproductive harm, the Office of Environmental Health Hazard Assessment (OEHHA) has developed threshold levels for about

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**PROPOSITION 65 SETTLEMENTS**

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Source: California Attorney General
300 to guide businesses in determining whether a warning is necessary. If the chemical is at or below the levels listed, the business has a “safe harbor” from providing a warning.

**RECENT MAJOR REGULATORY WIN FOR BUSINESS COMMUNITY**
For years, the OEHHA has proposed regulatory amendment packages often described by the agency as “merely clarifying existing law.” From the perspective of the business community, these “clarifying” amendments have consistently undermined the protections provided for businesses in the seminal Proposition 65 decision, *Environmental Law Foundation v Beech-Nut*, et al. The business community has pushed back successfully against these proposed amendments in every instance where OEHHA’s proposed regulations directly undermine and contravene the *Beech-Nut* holdings.

The Proposition 65 claims in *Beech-Nut* involved alleged failure to warn of exposure to lead in packaged fruits, vegetables and fruit juice products. In short, the *Beech-Nut* court held that Proposition 65 regulations do not require exposures to be assessed based on a single day, that the Proposition 65 statute and regulations support averaging for Maximum Allowable Dose Levels (MADLs) for Chemicals Causing Reproductive Toxicity determinations, and that the opinion to the contrary of the California Attorney General’s expert was not supported by any authorized OEHHA policy.

The *Beech-Nut* ruling provided businesses with clarity concerning applicable standards for determining whether potential exposures to Proposition 65 listed chemicals are below the “safe harbor,” or below the No Significant Risk Levels (NSRLs) for carcinogens or MADL for chemicals without an OEHHA safe harbor level. In sum, the *Beech-Nut* decision has protected businesses from plaintiffs seeking to impose Proposition 65 warning requirements for trace levels of chemicals that pose no significant risk from exposure.

In the waning days of the administration of Governor Edmund G. Brown Jr., on October 5, 2018, the agency instigated formal rulemaking and proposed two amendments to Sections 25821 (a) and (c) Level of Exposure to Chemicals Causing Reproductive Toxicity: Calculating Intake by the Average Consumer of a Product.

OEHHA’s proposals threatened the law’s longstanding average exposure-based approach to warnings—without justification and with significant cost and risk to California businesses. From the business community’s perspective, these two proposed amendments did not “clarify” existing regulations but instead presented entirely new regulatory requirements that had a direct impact on businesses’ Proposition 65 compliance efforts, as well as placing additional obstacles to a defendant meeting its burden of proof in litigation.

- The first amendment, “the Average Concentration Proposal” for food products, solved no actual problem that OEHHA could identify, yet would have significantly affected manufacturers and agricultural growers. To evaluate exposure levels under Proposition 65, concentration data—just like consumption data—must reflect what is typical. The Average Concentration Proposal would have effectively excluded cross manufacturing facility averaging from a case-specific consideration of the data, thereby distorting the determination of the reasonably anticipated rate of exposure and significantly raising the burden on defendants when receiving a 60-day notice.
- The second proposed amendment, “the Arithmetic Mean Proposal,” would have established an assumption that the arithmetic mean statistical method shall be used to calculate the rate of intake or exposure for average users of all consumer products unless more specific and scientifically appropriate data are available. This proposal was inconsistent with sound principles of statistics and data evaluation, where the appropriate measure of average depends on the facts and data in specific cases and is not amenable to a one-size-fits-all proposal.

The California Chamber of Commerce, along with coalition partners, submitted multiple comment letters challenging the agency’s proposed amendments. On July 5, 2019, OEHHA abandoned the Arithmetic Mean Proposal and revised the proposed language for the Average Concentration Proposal. The CalChamber-led coalition provided a second set of comments again challenging OEHHA’s justification for the revised Average Concentration Proposal. On September 9, 2019, OEHHA officially rescinded the Average Concentration Proposal. In doing so, the Agency put to rest (for now) these two issues that if adopted, would have upended *Beech-Nut* and significantly increased production costs, testing costs, litigation costs and the number of required Proposition 65 warnings.

**CALCHAMBER LAWSUIT AGAINST CALIFORNIA ATTORNEY GENERAL**
On behalf of its members, the CalChamber filed a lawsuit on October 7, 2019 to stop the multitude of Proposition 65 warnings for the presence of acrylamide in food.

The lawsuit filed against California Attorney General Xavier Becerra, who is responsible for enforcing Proposition 65, asks the U.S. District Court, Eastern District of California to stop
the Attorney General and private enforcers from proceeding with Proposition 65 litigation over acrylamide in food.

Currently, Proposition 65 requires any business that produces, distributes or sells food products containing acrylamide to provide a warning unless the business can prove in court, with scientific evidence, that the level poses no significant risk of cancer. Many businesses have chosen to forgo the expense and uncertainty of litigation and settled with private enforcers while providing warnings for acrylamide.

The CalChamber’s complaint argues that these warnings are misleading because “neither OEHHA nor any other governmental entity has determined that acrylamide is a known human carcinogen....”

The lawsuit has two goals: to protect companies’ First Amendment rights while also protecting the rights of consumers to receive truthful information.

The CalChamber argues that companies should not be forced to provide unsubstantiated and highly controversial acrylamide warnings or face potentially costly enforcement actions initiated by the Attorney General or private enforcers. Moreover, the CalChamber argues, by mandating warnings for acrylamide in food, Proposition 65 is forcing individuals and businesses to say something false and misleading.

Acrylamide is not a chemical that is added intentionally to food products. Rather, it forms naturally in many types of foods when they are cooked at high temperatures, whether at home, in a restaurant or in a factory. Common sources of acrylamide in the diet (and subjects of Proposition 65 litigation) include baked goods, breakfast cereal, black ripe olives, coffee, grilled asparagus, French fries, peanut butter, potato chips and roasted nuts.

To date, more than 560 60-day notices have been filed for alleged violations of the Proposition 65 warning requirement for alleged exposures to acrylamide.

More than 500 of these 60-day notices relate to acrylamide in food products. The CalChamber’s lawsuit seeks to limit this recent trend of shakedown lawsuits with regard to acrylamide that are exploiting Proposition 65 for financial gain, exacerbating overwarnings, and raising costs on food products in California.

**CalChamber Position**

The CalChamber supports the underlying intent of Proposition 65, which is to ensure that consumers can make reasoned and informed choices when they purchase consumer products or enter certain establishments. Unfortunately, the intent of Proposition 65 has been undermined by ever-increasing attempts to use the law solely for personal profit, which has exploded into a million-dollar cottage industry. For this reason, the CalChamber ardently supports reforms to end frivolous, “shakedown” lawsuits, improve how the public is warned about dangerous chemicals, and strengthen the scientific basis for warning levels and initial listings.

Although achieving these goals legislatively has proven nearly impossible, the CalChamber remains committed to initiating or supporting legislative efforts that seek to restore the original intent of the law. Whether reforms are proposed in the legislative or regulatory forum, the CalChamber will continue to engage policy makers and OEHHA to ensure that any proposed changes to Proposition 65 are in line with the original intent of the statute.

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Parcel Taxes

Two-Thirds Vote Threshold Guards Against Discriminatory Taxation

In 1978, California voters approved the landmark initiative, Proposition 13. Although Proposition 13’s primary focus was to reduce and stabilize out-of-control property taxes for homeowners, it also prohibited school districts from raising property taxes based upon property value (for example, ad valorem taxes). Earlier, the California Supreme Court’s 1971 decision in Serrano v. Priest wrote local school boards and voters out of school finance decisions and placed the state Legislature firmly in control of school appropriations. Thus, when local school communities would like to financially supplement their schools’ basic operations, the parcel tax becomes their stand-alone option.

A parcel tax is a levy usually based on either a flat per-parcel charge or a charge per square foot of parcel size or improvement. A parcel tax cannot be based on value or use. In 2019, parcel and property tax legislation reared its head in three notable forms.

• First, the City of Los Angeles attempted to advance a measure that would have assessed a $0.16 per square foot of interior space tax on residential and commercial properties. The measure was rejected.

• Second, SCA 5 was offered in an attempt to lower the voter threshold from two-thirds to 55% to ease the burden of passing a school parcel tax. This also failed.

• In that same vein, the third instance of property tax legislation making an appearance in 2019 was ACA 1. ACA 1 unsuccessfully proposed that voters decide whether property tax increases for affordable housing and infrastructure could be approved by just a 55% vote rather than the two-thirds threshold.

These failed attempts to institute and augment parcel and property taxes seem to portend that 2020 will be another year where government employee unions and social advocates endeavor to fund their agendas by assessing taxes upon property owners.

PARCEL TAXES MUST PASS BY A TWO-THIRDS THRESHOLD

Proposition 13 requires approval by two-thirds of voters for any tax levied by local governments and designated for a special purpose, like schools, parks or roads, and a majority vote for general taxes. Parcel taxes generally are levied by a local government for a specific purpose and therefore require approval of two-thirds of voters.

Parcel taxes have passed in more than half of the elections held since 1983, but the districts that passed them represent less than 10% of the student population of California. According to Michael Coleman, creator of the online California Local Government Finance Almanac and principal fiscal policy adviser to the League of California Cities, voters historically have passed 56% of parcel taxes for school funding. In June 2018, 10 out of 11 parcel taxes were approved, a much higher rate than average. Given the historical data, as well as recent voter approval, the push to lower the voter threshold is unwarranted.

EFFORTS TO REDUCE THE TAX ENACTMENT THRESHOLD TO 55%

• SCA 5. Most recently, SCA 5 aimed to amend the California Constitution and reduce the voter approval threshold from two-thirds to 55% for parcel taxes proposed by school districts and community college districts to fund education. The proposed legislation did not move out of the Senate.

The business community opposed SCA 5 and the California Chamber of Commerce tagged it as a job killer, as it would have facilitated a discriminatory parcel tax directed at commercial and industrial properties within local jurisdictions. This sort of property discrimination was on full display in Los Angeles last year. Specifically, Los Angeles’ proposed measure would have imposed a tax of $0.16 per square foot of interior square footage on residential and commercial property for the next 12 years. This proposal would have had a disproportionate effect
on commercial property because those properties generally have larger square footage than a private residence.

For instance, the owner of a 2,000 square-foot house would have paid $320 a year while a 25,000 square-foot warehouse owner would have paid $4,000. Los Angeles voters spoke loud and clear with the measure winning only 45.68% of the vote and 54.32% voting against it. This margin of loss was more than 20 percentage points below the two-thirds majority the parcel tax measure needed for passage and the measure would have failed even if the threshold was 55%.

• ACA 1. In 2019, ACA 1 was another unsuccessful bid aimed at reducing the voter threshold for tax enactments from two-thirds to 55%. Rather than addressing parcel taxes for school funding, ACA 1 focused on increasing property taxes to fund affordable housing and infrastructure. ACA 1 fell short of the votes needed to pass the Assembly.

Although ACA 1 was intended to address affordable housing, it would have increased housing costs for millions of Californians. This measure provided increased tax authority for every government agency in California—not just cities and counties, but thousands of potentially overlapping special districts. ACA 1’s consequences would have been an uncoordinated and ill-advised layering of new taxes from multiple special districts levied on a single taxpayer. A recent report from the California Association of Realtors concluded that only 30% of California households could afford to buy an existing, median-priced home. ACA 1 would have reduced that percentage even further.

ACA 1 also sought to amend Proposition 13 by lowering the voter threshold for long-term indebtedness by increasing ad valorem property taxes. These debt obligations backed by an increased property tax often are in place for as long as 30 years. Obligating taxpayers to an increased tax rate for such a long period should require a much stronger consensus by voters. For this reason, the two-thirds voter threshold for general obligation bonds has been in place for well over a century.

CALCHAMBER POSITION
The CalChamber is sensitive to the financial challenges facing many local governments and school districts. However, permitting a lower vote threshold for parcel taxes would make it easier for local governments to impose targeted, discriminatory taxes against businesses. The current two-thirds vote requirement for parcel taxes provides a mechanism by which voters still can approve tax increases while protecting the interests of a small minority of taxpayers. Any change in the vote threshold for parcel taxes must be considered only in the context of providing continuing protections against discriminatory taxation.

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Split Roll Battle
Proposition 13 Property Tax Protections Focus of Ballot Challenge in 2020

Since voters reduced California property taxes with Proposition 13 in 1978, multiple factions have attempted to roll back the reform and boost property tax collections. Government labor unions and advocacy organizations are aiming for the 2020 general election to repeal many of Proposition 13’s protections and increase taxes on business properties, called a “split roll,” to support their priorities. Because a split roll property tax would be so damaging to the state’s small businesses and the investment climate, the initiative will be a central feature of the 2020 political debate.

BACKGROUND ON PROPOSITION 13
Proposition 13 has been the law for more than 40 years. In 1978, property values were soaring and so were their corresponding property taxes. There was no limit to how high an assessor could increase a property’s value in any given year. Between 1972 and 1977, home prices in Southern California doubled. Even if tax rates didn’t change, property tax bills also doubled. Many taxpayers could not afford their ever-increasing property taxes and feared losing their homes.

Proposition 13 brought a halt to all that—limiting total taxes to 1% of the property’s value, and any increases to a maximum of 2% per year. California voters passed the constitutional amendment by a nearly 2 to 1 margin, and solidified property tax reasonableness and predictability.

PROPOSITION 13 AMENDMENTS TO STATE CONSTITUTION
KEEP PROPERTY TAXES MANAGEABLE AND PREDICTABLE
Proposition 13 required that all categories of real property on the local assessment roll be assessed at the same basic tax rate and under the same valuation standard. It did not distinguish among residential, commercial, industrial, agricultural, or any other type of property.

Additionally, it capped local property tax rates at 1% of the property’s assessed value—based on the market value as of the date of the most recent change in ownership or new construction. Proposition 13 capped property tax increases at 2% per year. This means that property taxes are pegged to the property’s original purchase price, plus improvements, not what the property is currently worth.

When a property is sold, it is reassessed at its new purchase price. It is then taxed at a rate of 1% of that new value, and from then on, Proposition 13’s tax limits apply until it is sold again. These protections provide stability and predictability to both property owners and government coffers—protecting both from very high or very low reassessed property values each year.

Furthermore, Proposition 13 required any state tax to be approved with a two-thirds vote of both houses of the Legislature. It required approval by two-thirds of voters for any tax levied by local governments that was designated for a special purpose, like parks or roads.

WHAT IS SPLIT ROLL?
A tax roll is the official list of all the properties to be taxed. “Split roll” means applying a different tax formula, either tax rate, reassessment frequency, or vote requirement, to commercial and industrial properties than that applied to residential properties. Proponents of a split roll would remove some of the protections of Proposition 13 from nonresidential properties in order to raise taxes.

The idea of a split roll has been rejected consistently since the passage of Proposition 13. Over the last few decades there have been numerous legislative proposals to present a split roll to the voters, but none ever reached the ballot. A split roll ballot measure in 1992 was defeated soundly.

SPLIT ROLL BALLOT INITIATIVE
The California Schools and Local Community Funding Act of 2018—an initiative proposal for a split roll property tax—is a
constitutional amendment that has qualified for the November 2020 ballot. On August 13, 2019, however, proponents of the initiative announced that the campaign would collect signatures for a revised version of the proposal to appear on the ballot. Even though they acknowledged the original measure was flawed, proponents refused to remove the already-qualified measure from the ballot pending qualification of the new measure. The deadline to gather signatures will be mid-April 2020.

Opposition to a split roll property tax is a fundamental concern for small business owners, commercial property owners, and industrial and manufacturing facilities, so voters can count on a well-funded opposition campaign for education about this initiative.

KEY PROVISIONS OF INITIATIVE

• Requires all business property to be reassessed to fair market value, beginning on the 2022–2023 lien date. The Legislature may phase in this requirement over three years.
• Increases business property taxes by $7.5 billion to $12 billion a year, according to the Legislative Analyst.
• Requires reassessment of business property to fair market value every three years.
• Includes all business property, except for property used for residential (including rental) or agricultural production purposes. Mixed-use property is reassessed proportional to its commercial use.
• Exempts from full reassessment business property with an on-site business, and which is under a single ownership with no more than $3 million worth of property statewide.
• Exempts from taxation up to $500,000 of business personal property and exempts from taxation all tangible personal property of certain small businesses.
• Dedicates the proceeds of the tax increase to schools, community colleges and local governments, in proportion to what those entities currently receive in general property tax allocations. In general, schools receive about 40% of the allocation, with cities, counties and special districts splitting the rest.
• Allocates money to these entities with almost no strings attached. No money is retained for reserves and few accountability conditions are attached.
• Earmarks $1 billion a year for the costs of implementation (for example, assessor’s offices), compliance and support of existing state and local programs.

CONCERNS WITH SPLIT ROLL

• Schools’ Fiscal State of Affairs Are Unaffiliated with

Property Taxes. Schools could certainly use more money, especially to pay teachers trying to make ends meet in expensive coastal housing markets. But the story of school finance is not a lack of revenues; it is the growth of other state priorities. State support for the health care program for poor Californians, called Medi-Cal, has increased ten-fold since 1978. It is now by far the biggest single program in state government, annually consuming $100 billion in state and federal funds, and serving one in three Californians.

Additionally, pension and health care costs have hit schools especially hard. In the seven years through 2020–2021, researchers estimate the cost of teacher and staff pensions for school districts will more than triple, totaling $9 billion just to support retirement systems that are still actuarially underwater.

In the Los Angeles school district, employees (and their dependents) pay no health care premiums, have no deductibles, and have lifetime benefits. The district estimates that in two years, health and pension payments will comprise more than 37% of its general fund budget, up from 11% in 2001. In 2018, Los Angeles schools had an unfunded liability for retirees’ health benefits of $15 billion.

Additionally, two California policy changes that predated Proposition 13 have had a far greater impact on the fiscal health of schools than property tax alterations.

First was California Supreme Court’s 1971 decision in Serrano v. Priest, which wrote local school boards (and voters) out of school finance decisions and placed the state Legislature firmly in control of school appropriations. The court required “equalization” of tax effort, which led to state-imposed revenue limits for schools—essentially a narrow band of per-student revenues allowed for school districts. Sacramento—not local voters—became the locus of school revenue decisions.

Second, Governor Edmund G. Brown Jr. signed legislation in 1976 granting collective bargaining rights to school employee unions. From that day on, every major spending decision by school districts required affirmative agreement by school unions. If money equals quality, then the unions must shoulder responsibility for student performance based on their spending priorities.

• Small Businesses and Their Employees Hardest Hit.

Smaller businesses will be even more incapable of absorbing a sudden rent increase due to reassessment. Those small businesses that cannot raise prices will need to cut costs, which will include reducing employee compensation, benefits, or cutting the number of employees. Some small businesses will have to relocate or close, creating an oversupply of commercial space and higher vacancy rates, which would cause commercial property rents
and values to decline. The closing of storefronts will decrease job opportunities because of decreased economic activity.

Although the revised initiative includes a small business exemption, the split roll still would be crippling to a significant portion of businesses. The new language, for example, expands the reassessment exemption to small business owners with property valued at $3 million or less, up from the previous $2 million threshold.

According to California Taxpayers Association President Rob Gutierrez, the protections for small businesses aren’t strong enough. Because many small businesses are renters, higher property taxes on the buildings they rent space in will result in more expensive rent for them, he said. “What that translates into is higher prices for consumers and brick-and-mortar stores,” he said. “Dry cleaners, grocers, companies that cannot move, will have to find a way to pass these costs on.”

• **Split Roll Will Increase Costs for Consumers.** Faced with higher property taxes, commercial property owners with typical lease terms are likely to pass the increased costs on to their tenants. For instance, a shopping center with multiple tenants would be faced with significant increased property taxes under this pending ballot initiative, and would in turn, increase rental rates. When faced with higher rent, those tenant business owners will increase the cost of their products to offset the higher rent, meaning the split roll tax will systemically increase the cost of living.

Even though a split roll tax is not aimed at consumers, the consumers are the ones who ultimately will pay for the tax through higher prices for everyday goods and services.

Residents already are struggling with a painfully high cost of living in California. This cost encompasses some of the steepest taxes in the country, including one of the highest gas, income, and sales taxes. The Legislature just passed policies that have resulted in Californians paying 48% more for electricity than the rest of the nation. Adding a split roll tax on top of these existing costs will only exacerbate the affordability issue for many Californians.

