

ALERT

CalChamber-Opposed Bills Stall; Dead for the Year



OPPOSE

The bills dealt with political contributions, non-compete contracts, and renewable hydrogen. Now dead are:

- **AB 83 (Lee; D-San Jose)**, an unconstitutional proposal that would have banned most corporations with even minimal foreign investment from contributing to campaigns or making independent expenditures.

- **AB 747 (McCarty; D-Sacramento)**, which would have augmented an existing exemption to non-compete law and imposed a steep, \$5,000 per employee penalty on businesses of any size if it was determined that their employment agreement included an unenforceable non-compete or if they even presented such a term to a contractor or employee.

- **AB 1550 (Bennett; D-Ventura)**, which would have imposed a burdensome standard on hydrogen production that would have driven up the cost of production and potentially risked billions of dollars in federal funding that would have been dedicated to hydrogen production in California.

Three California Chamber of Commerce-**opposed** bills have stalled in the California Assembly and are dead for the year.

The bills

Ban on Political Contributions

The CalChamber opposed AB 83 because it dramatically expanded the California Political Reform Act of 1974.

In its opposition, the CalChamber pointed out that AB 83 was redundant as “foreign influence” already is prohibited by federal and state law.

At the federal level, the bill was preempted by the Federal Election Campaign Act of 1971, which as amended, prohibits foreign nationals, directly or indirectly, from making contributions “in connection with a federal, state, or local election.” Congress has preempted the entire field; no other jurisdiction may regulate it, and any attempts will give way to federal law.

AB 83 also was unnecessary because the state implemented 2021 legislation, AB 319 (Valladares; R-Santa Clarita), which expanded the prohibition on foreign governments or principals to include contributions and expenditures in connection with an election of a candidate to state or local office.

Moreover, AB 83’s proposal to bar foreign-influenced corporations from making independent expenditures and contributions in furtherance of independent expenditures would be subject to strict scrutiny because it burdened core First Amendment speech. AB 83 was unlikely to survive such scrutiny,

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Local Tax Measures Totaling \$3.9+ Billion on March Ballots



Local tax and bond measures that cumulatively would increase taxes by more than

\$3.9 billion will appear on March ballots up and down the state, according to an [analysis](#) by the California Taxpayers Association.

The 77 measures included 36 school bonds, 16 transactions and use taxes, 19 parcel taxes, two general obligation bonds, one business tax license, one hotel tax and two special taxes.

If voters approve all the measures, Californians in various parts of the state will face more than \$350 million in direct tax increases and \$3.6 billion in bonded indebtedness that must be repaid, with interest, through property tax increases.

One Repeal Attempt

Notably, voters in San Bernardino County will be considering a repeal of a \$46.5 million parcel tax, placed on the ballot by initiative and requiring a majority vote to pass. The parcel tax helps fund the San Bernardino County Fire Protection District.

The [San Bernardino Sun](#) reports the March ballot measure marks the third attempt in four years to repeal the tax.

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Labor Law Corner

Asking Applicants about Vehicle Ownership May Be Discriminatory



Vanessa M. Greene
Employment Law
Subject Matter Expert

We've experienced challenges with employees being unable to come to work due to car troubles. In job interviews, is it OK to ask an applicant whether they own a working vehicle, to ensure consistent attendance?

Generally, no — asking an applicant whether they own a working vehicle may be discriminatory unless driving a personal vehicle for work falls under the essential duties of the position for which the applicant is applying.

Legal Implications

Questions about vehicle ownership often are regarded as exploring an applicant's financial information. Although employers generally are not prohibited from asking applicants about financial information, it's essential to understand that the law prohibits employers from using an applicant's financial information in ways that could create a disparate impact on the applicant.

"Disparate impact" refers to a situation where an employment practice appears neutral but disproportionately affects members of a protected class (for example, race, gender, physical disability, etc.), and cannot be justified by business necessity, thereby resulting in discrimination.

For example, requiring physical tests (such as lifting a certain weight) for positions where such physical strength is not a requirement could disproportionately affect women or individuals with disabilities, constituting a disparate impact if the requirement isn't justified by the job's nature.

Regarding the above question, imposing vehicle ownership as a requirement for employment could create a disparate impact on applicants from racial minori-

ties who, due to systemic barriers, may have lower socioeconomic backgrounds and less access to personal transportation.

In addition, this requirement could adversely affect applicants with physical disabilities who may be unable to drive due to their impairments.

Vehicle Ownership and Job Relevance

Guidance from the Equal Employment Opportunity Commission (EEOC) states that financial requirements for a job, such as vehicle ownership or whether an applicant has access to a working vehicle, must be directly relevant to the job's specific duties, particularly when evaluating an applicant's reliability and responsibility.

Accordingly, if driving is not one of the position's essential job duties, vehicle ownership or access should not be asked about during the interview process, nor should it influence the hiring decision. This means that it is crucial for employers to assess carefully the relevance of vehicle ownership or access in relation to the job duties for the position to determine the appropriateness of posing vehicle-related questions to applicants.