• **Split Roll Will Hurt California’s Economy.** High taxes, mandates and regulations already make it difficult for California businesses to compete. An almost $11 billion split roll tax increase will prevent businesses from hiring new employees and, potentially, from keeping existing ones. The stability and predictability brought by Proposition 13 has allowed California businesses to compete nationally despite the high cost of doing business in this state. A split roll tax will force many to close or relocate to a state that welcomes business investment.

The Legislative Analyst’s Office (LAO) warned that if the split roll ballot initiative passes, it would likely increase the costs of many businesses operating in California and thus influence their decisions as to whether to invest further in the state or move elsewhere.

• **No Accountability Measures for New Revenue Are Included with the Initiative.** The ballot initiative does not include taxpayer protections, cost controls, accountability measures or transparency requirements. The proponents even removed a cap on administrative expenses—so government can waste this new tax money on administration and overhead with no limits or checks.

In addition, it is challenging for assessors to competently value properties. The initiative will change the assessor’s review of property from an objective standard (price of sale) to a subjective standard (assessor’s opinion of value). This will lead to arbitrary assessments, more appeals, and an increased amount of bureaucratic overhead.

• **Problem of Budget Volatility Will Be Exacerbated.** Even if properly administered, tax assessments will follow the highs and lows of California’s real estate market—leading to more volatility. During recessions, this could lead to a significant reduction in revenue. For example, in 2008–2009, commercial property values declined by about 35% due to the economic recession.

These wild value swings are what led to the passage of Proposition 13 in the first place. Proposition 13 stabilized the flow of property tax revenue by locking in acquisition values and allowing these values to increase slowly from year to year.

• **Massive Additional Revenue Not Necessary.** California taxpayers have remitted a mountain of state and local taxes since Proposition 13’s inception—more than $240 billion this year alone. Next year, Governor Gavin Newsom anticipates a budget surplus of $21 billion.

Since Proposition 13 passed in 1978, per capita state and local taxes, adjusted for inflation, have increased by 55%. That’s the equivalent of $90 billion in new spending even after adding another 17 million residents and the increased cost of living.

California has record-high revenues and an enormous surplus. Local government revenue is at an all-time high as well. When Proposition 13 was passed in 1978, local property tax assessments were $6 billion. Local property tax levies are now projected to have grown $19 billion over the last decade alone—from $50 billion in 2008–2009 to $69 billion in 2018–2019. A massive tax increase via the unraveling of Proposition 13’s sound protections is not warranted.
Discriminating against businesses through a split roll proposal will hurt the business community as well as employees and consumers, thereby having a negative impact on our entire economy.

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Targeted Taxes
Push for More Taxes Continues Despite State Budget Surplus

Each year, the Legislature considers proposals to increase taxes on a targeted taxpayer. These tax increases are motivated by who the taxpayer is, what the taxpayer makes, or what the taxpayer sells. Currently, Californians are saddled with a slew of taxes that have one common denominator: the taxes are, typically, the highest in the country. Since raising taxes on individual voters is phenomenally unpopular, especially in an election year, targeted taxes are authored with the intent of circumventing the ire of a majority of voters. A targeted tax incurs the opposition of only a single group or industry as opposed to the entire population. Thus, proponents of targeted taxes often favor this approach when seeking increased tax revenue.

Proponents often justify targeting taxes on specific products, industries or behaviors to preclude consumption or alter consumer conduct. Look no further than California’s “sin taxes” on tobacco, alcohol and cannabis, for instance. The targeted tax is propped up with an altruistic justification because it taxes “undesirable” products and behaviors. In recent years, however, attempts to levy targeted taxes have crept into new and novel industries such as soda and pharmaceuticals.

Many of the proposed targeted taxes seek to use the revenue generated to fund publicly popular programs, such as treating drug abuse or health-related issues. To the extent targeted taxes succeed at altering consumer behavior, these taxes can be a declining revenue source. Additionally, one taxpayer should not be forced to carry the burden of funding a program that benefits the public at large. Given the state’s current $7 billion budget surplus, the need for any new tax is questionable. Despite this, there likely will be several targeted taxes introduced in 2020. Below is a list of some the most recent proposed targeted taxes considered by the Legislature.

RECENT LEGISLATION

• **Soda Tax.** In 2014, the City of Berkeley passed the nation’s first tax aimed at sugar-sweetened beverages. Since then, three other California cities—San Francisco, Oakland and Albany—have passed similar taxes. In 2018, the California Legislature preempted local governments from enacting soda taxes until 2031 in a compromise to keep off the ballot a proposal to further tighten local voter approval requirements for tax increases. Despite the preemption, sugar-sweetened beverages remain under siege.

  In 2019, the beverage industry successfully fought five bills that sought to curb soda consumption. The bills included a statewide soda tax and a health warning label on sugar-sweetened beverages. The other proposals would have banned large fountain drinks and soda sales near checkout aisles in addition to ending industry-friendly discounting and marketing programs.

  In addition, health advocacy groups launched the unsuccessful California Sugar-Sweetened Beverages Tax Initiative, campaigning to pass a statewide 2-cent-per-ounce tax on sugary drinks. Although the initiative did not qualify for the 2020 ballot, it is anticipated the Californians for Less Soda coalition will seek to reverse the 2018 law banning new local soda taxes.

  Proponents of the soda tax have attempted to demonize the sugar-sweetened beverage industry and blame it for causing various maladies, including diabetes and obesity. However, instituting a tax on sweetened beverages does not necessarily correlate to changing individuals’ choices or lifestyles. Furthermore, the American Beverage Association (ABA) has indicated it wants to work with lawmakers to reduce sugar consumption. The ABA has said it is committed to working with community leaders, legislators and public health groups on meaningful ways to reduce the sugar people get from beverages.

  • **Opioid Medication Tax.** In an effort to combat the opioid
epidemic, Assemblymember Kevin McCarty (D-Sacramento) introduced AB 1468 in 2019. The bill, deemed a job killer by the California Chamber of Commerce, seeks to impose an annual $50 million excise tax on manufacturers and wholesalers that distribute or sell opioid medications in California. Each manufacturer and wholesaler would then be required to report to the California Department of Public Health all opioid medication sold or distributed during a given fiscal year. Based on the reported information, the department then calculates the manufacturer’s or distributor’s ratable share, which is the individual portion of the collective sum of $50 million the manufacturer or distributor will be required to pay that year. The money is to be allocated to fund opioid prevention and rehabilitation programs.

This excise tax creates a significant cost increase for manufacturers that provide opioids for health care facilities, including assisted living and hospice programs. This cost increase may result in reduced workforce/distribution in California, which along with the excise tax, may ultimately increase the cost of such drugs for patients who are suffering with life-threatening diseases and illnesses, including cancer, and who need opioids the most.

- **Services Tax.** A service tax is a tax levied on service providers for certain service transactions. In reality, the service provider pays the tax and recovers the cost from the customer. Depending on the scope of the services taxed, the service tax could include services provided by lawyers, accountants, consultants, and the list goes on.

Many legislators, and even former Governor Arnold Schwarzenegger, have attempted to address budget volatility by suggesting changes to the tax system. Most recently, Senator Bob Hertzberg (D-Van Nuys) introduced SB 522 to levy a tax on services purchased by businesses. The intent was for “tax reform” or to extend the sales tax to services. This bill makes legislative findings about the need for further efforts to modernize and restructure the state’s tax system.

Over the last several years, Senator Hertzberg has introduced five bills to impose a sales tax on services in the State of California. The bills were tabbed by supporters as a vehicle to modernize California’s tax structure and curtail the state’s infamous budget volatility.

Many economists, however, view service taxes as poor fiscal policy because of their “pyramiding” effect where the tax’s costs on services are passed on and repeatedly taxed again through the production chain. These tax costs can snowball rapidly and add serious costs to end-consumers, particularly in services-intensive sectors.

Research for the California Foundation for Commerce and Education found that a 5% sales tax on business services would have the following impact:

- The average cost of a new single-family home would increase by more than $16,500;
- The average construction cost for a new school would increase by more than $17 million; and
- Costs for public infrastructure like roads and bridges would rise by 3.2%.

Although some may view targeted taxes to be more politically expedient, it turns out that California voters were not too keen on this idea. A statewide voter survey by the CalChamber after the November 2018 election found that voters by a 3 to 1 margin opposed new taxes on services like lawyers, lawn care, or automotive repair—even if applied only to businesses.

- **Oil/Severance Tax.** A severance tax is a state tax imposed on the extraction of non-renewable natural resources that are intended for consumption in other states. These natural resources include crude oil, condensate and natural gas, coalbed methane, timber, uranium, and carbon dioxide.

California has never imposed a tax on the extraction of fossil fuels. Instead, state and local taxes and fees are applied to oil and natural gas producers in California, including:

- Local ad valorem taxes on extraction equipment;
- Local ad valorem taxes on value of recoverable oil and gas in the ground;
- Personal and corporate income tax based upon profits earned in California;
- Annual regulatory fees paid to support the Division of Oil, Gas, and Geothermal Resources—renamed the California Geologic Energy Management Division (CalGEM) on January 1, 2020—in the Department of Conservation. The fees are calculated on an annual basis according to the division’s estimated annual budget and the total amount of assessable oil and gas produced in the prior year.
- Oil Spill Prevention and Administration Fee, not to exceed $0.05 per barrel, upon persons owning crude oil when it is received at a marine terminal from within the state.
- Sales tax on the equipment purchased and used to extract oil and gas.

Since 1990, at least seven severance tax bills have been proposed. Most recently, Senator Bob Wieckowski (D-Fremont) introduced SB 246, tagged as a CalChamber job killer. Under this proposal, known as the Oil Industry Levy Act, 10% of the average price/barrel of oil or 10% of the average unit of natural gas would be taxed. Collected revenue would be deposited in the state General Fund. According to the Western States Petroleum Association, California’s energy industry already pays about $42 billion in federal, state and local taxes.
Should a bill like SB 246 be passed and signed into law, it would certainly increase California consumer gas prices, which already are the highest in the nation. As of October 2019, the national average cost of gas is $2.65 per gallon—but in California, it is $4.18 per gallon.

• Tire Tax. In 2019, Assemblymember Chris Holden (D-Pasadena) introduced AB 755, the California Tire Fee: Stormwater Permit Compliance Fund. The bill, a CalChamber job killer, unfairly targeted one type of taxpayer—purchasers of tires—to fund programs to mitigate the impacts of zinc in stormwater. Specifically, AB 755 aimed to increase the California Tire Recycling Act tire fee by $1.50. This translated to an increase in the tire change fee from $1.75 per tire to $3.25 per tire. The additional revenue would have gone into the state’s Stormwater Permit Compliance Fund, created by AB 755, to pay for “competitive grants for projects and programs for municipal storm sewer system permit compliance requirements that would prevent or remediate zinc pollutants caused by tires in the state.”

Stormwater pollution is problematic; however, there are many contributors to stormwater pollution other than tires. Specifically, in the case of zinc pollutants, zinc can appear in stormwater due to galvanized metal surfaces, including roofs, fences, gutters and downspouts, light poles, steps, and storm sewers; motor oil and hydraulic fluid exposed on the ground; certain emissions; moss control herbicides; certain types of paints; and wood preservatives.

• CEO Compensation/Corporate Tax. Senator Nancy Skinner (D-Berkeley) proposed one of the steepest tax increases ever contemplated in California when she introduced SB 37, another CalChamber job killer, in 2019. Based upon the proposed legislation, for certain companies, the bill would have increased California’s corporate tax rate—already one of the highest in the nation—to 22.26%. This amounts to a staggering increase of about 150%.

If SB 37 passes, California will have the highest corporate tax rate in the country and the highest or second highest tax rates nationally for income taxes, sales taxes and motor vehicle fuel taxes. This will undoubtedly discourage companies from remaining, locating, relocating or further investing in the state.

California currently imposes a flat 8.84% income tax on all corporations (10.84% for banks and financial corporations). SB 37 requires that for taxable years beginning on or after January 1, 2020, the rate for corporations with net income of $10 million or more be revised to instead impose a tax rate from 10.84% to 14.84%. For financial institutions, the rates range from 12.84% to 16.84%. These rates, for both corporations and financial institutions, are based on the compensation ratio of CEOs to employees of the organization.

SB 37 further seeks to increase the tax rate by another 50%—to a maximum of 22.26% (24.26% for banks and financial corporations)—for publicly held corporations that have a specified decrease in full-time employees in the United States while increasing the number of contracted and foreign full-time employees.

Although the bill is attempting to address outsourcing and alleged wage disparity within some corporations or financial institutions, driving businesses out of the state through a punitive tax proposal could harm California workers by costing them their jobs when their companies attempt to offset the costs of higher taxes by reducing the companies’ presence in California. Further, executive pay is already subject to tax limits. A publicly traded corporation is prohibited from deducting more than $1 million per year in compensation paid to CEOs and the most senior executive officers. The exemption for commission and performance-based pay was eliminated recently as well.

LEGISLATIVE ACTION IN 2020

Despite Californians’ general opposition to increasing general taxes in most circumstances, the 2020 Legislature will inevitably propose additional targeted tax increases. The authors of the bills proposing a tax on sugar-sweetened beverages, opioid medications and oil have indicated their willingness to continue pushing these agendas.

CALCHAMBER POSITION

Targeted taxes are regressive and harmful to consumers. The targeted taxes increase the cost of doing business in California and those costs are naturally passed on to consumers by way of increased prices and job losses.

Any tax increase should be broad-based and shared by all so that the financial impact is mitigated, and so that voters have a greater ability to hold elected leaders accountable for the programs funded by these tax increases.

In addition, the state’s $7 billion budget surplus makes questionable the need for any new taxes.

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Tourism in California
Maintaining Success Helps State, Local Economies

California’s multibillion-dollar travel industry is a vital and growing part of California’s economy, providing benefits at the state and local levels. Tourism-related spending supports a wide swath of California businesses, including lodging establishments, attractions, restaurants, retail stores, gas stations, and a host of other businesses that sell their products and services to travelers.

TOURISM BENEFITS CALIFORNIA ECONOMY
In 2018, the tourism industry continued its nearly decade-long trend of growth, with increased spending, employment, and gross domestic product (GDP). Based on statistics from the California Travel and Tourism Commission (doing business as Visit California), approximately 42 million visitors arrived in California in 2018 and spent approximately $140.6 billion—an increase of approximately 7% and 5.4% respectively over 2017.

The money that visitors spent on various goods and services also produced secondary benefits as businesses employed California residents and purchased goods and services in California. In this manner, tourism supported 1.15 million jobs in California directly, and another 795,000 jobs via secondary spending—meaning that tourism in California generated more than 2 million jobs in 2018. In total, the GDP of the travel industry rose to $79 billion in 2018, representing about 2.5% of California’s GDP.

TOURISM BENEFITS STATE AND LOCAL GOVERNMENTS
Tourism’s success also benefits California’s public entities. The economic engine of tourism helped fund state and local governments to the tune of $11.8 billion—a year-over-year increase of 7.3% from 2017. In fact, the travel industry generates approximately 4.6% of all state and local tax revenue in California—beyond its share, given it comprises 2.5% of California’s GDP. These revenues are approximately evenly split between state and local government, with aggregate local and state tax revenues at approximately $5.9 billion each.

These tax revenues are derived primarily from visitor spending (sales tax), travel industry businesses (property and income tax), and travel industry employees’ spending (sales and property taxes). On a per-household basis, the travel industry’s tax contributions are equivalent to an additional $890 tax per California resident household.

PAST LEGISLATION AND FUTURE CONCERNS
Tourism creates vital jobs in California and generates revenue for the state and local jurisdictions. Because of tourism’s importance in our state, the California Legislature should continue to support the industry through prudent policies and legislation. In 2019, legislation raised the possibility of both aid and harm to California’s tourism industry. In addition to a host of labor-related bills, a few tourism-centric bills bear mention.

• AB 1387 (Wood; D-Santa Rosa) attempted to support California’s recreational fishing industry by improving the sport fishing licensing process. Specifically, AB 1387 would have allowed fishing licenses to be purchased for a 12-month period, regardless of season, and also allowed for automatic renewal, making them more attractive to potential in-state and
out-of-state fishermen who might be purchasing half-way or near the end of the season.

Even though there was no opposition, AB 1387 was made a two-year bill—meaning a delay in action until 2020—before it could be considered by the Senate Natural Resources and Water Committee.

• **SB 736 (Umberg; D-Santa Ana)** sought to create a Creative Economy Incentive Act, to be administered by the Governor’s Office of Business and Economic Development, to allow local governments or nonprofits to apply for state funds to assist in attracting tourism events to their districts. The bill aimed particularly at keeping California competitive with other states, including Texas and Louisiana, which have utilized similar programs to attract large events such as NCAA tournaments and NBA All-Star games.

Although the bill had no registered opposition, SB 736 was held in the Assembly Appropriations Committee, presumably due to the fiscal cost to the state of potentially $10 million.

**LEGISLATIVE ACTIVITY IN 2020**

Expected in 2020 is additional legislation that intends to increase economic development, especially at the local level, through strategic plans, programs, or tax incentives, similar to SB 736. The challenge with these proposals is the fiscal cost to the state. Unfortunately, it is difficult to determine the revenue such programs could bring to the state through additional tourism to offset those costs.

Conversely, there presumably also will be legislation introduced that will place additional costs or burdens on all employers in California. Even though such legislation may not target the tourism industry, it may nonetheless have a negative impact.

**CALCHAMBER POSITION**

The California Chamber of Commerce supports policies that increase and protect travel and tourism within and to the state to continue to stimulate the economy and provide jobs to Californians. This includes supporting policies that fund tourism-friendly programs, including Visit California and tourism improvement districts.

In addition, we support new incentive programs to bring significant events or attractions to California. When considering legislation that increases costs, burdens, and litigation on businesses, the Legislature should consider the negative impact such laws can have on the tourism industry and ultimately California’s economy.

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Autonomous Vehicles
Laws/Regulations Must Coincide with Technological Advances

As of this year, 29 states and Washington D.C. have enacted legislation relating to autonomous vehicles (AV)—15 since just 2018. Since promulgation of California’s regulations in 2012 and 2014, more than 50 entities have applied to the California Department of Motor Vehicles (DMV) to test AV technology on California roadways. In the meantime, cars have grown increasingly reliant on AV technology to become “smarter” with each model, incorporating additional sensors, brake assist, and other semi-autonomous features to help people drive more safely and efficiently.

AV technology is already everywhere. Our floors are cleaned by robot vacuums that sense and maneuver around furniture and drive our pets crazy (and make for cute internet cat videos). Autonomous technology in jet planes controls the flights we take around the world. And we send autonomously controlled rockets to explore space. AV technology is being developed, not just for commuters, but for commercial transit as well. Encouraging the development will be essential to continue California’s place as a technological leader.

THE BASICS

- Autonomous Means Many Things to Many People. California defines an AV as a vehicle equipped with autonomous technology that has the capability to operate the vehicle without the active physical control of or monitoring by a human operator. There are six levels of AV technology, which derive from the Society of Automotive Engineers (SAE) International and are set forth in the figure on the next page. Different regulations apply to each level of automation.

Many states are using SAE International’s Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, standard J3016 (SEP2016) as the basis for their regulations. Use of a standard set of regulations is imperative to avoid conflicting regulations that would impede travel between states. The National Conference of State Legislatures maintains a searchable database of AV bills at http://www.ncsl.org/research/transportation/autonomous-vehicles-legislative-database.aspx in an attempt to keep states on a consistent path and pave the way for streamlined deployment across the United States. Division 16.6, Section 38750 of the California Vehicle Code requires the DMV develop regulations for testing and public use of autonomous vehicles.

- DMV Finalizes AV Testing and Deployment Regulations. The California DMV AV testing regulations were first developed in September 2014. Since then, at least 50 manufacturers have applied to the DMV for approval. Updated regulations were finalized on February 26, 2018. These regulations incorporate by reference the SAE International J3016 standard, and contain training, notice, and annual reporting requirements for testing, including the requirement that a human be behind the wheel for testing even in fully autonomous vehicles.

Recognizing the rapid advancement in technology, the DMV also promulgated regulations for the post-testing deployment of AVs in California, including completion and certification of completion of safety testing, significant insurance coverage requirements, a law enforcement interaction plan, and, for Level 5 AVs, communication link between the vehicle and a remote operator, as well as the ability to transmit collision data. Although this regulation does not allow for testing of commercial or freight AV technology, the DMV indicates that it is evaluating the unique safety and economic impacts of commercial AV through further study.

THE POLICY ISSUES

- Funding for AV Infrastructure. The 2017 transportation funding bill SB 1 (Beall; D-San Jose), in addition to providing much-needed repairs for California roadways, also allows for
<table>
<thead>
<tr>
<th>SAE Level</th>
<th>Name</th>
<th>Narrative Definition</th>
<th>Execution of Steering and Acceleration/Deceleration</th>
<th>Monitoring of Driving Environment</th>
<th>Fallback Performance of Dynamic Driving Task</th>
<th>System Capability (Driving Modes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>No Automation</td>
<td>The full-time performance by the human driver of all aspects of the dynamic driving task, even when enhanced by warning or intervention systems</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>n/a</td>
</tr>
<tr>
<td>1</td>
<td>Driver Assistance</td>
<td>The driving mode-specific execution by a driver assistance system of either steering or acceleration/deceleration using information about the driving environment and with the expectation that the human driver perform all remaining aspects of the dynamic driving task</td>
<td>Human Driver and System</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>Some driving modes</td>
</tr>
<tr>
<td>2</td>
<td>Partial Automation</td>
<td>The driving mode-specific execution by one or more driver assistance systems of both steering and acceleration/deceleration using information about the driving environment and with the expectation that the human driver perform all remaining aspects of the dynamic driving task</td>
<td>System</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>Some Driving Modes</td>
</tr>
<tr>
<td>3</td>
<td>Conditional Automation</td>
<td>The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task with the expectation that the human driver will respond appropriately to a request to intervene</td>
<td>System</td>
<td>System</td>
<td>Human Driver</td>
<td>Some Driving Modes</td>
</tr>
<tr>
<td>4</td>
<td>High Automation</td>
<td>The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task, even if a human driver does not respond appropriately to a request to intervene</td>
<td>System</td>
<td>System</td>
<td>System</td>
<td>Some Driving Modes</td>
</tr>
<tr>
<td>5</td>
<td>Full Automation</td>
<td>The full-time performance by an automated driving system of all aspects of the dynamic driving task under all roadway and environmental conditions that can be managed by a human driver</td>
<td>System</td>
<td>System</td>
<td>System</td>
<td>All driving modes</td>
</tr>
</tbody>
</table>

Source: Society of Automotive Engineers (SAE) International

Transportation dollars to be used for infrastructure improvements to support AV deployment. SB 1 states that “[t]o the extent possible and cost effective, and where feasible, the department and cities and counties receiving funds under the program shall use advanced technologies and communications systems in transportation infrastructure that recognize and accommodate advanced automotive technologies that may include, but are not necessarily limited to, charging or fueling opportunities for zero-emission vehicles, and provision of infrastructure-to-vehicle communications for transitional or full autonomous vehicle systems.”

- **Safety.** We humans have an outsized notion of our ability to navigate the roadways safely. Test it by trying to merge onto any highway onramp at rush hour. The perception of the safety of AVs has been hampered by some high-profile accidents, with a recent study conducted by research firm J.D. Power and Associates and the National Association of Mutual Insurance Companies (NAMIC) finding that 4 out of 10 Americans “would never ride” in a fully automated vehicle.

Despite these fears, experts predict that AVs will end up much safer than human-controlled ones. According to the California Office of Traffic Safety, traffic fatalities increased 7% from 3,387 in 2015 to 3,623 in 2016, and the 2015 Mileage Death Rate (MDR)—fatalities per 100 million miles traveled—was 1.01. According to National Highway Transportation Safety Administration (NHTSA) data, which was collected from all 50 states and the District of Columbia, 37,461 lives were lost on U.S. roads in 2016, an increase of 5.6% from calendar year 2015. NHTSA found that distracted driving and drowsy driving fatalities declined, while deaths related to other reckless behaviors—including speeding, alcohol impairment and not wearing seat belts—continued to increase.

AVs use a variety of technology, most of which does not depend upon attention spans, number of cocktail decisions, or
whether your newborn kept you up all night. Computers do not listen to music, and they ignore (or can simultaneously respond to) texts while navigating roadways. Various technology is being tested by some or all of the manufacturers.

Many automakers have advocated skipping straight to Level 5 automation for added safety. They argue, perhaps rightly, that humans are not capable of resuming control quickly enough to make human backups useful, and that skipping to Level 5 would allow regulators to adapt more quickly to technology. Experts project, depending upon the level of AV used, a reduction in collisions by as much as 90%, with the ensuing preservation of life.

Currently, the final regulations from the California DMV require that a human backup be used during all testing. In enacting future legislation on AVs, policymakers must balance safety, avoid conflicting regulations with other states and the federal government, and avoid overly prescriptive and burdensome regulations that impede the continued safe testing and deployment of AV technology.

**LEGISLATIVE AND REGULATORY ACTION IN 2020**

* AVs and Ride Sharing. A study by the Boston Consulting Group estimated that by the end of the next decade, fully 20% to 25% of US rides will be logged by Level 5 AVs operated by ride-sharing services such as Waymo, Uber, Lyft and GM’s Maven. In May 2018, the California Public Utilities Commission (PUC) authorized two pilot programs—one with a driver and one driverless—with quarterly data reporting requirements and a plan to conduct workshops on carrier and passenger experiences within the pilot. Workshops for the pilot programs are ongoing, and the expectation is that a deployment pilot will follow.

* Commercial Testing and Deployment. The DMV anticipates continued exploration of testing and deployment of trucks and commercial vehicles in the coming years. Several California companies are developing vehicles for commercial use. Governor Gavin Newsom’s Office of Planning and Research published a set of principles at [http://opr.ca.gov/planning/transportation/automated-vehicles.html](http://opr.ca.gov/planning/transportation/automated-vehicles.html) to help guide the policy discussion.

Overall, the Legislature must tread carefully when legislating in these areas, being sure to keep pace rather than get out too far ahead of the technology curve and hinder innovation or cause unnecessary fear of new technology.

**CALCHAMBER POSITION**

California should encourage the development of AV technology for transit and commercial operations. It should ensure that laws and regulations keep pace with advancing technology, are not duplicative, do not conflict with federal or other state laws, and that regulation is not overly burdensome, all while maintaining consumer safety. With such a balance, California can remain at the technological forefront of AV development.

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Transportation/Infrastructure Funding
Long-Term Stability, Spending Oversight Important to Keep State Moving

Each year, Californians drive an average of 14,000 miles, increasing the wear and tear on the state’s aging roads, highways and freight routes. Californians use roadways to travel to work and school, vacation at the state’s abundant parks and entertainment destinations, and move trillions of dollars of goods through and around the state. California’s roads, bridges, freight, and public transit systems require annual maintenance, much of which has been deferred for the better part of a decade. State transportation leaders must tackle a significant backlog of repairs, modernization, and expansion to keep pace with advances in technology, such as autonomous vehicles and rapid transit, as well as expand roadways to accommodate additional drivers.

THE BASICS
The California Transportation Commission’s most recent Needs Assessment, last updated in 2012, found that 58% of the state’s roadways require rehabilitation or pavement maintenance and 26% of its bridges require major or preventive maintenance or complete replacement. The Federal Highway Administration estimates that California will need approximately $70 billion to modernize and fix its highway systems, and another $118 billion to widen its highways to keep up with growth.

California receives approximately $3.5 billion annually from the Federal Highway Administration, mostly from fuel taxes on gasoline and diesel.

The 2019 Urban Mobility Report published by the Texas Transportation Institute shows congestion data for various cities. The research shows that commuters in the Los Angeles/Long Beach/Anaheim area wasted 117 hours, and commuters in San Francisco wasted 103 hours sitting in traffic in 2017. These congestion delays resulted in economic loss of approximately $17.8 billion and $4.8 billion per year, respectively.

When surveyed, Californians regularly rank transportation and infrastructure concerns, including traffic congestion and commuting time, as issues of high importance, and most support more spending and efficiencies to improve roads, highways and bridges.

INCREASED SPENDING IN 2019–2020 BUDGET
The Legislative Analyst’s Office notes a $1.3 billion net increase in transportation spending for 2019–2020 when compared to the 2018–2019 budget, largely as a function of increases in overall revenues due to the passage of SB 1 (Beall; D-San Jose; Chapter 5, Statutes of 2017). California Chamber of Commerce-supported SB 1 survived a ballot measure attack in 2018.

<table>
<thead>
<tr>
<th>Source: Legislative Analyst’s Office, California’s Transportation System (June 2018).</th>
<th>Gas and Diesel Excise Taxes $7.8 Billion</th>
<th>Transportation Improvement Fees $1.5 Billion</th>
<th>Cap-and-Trade Revenues $0.9 Billion</th>
<th>Diesel Sales Taxes $0.8 Billion</th>
<th>Truck Weight Fees $1.1 Billion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multimodal $1.4 Billion</td>
<td>Highways $4.8 Billion Streets and Roads $2.7 Billion</td>
<td>Transit and Intercity Rail $1.5 Billion High-Speed Rail $0.6 Billion</td>
<td>Debt Service Transportation Bonds $1.1 Billion</td>
<td></td>
<td>Total Funding = $12.1 Billion</td>
</tr>
</tbody>
</table>
SB 1 imposed a tax on the use of gasoline, and was necessary to address long-deferred infrastructure and concerns over a growing lack of mobility in the state, evidenced by the Urban Mobility Report.

POLICY CONCERNS
Long-term modernization of California’s system of roadways and transportation infrastructure requires a long-term plan, given the high costs estimated for repair, modernization, and expansion to accommodate continued economic and population growth. Transportation bills are highly interrelated. For example, the California Legislature in 2018 and 2019 considered a bill to ban combustion engines in the state by 2040, despite the transportation system being reliant on gasoline excise taxes to fund infrastructure maintenance and expansion.

Targeting transportation emissions solely by increasing reliance on electric vehicles can cause upheaval in the funding arena, as SB 1 imposes only a set $100 fee per electric vehicle. Proposals like these must consider funding impacts, as electric vehicles impose the same wear and tear on roads and bridges as fuel-powered vehicles.

To that end, as Californians drive ever-increasingly fuel-efficient vehicles, rely more on public transportation, and drive more zero-emission cars, relying on these fuel excise taxes will divorce funding from the actual vehicular use of the roads. The Legislature recognized this phenomenon in 2016, creating an advisory committee (including a member from CalChamber) to develop a new transportation finance system based on miles driven, rather than gallons of fuel consumed. Any new mileage fee would replace the current fuel tax, not add to it. The advantage of such a system would be to assess drivers for exactly how much they use the roads, without regard to how efficient their engines may be or if they use petroleum fuels at all. The committee and state officials are evaluating this new finance regime for possible rollout after 2020.

California must be cognizant of the interrelationship between funding and vehicle miles traveled (VMT). Increase efficiencies in the use of funds, and ensure it maintains sufficient oversight and accountability in the use of funds while allowing flexibility for technological development and advancement of California’s transit system.

LEGISLATIVE ACTIVITY IN 2020
The CalChamber expects that Governor Gavin Newsom and the Legislature will continue funding investments in transportation infrastructure at a pace similar to recent years. Bills could include appropriations of funding traditionally used for roads and infrastructure being diverted for climate or other goals.

CALCHAMBER POSITION
The CalChamber supports reasonable and necessary funding to ensure long-term stability of California’s roads, bridges, and infrastructure, all of which are needed to move California-made goods and support the state’s vibrant economy.

California should reject fees unrelated to infrastructure improvement or which otherwise make it more difficult for Californians to commute or businesses to move their goods in order to ensure a robust economy.

The Legislature should encourage policy that maintains adequate oversight over use of transportation dollars and implements measurable benchmarks and performance-based outcomes for the use of funds.

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Unemployment Insurance
UI Trust Fund Stability Depends on State/Federal Actions

Through federal and state cooperation, unemployment insurance (UI) benefits act as a stabilizer during economic downturns by providing a source of temporary, partial wage replacement for workers who have become unemployed through no fault of their own and are looking for employment. To induce states to enact UI laws, the Social Security Act of 1935 provided a tax offset incentive to employers, if a state UI program complies with federal requirements, including fully funding benefits for state claimants.

Aside from federal standards, each state has primary responsibility for the content and development of its UI law, and administration of the program. California administers its UI program through the Employment Development Department (EDD) within the guidelines established under federal law.

One federal requirement is that all contributions (UI tax paid by employers) collected under state laws be deposited in the Unemployment Trust Fund (UI Fund) of the U.S. Treasury Department. States withdraw money from their account in the trust fund exclusively to pay UI benefits. If a state trust fund does not have adequate funds to pay benefits, a loan is made from the federal fund so that all claims are paid.

Funded by Federal/State Taxes on Employers
California’s UI program is funded exclusively by employers, via state and federal taxes on wages. The only exceptions to this rule are temporary federal grants for administration and certain emergency and extended benefits that have been paid from federal general revenue. Employees do not pay any UI taxes.

Generally, the federal UI tax is fixed at 6% of wages up to $7,000 per year for all employers in the state (FUTA taxes), offset by a 5.4% credit in states that comply with federal UI laws (FUTA tax credit), resulting in a payable rate of 0.6%. Assuming the state is in compliance, this comes out to $42 per employee per year. FUTA taxes are due January 31 following the year in which the taxes are applied (for example, 2018 taxes are due January 31, 2019). Employers receive the 5.4% credit when the state program is in compliance with the federal UI program rules.

Recession and Insolvency: From 2009 to 2018
If California’s program falls out of compliance—such as when recession pulls the UI Fund into insolvency—the state and employers face increased costs. The recent Great Recession of 2008 provides a chilling example of the burdens that UI Fund insolvency can impose.

As California’s economy crashed in the Great Recession of 2008, multitudes of Californians found themselves out of work. Unemployment peaked at 12.4% in 2010—well above national averages—and California’s proportionately larger workforce relied heavily on unemployment insurance. California’s UI Fund quickly fell deep into insolvency, and correspondingly fell deeply in debt to the federal government, with California’s debt peaking at $10.3 billion in 2012.

This insolvency had significant costs for both employers and the state. As California’s program fell into insolvency in 2009—and remained there until 2018—the FUTA tax credit was reduced by 0.3% each year. By 2017, the employers’ tax rate had risen to 2.7%, quadrupling per employee costs from the traditional $42 per employee to $189 per employee.

In total, this insolvency cost California’s businesses approximately $10 billion in increased FUTA taxes. As employers faced increased federal taxes, the State of California also took a hit, paying interest on the federal loans to the tune of approximately $1.5 billion.

Solvency and the Future
Fast forward to today—almost a decade after the Great Recession—California’s UI Fund has just returned to solvency. In 2018, California finished repaying its federal UI loans and, according to the Employment Development Department’s (EDD) recent estimates, the UI Fund is expected to hold $3.3 billion by the end of 2020. However, the question that needs to
be asked: Is California ready for the possibility of the next recession? California’s UI Fund held a similar amount before 2009’s recession, and that proved woefully insufficient.

In 2019, AB 1066 (Gonzalez; D-San Diego), designated a job killer by the California Chamber of Commerce, attempted to expand unemployment to workers involved in labor disputes, potentially bringing entire unions onto unemployment for the duration of trade disputes. Although AB 1066 failed to pass the Senate in 2019, the proposal may return and certainly raises some questions. For example: if California’s UI fund is already on unstable footing and will be needed for out-of-work employees in the next recession, will California’s Legislature be willing to stretch benefits to workers who are not traditionally “looking for work”?

In addition, AB 1066’s return would raise a second question that only the federal government could answer: Does extending benefits beyond the traditional UI requirements—unemployed through no fault of their own, and actively seeking/able to take work—threaten California’s funding stream for unemployment insurance?

Under federal law (42 USC 503(a)(12)), the U.S. Secretary of Labor is required to verify, before distributing unemployment funds to states, that state law includes “[a] requirement that, as a condition of eligibility . . . a claimant must be able to work, available to work, and actively seeking work.”

Therefore, it appears that extending benefits to those in a labor dispute (who are not, arguably, available to work or seeking work) could pose concerns with federal compliance. Also, any offers of employment made to striking workers, if rejected, could trigger a need to end benefits. AB 1066, however, does not appear to contemplate this situation.

Notably, this issue does not appear to have been raised in other states that have put in place similar programs. Depending on the motivations at the federal level, however, an anti-California administration might view federal law as in conflict with AB 1066, and use that to harsh effect for California’s unemployment insurance payments.

**CALCHAMBER POSITION**

Although unemployment in California is currently low, California needs to maintain a stable UI Trust Fund that protects workers who become unemployed through no fault of their own. As the Great Recession of 2008 has shown, the economy can change quickly and California needs to continue to strengthen the UI Fund to prepare for any future challenges.

Legislation that expands eligibility to receive unemployment benefits beyond those individuals who actually have been terminated, or which adds unnecessary cost burdens onto employers, jeopardizes the entire system.

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Access to Water
Storage Plus Conveyance Central to Comprehensive Solution

Access to an adequate water supply is critical for business to thrive, for human survival and for the environment. Demand outstrips the current supply. New water storage projects, above and below ground, are needed urgently. New technology is in its infancy with water purification projects and in its toddler years with desalination plants. These projects that increase supplies are just coming online after rigorous environmental scrutiny sometimes taking years to accomplish. Meanwhile, environmental regulations requiring more water flows from rivers to support fish and wildlife have been implemented.

At the same time the cost to supply water for human needs continues to spiral out of sight. The drought highlighted the plight of disadvantaged communities that ran out of drinking water in the Central Valley and rural parts of the state. Bringing water to those communities is expensive, covered in part by money from the state budget, but the problem of how those communities pay for water service when connected to nearby water purveyors is unclear.

STORAGE PROJECTS IMPORTANT PIECE OF COMPREHENSIVE SOLUTION

Water storage is one of the fundamental keys to increasing the state’s water supply. Environmental and ecological demands, climatic changes, and a growing population place stresses on available water supplies. The State Water Project, built in the 1960s, is aging and struggling to supply enough water for current needs. Ever-more-stringent environmental regulations and lack of funding make it difficult to construct new storage facilities. Headlines during the last drought were filled with towns running out of water and pictures of large water tanks being dropped off along with cases of bottled water. There is no question that more water storage is needed to increase supplies, but also to help manage existing sources.

Despite the challenges, the State Water Resources Control Board (Water Board) is considering a plan that shifts more water to support fish, which will result in less water at higher costs for water ratepayers. At the same time, the Water Board is considering regulations that will impose a fee on the same ratepayers to subsidize low-income households whose occupants can’t afford to pay their water bills.

KEY POINTS

- California needs more water storage. Population is increasing, but available water supplies are diminishing. Not everyone has access to or can afford clean drinking water, mostly agricultural counties in the Central Valley plus Kern and Imperial counties.
- The Governor included in his 2019 budget $130 million dollars annually for 10 years to support access to clean and affordable drinking water for disadvantaged communities.

WATER STORAGE INVESTMENT PROGRAM PROJECTS

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Source: California Water Commission
Increasing environmental and fish species demands limit the amount of water available for human use.

No new major water storage has been built since 1999 and most were built in the last century.

Bond funding of $2.7 billion is available for the “public benefits” of new water storage projects.

Environmentalists continually put up roadblocks to new storage proposals, contending that all possible conservation measures should be implemented first.

The Water Board adopted regulations to cut water supplies to water rights holders like water districts, municipalities, landowners and farmers. Implementation is being held subject to water rights holders developing voluntary settlement agreements to reduce their usage acceptable to the Water Board.

The controversy of water storage pits environmental and fish needs against human needs.

**WATER STORAGE INVESTMENT PROGRAM PROJECTS**

Although voters approved a water bond in 2014, they voted against an $8.87 billion water bond in 2018. The 2014 water bond contained, among other provisions, $2.7 billion for storage projects. Those funds can be used only for the “public benefits” of the storage projects, such as improved water quality, flood control, habitat restoration or outdoor recreation.

The California Water Commission (Commission) developed regulations and guidelines, and started accepting project applications in 2017. The Commission approved eight proposed water storage projects for funding. Collectively, the projects will add 4.3 million acre-feet of water storage capacity. The applicants will need to complete remaining requirements, including feasibility studies and environmental reviews, before the Commission can award final funding for each project.

The Commission timeline shows that most of the projects will be finalized in 2021. Should any of the projects not go forward, the funds can be redistributed to the remaining projects.

The proposed projects were a mix of above ground and underground storage (see timeline on previous page).

- Two reservoir expansions: Los Vaqueros and Pacheco.
- Two new reservoirs: Sites in Northern California and Temperance Flat near Fresno.
- Two underground storage facilities: Kern Fan Groundwater Storage and Willow Springs Water Bank.
- Two recycling projects: Chino Basin Conjunctive Use and South Sacramento County Ag Program.