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CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Labor and Employment

Responding to Workplace Requests Related to Pregnancy and Childbirth. CalChamber. February 15, Online. (800) 331-8877.

Leaves of Absence. CalChamber. February 22–23, April 11–12, Online. (800) 331-8877.

Practical Application of 2024 California Employment Laws to Your Workplace. CalChamber. February 29, Online. (800) 331-8877.

HR Boot Camp. CalChamber. March 7–8, March 28–29, Online. (800) 331-8877.

International Trade

California Pavilion at the Singapore Airshow. Governor's Office of Business and Economic Development (GO-Biz). February 20–25, Singapore. (916) 447-7946.

Managing Risk and Cost in the Global Supply Chain: Focus on Foreign Trade Zones. National Institute for World Trade. February 28, San Bernardino; February 29, Long Beach. (888) 484-6484.

Journey to Panama. San Diego Diplomacy Council. April 1–5, Panama. *See CalChamber-Sponsored: Page 6*

CalChamber Calendar

Water Committee:

March 7, La Jolla

ChamberPAC Advisory Committee:

March 7, La Jolla

Board of Directors:

March 7–8, La Jolla

International Trade Breakfast:

March 8, La Jolla

A Note from CalChamber President and CEO Jennifer Barrera

Remembering Allan Zaremborg

Sunday, February 4th, marked the one-year anniversary of Allan Zaremborg's passing. The day caused me to pause, again remembering and recognizing Allan's legacy. A year later, I continue to be grateful for all Allan accomplished and am in awe of his wisdom and political acumen—the hallmarks of his time with CalChamber.

Last year, immediately after Allan's passing, tributes poured in and several articles were written profiling his life. The headline accompanying one of the best pieces, written by the *LA Times*' Taryn Luna, called Allan the "dean of the California business community."

The title is certainly appropriate and reflects the magnitude of Allan's influence and the respect people from all parts of the Capitol Community have for him.

However, as time passes, it has become very clear that Allan is equally (perhaps more) known and appreciated for his kindness and decency. Yes, Allan was often the one in charge—he was a boss to many—but he was at his very best as an ally, encourager, mentor and friend.

The sad anniversary of Allan's passing might cause us to think about all we lost a



year ago, but it also offers us an opportunity to reflect on what we gained through knowing him.

Allan not only championed the cause

of business in California; he was a champion for others. I continue to be grateful for Allan as a role model and an example of exceptional leadership.

Asking Applicants about Vehicle Ownership May Be Discriminatory

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Framing Interview Questions

Although an applicant's ability to show up on time to work is undoubtedly a job-related concern, the way an applicant commutes — whether by car, public transport or other means — does not automatically determine their ability to be punctual.

Therefore, employers should ask questions meant to obtain information about the applicant's reliability and punctuality without delving into their personal means of transportation.

For example, asking "Do you have reliable transportation to and from work?" is a legally safer way to address attendance concerns.

Other useful questions might include inquiries about the applicant's availability for specific shifts or overtime, their past attendance record, and whether they anticipate any issues with working particular schedules.

It is crucial, however, that questions about an applicant's availability or reliability do not inadvertently probe into areas protected under [California regulations](#), such as religious observances or disability-related accommodations.

Accordingly, scheduling inquiries must communicate clearly that the applicant doesn't need to disclose any restrictions based on legally protected grounds (for example, religious beliefs, medical disability, etc.).

To help avoid the appearance of

discrimination, employers should consistently ask the same questions of every candidate interviewed for the position.

For additional guidance on this subject, employers and HR professionals can refer to the [EEOC's guidance on pre-employment inquiries and financial information](#) and the [Fair Employment and Housing Council's Employment Regulations Regarding Religious Creed and Age Discrimination](#).

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

Overview of March Ballot Measure

Following is a brief summary of Proposition 1, which will appear on the March 5 Primary Election ballot. The California Chamber of Commerce supports Proposition 1 and the reasons for that position are summarized below.

The CalChamber encourages employers to share this information with employees. Businesses are within their rights to

do so — just remember: NO PAYCHECK STUFFERS, no coercion, no rewarding or punishing employees (or threatening to do so) for their political activities or beliefs.

For more guidelines on political communications to employees, see the brochure at www.calchamber.com/guidelines. Note the distinction between

internal communications (to employees, stockholders, and their families) and communications to *external* audiences (such as nonstockholder retirees, outside vendors, customers and passersby).

For more information on Proposition 1, see the link listed below or visit the website of the Secretary of State at www.sos.ca.gov.

Proposition 1



Authorizes \$6.38 Billion in Bonds to Build Mental Health Treatment Facilities for Those with Mental Health and Substance Use Challenges; Provides Housing for the Homeless. Legislative Statute.

Authorizes \$6.38 billion in state general obligation bonds for mental health treatment facilities (\$4.4 billion) and supportive housing for homeless veterans and homeless individuals with behavioral health challenges (\$2 billion).

Amends Mental Health Services Act to:

- Allow funding to be used to treat substance use disorders (instead of only mental health disorders);
- Re-allocate funding for full-service treatment programs, other behavioral health services (e.g., early intervention), and housing programs;
- Require annual audits of programs.