Environmental opposition to new water projects is constant. Environmental groups are opposing desalination, recycling, and storage projects. Their opinion is that conservation will provide enough water for all purposes. During the recent five-year drought, mandatory conservation measures did result in 25% less water usage. However, some rural communities still ran out of water and required state assistance to obtain baseline amounts. Communities running out of water were mostly on private domestic wells or were served by very small water districts with no ability to upgrade or expand existing facilities. Nearby water storage could have alleviated the problem by storing excess water in wet years for use in drier times.

**REDUCTION OF WATER SUPPLIES THROUGH REGULATIONS**

The Water Board is in the process of updating the Water Quality Control Plan for the Bay-Delta to establish flow and water quality objectives needed to reasonably protect beneficial uses, including fish and wildlife. There are two proposals—one for the San Joaquin River and its tributaries that has already been adopted, and a second one for the Sacramento River and its tributaries that is still in progress.

For the San Joaquin River, the issue, according to the Water Board, is that the San Joaquin River Watershed does not produce enough water to both meet existing human demands and support a healthy ecosystem. Requiring more water to remain...
The San Joaquin River proposal, first released in September 2016, immediately drew criticism from agriculture, business, municipalities and water districts, and praise from the environmental community. The proposal recommended between 30% and 50% of the river’s unimpaired flow be dedicated to fish. Average unimpeded flow is about 20% under current conditions. The Water Board staff suggested a starting point of 40%, which was solidified in later amendments.

The San Joaquin River proposal has been the subject of workshops, hundreds of letters, extensive public comment and a significant number of one-on-one meetings with various stakeholders and experts regarding the effects of altering stream flows in the San Joaquin River. There is considerable scientific disagreement about whether more water in the river alone will bring a resurgence of fish populations. Reducing the flows, as proposed, increases the cost of water, assuming there is wider availability and the means to convey the water exist.

In August 2018, the Water Board delayed a vote on the San Joaquin proposal in response to a request from state agencies, legislators, businesses, water agencies, cities, counties and agriculture to allow more time for voluntary agreements with water rights holders to be worked out. Following the delay, water districts, municipalities, farmers and other affected groups worked diligently to craft agreements that would satisfy the requirements of the water quality control plan amendments. A second request for postponement came the night before the Water Board was set to adopt the proposal in November. A letter from then-Governor Edmund G. Brown Jr. and then-Governor-Elect Gavin Newsom stated that “a short extension will allow these negotiations to progress and could result in a faster, less contentious and more durable outcome. Voluntary settlement agreements are preferable to a lengthy administrative process and the inevitable ensuing lawsuits.” The Water Board again delayed a vote until its December meeting, ultimately voting on December 12, 2018 to adopt the proposal.

Implementing the 40% flow proposal is expected to result in a 7% to 23% reduction in water available for human use. The flow proposal also could result in an average increase in groundwater pumping of 105,000 acre-feet per year. The current deficit in groundwater supplies is about 45,000 acre-feet per year. Agricultural water supply deficits have the potential to increase over time as pumpers must come into compliance with the Sustainable Groundwater Management Act (see Business Issues article on “Groundwater”).

Meanwhile on a separate track, legislation was introduced in 2018 that would have provided access—not low-income rate assistance—to safe and affordable drinking water for disadvantaged communities. The proposal failed to progress because it included a fee that was perceived as a tax. The bill had two parts—access to clean drinking water and a funding source. Under the legislation, access could include annexation to the nearest water district for those with dry wells, help with contaminated wells, consolidation of smaller water districts with nearby

The Sacramento River flow proposal has not been released. Water managers have been in discussions with government entities and the environmental community to develop voluntary agreements that will accomplish the goals of the Water Board’s flow requirements.

LOW-INCOME RATE ASSISTANCE AND ACCESS TO CLEAN DRINKING WATER
State law ensures universal access to water by declaring that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes.” However, water is becoming more expensive. California’s growing economy and population create continued demand for water. Meanwhile, drought and water leaks tighten available supplies. In addition, pipes and aging infrastructure result in expensive repairs or replacements. These conditions contribute to higher costs. The result is more low-income households with unaffordable drinking water.

Most California residents have drinking water that meets state and federal drinking water standards. There are water systems that do not meet the standards, however. Many of those systems are in the Central Valley and other rural areas. Disadvantaged communities are disproportionately affected with a lack of safe drinking water. Communities served by small water systems do not have the rate base to modernize drinking water plants or deepen or drill new wells. In addition, many rural residents have private domestic wells, which ran dry during the drought or were contaminated.

The Water Board circulated a draft proposal for a statewide low-income rate assistance program developed, under contract, by researchers from the University of California, Los Angeles in 2017 to analyze possible funding mechanisms. Cost estimates ranged from $279 million to $580 million. The funding mechanism would include a tax on water utility bills for approximately 34% of the water hookups in California. Households with income less than 200% of the federal poverty level would be exempt. The proposal is still pending.

Meanwhile on a separate track, legislation was introduced in 2018 that would have provided access—not low-income rate assistance—to safe and affordable drinking water for disadvantaged communities. The proposal failed to progress because it included a fee that was perceived as a tax. The bill had two parts—access to clean drinking water and a funding source. Under the legislation, access could include annexation to the nearest water district for those with dry wells, help with contaminated wells, consolidation of smaller water districts with nearby
larger and better-funded districts, or building or upgrading existing drinking water facilities.

The funding mechanism was a tax on fertilizers and a tax on dairy/livestock that declined over time and a permanent fee on water utility bills except for households with incomes of less than 200% of the federal poverty level.

Governor Newsom side-stepped the issue of a water tax for access to clean drinking water by including $130 million annually for the next 10 years in his 2019 budget. The funds are derived from the Greenhouse Gas Reduction Fund. Legislation easily passed to establish the framework for the Safe and Affordable Drinking Water Fund to receive the funds and direct the Water Board to adopt a fund implementation plan. This budget appropriation addresses only access to clean drinking water, not low-income rate assistance to help pay monthly water bills.

**IMPACT ON BUSINESS**

The additional 4.3 million acre-feet of water these water storage projects will yield is important to the overall water supply of the state. The diverse locations of the projects help distribute the new supply throughout the state. The promise of more supply alleviates the stress that developers are under to provide written documentation from water suppliers that they can provide water to new building sites. Farmers will be able to grow and harvest crops without fear that their water supply will be cut. General business will be more comfortable estimating how much the cost of water will rise in future years. New water projects provide good-paying jobs in areas that have few employment opportunities.

The potential loss of water supplies from the San Joaquin River affects how water districts will meet consumer demands, water conservation measures and groundwater sustainability goals. Business will be further adversely affected by the reduced water supplies through higher costs to secure water and limitations on growth potential. Development of housing and commercial properties will be delayed. Before developers can break ground, they must secure written confirmation from water purveyors that a 20-year water supply is available for the project.

The Water Board staff estimated a $64 million a year loss to agriculture as a result of reduced flows under the San Joaquin River proposal. Farm groups believe the loss to be closer to $150 million, idling possibly 240,000 acres of Central Valley farmland and significant job losses. Land values in affected parts of the valley will drop steeply with the loss of surface water, depressing property tax and sales tax revenues, thereby limiting county and city services to some of the neediest residents of the state.

Businesses operating in the valley, especially small businesses, will be hard-pressed to survive under these conditions. Although the water storage projects may ultimately help offset some of the reduction in water flows under the San Joaquin River proposal, those projects will not be completed for another 5 to 10 years, which leaves businesses struggling in the meantime.

**ANTICIPATED ACTIONS IN 2020**

The California Water Commission will continue to monitor the progress of the eight proposed water projects. If any of the applicants withdraw, the funds will be spread among the remaining applicants. The Commission decides how to apportion the funds. The projects need to finish required feasibility studies and environmental reviews before receiving bond funding. It is likely more funding will be needed, as well as permits from the federal government. Businesses should stay engaged with the Commission to ensure funding is not delayed and be prepared to support projects before federal agencies.

The Water Board voted in December 2018 to adopt the San Joaquin River proposal. Early in 2019, several water districts and the U.S. government filed lawsuits against the Water Board for the adoption. The lawsuits are pending and should be watched closely. Meanwhile, the business community should continue to support the voluntary settlement agreement process as it moves along.

**CALCHAMBER POSITION**

The California Chamber of Commerce supports a comprehensive solution to the state’s chronic water shortage to ensure all Californians have access to clean and affordable water. Water storage combined with conveyance is an important part of achieving a water supply adequate to meet the needs of Californians.

Any reduction in water supplies for environmental purposes must be balanced carefully against the harm it will have on the business community. A robust economy depends on a thriving business climate. It’s business that provides jobs, housing, food and a good quality of life for residents of the state.

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Groundwater: The New Frontier
Planning, Investment in New Technologies Must Start Now

Changing demands on water supplies, such as new environmental restrictions, the effects of cyclical droughts, and increased urban and agricultural usage, have resulted in more groundwater pumping and subsequently chronic overdrafting of groundwater basins. This has created a noticeable increase in soil subsidence (permanent loss of below-ground storage capacity).

Water is stored in the cracks of soil, sand and rocks underground called aquifers. Prolonged pumping depletes water in soil, causing the soil to sink, collapsing underground water aquifers. Once that happens, it is not possible to recharge the aquifer. Unlike most Western states, California never has had a state comprehensive system for regulating groundwater until now.

**KEY POINTS**
- California adopted legislation for stabilizing overdrafted groundwater water basins in 2014.
- The new law allows for groundwater pumping restrictions and the imposition of fees, but does not mandate either one.
- Local public agencies with water supply, management, and land use obligations will develop a Groundwater Sustainability Plan (GSP) with stakeholder input for approval by the state.
- GSPs must be submitted for critically overdrafted basins by January 2020 and lower priority basins in 2022.
- There will be less groundwater available in the future.
- Business and agricultural representatives should be engaged in the planning process expressing the impacts a reduced water supply will have on business vitality.
- New technologies should be explored to use water more efficiently.
- The California Chamber of Commerce continues to reach out and inform businesses of the importance to engage in the process.

**BACKGROUND**
Unlike other states, California did not have a system for regulating groundwater pumping until 2014 when the Sustainable Groundwater Management Act (SGMA) was signed into law. Before 2014, management generally had been in the form of plans developed by local agencies that focused primarily on information gathering. Overlying landowners, including agricultural users, domestic well owners and other groundwater users, pumped without having to obtain government approvals.

SGMA lays out how the state will achieve sustainable groundwater basins. “Sustainable” generally means eliminating overdraft in the basins. Water seeps back into basins through winter floods, water from recharge basins and rain. Some funding has been provided by the state General Fund, but the majority of funding is from a large water bond passed a few years ago. Looking at the
amount of work needed to design a GSP to achieve basin sustainability and begin implementation, however, fees are going to be necessary.

Designing a GSP entails a tremendous amount of work, including research, surveying, monitoring, reporting, public meetings, development of best practices, finding and purchasing replacement water, evaluating new technologies, and working out groundwater rights. Each basin is unique. Plans need to be tailored to conditions in each overdrafted basin. A further complication is that there can be many local agencies overlying the basins that must agree on a GSP. Schisms in planning agencies are showing up as the deadline approaches.

SGMA does not mandate groundwater pumping restrictions or require the imposition of groundwater fees, but allows both. It’s hard to imagine the basins or sub-basins achieving sustainability without imposing some sort of pumping restrictions or limitations. Those subject to paying the fees would be farmers, private well owners, cities, counties, public water systems, local land use planning agencies, environmental groups, the federal government, or tribes, just to name a few.

In 2015, AB 1390 (Alejo; D-Salinas) and SB 226 (Pavley; D-Agoura Hills) went into effect, streamlining the adjudication process to reduce the burden of groundwater adjudications on both the courts and claimants without altering the law of groundwater rights and without disrupting the SGMA process.

Basin adjudications occur when a party initiates a lawsuit against all other users in a groundwater basin so that the court can determine the groundwater rights of all parties overlying the basin and whether others may export water from the basin. Prior to the legislation, adjudications often took decades to resolve, which prompted the legislation because the basins must reach sustainability 20 years after the GSP is adopted. If the planning process becomes too burdensome or the local planning agencies cannot agree, it is likely that there will be a movement to adjudicate the basin.

IMPACT ON BUSINESS
Although SGMA does not establish, determine or confirm water rights, it does regulate the exercise of those rights. Reaching and maintaining groundwater sustainability will take many years and require less groundwater pumping, especially in drought or dry years. Business and agriculture will be adversely affected by reductions in water supplies. Planning for new supplies or investments in new technologies should begin now. (See Business Issues articles on “New Water Future,” “Access to Water,” “Long-Term Water Strategy.”)

The Public Policy Institute of California (PPIC) predicts that at least 535,000 acres of Central Valley farmland could be permanently retired over the next 20 years as farmers curtail their water consumption. The PPIC estimated that 50,000 acres will go solar, converting some of the world’s most productive tomato farms, pistachio orchards and dairies into vast fields of tea-colored photovoltaic panels. Other landowners are working with environmental groups to develop conservation easements to turn some of their land into wildlife habitats.

ANTICIPATED ACTIONS IN 2020
Groundwater Sustainability Plans must be finalized and ready for submission to the Department of Water Resources in 2020 and 2022, depending on the severity of overdraft. Business and agricultural representatives need to be engaged with their local planning agencies to keep abreast of the plans, offer information on impacts to their companies, and share future strategies to help offset reductions.

CALCHAMBER POSITION
The CalChamber supports legislation to improve the Groundwater Sustainability Management Act to alleviate the impacts on farmers, businesses and landowners. The CalChamber also supports research and development of new technologies and water management practices that promote water use efficiency, recycling and reuse.

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Long-Term Water Strategy
From One Canal to One Tunnel: Conveying Water Central to Reliability

The Bay Delta Conservation Plan (BDCP) is a key part of the 2009 comprehensive water package that addresses California’s long-term water strategy. It is designed to achieve the co-equal goals of providing a reliable source of water and protecting, restoring and enhancing the Delta ecosystem while minimizing impacts to Delta communities and farms. It focuses on the Sacramento-San Joaquin Delta, where water is diverted to serve 27 million Californians and 3 million acres of farmland.

This is the third time the issue of how to convey water through the Delta is on the table. Round one was the Peripheral Canal in 1980. The canal was authorized in legislation but was the subject of a successful referendum. The issue arose again as one of the options in the BDCP that was referred to as the twin tunnel option, aka the “WaterFix” during the Brown administration. In the latest iteration of how to move water through the Delta, twin tunnels have been reimagined into a single, slimmed down tunnel.

SUMMARY
• Upgrade the state’s aging water delivery system by constructing new infrastructure to improve reliability and sustainability.
• One big earthquake near the Delta or a major levee break will leave 27 million Californians without an adequate source of water.
• Business relies on a consistent and available water supply at a reasonable cost for planning purposes.
• The proposed BDCP is protective of the Delta ecosystem and fish habitat.

BACKGROUND
California’s natural water picture is a study in contrasts. Two-thirds of the state’s water originates north of Sacramento, but two-thirds of its residents live in the southern part of the state.

The Delta is at the heart of the two major projects in California, the State Water Project (SWP) and the federal Central Valley Project (CVP), built during the last century. These two systems transfer fresh water supplies from northern reservoirs and dams through a series of canals, pipelines and aqueducts through the Delta to Southern California, the Central Valley and coastal areas.

Droughts and environmental laws have since reduced the amount of water being pumped through the Delta. Islands in the Delta continue to subside while levees degrade and are no longer sufficient to protect nearby communities. When the Peripheral Canal wasn’t built, two more pumps were installed to help move water and protect the Delta from salt intrusion. Screens were installed to prevent fish from being sucked into the pumps.

WATERFIX MORPHS TO DELTA CONVEYANCE
In the latest iteration of how to move water through the Delta, twin tunnels have been reimagined into a single, slimmed down tunnel. The new preliminary estimate for the 30-mile project is approximately $11 billion, which is about $5 billion less than the $16 billion estimate for the original twin-tunnel proposal. As directed by Governor Gavin Newsom, the Department of Water Resources (DWR) is pursuing a new environmental review and planning process building on the work already conducted to modernize Delta conveyance and ensure a climate resilient water system. How big and how much water can be conveyed is not yet determined. The Governor has promised robust outreach to Delta communities and stakeholder participation. DWR
anticipated the formal environmental review process would begin with the Notice of Preparation under the California Environmental Quality Act near the end of 2019.

“A smaller project, coordinated with a wide variety of actions to strengthen existing levee protections, protect Delta water quality, recharge depleted groundwater reserves, and strengthen local water supplies across the state, will build California’s water supply resilience,” said Natural Resources Secretary Wade Crowfoot. Critics maintain that the latest iteration still harms endangered fish species, damages the Delta as a community, and potentially jeopardizes the agricultural economy. The current proposal will protect endangered fish, including salmon and Delta smelt, and will improve water supply reliability in the face of climate change, earthquakes and potential levee failures that could leave 27 million people with very limited water supplies. Proponents prefer two tunnels instead of one, but are supportive of the smaller project, realizing that without the Governor’s buy-in, the project dies.

IMPACT ON BUSINESS
Many businesses plan for the long term. Part of the calculation to locate or expand in California depends on the cost of doing business. The cost, quality and availability of water is critical, especially for water-intensive industries. It’s well-known that California has a turbulent water history. The state’s chronic water shortage and numerous legal water rights challenges are often in the news.

The BDCP is expected to help mitigate some of businesses’ concern by upgrading outdated Sacramento-San Joaquin Delta infrastructure and securing water supplies, while also improving the Delta’s ecosystem. The new plan hopefully will be designed to make the most of big winter storms that produce more outflow than can be captured and used under current conditions. The excess flows could be routed through the new conveyance and stored for use in drier times, providing a reliable water source for businesses and residents.

ANTICIPATED ACTIONS IN 2020
DWR anticipated that the formal environmental review process would begin with the Notice of Preparation under the California Environmental Quality in late 2019, but realistically the process is more likely to start in early 2020. DWR is looking for qualified consultants to assist with various aspects of the planned environmental review. Participation in stakeholder meetings and workshops will be critical to ensure that the business community’s concerns and input are heard.

CALCHAMBER POSITION
The California Chamber of Commerce supports a comprehensive solution to the state’s chronic water shortage. Delta conveyance in conjunction with increased storage, new technologies, and water use efficiency techniques will help provide a reliable and consistent water supply.

The CalChamber supports the single-tunnel proposal as a viable means of conveying water through the Delta. To assure a future robust economy, every avenue needs to be explored to further increase business’s access to affordable water.

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New Water Future
Do More with Less, Explore Alternative Sources, Conserve More

California is chronically short of water even in normal water years. Cyclical droughts and changing demands on water supplies have led to government-imposed mandatory conservation measures on water districts’ urban water and agricultural water management plans. Combined with increased regulations that reduce the amount of water supplies available for human consumption, agriculture and business, it is imperative that alternative sources of water supplies be investigated, and additional conservation efforts be made. The new water future is defined as doing more with less.

**KEY POINTS**
- During the 2012–2016 drought, Governor Edmund G. Brown Jr. imposed emergency mandatory conservation measures, now codified, that water districts have met.
- Legislation passed subsequently in 2018 requires water districts to develop long-term mandatory conservation and drought plans by 2023.
- Environmental and conservation regulations diminish available water supplies for business, farming and human consumption.
- Alternative sources of water are a small but important part of the overall water portfolio for the state. Although more expensive, alternative sources are more reliable.
- Business must engage with state entities in the regulatory process to ensure proposed performance measures stay within the bounds of the Commercial Institutional and Industrial (CII) Task Force Report, developed by business, water and environmental representatives, to provide those sectors with information on water-saving technologies and applicable best management practices.

**WATER REDUCTION**
The persistent drought of 2012 through 2016 has changed the water landscape in California. Governor Brown imposed emergency mandatory conservation measures in 2015 to reduce potable urban water usage and imposed curtailments of farmers’ water rights. The goal was to reach a 25% reduction in use from 2013 levels for the duration of the emergency proclamation.

Business, agriculture, water districts and residents stepped up and turned off the water spigot. Lawns turned brown, cars stayed dusty, new drought-resistant landscaping cropped up, businesses looked for innovative ways to reduce water usage, and farmers found ways to grow using less water.
The emergency order was lifted in 2017 except for Fresno, Kings, Tulare, and Tuolumne counties, although many of the conservation measures were adopted by executive order in late 2017. In 2018, the Legislature passed, and Governor Brown signed two bills, SB 606 (Hertzberg; D-Van Nuys; Chapter 14) and AB 1668 (Friedman; D-Glendale; Chapter 15), to establish long-term improvements in water conservation and drought planning to adapt to a drier climate.

The new laws impose water use efficiency standards, data collection, monitoring requirements, enforcement guidelines, and penalties for urban and agricultural conservation plans developed by water districts. There was initial confusion regarding a 55 gallons per person, per day standard for indoor water use. That number was taken out of context by the media and was meant only as guidance for water districts' planning purposes. The recently adopted conservation regulations do not establish restrictions for individual water customers. The regulations are intended as guidance for water districts to use in developing their conservation targets.

**ALTERNATIVE SOURCES OF WATER**

- **Recycling Wastewater.** California’s history of cyclical droughts and long-term water shortages has also led to innovative strategies to save and reuse water as much as possible. Water flushed down drains or toilets—once considered waste—is now being cleaned and recycled for reuse. After studying projects undertaken by water-scarce countries such as Israel and Australia, local water agencies are beginning to look at advanced treatment of wastewater as a possible source of drinking water.

  Water recycling is usual for countries like Israel, Saudi Arabia, Australia and Singapore. Israel reclaims about 80% of its wastewater and uses it to irrigate agricultural lands and recharge aquifers. Singapore reclaims almost 100% and uses it for industrial purposes. California water districts are beginning to invest in water recycling to provide a locally controlled, drought-proof water supply.

  Orange County Water District and the Orange County Sanitation District built a groundwater replenishment system, which is the world’s largest advanced water purification system for potable reuse. The system takes highly treated wastewater that normally would have been discharged into the Pacific Ocean and purifies it. The plant produces up to 100 million gallons per day of high-quality water that exceeds state and federal drinking water standards.

  In late 2019, the Metropolitan Water District of Southern California and the Sanitation Districts of Los Angeles County launched a new water recycling demonstration plant that takes wastewater and purifies it using innovative processes that could significantly improve efficiencies and reduce costs in water recycling. The 500,000-gallon-a-day demonstration facility will undergo intense testing for the next year to see if the process results in water that meets the highest quality standards. This testing could lead to a full-scale plant that could potentially produce up to 150 million gallons of purified water daily—enough to serve more than 500,000 homes and industrial facilities.

  San Diego approved an environmental impact report for the first phase of a recycling program in early 2018. It is a multi-year program that will provide one-third of San Diego’s water supply locally by 2035. The first phase is scheduled to come online in 2021 and will expand San Diego’s potable water production capacity by 30 million gallons per day, replacing the use of imported water. Eventually, the program will recycle up to 83 million gallons of wastewater per day into high-quality drinking water.

- **Desalination of Water.** Desalination of ocean and brackish groundwater is rapidly becoming a reality in California. According to the Department of Water Resources, 26 desalination plants were operating in California in 2013. Twenty of the plants desalt brackish groundwater and six plants desalt seawater. The largest ocean desalination plant in North America went online in Carlsbad, California in December 2015. The plant supplies 50 million gallons of drinking water to San Diego daily. Another large desalination plant designed by Poseidon was to come online in Huntington Beach in 2019 but has been delayed by the State Water Resources Control Board. It is expected to produce 50 million gallons of drinking water to augment Orange County’s drinking water supplies.

  These plants have taken close to 20 years to make it through the permitting process, including environmental impact reports. During the last drought, coastal areas began to seriously investigate the possibilities of siting desalination plants to augment diminishing water supplies.

- **Capturing Stormwater Runoff.** Capturing stormwater runoff from impervious surfaces in urban and suburban areas like streets, sidewalks, rooftops, and parking lots is another way to increase water supply. Stormwater treated to reduce pollutants can be used to replenish groundwater aquifers or recycled for use in landscaping.

  New building techniques incorporate the use of low-impact designs that keep stormwater runoff rates and volumes as close to predevelopment rates as possible. Examples include the use of natural or manmade swales or green belts to allow stormwater to percolate into the ground; the use of permeable paving for

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streets, pedestrian pathways and driveways that allows for infiltration of fluids in the ground; and designs that incorporate rooftop systems to capture rainwater for landscaping.

In general, alternative water supplies are more expensive. Developing those supplies may be less expensive than building new surface or groundwater storage, but more expensive per unit of water produced. Along with the initial cost of construction, recycling and desalination processes can have significant ongoing energy costs. The benefit of alternative sources of water, however, is reliability.

**IMPACT ON BUSINESS**

A coalition of businesses was able to get language amended into AB 1668, a water management bill signed in 2018, to require the state to conduct necessary studies and investigations to develop recommendations on performance measures for commercial, institutional and industrial (CII) sectors. The bill requires public participation from stakeholders and other interested parties before adoption related to the following provisions:

- CII water use classification system.
- Minimum size thresholds for converting mixed CII meters to dedicated irrigation meters.
- Technologies that could be used in lieu of requiring dedicated irrigation meters.
- Best management practices, including water audits and water management plans for CII customers above a certain size, volume of use, or other threshold.

The recommendations must be consistent with the October 21, 2013 Department of Water Resources document developed by the CII Task Force, “Water Use Best Management Practices,” including the technical and financial feasibility recommendations, and shall support the economic productivity of CII sectors. The task force was convened to identify specific best management practices and water-saving actions to support the commercial, industrial and institutional sector’s efforts to improve water use efficiency and support California’s water supply sustainability.

Alternative water sources like recycled wastewater, urban stormwater, and desalination plants now provide 2% to 3% of the state’s urban and farm water supply. Recycled water use has more than doubled to 700,000 acre-feet a year. Desalination plants now generate 200,000 acre-feet of water a year.

Business and agriculture benefit from increased water supply reliability. Desalination and recycling plants provide a secure water supply during dry years and droughts. Although more expensive, reliability is an important component of business management decisions made for current practices and for long-term planning.

**ANTICIPATED ACTIONS IN 2020**

Standards and guidance documents continue to be drafted by the State Water Board. There are a variety of timelines for Board adoption of the standards. There will be several opportunities to participate and work with regulators to ensure that CII performance measures stay within the parameters of the CII Task Force report.

The state also is developing regulations for storing recycled water in surface reservoirs, integrating recycled water directly into drinking water systems, and on-site wastewater or stormwater reuse programs.

Business should comment on draft regulatory proposals and attend workshops to ensure reasonable and practical rules. New technology is developed, not by government, but by innovative research, often funded by business entrepreneurs.

**CALCHAMBER POSITION**

The California Chamber of Commerce supports a balanced approach to securing a safe and reliable supply of water for all Californians. Conservation, desalination, recycling, reuse, water use efficiency, conveyance and storage should be vigorously pursued to help increase water supply. Permit streamlining among the various agencies should be undertaken to expedite the approval process.

Companies must participate at every opportunity in the regulatory process to educate regulators about business practices—especially compliance requirements imposed by other state, local and federal entities. Business productivity and cost containment should be foremost considerations in business comments.

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January 2020
Voluntary Water Settlement Agreements

Viable Process to Improve Environment, Keep Needed Water Flowing

The State Water Resources Control Board (Board) periodically updates the Bay-Delta Water Quality Control Plan to carry out obligations under the Clean Water Act and Porter-Cologne Water Quality Control Act to protect beneficial uses, including fish and wildlife, in the Bay-Delta watershed. The Board relies on its water right authority and water right proceedings as the predominant mechanism to implement objectives.

In December 2018, the Board adopted a proposed resolution to update the Bay-Delta Plan to amend the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced rivers, and agricultural beneficial uses in the southern Delta.

The resolution calls for a 40% “unimpaired flows” from February through June with a permitted diversion range of 30% to 50%, depending on conditions in the river and its tributaries. The Board acknowledged the diversion could create financial and operational challenges for local economies as well as lost jobs, but insists that it is necessary to provide enough water for vulnerable fish and wildlife.

Adoption of this resolution was delayed in response to a request from the Natural Resources Agency, Department of Fish and Wildlife, and the Department of Water Resources to make a presentation on adaptive implementation and voluntary water settlement agreements and a request to defer final action. Former Governor Edmund G. Brown Jr. and Governor Gavin Newsom made it clear early in the proposal process that they preferred the voluntary agreements process before imposing mandatory flow reductions.

The Board granted the delay, but pointed out that over the last couple of years it has emphasized repeatedly that voluntary agreements would be a quicker and more durable solution to protect the beneficial uses in the Lower San Joaquin River and its tributaries. The Board pointed out that the proposal recognized the flow and nonflow actions to enhance fisheries and allows flexibility for adaptive management. Voluntary agreements are nonflow elements, but can greatly influence flows.

The agreements are being developed as an alternative mechanism to provide reasonable protection of native fish and wildlife, and other beneficial uses as required by law and identified in the Water Board’s Bay-Delta Water Quality Control Plan. The agreements achieve improvements through targeted river flows and several habitat-enhancing projects, including floodplain inundation and physical improvements of spawning and rearing areas, while balancing the needs of other beneficial uses, including municipal, domestic and agricultural water supplies, recreation, and navigation.

VOLUNTARY AGREEMENT PROJECT

The Board resolution included the following directive:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses not later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

The Natural Resources Agency, the California Environmental
Protection Agency, the U.S. Department of the Interior (Bureau of Reclamation) and various interested parties (water districts, environmental and conservation organizations, agriculture) agreed to a project description for a set of voluntary agreements based on the framework introduced at the December Board meeting and a set of planning principles for guidance.

Three work groups were established led by the agency secretaries:
- **Assets to Outcomes Work Group** to identify how the water flows, habitat and funding provided through the agreements could result in measurable, achievable outcomes that will protect native fish species and other beneficial uses.
- **Governance, Science and Adaptive Management Work Group** to design a science program to track and report outcomes of the various assets and provide scientific information to support effective adaptive management.
- **Policy Work Group** to address critical path legal and policy questions, such as enforceability of the agreement’s terms and appropriate amendments or updates to the Bay-Delta Plan that remain to be resolved.

Work was scheduled to be completed by December 2019.

**WHAT’S NEXT?**
If the agency secretaries agree with the outcomes of the work groups, they will recommend that the Board consider the voluntary agreements in their current form, and the Board will complete its analyses to determine if the agreements meet objectives of the Bay-Delta Water Quality Control Plan as required by law. The science program will undergo scientific peer review that should be completed by spring 2020.

The Board will complete an environmental review of the voluntary agreements and update the Water Quality Control Plan as required under the California Environmental Quality Act. A draft document could be released in the summer of 2020 and be finalized in 2021.

If the Board does not accept the voluntary agreements, then work will continue on the agreements to make refinements to the biological and environmental targets. Governor Newsom has made it clear that he would like the process to succeed, so likely an extension of time, if needed, would be allowed to work through the issues.

**LEGISLATIVE ACTIONS**
The federal government under President Donald Trump’s leadership has proposed changes to federal environmental regulations that have caused consternation and angst amongst environmental and conservation groups. A steady barrage of news articles, shows and tweets bashing the Trump administration’s actions aired in media markets all over California. Environmentalists were vocal about the perceived damage that would occur if the Legislature did not take steps to force state agencies to protect California’s environment.

In response, SB 1 (Atkins; D-San Diego), the California Environmental, Public Health, and Workers Defense Act of 2019 was introduced and established baseline environmental, public health, and labor standards in accordance with the federal standards that were in place on January 19, 2017, President Barack Obama’s last day in office. Nearly identical legislation, SB 49 (de León; D-Los Angeles), had been introduced in 2018 and held in the Assembly Rules Committee.

In the final analysis, SB 1 would have frozen decades-old biological opinions and set back or had a significant impact on the voluntary agreements proposal that is essential to achieving a comprehensive approach to flow and nonflow measures needed to provide reliable water supplies for tens of millions of California residents, farmers, and wildlife. SB 1 also would have applied California Endangered Species Act regulations to the federal Central Valley Project, which would have caused the Bureau of Reclamation to withdraw from the voluntary agreement project. Governor Newsom vetoed SB 1.

There are rumors that parts of SB 1 could be introduced as stand-alone bills in 2020. Governor Newsom said in late November 2019 that he plans to sue the Trump administration over changes to federal biological opinions that affect the amount of water allowed to be pumped from the Delta.

**CALCHAMBER POSITION**
The California Chamber of Commerce supports the voluntary agreements process as a viable means of meeting environmental objectives of the Bay-Delta Water Quality Control Plan. Stakeholders are working with regulators and environmentalists to improve conditions for fish and wildlife on the San Joaquin River and its tributaries. They are voluntarily reducing their water draw at certain times of the year, modifying some of their business practices to use less water, and contributing to conservation habitats in the Delta. A voluntary process to achieve environmental goals is preferable to mandatory restrictions.

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Cal/OSHA Regulatory Roundup

Highlights of What’s Coming for Businesses in 2020

The California Division of Occupational Safety and Health (Cal/OSHA) has been busy in the last few years and shows no signs of slowing down in 2020, which means every business in California needs to monitor Cal/OSHA’s activity to ensure compliance. Below is a brief primer on some of the recent high-profile regulations coming out of Cal/OSHA that employers should be aware of heading into 2020—but, to be clear, this is by no means a full summary of the items that may be voted upon or commented upon in 2020.

WILDFIRE SMOKE PROTECTION

On July 29, 2019, new emergency regulations for protecting workers from wildfire smoke went into effect (the “Emergency Wildfire Smoke Regulation,” California Code of Regulations. Title 8, Section 5141.1) and created new and somewhat ambiguous obligations for employers when wildfire smoke drifts into a workplace. Generally speaking, when the Air Quality Index (AQI) for particulate matter with a diameter of 2.5 micrometers or smaller (PM2.5) rises due to smoke, employers generally are required to:

- Monitor the AQI at any worksite that their employees will visit and be outside for more than one hour.
- AQI of 150: Provide information to outdoor employees regarding wildfire smoke hazards and provide the option of protection (N95 respirators) to outdoor employees at 150.
- AQI of 500: Compel all outdoor employees to be medically evaluated, fit-tested, and wear respiratory protection—or shut down.

The California Chamber of Commerce was vocal during the emergency rulemaking process to raise the business community’s concerns about ambiguities and infeasible requirements. Notable concerns included:

- Ambiguous triggering mechanism for the regulation to take effect, making it harder for businesses to know when to comply with the regulation.
- Ambiguous definition of which workplaces qualified as “outdoor” versus “indoor,” making it difficult to know which employees needed to receive protection.
- Failure to exempt emergency-related personnel from the regulation’s more onerous requirements, potentially slowing utilities and other businesses from assisting emergency response personnel.

Unfortunately, many of these ambiguities were not addressed in the emergency rule, leaving businesses to speculate on the best way in which to comply. Heading into 2020, CalChamber will continue to weigh in to address these issues in the permanent regulation, which is expected in late 2020.

INDOOR HEAT ILLNESS PREVENTION

In 2005, California became the first state to adopt a heat illness prevention standard to protect outdoor workers (California Code of Regulations. Title 8, Section 3395). The heat illness prevention standard requires employers to provide agricultural workers, construction workers, landscapers and others who work outdoors with water, shade, rest breaks and training. Known as the high heat provisions, additional requirements apply when the outdoor temperature exceeds 95 degrees.

In 2016, SB 1167 (Mendoza; D-Artesia, Chapter 839) passed and required Cal/OSHA to propose to the Standards Board a similar heat illness and injury prevention standard applicable to workers working in indoor places of employment. CalChamber and a large coalition of businesses opposed the legislation as unnecessary because current regulations (Title 8, Section 3203 Illness and Injury Prevention Program) require employers to identify and address workplace hazards, including the risk of heat illness in indoor workplaces.

Since SB 1167 passed and was signed into law, CalChamber has worked with Cal/OSHA and affected stakeholders to find
Workplace Safety

Consensus for a reasonable and rational regulation. As with the wildfire smoke regulation, the CalChamber and business allies have raised a range of issues relating to clarity and feasibility during the advisory process. Presently, rulemaking documents are being prepared, and the business community’s next opportunity to weigh in will be when formal rulemaking begins with the Cal/OSHA Standards Board (the rulemaking body for Cal/OSHA), likely in 2020.

General Industry and Construction Lead Exposure Standards
California’s lead exposure standards in construction and in general industry have been creeping through the Cal/OSHA regulatory process since 2011 (California Code of Regulations, Title 8, Sections 1532.1, 5198). In 2019, the standardized regulatory impact analysis (SRIA) was finally completed, allowing the standard to move to formal rulemaking. This is not a moment too soon given the enactment of 2019 legislation imposing a September 30, 2020 deadline for the Standards Board to act (SB 83; Committee on Budget and Fiscal Review; Chapter 24).

Generally speaking, the draft regulation will greatly lower thresholds for testing and medical removal related to blood lead levels, and consequently greatly expand the number of workplaces and employees that will fall under blood lead monitoring. Businesses working with even small amounts of lead—potentially even lead contained in other metals, such as brass—should keep an eye on this process as it heads to the Standards Board in 2020.

Agricultural Work in Darkness
Agriculture in California should be aware of pending changes to the required lighting in agricultural workplaces in the early morning/evening hours (California Code of Regulations, Title 8, Sections 3441, 3449). As presently drafted (and likely to be adopted), the proposed changes create new requirements for lighting around vehicles and while harvesting, as well as requiring measurement of light levels in the workplace.

Although the CalChamber is supportive of safe lighting requirements, it has ongoing concerns that the proposed text is vague and will lead to uncertainty in compliance. This regulation is currently with the Standards Board, and should have a final vote no later than early 2020.

CalChamber Position
California employers take the safety and health of their employees very seriously. The CalChamber supports effective workplace safety policies and believes that such policies must be based on sound science, clearly drafted, and feasible to implement. The CalChamber will continue to advocate for sound, effective and feasible policy at Cal/OSHA in all rulemaking processes.

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January 2020
Marijuana in the Workplace
Zero-Tolerance Drug Use Policies Help Keep Workers Safe

In California and 32 other states across the country, marijuana is now legal for medical purposes, and 11 states (including California) have legalized marijuana for recreational use. This changing legal landscape has left employers wondering about their rights and responsibilities regarding drug testing for marijuana. Although employers in California maintain the right to drug test employees for marijuana and other drugs in certain circumstances—including pre-employment—there have been several efforts to limit their ability to do so.

RIGHT TO A DRUG-FREE WORKPLACE
- Under current law, generally an employer has the right to maintain a drug-free workplace through policies and by drug testing at pre-employment, suspicion of impairment and post-accident.
- California employers who work with the federal government must comply with the federal Drug-Free Workplace Act, which requires employers to maintain drug-free workplace policies.
- California’s new laws regulating medical use and recreational use—including particularly Proposition 64 of 2016—explicitly maintain those employers’ rights.
- The California Chamber of Commerce did not oppose legislation or regulation establishing the legal framework for medical marijuana. The CalChamber also did not oppose Proposition 64, the 2016 initiative legalizing adult recreational use, specifically because the initiative included language to protect these employers’ rights.
- Prohibiting testing or requiring employers to hire medical marijuana users undermines employers’ ability to provide a safe and drug-free workplace. Impaired employees put everyone at risk of injury.
  - Under federal law, marijuana remains illegal as a Schedule 1 drug under the Controlled Substances Act.

DRUG TESTING
Impaired workers undermine workplace safety, quality and productivity. Employers are concerned that marijuana users could be impaired at work and put the safety of the impaired employee, other employees, and members of the public at risk. Also, impairment could decrease productivity in the workplace.

In addition to the obvious safety risks of impairment, any uptick in on-the-job injuries or vehicle accidents will result in increased workers’ compensation and vehicle insurance premiums for employers. As a result, it is important that employers be able to decline to employ applicants who test positive for drugs in order to lower the odds of workers being impaired at work.

Employers’ concerns about the risks of impairment are compounded by the limitations of current drug-testing technology:
  - Currently there is no objective and legally recognized test an employer can administer or have administered by a testing company to confirm recent use of marijuana or impairment due to marijuana.
  - Under present testing methods, marijuana can remain in the system and show up in a drug test for up to 45 days following use in regular users.
  - There is no method to determine if individuals are impaired at the time the drug is found in their system or, conversely, if the marijuana was consumed at an earlier time and the individual is no longer impaired.
  - Therefore, zero tolerance is the only policy that ensures workers are not impaired on the job.

MEDICAL MARIJUANA AND STATE FAIR EMPLOYMENT LAW
The California Supreme Court held in Ross v. Ragingwire Telecommunications, Inc. (2008) that employers were not compelled to accommodate marijuana in the workplace—including as a
WORKPLACE SAFETY

medical treatment for a disability or injury—because it remains illegal under federal law and because the relevant legalization legislation (Proposition 215 at the time) did not specifically compel employers to allow marijuana in the workplace.

Although *Ragingwire* preceded 2016’s Proposition 64, the express language of Proposition 64 similarly explicitly carved out the workplace, which has led to a general consensus that *Ragingwire*’s holding and reasoning remain the law of the land. Nevertheless, proponents have pushed for statute to rewrite *Ragingwire*’s holding and compel employers to allow marijuana in the workplace as a medical treatment under the state Fair Employment and Housing Act (FEHA).

PAST ACTION

- **2019:** AB 882 (McCarty; D-Sacramento) This job killer bill would have prohibited an employer from terminating an employee based on a positive drug test if the drug (including marijuana) was being used as part of a narcotics or medication-assisted treatment program. The bill was not heard in the Assembly Labor Committee and has since been amended to focus on differences in California and federal law related to disability.
- **2018:** AB 2069 (Bonta; D-Oakland) would have prohibited employers from terminating, disciplining or refusing to hire persons who use marijuana and possess a valid state identification card as a medical marijuana patient. Although AB 2069 would have allowed an employer to discipline or terminate an employee impaired on the job, this provision could not be implemented because impairment cannot be determined by a clinical test. The CalChamber led a large business coalition in opposition to the bill, which did not move forward from the Assembly Appropriations Committee.
- **2016:** California voters approved Proposition 64, allowing adult recreational use of marijuana, but the initiative specifically emphasized that employers may maintain a drug-free workplace.
- **2008:** The California Supreme Court held that the Compassionate Use Act of 1996, which allowed Californians to use marijuana for medical purposes, did not create safeguards for such individuals in the workplace. Similar court cases have been decided in favor of employers in maintaining the right to a drug-free workplace despite legal marijuana use for medical purposes.
- **1995:** Voters approved Proposition 215, which specifically exempted medical marijuana users from enforcement of two California criminal statutes, but made no provisions as to marijuana use in the workplace.

PERSPECTIVE HEADING INTO 2020

Heading into 2020, marijuana in the workplace is very much on the mind of legislators and proponents. On November 8, 2019, the Senate Labor, Public Employment and Retirement Committee held an informational hearing on “Cannabis and Employment: Balancing Safety and Equity in a Post-Proposition 64 (2016) Workplace.”

During the hearing, legislators probed issues such as workers’ compensation, safety and drug testing. Also, notably, marijuana proponents showed interest in rewriting *Ragingwire* and banning urine testing (the present industry standard testing) as a pre-employment drug test, although no specific legislation has been proposed. The CalChamber expects potential legislation on both these fronts.

Also, there is always the potential for direct democracy to reshape marijuana law in California, as with Propositions 215 and 64. Although proponents have not yet collected sufficient signatures to place it on the ballot, the “California Cannabis Hemp Initiative 2020” was submitted to the Attorney General’s Office in August 2019 and has the potential to rewrite marijuana law in California in all aspects, including in the workplace. Employers will be keeping an eye on it, should its supporters gather the requisite signatures.

CALCHAMBER POSITION

Allowing drug use in the workplace—including requiring an employer to accommodate an employee’s marijuana use—could jeopardize the safety of other workers as well as the public. It also forces employers to make subjective determinations regarding whether an employee is impaired, as there are no reliable scientific tests to assess impairment.

The CalChamber continues to support the right of an employer to maintain a safe workplace by enforcing zero-tolerance drug use policies through drug testing, including pre-employment testing. In addition, the CalChamber remains opposed to legislation that would force employers into costly litigation to defend their ability to preserve a drug-free workplace.

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January 2020
California Promise: Opportunity for All

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2020 CalChamber Business and
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Economic growth and job creation are the keys to making California a great place to live, work and do business. To help lawmakers focus on the full ramifications of proposed laws, the California Chamber of Commerce identifies each year the legislation that will hinder job creation. The job killer list highlights those bills that truly are going to cost the state jobs. The CalChamber policy staff is very judicious about the difference between legislation that merits opposition and a job killer.

The goal is to remind California policymakers to keep their focus on the No. 1 issue affecting their constituents—economic recovery and job creation. Each bill designated as a job killer would increase uncertainty for employers and investors, and lead to higher costs of doing business, which will undermine the economic health of the state. Individually, the job killer bills are bad, but cumulatively they are worse.

Jobs are killed when employers lay off workers or can’t afford to hire workers to provide goods and services to consumers. Workers are laid off (or wages are reduced) if consumers do not buy goods and services from businesses, or because the cost of providing those goods or services has increased to the point where the business is not competitive. Consumers will not buy goods and services if they have less money to spend, or if the goods and services are a lesser value (higher cost/lesser quality) than alternatives in the marketplace. Lower wages and fewer jobs are the result of an employer not being successful in the marketplace—when an employer is not competitive and/or consumers have no money to spend.

Government kills jobs when it passes laws, rules and regulations that discourage investment and production, that add unnecessary cost and burdens to goods and services, or that make California employers uncompetitive.

Job killer bills make employers less competitive, forcing them to reduce employee benefits, or take resources from consumers.

**CRITERIA**

Factors that have earned job killer status for legislation include:

- imposing costly workplace mandates;
- creating barriers to economic development/economic recovery;
- requiring expensive, unnecessary regulations;
- inflating liability costs;
- imposing burdensome or unnecessary requirements that increase costs on businesses;
- expanding government at businesses’ expensive;
- criminalizing inadvertent business errors;
- imposing new or higher fees and taxes;
- discouraging businesses from expanding their workforce in or to California.

**BILLS STOPPED**

Since starting the job killer bill list in 1997, the CalChamber has prevented 93% of these onerous proposals from becoming law. Every job killer stopped means the state will at least do no more harm to businesses and their ability to compete in the national and global markets.

Updates appear at [cajobkillers.com](http://cajobkillers.com) and [calchamber.com/jobkillers](http://calchamber.com/jobkillers).
Job Creator Bills Help California Economy Grow

Alongside the California Chamber of Commerce list of job killer legislation is the job creator bill list. Since 2008, the CalChamber has identified and strongly supported legislation that will stimulate the economy and improve the state’s jobs climate. The Business Issues and Legislative Guide explains the policies that would improve California’s business climate and nurture our economy—the principles that determine which bills are job creators. If adopted, job creator legislation would encourage employers to invest resources back into our economy and their local communities rather than spend on unnecessary government-imposed costs.

Job creating legislation promotes the following policies:

• Keeping taxes on new investment and business operations low, fair, stable and predictable.
• Reviving local economic development tools.
• Reducing regulatory and litigation costs of operating a business—especially when hiring and keeping employees.
• Reducing the cost and improving the certainty and stability of investing in new or expanded plants, equipment and technology.
• Investing in public and private works that are the backbone for economic growth.
• Ensuring the availability of high-quality skilled employees.

SIGNED INTO LAW

Among the 32 job creators signed into law to date are bills:

• Protecting employees and employers from being sued for defamation in sexual harassment cases simply for reporting and investigating harassment.
• Giving employers a limited opportunity to cure technical violations in an itemized wage statement before being subject to costly litigation.
• Reforming disability access requirements and limiting frivolous litigation related to disability access compliance.
• Expediting the environmental review process for projects related to energy or roadway improvements, repair and maintenance.
• Creating a predictable and easy-to-track schedule for implementing new regulations.
• Extending and expanding the film and television tax credit.
• Stopping drive-by Proposition 65 lawsuits for alleged failure to post specific required warnings.
• Repealing a retroactive tax on small business investors.
• Encouraging aerospace projects to locate in California.
• Restoring funding to the California Competes Tax Credit Program.
• Increasing loan access for small business.
• Helping businesses rebuild after disasters by allowing state agencies to establish a procedure to reduce licensing fees for businesses affected by a federal- or state-declared emergency.

Removing unnecessary regulatory hurdles makes it easier for California employers to create the jobs needed to maintain the state’s economic recovery.

Updates on the job creator bills appear at calchamber.com/jobcreators.
California Promise: Opportunity for All

About CalChamber
BRIDGING THE DIGITAL DIVIDE
PRESIDENT AND CHIEF EXECUTIVE OFFICER

Allan Zaremberg is president and chief executive officer of the California Chamber of Commerce. He took over the top staff position in 1998 after six years as executive vice president and head of the CalChamber's legislative advocacy program.

Supporting policies that give job creators the certainty and stability they need to make investment and hiring decisions has been a priority for Zaremberg. He has headed statewide ballot campaigns to ensure real taxes require a two-thirds vote, to close the legal loophole that permitted shakedown lawsuits, to assure adequate funding for transportation infrastructure, and to oppose anti-business proposals that would have increased the cost of health care, electricity and public works. He led negotiations culminating in adoption of comprehensive reforms of the state workers’ compensation system, endangered species laws and other key issues.

He also guides the CalChamber’s ongoing effort as the leading employment law expert for California businesses to provide products and services that help employers comply with continually changing state and federal laws.

Before joining CalChamber, Zaremberg served as chief legislative adviser to and advocate for Governors George Deukmejian and Pete Wilson.

Zaremberg served as a captain and flight navigator on a KC-135 jet air refueling tanker while in the U.S. Air Force from 1970 to 1975.

He holds a B.S. in economics from Penn State University and a J.D. from the McGeorge School of Law, University of the Pacific, where he was a member of the Law Journal.

EXECUTIVE VICE PRESIDENT

Jennifer Barrera oversees the development and implementation of policy and strategy, and represents the California Chamber of Commerce on legal reform issues.

She led CalChamber advocacy on labor and employment and taxation from September 2010 through the end of 2017. As senior policy advocate in 2017, Barrera worked with the executive vice president in developing policy strategy. She was named senior vice president, policy, for 2018 and promoted to executive vice president as of January 1, 2019.

In addition, she advises the business compliance activities of the CalChamber on interpreting changes in employment law.

From May 2003 until joining the CalChamber staff, she worked at a statewide law firm that specializes in labor/employment defense. She represented employers in both state and federal court on a variety of issues, including wage and hour disputes, discrimination, harassment, retaliation, breach of contract, and wrongful termination. She also advised both small and large businesses on compliance issues, presented seminars on various employment-related topics, and regularly authored articles in human resources publications.

Barrera earned a B.A. in English from California State University, Bakersfield, and a J.D. with high honors from California Western School of Law.

Staff to: Legal Reform and Protection Committee
Laura E. Curtis joined the California Chamber of Commerce in December 2017 as a policy advocate. She specializes in labor and employment, workers’ compensation, and regulatory reform.

Before joining the CalChamber policy team, she was a labor and employment attorney for The Mitzel Group, LLP in San Francisco, counseling clients on subjects including wage and hour disputes, harassment, discrimination, retaliation, Private Attorneys General Act (PAGA) claims, and administrative agency compliance.

She previously served as a labor and employment attorney at Littler Mendelson, PC, in Walnut Creek, representing employers in state and federal court on a wide range of employment law matters. She also represented applicants in all aspects of workers’ compensation litigation as a workers’ compensation attorney at Mastagni Holstedt, APC in Sacramento.

Before starting her legal career, Curtis was an outside sales representative for SimplexGrinnell-TYCO, provider of fire and life safety services, directing sales and service teams and leading product training in the company’s San Francisco region. She also was an account coordinator at Binger Communications, Inc. of San Diego, and a congressional intern in the Washington, D.C. office of Congressman Robert T. Matsui.

Curtis holds a B.A. in communications with a minor in political science from the University of California, San Diego. She earned a J.D. from Santa Clara University School of Law, where she worked on the International Law Journal.

Staff to: Labor and Employment Committee, Workers’ Compensation Committee

Shoeb Mohammed joined the California Chamber of Commerce in December 2019 as a policy advocate. He specializes in privacy and cybersecurity, economic development, technology, telecommunications and elections/fair political practices issues.

Mohammed is an experienced litigator who advised clients on matters such as trademark; employment; business planning; proprietary software; and technology-related business cases.

He came to the CalChamber policy team after practicing law at Knox Lemmon & Anapolsky, LLP, where he provided product and general counsel for various industries, including heavy manufacturing, internationally distributed snacks, fintech prepaid card services, and technology.

Before joining Knox Lemmon, Mohammed handled technology-related business counsel and litigation as a senior partner at Black Tie Law Corporation.

Mohammed earned a B.A. in political science at California State Polytechnic University, Pomona; a J.D. from the McGeorge School of Law, University of the Pacific; and a Certificate in Disruptive Strategy from Harvard Business School Online.

Staff to: Privacy and Cybersecurity Committee, Energy and Telecommunications Committee
POLICY ADVOCATE

Robert Moutrie joined the California Chamber of Commerce in March 2019 as a policy advocate. He leads CalChamber advocacy on occupational safety, tourism, unemployment insurance and immigration. Starting in 2020, he also will represent employer interests on education issues.

Moutrie has represented clients on matters such as consumer fraud litigation, civil rights, employment law claims, tort claims, and other business-related issues in federal and state courts.

He previously served as an associate attorney at the Oakland-based firms of Meyers, Nave, Riback, Silver & Wilson, and at Valdez, Todd & Doyle; and as a junior associate attorney at the Law Offices of Todd Ruggiero in San Francisco. He also served as a legal intern for the San Francisco Public Defender’s Office and the Los Angeles District Attorney’s Office.

Moutrie earned a B.A. in political science from the University of California, Berkeley, and a J.D. with honors from the University of California, Hastings College of the Law. He is an instructor for the UC Hastings Trial Team, ranked No. 1 in the nation.

Staff to: Education Committee, Workplace Safety Subcommittee, Tourism Committee, Immigration Committee

POLICY ADVOCATE

Valerie Nera specializes in advocacy on agriculture, water, water storage, resources, crime, and banking and finance issues for the California Chamber of Commerce.

Priority issues include water supply and conveyance, agricultural land use, balanced resource development policies for timber, protection of private property rights, federal and state endangered species laws, banking rules, graffiti, and organized retail theft.

Nera joined the CalChamber staff in 1978 as a legislative assistant on agricultural issues. She also has lobbied air, environmental, telecommunications and privacy issues for the CalChamber.

She earned a B.A. with honors from the University of California, Berkeley, and a J.D. from the McGeorge School of Law, University of the Pacific.

Staff to: Water Resources Committee

POLICY ADVOCATE

Adam Regele joined the California Chamber of Commerce in April 2018 as a policy advocate specializing in environmental policy, housing and land use, and product regulation issues.

He came to the CalChamber policy team after practicing law at an Oakland-based law firm—Meyers, Nave, Riback, Silver & Wilson, PLC—where he advised private and public clients on complex projects involving land use and environmental laws and regulations at the local, state and federal levels. His extensive environmental and waste regulatory compliance experience includes defending in litigation matters related to the California Environmental Quality Act (CEQA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA).

Before joining Meyers Nave, Regele handled state and federal environmental litigation and administrative proceedings as an associate at a Bay Area law firm that focused on environmental, natural resources, land use, labor and local government law.

He served as a federal judicial law clerk to the Honorable Edward J. Davila of the U.S. District Court, Northern District of California and as a legal fellow with the Oakland City Attorney’s Office prior to entering private law practice.

Regele earned a B.S. in environmental science at the University of California, Berkeley, and a J.D. from UC Hastings College of Law, where he was symposium editor and research and development editor for the Hastings West-Northwest Journal.

Staff to: Chemical Policy Committee, Environmental Policy Committee
POLICY ADVOCATE

Leah B. Silverthorn joined the California Chamber of Commerce in May 2018 as a policy advocate. She specializes in climate change, air quality, energy, environmental justice, marijuana/cannabis, and transportation and infrastructure issues.

She brought to the CalChamber more than decade of legal experience in environmental, energy, and land use matters. Immediately before coming to CalChamber, she was the principal owner of Silverthorn Legal, based in Seattle, Washington. She focused on environmental litigation, contaminated property redevelopment, and environmental cost recovery and defense.

Silverthorn has represented Fortune 500 companies and property owners against claims by U.S., Washington, Oregon, and California regional environmental entities.

She also handled cases dealing with environmental recovery claims, environmental insurance, and toxic tort cases at Wooden McLaughlin in Indianapolis, Indiana; and at Hunsucker Goodstein, with offices in California, Washington D.C., Colorado, and Seattle. Her clients at Wooden McLaughlin included large commercial and multi-family real estate developers, oil and gas companies, and insurance carriers, as well as small farms and restaurants.

Before entering private practice, Silverthorn was a staff attorney at the Indiana Department of Environmental Management Office of Legal Counsel. She is an honors graduate of Indiana University-Bloomington, with a B.S. in public affairs and environmental management. She earned her J.D., with honors, at the Indiana University McKinney School of Law, where she was articles editor for the Indiana International and Comparative Law Review and a member of the Moot Court Board.

**Staff to:** Environmental Policy Committee, Transportation and Infrastructure Committee, Energy and Telecommunications Committee

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POLICY ADVOCATE

Preston R. Young joined the California Chamber of Commerce in October 2019 as a policy advocate, specializing in health care policy and taxation issues.

Young came to the CalChamber from the Sacramento law firm of Schuering Zimmerman & Doyle, LLP, where he had been a partner since May 2012. He specialized in medical malpractice, health care, the Health Insurance Portability and Accountability Act (HIPAA), product liability, and elder abuse litigation.

He previously was an attorney with Powers & Miller Attorneys at Law in Sacramento, specializing in general and product liability litigation. He also worked as a graduate legal intern and an attorney for Philip M. Andersen & Associates of San Francisco.

Young holds a B.A. in communications from Saint Mary’s College of California, and earned a J.D. from Golden Gate University School of Law, where he was associate editor of the Environmental Law Journal.

**Staff to:** Health Care Policy Committee, Taxation Committee

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GRASSROOTS COORDINATOR

Natalie Leighton joined the California Chamber of Commerce in April 2019 as the grassroots coordinator.

She works closely with the CalChamber public policy team to encourage local chambers, business owners and representatives from throughout the state to make their views known to lawmakers and regulators.

Leighton brings to her grassroots assignment much experience in using social media and other contacts to get people involved. While assistant manager at Ascena Brands from November 2017 until joining the CalChamber, she collaborated with co-workers to engage customers and market promotions strategically.

As Educational Leadership Consultant for a nonprofit women’s organization, she curated the organization’s brand through social media on campuses through the country. She also recruited the 200 women for the founding class at the Cal Poly Pomona chapter, as well as planning events and overseeing the chapter’s initial funding.

Leighton earned a B.S. in business administration from Sonoma State University, where she specialized in wine business and marketing, and coordinated the guest speaker series for the Wine Sense Club. Her senior project examined Etsy’s business model as a focus for analyzing the online creative marketplace.
EXECUTIVE VICE PRESIDENT, CORPORATE AFFAIRS

Dave Kilby, executive vice president, corporate affairs, joined the California Chamber of Commerce staff in December 1988 after more than 11 years in local chamber of commerce management.

In addition to working with CalChamber major members, he serves as CalChamber corporate secretary and coordinates Board relations. Kilby also serves as president/chief executive officer of the Western Association of Chamber Executives.

During his first 11 years at CalChamber, Kilby served as the CalChamber’s lobbyist on economic development, land use and small business issues.

Over the years, he has coordinated local chamber relations, grassroots legislative action efforts, the CalChamber’s weekly legislative conference call and the annual business legislative summit.

Kilby is a member of the U.S. Chamber’s Committee of 100 and in 2011 the American Chamber of Commerce Executives named him to its “People Who Shape People” influential leaders list.

He has a B.A. in political science from California State University, Fresno.

Staff to: Economic Advisory Council

EXECUTIVE VICE PRESIDENT, PUBLIC AFFAIRS

Martin R. Wilson, executive vice president of public affairs, joined the California Chamber of Commerce in October 2011.

Wilson oversees all the CalChamber’s public affairs and campaign activities, including the Public Affairs Council, a political advisory committee made up of the CalChamber’s major members; its candidate recruitment and support program; and its political action committees: ChamberPAC, which supports pro-jobs candidates and legislators, and CalBusPAC, which qualifies, supports and/or opposes ballot initiatives.

He also serves as the CalChamber liaison to JobsPAC, an employer-based, independent expenditure committee that supports pro-business candidates.

Wilson has more than 40 years of experience in California politics, playing leadership roles in the election and re-election of two governors, and a U.S. senator. He also has orchestrated numerous successful ballot measure and public affairs campaigns.

In addition to his campaign experience, Wilson has served in government as a senior staff member at the local, state and federal levels.

Before joining the CalChamber, Wilson spent seven years as managing partner of Wilson-Miller Communications, where he also advised Governor Arnold Schwarzenegger as head of the Governor’s political and initiative committee, the California Recovery Team.

Before founding his own firm, Wilson was managing director for Public Strategies Inc. in Sacramento for five years and held a similar position with Burson-Marsteller for six years.

Wilson has served as senior fellow for the University of California, Los Angeles School of Public Affairs, board member for the California State Fair and director of the Coro Foundation, a public affairs training organization.

He graduated from San Diego State University with a B.A. in history.

Staff to: Public Affairs Council, ChamberPAC Advisory Committee, ChamberPAC, CalBusPAC, Candidate Recruitment and Development Fund

Also: JobsPAC Executive Director
EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL

Erika Frank, executive vice president of legal affairs, joined the CalChamber in April 2004 as a policy advocate and began serving as general counsel shortly thereafter, leveraging her 10 years of combined legal, governmental and legislative experience. She was named vice president of legal affairs in 2009 and executive vice president at the start of 2017.

Before assuming full-time general counsel responsibilities in late 2005, Frank also lobbied the legislative and executive branches on taxation, civil litigation and lawsuit abuse issues.

Frank leads CalChamber’s Legal Affairs Department, which participates in court cases having a broad impact on California’s economy and business climate—including workers’ compensation reform, labor and employment, taxation, litigation reform and commercial free speech.

As CalChamber’s subject matter expert on California and federal employment law, she oversees and contributes to CalChamber’s labor law and human resources compliance products, including HRCalifornia; co-produces and presents webinars and seminars; and heads the Labor Law Helpline.

Through their active involvement on the front lines of California’s legal and labor law compliance scene, Frank and her team are first to know when and how changes in law affect employers. She uses her employment law expertise to develop and facilitate training courses for HR employers. She uses her employment law expertise to develop and facilitate training courses for HR employers, and is a sought-after speaker at industry events.

Frank holds a B.A. in political science from the University of California, Santa Barbara, and received her J.D. from the McGeorge School of Law, University of the Pacific.

VICE PRESIDENT, COMMUNICATIONS

Ann Amioka has been a communications specialist at the California Chamber of Commerce since 1980. Since 1982, she has been editor of the CalChamber’s legislative newsletter, Alert. She oversees editing and production of CalChamber communications and the corporate website.

Before joining the CalChamber staff as editor of the CalChamber’s agricultural labor relations newsletter, Amioka was a reporter for a daily newspaper in Yolo County. She has a B.A. in history from Stanford University and an M.A. in history from California State University, Sacramento.

VICE PRESIDENT, MEDIA RELATIONS AND EXTERNAL AFFAIRS

Denise Davis is the chief liaison with the news media for the California Chamber of Commerce. As vice president for media relations and external affairs, she oversees communications strategy and outreach, and manages the CalChamber’s involvement in select issue advocacy and ballot measure campaigns.

Before joining the CalChamber, Davis was a senior-level communications consultant working on a number of high-profile campaigns, legal matters and policy issues. She was Governor Arnold Schwarzenegger’s chief deputy communications director and has 14 years of experience serving three California attorneys general as a spokesperson and victim advocate. She also directed media relations for a national, nonprofit legal foundation.

Over the course of her career, Davis has worked closely with statewide officeholders, Cabinet members, major corporations and a variety of trade associations. As such, Davis has developed expertise in the areas of environmental law, land use regulation, water law, resource management, criminal justice issues, correctional law, consumer law, health care and labor relations.

Davis graduated from the University of California, Davis, receiving a B.A. in communications.
Russell Lahodny joined the California Chamber of Commerce as vice president of local chamber relations in 2014. He serves as an information resource for and CalChamber liaison with local chambers of commerce.

From 2010 until joining the CalChamber staff, Lahodny was senior vice president, communications for the Anaheim Chamber of Commerce. His role was to maintain the quality and consistency of the chamber’s messaging to its members and the business community. He created and oversaw all Anaheim Chamber communication tools, including a member newspaper, weekly e-newsletters, press releases, marketing materials, and website design. He also oversaw the Anaheim Chamber’s legislative actions and coordinated monthly meetings featuring local elected officials.

Before relocating to Anaheim, Lahodny was vice president of communications at the Irvine Chamber of Commerce. During his seven years in Irvine, he helped the chamber earn 15 communications awards from the Western Association of Chamber Executives.

In his CalChamber position, Lahodny also serves as vice president of the association.

Lahodny received his B.A. in communications with an emphasis in photojournalism from California State University, Fullerton, where he served as photo editor for the college newspaper, The Daily Titan.

Drew Savage was named vice president of corporate relations at the beginning of 2001. The position is dedicated to enhancing the CalChamber’s profile with major corporations.

Savage came to CalChamber in 1990 as a membership specialist following three years in a similar position at the Illinois Chamber. He was named manager of the CalChamber’s membership sales team in October 1994. After taking on additional responsibilities for working with the state’s growth industries and developing relationships with larger companies, Savage was promoted to vice president of membership in late 1999.

He holds a B.A. in political science from the University of Illinois at Chicago.

Susanne Thorsen Stirling has headed CalChamber international activities for nearly four decades.

She is an appointee of the U.S. Secretary of Commerce to the National Export Council, and serves on the U.S. Chamber of Commerce International Policy Committee, the California International Relations Foundation, and the Chile-California Council.

In previous years, Stirling was an appointee of Governor Edmund G. Brown Jr. to the California International Trade and Investment Advisory Council, and served on the Board of Directors of the International Diplomacy Council, the World Affairs Council of Northern California (Sacramento), and the Danish-American Chamber of Commerce.

The CalChamber sponsors and participates in trade, investment and other international events; assists members with general export and import activities; maintains www.calchamber.com/international; and provides a weekly e-newsletter.

The CalChamber is a past recipient of the U.S. Presidential Award for Export Service, and received the Presidential Citation from the government of the Republic of Korea. In November 2019, Stirling was presented with the “Outstanding Woman of the Year in International Trade” award by the Women in International Trade, Los Angeles (WIT-LA).

Before joining the CalChamber, Stirling held positions in public affairs and public relations for Burmeister & Wain A/S, an international shipbuilding company based in Copenhagen.

Stirling, originally from Denmark, studied at the University of Copenhagen and holds a B.A. in international relations from the University of the Pacific, where she now serves as a member of the Board of Regents. She earned an M.A. from the School of International Relations at the University of Southern California.

Staff to: Council for International Trade
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## California Foundation for Commerce and Education

### PRESIDENT
Loren Kaye was appointed president of the California Foundation for Commerce and Education in January 2006.

The Foundation is affiliated with the California Chamber of Commerce and serves as a “think tank” for the California business community. The Foundation is dedicated to preserving and strengthening the California business climate and private enterprise through accurate, impartial and objective research and analysis of public policy issues of interest to the California business and public policy communities.

Kaye has devoted his career to developing, analyzing and implementing public policy issues in California, with a special emphasis on improving the state’s business and economic climate.

Kaye also was a gubernatorial appointee to the state’s Little Hoover Commission, charged with evaluating the efficiency and effectiveness of state agencies and programs. He served in senior policy positions for Governors Pete Wilson and George Deukmejian, including Cabinet Secretary to the Governor and Undersecretary of the California Trade and Commerce Agency. Kaye also has represented numerous private sector interests, managing issues that affect specific business sectors to promote an improved business climate or to resist further regulation or costs on business.

Kaye is a graduate of the University of California, San Diego, with a degree in political science.
CalChamber Committees
California Chamber of Commerce policy committees draft and review policy and make recommendations to the Board of Directors on a range of issues. The CalChamber also establishes ad hoc committees as the need arises to address other policy issues. Committees range in size from eight to 100 members, and meet between two and four times a year (or, as needed) at locations throughout California or via telephone conference calls. Committee chairs generally are members of the CalChamber Board of Directors and work closely with CalChamber policy team members, permitting the CalChamber to act quickly as issues emerge. Membership in committees (other than those whose membership is by appointment) is open to managers, technicians and/or policy experts with member firms. To get involved, submit the form at www.calchamber.com/getinvolved.

POLICY COMMITTEES

CHEMICAL POLICY
Goal: Simplify compliance obligations; minimize compliance cost for businesses; support use of best available scientific evidence; reduce frivolous litigation; and prevent “overwarning.” (Must be CalChamber Advocate-level member to join.)
Staff Contact: Adam Regele
adam.regele@calchamber.com

EDUCATION
Goal: Foster greater business involvement to improve both teacher and student performance, and administrative accountability in schools throughout California. (Membership by appointment.)
Staff Contact: Robert Moutrie
robert.moutrie@calchamber.com

ENERGY AND TELECOMMUNICATIONS
Goal: Recommend policies on utilities and commerce issues, including electricity, telecommunications, commercial transactions, corporate governance, economic stimulus and development.
Staff Contacts: Leah Silverthorn, leah.silverthorn@calchamber.com
Shoeb Mohammed, shoeb.mohammed@calchamber.com

ENVIRONMENTAL POLICY
Goal: Oversee issues related to the environment, such as air quality, climate change and AB 32 implementation, the California Environmental Quality Act (CEQA), Proposition 65 and green chemistry, hazardous and solid waste, surface mining and land use. Recommend policies that meet the mutual objectives of protecting human health and the environment while conserving the financial resources of business to the fullest extent possible to help California businesses grow and promote their technologies/services.
Staff Contacts: Adam Regele, adam.regele@calchamber.com
Leah Silverthorn, leah.silverthorn@calchamber.com

HEALTH CARE POLICY
Goal: Promote a sound and affordable health care system. Work to contain costs and avoid unnecessary and expensive regulatory controls, including mandates.
Staff Contact: Preston R. Young
preston.young@calchamber.com

IMMIGRATION
Goal: Recommend policies on issues concerning immigration.
Staff Contact: Robert Moutrie
robert.moutrie@calchamber.com

LABOR AND EMPLOYMENT
Goal: Protect employers’ rights to organize, direct and manage their companies’ employees in an efficient, safe and productive manner.
Staff Contact: Laura E. Curtis
laura.curtis@calchamber.com

LEGAL REFORM AND PROTECTION
Goal: Seek comprehensive tort reform that will halt runaway liability risk and promote greater fairness, efficiency and economy in the civil justice system.
Staff Contact: Jennifer Barrera
jennifer.barrera@calchamber.com

PRIVACY AND CYBERSECURITY
Goal: Proactively develop and promote privacy principles and policies that protect consumers without stifling innovation and that avoid costly and unnecessary legal liability and compliance burdens on businesses.
Staff Contact: Shoeb Mohammed
shoeb.mohammed@calchamber.com
ABOUT CALCHAMBER

TAXATION
Goal: Monitor legislation and regulatory activity to ensure that California tax laws are fair and can be administered easily. Review state spending plans to make certain that economy and efficiency are the primary goals of government.
Staff Contact: Preston R. Young
preston.young@calchamber.com

TOURISM
Goal: Encourage increased travel to California by fostering investment in advertising and improvements to tourism infrastructure, considering the important role of tourism in the state’s economy and plans for economic recovery. (Membership by appointment.)
Staff Contact: Robert Moutrie
robert.moutrie@calchamber.com

TRANSPORTATION AND INFRASTRUCTURE
Goal: Work toward developing and maintaining a statewide transportation network that is adequate for the needs of business, agriculture and individual citizens.
Staff Contact: Leah Silverthorn
leah.silverthorn@calchamber.com

WATER RESOURCES
Goal: Encourage responsible water quality goals and water development policies to meet the increasing demand for reliable water supplies. (Membership by appointment.)
Staff Contact: Valerie Nera
valerie.nera@calchamber.com

WORKERS’ COMPENSATION
Goal: Promote legislative, judicial and regulatory actions that maintain an efficient workers’ compensation system that provides adequate worker benefits while protecting the competitive position of California employers.
Staff Contact: Laura E. Curtis
laura.curtis@calchamber.com

SUBCOMMITTEE
WORKPLACE SAFETY
Goal: Advocate cost-effective and practical safety and health regulations while protecting the competitive position of California employers. (Subcommittee of Labor and Employment Committee.)
Staff Contact: Robert Moutrie
robert.moutrie@calchamber.com

POLITICAL ACTION COMMITTEES
The California Chamber of Commerce has established two political action committees (PAC) to help focus business efforts to provide financial support to pro-jobs candidates or issues campaigns.

CHAMBERPAC
Goal: Provide financial support to business-friendly incumbent legislators and candidates for state legislative and local office.
Staff Contact: Martin R. Wilson
martin.wilson@calchamber.com

CALBUSPAC
Goal: Provide funding to help qualify, support and/or oppose statewide ballot initiatives.
Staff Contact: Martin R. Wilson
martin.wilson@calchamber.com
SPECIAL COMMITTEES

PUBLIC AFFAIRS COUNCIL

**Goal:** Advise CalChamber on key political issues affecting the business community. (Must be CalChamber Advocate-level member to join.)
**Staff Contact:** Martin R. Wilson
  martin.wilson@calchamber.com

COUNCIL FOR INTERNATIONAL TRADE

**Goal:** Work with state and federal administrations and lawmakers to support expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.
**Staff Contact:** Susanne T. Stirling
  susanne.stirling@calchamber.com

CHAMBERPAC ADVISORY COMMITTEE

**Goal:** Provide guidance and assistance to the CalChamber in its political fundraising efforts. (Must be a member of the CalChamber Board of Directors to join.)
**Staff Contact:** Martin R. Wilson
  martin.wilson@calchamber.com

ECONOMIC ADVISORY COUNCIL

**Goal:** Provide quarterly forecasts of the California economy and coordinate special economic studies. Council members include business economists from a variety of industries and from government.
**Staff Contact:** Dave Kilby
  dave.kilby@calchamber.com
The California Chamber of Commerce is the largest broad-based business advocate to government in California.

Membership represents one-quarter of the private sector jobs in California and includes firms of all sizes and companies from every industry within the state. More than 250 local chambers of commerce are affiliated with the CalChamber, and are solid partners in CalChamber efforts to promote business-friendly policy.

Based on a survey of members in January 2020:
- 23% have been in existence for 50 years or more; 38% for 25 years or more; 6% for 100 years or more.
- 12% have been in existence for less than 10 years.
- 17% are owned/co-owned by women.
- 31% are owned/co-owned by ethnic minorities or persons of mixed ethnicity.
- 32% do business internationally.
- 41% plan to add employees in 2020, while 56% plan to maintain the size of their workforce.
- 89% offer health insurance coverage and 83% offer a retirement savings plan.

**By Employer Size**

- 0-20 employees: 32%
- 21-50 employees: 22%
- 51-100 employees: 17%
- 101-250 employees: 16%
- 251-500 employees: 7%
- 501-999 employees: 2%
- 1,000+ employees: 4%

**By Industry Classification**

- Business/Personal Services: 48%
- Manufacturing: 14%
- Agriculture/Mining: 3%
- Construction: 5%
- Transportation/Communications/Utilities: 4%
- Wholesalers: 7%
- Retailers: 8%
- Finance/Insurance/Real Estate: 8%
- Public Administration: 1%
- Local Chambers: 2%
California Promise: Opportunity for All
Candidate Recruitment/Development
Open Seats Provide Opportunity
Finding Candidates Who Understand Employer Perspective

By the time you read this you are aware that 2020 is a presidential election year and California is brimming with activity due to our March 3 primary election. There will be campaign workers and volunteers aplenty stumping for Trump, roaring for Warren or siding with Biden plus numerous other candidates creating a hive of activity that will drive voter interest and participation.

While the presidential primary is the marquee race, we at the California Chamber of Commerce will turn our time, attention and resources further down the ballot by focusing on the 20 Senate and 80 Assembly elections that coincide with the presidential contest.

The early primary creates special challenges for legislative candidates, especially those running in open seats where there are no incumbents. This year there are eight open Assembly seats—10% of the body; and seven in the Senate—almost 20%.

Most of these seats have multi-candidate fields, which make it difficult to separate the front runners from the also-rans. That being said, we will do our best to find the candidate who understands the employer community’s perspective and who can win regardless of party affiliation.

**ROARING INTO THE ‘20S—CALIFORNIA’S ELECTION LANDSCAPE**

As mentioned above, the open Senate and Assembly seats will draw an extraordinary amount of attention as they provide a unique opportunity to elect people willing to learn our issues and support our legislative agenda.

The trick is getting the sympathetic candidates elected, which is why we deploy all the modern techniques of elections, including polling, analytics, targeted messaging and good old-fashioned shoe leather to succeed at the ballot box.

A year ago, there were zero Assembly vacancies and no lawmakers were facing the end of their 12-year terms. But electoral opportunities pop up like a game of whack-a-mole and now we have eight open seats in 2020. Of the eight seats, seven are occupied by Democrats, again presenting an opportunity to improve the quality of the officeholder, and that will be our aim this year.

**KEY RACES**

- Among the open Democratic Senate seats, expect a lot of attention paid to Senate District 5, a Central Valley district currently occupied by business-friendly Democrat Cathleen Galgiani.
  - Senate District 13, split between San Mateo and Santa Clara counties, will be open due to Democrat Jerry Hill terming out. The Santa Clara County seat, Senate District 15, will open up due to Democrat Jim Beall being term limited. CalChamber is looking at replacements for both of these seats who will be more open to the views of the high concentration of employers in these two counties.
  - Senate District 19, which contains the counties of Santa Barbara and Ventura, is open due to Democrat Hannah-Beth Jackson stepping aside due to term limits. It is very likely that Democrat Monique Limón will move up from the Assembly to occupy this seat.
  - CalChamber has the dual imperative of protecting our Senate allies. To that end, we will work to ensure that Democrat Steve
CANDIDATE RECRUITMENT/DEVELOPMENT

Glazer returns to the East Bay Senate District 7, where he faces two challengers—one from the right and the other from the left. It is expected that labor and its allies will work to unseat several sitting GOP senators and CalChamber will engage to defend those seats as well.

Among the Republican seats thought to be most competitive are the San Bernardino County seat occupied by Mike Morrell, the Santa Clarita Valley seat of Scott Wilk and the Orange County seat occupied by John Moorlach.

In addition, there will be a special election in Senate District 28, based in Riverside County, to fill the vacancy created by the resignation of Republican Jeff Stone. It is a March Primary and May General Election in a district that slightly favors the GOP. CalChamber will be working to ensure the seat remains in Republican hands.

TRACK RECORD
CalChamber will continue to recruit and elect business-friendly candidates to maintain our superb track record of beating job-killing legislative proposals by staying on the task of engaging our political action network. Our focus will remain dedicated to finding and electing candidates from both political parties who possess the courage to stand up to the liberal special interests and reject their philosophy of tax, spend and regulate.

If successful with our election strategy, then our opportunities will far outdistance our challenges.

CANDIDATE RECRUITMENT
Although not a political action committee, the Candidate Recruitment and Development Program provides the resources necessary to build a bench of electable, pro-jobs candidates for state legislative and local office. CalChamber partners with our local chamber network, as well as state and local member businesses, to ensure the recruitment efforts are bipartisan and locally driven.

The primary component of this program is to identify potential candidates and put them on the path to elective office. The secondary component is training and developing candidates for their positions. The program has successfully recruited numerous local candidates who have won election to state legislative seats.

POLITICAL ACTION COMMITTEES (PACS)
The CalChamber’s Political Action Network includes three political entities:

• ChamberPAC is a bipartisan political action committee that makes direct contributions to incumbent office holders and select candidates who promote and vote for an agenda of private sector job creation. Contributions to this committee are limited to $7,300 per year, person, organization or political action committee.

• JobsPAC is an independent expenditure committee, meaning it speaks directly to voters on behalf of the business community to elect pro-jobs candidates. Co-chaired by CalChamber and the California Manufacturers and Technology Association, JobsPAC may accept contributions in unlimited amounts.

• CalBusPAC is a CalChamber committee that is formed to primarily support or oppose ballot measures having an impact on the state’s business climate. CalBusPAC may accept contributions in unlimited amounts.

CALCHAMBER POSITION
California’s business community is under constant pressure due to the disproportionate influence that special interest and government employee organizations have on the legislative and regulatory process. CalChamber is committed to standing up for and speaking out on behalf of the state’s employer community through political action, our advocacy network, and constant and direct contact with elected officials.

Staff Contact
Martin R. Wilson
Executive Vice President, Public Affairs
martin.wilson@calchamber.com
January 2020
Contacting Your Legislators: Protocol

California Senate and Assembly want to hear from their constituents—you—the voters in their districts. At times, your association may call on you to do some grassroots lobbying. Often, the contact from a district constituent can sway a legislator’s vote.

Here are some guidelines for you to follow in contacting your legislators in person, by phone or by letter.

• **Be thoughtful.** Commend the right things which your legislator does. That’s the way you’d like to be treated.

• **Be reasonable.** Recognize that there are legitimate differences of opinion. Never indulge in threats or recriminations.

• **Be realistic.** Remember that most controversial legislation is the result of compromise. Don’t expect that everything will go your way, and don’t be too critical when it doesn’t.

• **Be accurate and factual.** The mere fact that you want or do not want a piece of legislation isn’t enough. If an issue goes against you, don’t rush to blame the legislator for “failing to do what you wanted.” Make certain you have the necessary information and do a good job of presenting your case.

• **Be understanding.** Put yourself in a legislator’s place. Try to understand his/her problems, outlook and aims. Then you are more likely to help him/her understand your business and problems.

• **Be friendly.** Don’t contact your legislator only when you want his/her vote. Invite him/her to your place of business or your group meetings. Take pains to keep in touch with him/her throughout the year.

• **Give credit where it is due.** If an issue goes the way you wanted, remember that your legislator deserves first credit. He/she has the vote, not you. And, remember also that many organizations and individuals participated on your side.

• **Learn to evaluate issues.** The introduction of a legislative bill doesn’t mean that it will become law. Whether you’re for it or against it, don’t get excited about it until you learn the who, what and why of it.

• **Support your legislator.** If he/she is running for re-election and if you believe he/she deserves it, give him/her your support. He/she needs workers and financial supporters. Don’t become aloof at the time when your legislator needs your help.

• ***Don’t, don’t, don’t even hint that you think certain bills, campaigns or politics in general are not worthwhile or may be dishonest.***

• **Don’t demand anything.** And don’t be rude or threatening. There is always “the future,” and in many cases a legislator may disagree with you on one issue and be supportive on another.

• **Don’t be vague or deceptive, righteous or long-winded, and please don’t remind the legislator that you are a taxpayer and voter in his/her district.** (He/she knows it!)

• **Don’t be an extremist.** Remember, your legislator represents all his/her constituents—those you consider liberal and those you consider conservative. Don’t condemn a legislator just because he/she supports a piece of legislation that you think is too liberal or too conservative.

• **Don’t be a busybody.** Legislators don’t like to be pestered, scolded or preached to. Neither do you.

• **Be cooperative.** If your legislator makes a reasonable request, try to comply with it. You can help him/her by giving him/her the information he/she needs. Don’t back away for fear you are “getting into politics.”

**Letter Writing**

Following are guidelines for an effective letter:

• **Be brief.**

• **Refer to bill numbers whenever possible.**

• **Make sure the legislator knows this communication is from a constituent who lives and/or does business in the legislator’s district.**

• **Explain how the proposed legislation affects your business, and why you support/oppose it.**

• **Don’t attempt to give “expert” opinions.** Tell how the legislation would affect your business, based on your experience and knowledge.

• **Ask for the legislator’s support or opposition.**

• **Write the letter without copying any association-provided background information verbatim.**

• **Request that your legislator take a specific action by telling him/her what you desire.** State the facts as you see them. Avoid emotional arguments. If you use dollar figures, be realistic.

• **Ask the legislator what his/her position is.**

• **Keep all communications friendly and respectful.** Be sure to thank your legislator for considering your views.

• **Write on your personal or business letterhead if possible, and sign your name over your typed signature at the end of your message.**

• **Be sure your exact return address is on the letter, not just the envelope.** Envelopes sometimes get thrown away before the letter is answered.

• **Be reasonable.** Don’t ask for the impossible. Don’t threaten. Don’t say, “I’ll never vote for you unless you do such and such.” That will not help your cause; it may even harm it.

• **Be constructive.** If a bill deals with a problem you admit exists, but you believe the bill is the wrong approach, tell what the right approach is.
Send your association a copy of your letter and a copy of the response you receive from your legislator.
Address all letters in the following manner, unless you are on a first name basis:

**State Legislature:**
- **Assembly Member**
  The Honorable Joe/Jo Doe
  California State Assembly
  State Capitol
  Sacramento, CA 95814
  Dear Assembly Member Doe:
- **Senator**
  The Honorable Joe/Jo Doe
  California State Senate
  State Capitol
  Sacramento, CA 95814
  Dear Senator Doe:

**Local Elected Officials:**
- **Council Member**
  The Honorable Joe/Jo Doe
  Councilman/woman,
  City of—
  City Hall
  City, State and Zip Code
  Dear Mr./Ms./Mrs./Miss Doe:
- **County Supervisor**
  The Honorable Joe/Jo Doe
  Supervisor, —County
  County Seat
  City, State and Zip Code
  Dear Sir/Madam:
  or Dear Mr./Ms./Mrs./Miss Doe:

**Guidelines for District Visits**
The following guidelines may be helpful when you make district visits:
- Members of the state Legislature rely heavily on their staffs for a major portion of their responsibilities, i.e., scheduling, advice on specific legislation, constituent problems, etc.

This is why it is important to maintain some familiarity with the district office staff. However, you do want to become acquainted and develop a working relationship directly with the legislators in your district.

**Generally, the legislative schedule permits each legislator to visit the district office on Fridays and holidays.**
- Always call in advance for an appointment and briefly explain the purpose of the meeting. As a business person, you are an important constituent and the politician and his/her aides are eager to get acquainted.
- If the meeting with the member of the Senate or Assembly is for the purpose of discussing specific legislation, review the background information and position statements available from your association and use the bill numbers when possible.
- Ask the legislator for his/her position on issues and how he/she will vote.

**Other activities**
We encourage you to consider other activities as ways of effectively maintaining liaison with your district legislators:
- Invite other members of your profession to join you and your legislator for lunch.
- Invite your legislator to visit your company. You may want to have a short meeting between your employees and the legislator. The legislator could make brief remarks, followed by a question-and-answer period.
- Offer to help organize an information business advisory group to meet regularly with your legislators to discuss business and key industry issues.

**Telephone Procedures**
- When the Legislature is in session, call the Capitol office; during recess and on Fridays, call the district office.
- Ask to speak directly to the legislator. If he/she is not available, ask to speak to the administrative assistant or legislative aide.
- When the legislator or his/her assistant is on the line, identify yourself and mention the name of your company and the fact that you are from the legislator’s district.
- State the reason for the call. Use bill numbers whenever possible.
- Explain how the proposed legislation affects your business and why you support or oppose it.
- Discuss only one issue per telephone call.
- Ask the legislator’s position.
  ✔ If the legislator’s position is the same as yours, express agreement and thanks.
  ✔ If your position differs from the legislator’s, politely express disappointment and offer some factual information supporting your views.
- Don’t attempt to give “expert” opinions. Tell how legislation would affect your business, based on your experience and knowledge.
- Request that your legislator take a specific action by telling him/her what you desire. State the facts as you see them. Avoid emotional arguments. If you use dollar figures, be realistic.
- Keep all communication friendly and respectful.
- Thank the legislator or aide for his/her time and for considering your views.
The Legislative Process

- **Senate:** 40 members
- **Assembly:** 80 members
- **Regular Session:** Convenes on the first Monday in December of each even-numbered year and continues until November 30 of the next even-numbered year.
- **Special Session:** May be called by the Governor and is limited to a specific subject. Length is not limited and may be held concurrently with the regular session.
- **Effective Date of Laws:** January 1 of the year after enactment unless an urgency measure, which takes effect immediately upon being signed, or a different effective date is specified.

**Procedure**

- **Introduction:** The bill is introduced by a member of the Senate or Assembly, read for the first time, then assigned to a committee by either the Senate Rules Committee or the Assembly Speaker.
- **Committee:** Hearing(s) are held in committee and testimony is taken from proponents and opponents. Generally, the committee will then amend, pass or fail to pass the bill.
- **Second Reading:** Bills that are passed by committee are read a second time and sent to the full floor for debate.
- **Floor Debate (in house of origin):**
  The bill is read a third time, debated and voted on. Most bills need a majority to pass (21 for the Senate, 41 for the Assembly). Bills with urgency clauses, appropriation measures and some tax-related bills need a two-thirds majority (27 for the Senate, 54 for the Assembly). If the bill is passed, it is sent to the second house.
- **Second House:** Procedures for a bill to pass the second house are similar to consideration and passage in the house of origin.
- **Amendments:** If the second house passes a bill with amendments, then the bill must be passed a second time by the house of origin for concurrence. If the amendments are rejected, a conference committee is formed to iron out the differences between the two houses.
- **Governor:** The Governor must act on (sign or veto) any bill that passes the Legislature within 12 days during the legislative session. However, the Governor has 30 days in which to act at the end of each year of the legislative session. Bills not acted on by the Governor automatically become law. A two-thirds vote of the Legislature is required to override a Governor’s veto.
How to Write an Effective Lobbying Letter

Address correspondence lobbying to the author of the bill with copies to members of the committee hearing the bill and to your local legislator.

Indicate immediately which bill you’re addressing by its bill number (AB__ if it originates in the Assembly, SB__ if it originates in the Senate), by an identifying phrase and whether you support or oppose the bill. This will help legislative staff in routing your letter.

Use your business letterhead when communicating your position on a bill.

Keep your letter short. A succinct, one-page letter will have more impact than a longer one. If you have documentation of the bill’s impact on your business, enclose it, but keep the letter short.

Provide concrete, credible information on the impact of proposed legislation on your business.

Get to the point of your letter quickly: your support for or opposition to the bill.

Elected officials prefer to hear from persons in authority rather than just from staff members. A letter will have more impact if the business owner or person in a management position signs the letter.

Be sure to be clear about what action you want the legislator to take.

If you have a personal relationship with the legislator, take a moment to write a quick, handwritten note to draw his or her attention to your letter.

Be sure to make clear for whom you’re speaking.

Act promptly. Too many good lobbying letters arrive after a vote already has been taken.

Be sure to send a copy of your letter to the Governor. Also please send a copy to the CalChamber staff members assigned to the bill so they can include information on your support or opposition in their committee testimony.

Use boldface type, underlining or italics sparingly to emphasize important points.

Impact California
Make a difference by using easy-to-edit sample letters and links to more information about bills and legislators at www.impact-california.com.
Guide to Reading a Bill

AMENDED IN ASSEMBLY JUNE 27, 2019
AMENDED IN SENATE MARCH 28, 2019

SENATE BILL No. 601

Introduced by Senator Morrell
(Coauthors: Senators Bates, Borgeas, Dahle, and Nielsen)
(Coauthors: Assembly Members Dahle and Mathis)
(Coauthor: Assembly Member Mathis)

February 22, 2019

An act to add Section 11009.5 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL’S DIGEST

SB 601, as amended, Morrell. State agencies: licenses: fee waiver. Existing law requires various licenses to be obtained by a person before engaging in certain professions or vocations or business activities, including licensure as a healing arts professional by various boards within the Department of Consumer Affairs. This bill would authorize any state agency that issues any business license to reduce or waive any required fees for licensure, renewal of licensure, or the replacement of a physical license for display if a person or business establishes to the satisfaction of the state agency that the person or business has been displaced or affected by a declared federal emergency or proclaimed state emergency, as defined, establish a process for a person or business that has been displaced or is experiencing economic hardship as a result of an emergency, as defined, to submit an application for reduction or waiver of fees required by the agency to obtain a license, renew or activate a license, or replace a physical license for display.

The actual language that will be a part of the state code when the bill is enacted into law appears following the line: “The people of the State of California do enact as follows.”
California Government Glossary

Legislature
The two “houses” that pass or reject proposed new laws.

Assembly: 80-member lower house of the Legislature. Its members serve two-year terms. 80 members are elected every two years.

Senate: 40-member upper house of the Legislature. Its members serve four-year terms. 20 members are elected every two years.

Legislation
Bill: A proposed law or statute that amends or repeals existing laws or proposes new laws. Most bills require a majority vote. If there is a fiscal impact, a bill requires a two-thirds vote.
> AB 0000—Assembly Bill
> SB 0000—Senate Bill

Constitutional Amendment: A proposed change in the state Constitution, which, after approval of two-thirds of the legislators, is submitted to the voters, who also must approve the change.
• ACA 0000—Assembly (authored) Constitutional Amendment.
• SCA 0000—Senate (authored) Constitutional Amendment.

Concurrent Resolution: A legislative proposal that commends individuals or groups, adopts legislative rules or establishes joint committees.
• ACR 0000—Assembly Concurrent Resolution.
• SCR 0000—Senate Concurrent Resolution.

Joint Resolution: A legislative opinion on matters pertaining to the federal government, often urging passage or defeat of legislation pending before Congress.
• AJR 0000—Assembly Joint Resolution.
• SJR 0000—Senate Joint Resolution.

Assembly and Senate Resolutions: An expression of sentiment of one house of the Legislature. Resolutions usually ask a committee to study a specific problem, create interim committees or amend house rules. Resolutions take effect upon adoption.
• AR 0000—Assembly Resolution.
• SR 0000—Senate Resolution.

Spot Bill: Bill introduced that usually makes nonsubstantive changes in a law. The spot bill is substantially amended at a later date. This procedure evades the deadline for the introduction of bills.

Legislative Process
Legislative Counsel: A staff of more than 80 attorneys who draft legislation (bills) and proposed amendments, review, analyze and render opinions on legal matters of concern to the Legislature. The Legislative Counsel’s Digest is a summary of a bill’s content contrasting existing law with proposed law (in lay language) and appears on the face of each bill.

Legislative Analyst: Provides advice to the Legislature on anything with a fiscal implication, which can cover virtually every major bill. The analyst annually publishes a detailed analysis of the Governor’s budget, which becomes the basis for legislative hearings on the fiscal program.

Author: Member of state Senate or Assembly who submits or introduces a bill and carries it through the legislative process.

Floor Manager: Speaks as author when the bill is being heard in the second house. (Assembly members are not allowed to present bills on the Senate floor and vice versa.)

Sponsor: Interest groups or constituents from the legislator’s district who bring suggested legislation to the attention of the prospective author (legislator).

Standing Committee: The forum used in the Senate and Assembly for studying bills and hearing testimony from the author, proponents and opponents.

• Many bills are heard by two or more committees in each house.
• If a majority of the committee members approve the bill, it is sent to the floor (or, if it has fiscal impact, to the Senate or Assembly Appropriations Committee) with a recommendation “Do Pass.” It takes a majority vote of committee members present to amend a bill.
• Your association’s legislative advocate and other members often testify before such committees.

Committee Consultants and Aides: Every legislator has a personal staff plus the assistance of specialists assigned to committees and to the party caucuses. This research staff is responsible for analyzing the pros and cons of the proposed legislation.

Introduction and First Reading: Bill is submitted by member of Senate or Assembly, numbered and read. It is assigned to a committee by the Senate Rules Committee or Assembly Speaker and printed.

Second Reading: When the bill passes the policy committee, it is read on the house floor for a second time.

Third Reading: Bill is read a third time and debated. A roll call vote follows. If passed or passed with amendments, the bill is sent to the second house (or, if it already is in the second house, it is returned to the house of origin) for consideration of amendments.

Enrollment: Legislation that has passed both houses is sent to enrollment for proofreading for consistency before being sent to the Governor for approval.
**Item Veto:** Allows the Governor to veto (return unsigned a legislative proposal or indicate points of disagreement) objectionable parts of a bill without rejecting bills in their entirety.

**Chaptered:** A bill that has passed both houses and has been signed by the Governor is said to be “chaptered.” The bill becomes law January 1 of the following year unless it contains an urgency clause (takes effect immediately) or specifies its effective date.

**Sunset Clause:** Acts of the state Legislature that expire after a certain date unless renewed by the Legislature.

**Voter Responses**
The techniques of direct democracy enable citizens to bypass elected government bodies and act directly on policy matters.

**Initiative:** A local or state measure that is placed on the ballot after a certain number of registered voters sign petitions supporting its placement on the ballot. Initiatives are used by groups or individuals when the Legislature fails to pass a law they want to enact.

**Referendum:** A procedure whereby the voters may approve or disapprove proposals recommended by a legislative body, such as a proposal for an increase in the tax rate.

**Recall:** A procedure whereby petitions are circulated calling for removal of a public official from office. If a sufficient number of signatures is obtained, an election is held in which voters decide whether to keep the official in office.

**PAC:** A Political Action Committee is a nonprofit committee that provides a lawful means to help elect and re-elect political candidates selected on the basis of their positions on industry-related issues, committee assignments and leadership in the Legislature. PACs make contributions to candidates or in support of or opposition to ballot measures.

*Adapted from California Grocers Association publication.*

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**California State Government — The Executive Branch**

The executive branch administers and enforces the laws of California. Led by the Governor, the California executive branch is made up of more than 200 state entities.

The executive officials of the branch—such as the Governor, Lieutenant Governor, Secretary of State and Attorney General, to name a few—are elected by the people of California. Each of these officers is elected to serve a four-year term, and may be elected to an office a maximum of two times.

Within the executive branch there are four types of entities: agencies, which are headed by a secretary; departments, which are headed by a director; and boards and commissions, which are headed by an executive officer or board member.

A number of entities, such as the Regents of the University of California and the Public Utilities Commission, are intended to be independent of direct control by all three branches of the state government. Most of the leaders of these entities are appointed by the Governor and confirmed by the California Senate.

The Governor also is responsible for appointing the secretaries/directors of 11 Cabinet-level state agencies: Consumer Services and Housing; Corrections and Rehabilitation (department); Environmental Protection; Finance (department); Food and Agriculture (department); Natural Resources; Government Operations; Health and Human Services; Labor and Workforce Development; Transportation; and Veterans Affairs (department).

Each Cabinet-level agency includes multiple departments, whose leaders also are appointed by the Governor and usually subject to confirmation by the Senate. The Cabinet-level Natural Resources Agency, for example, includes the Department of Water Resources, the Department of Parks and Recreation, and the California Energy Commission, to name three of 13 entities within that agency.

Each state entity wields significant power and plays a large role in interpreting and applying the laws of the state.

To find a state agency, department, board or office, visit [www.ca.gov/agencysearch/](http://www.ca.gov/agencysearch/).

The organization chart is available at [https://cold.govops.ca.gov/File/OrganizationalChart](https://cold.govops.ca.gov/File/OrganizationalChart).

Referral number for state agencies: (800) 807-6755.
From Advocacy Issues to Labor Law Compliance, CalChamber Is Your Trusted Resource for Helping California Business Do Business.

Membership benefits include:

HRCalifornia
Labor Law Helpline
Sexual Harassment Prevention Training
Respect Works
Advocacy

www.calchamber.com
The California Chamber of Commerce is the largest broad-based business advocate to government in California. Membership represents one-quarter of the private sector jobs in California and includes firms of all sizes and companies from every industry within the state. More than two-thirds of CalChamber members are companies with 100 or fewer employees.

The CalChamber’s full-time lobbying staff meets with legislators, regulators and other key government staff members year-round to assure that they consider employer concerns when proposing new laws and regulations. Backing up this lobbying team are the representatives of member firms who serve on the CalChamber’s standing committees, 200 member trade associations, 250 affiliated local chambers of commerce and a statewide network of 300,000 small business owners. The CalChamber promotes international trade and investment in order to stimulate California’s economy and create jobs. In addition, the CalChamber is involved in a number of coalitions on policy issues of concern to business. Updates on coalition activities appear on the CalChamber website.

Leveraging its front-line knowledge of laws and regulations, the CalChamber provides products and services to help businesses comply with both federal and state law. The CalChamber is the authoritative source for California labor law and safety resources and products. Each year, the CalChamber helps thousands of California employers understand laws and regulatory issues, and alerts employers when changes happen. In addition to California and federal, local ordinance, and out-of-state labor law posters, the CalChamber offers online tools, print and digital publications, harassment prevention training and other compliance seminars/webinars to help businesses meet changing employment law requirements.

CalChamber members have access to time-saving membership benefits such as HRCalifornia.com, a continually updated website for answering tough human resources questions. The Labor Law Helpline gives Preferred and Executive members with specific labor law and safety questions a chance to talk to experienced HR advisers for an explanation of laws and prompt, nonlegal advice. If you need to consult your attorney, they’ll let you know.

For more information about membership benefits or to receive a complete catalog of products, call 1-800-331-8877 or visit www.calchamber.com. The CalChamber is a not-for-profit organization.