Placed on Ballot by: Legislature: AB 531 (Irwin; D-Thousand Oaks), Chapter 789, Statutes of 2023; and SB 326 (Eggman; D-Stockton), Chapter 790, Statutes of 2023. Sponsored by Governor Gavin Newsom.

CalChamber Position: Support. CalChamber President and CEO Jennifer Barrera co-signed the rebuttal to the ballot argument against Proposition 1.

Arguments For

Proposition 1 provides an effective and ambitious plan that addresses the three interrelated social crises of homelessness, untreated serious mental illness and drug abuse in California. The measure will provide the resources to help communities across the state recover from what has been an unprecedented mental health and homelessness crisis.

Proposition 1 authorizes nearly \$6.4 billion in bonds and directs billions more annually to fix the broken mental health system and move people off the streets, out of tents and into treatment. Proposition 1:

- Expands community-based mental health and addiction services across the state and will serve tens of thousands of Californians each year.
- Builds supportive housing where more than 11,000 Californians with the severest mental health needs can live, recover, stabilize and thrive.
- Prioritizes treatment over incarceration. Today, 1 in 3 California prisoners has a diagnosed mental illness and California spends more than \$100,000 per incarcerated person. Research shows incarceration is costly and counterproductive.
- Helps homeless veterans. Proposition 1 will provide \$1 billion to serve veterans experiencing homelessness, mental health and substance abuse issues. More than 10,000 California veterans, many suffering from post-traumatic stress disorder (PTSD), are homeless and on the street.
- Addresses shortage of mental health workers. Currently, persons with serious mental health issues can wait six months or longer for just an introductory appointment. Proposition 1 will fund additional professionals.
- Requires strict accountability. The measure includes mandatory audits to ensure that funds are spent as promised.

More Information

<https://treatmentnottents.com/>

California Annual Pay Data Reporting Opens



The California Civil Rights Department (CRD) has updated its [pay data reporting](#)

[resources](#) for 2024. Employers should start thinking about their annual pay data reports — due this year on **May 8** — as they could begin submitting them on February 1.

Since 2020, California has required employers with at least 100 employees to submit pay data reports to the CRD, with [some major changes to the law](#) taking effect just last year.

Employers must report detailed information covering a snapshot period of the previous year, including:

- The number of employees by race, ethnicity and sex in 10 different job title categories;
- The number of employees by race, ethnicity and sex, whose annual earnings fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in

the Occupational Employment Statistics survey; and

- The median and mean hourly rate within each job category, for each combination of race, ethnicity and sex.

Expanded Requirements

In addition to reports covering payroll employees, last year's revisions to the law expanded the reporting requirements to cover "labor contractor employees" — i.e., workers who are performing labor for the client employer but are on the labor contractor's payroll.

As of last year, employers that have 100 or more workers hired through labor contractors are required to submit a labor contractor employee report, which is a separate report than is required for traditional payroll employees.

Templates

The CRD has released updated Microsoft Excel and CSV templates for this year's report on its [pay data reporting website](#), as well as an updated [User Guide](#) and [FAQs](#). Some notable announcements for this year include:

- New for this year: Employers must report whether employees worked remotely during the snapshot period.
- For labor contractor employee reports, reporting "unknown" race/ethnicity or sex of a labor contractor employee is no longer permitted.

- Employers can't use Excel templates or CSV examples from prior years; the portal will reject submissions based on outdated versions of the templates.

Employers should begin reviewing the resources and templates and preparing their reports. Employers that are required to submit labor contractor employee reports should start soon since they will have to work with their labor contractors to obtain the required information.

The pay data reporting portal opened on February 1, 2024, so employers can file their reports until May 8, 2024 — which is the latest they can be filed.

CalChamber members can read more about "Pay Data Reporting in California" in [EEO Reporting Requirements](#) in the HR Library on *HRCalifornia*. Not a member? Learn about the [benefits of membership](#).
Staff Contact: James W. Ward

GO-Biz to Lead Delegation to SelectUSA Investment Summit



The California Governor's Office of Business and Economic

Development (GO-Biz) is leading a delegation of California local economic development leaders and innovation partners to the 2024 SelectUSA Investment Summit to promote California to international investors.

The 10th SelectUSA Investment Summit, to be held in National Harbor, Maryland, June 23–26, will enable attendees to establish new connections and explore business opportunities through investing in the United States.

Sponsorship Opportunities

GO-Biz is offering sponsorship opportunities to California organizations that serve the international business

community. Sponsors will be highlighted in select events and publications at the Summit. All sponsors must be vetted and approved by GO-Biz. The sponsorship deadline is March 29. [Learn more](#) and contact Henan Li (henan.li@gobiz.ca.gov) with any questions.

The SelectUSA Investment Summit is the highest profile event in the United States to facilitate business investment by connecting thousands of investors, companies, economic development organizations (EDOs), and industry experts to make deals happen.

One-Stop Shop

Hosted by the U.S. Department of Commerce, the Investment Summit is a one-stop shop for companies considering expanding to the United States and provides EDOs with the opportunity to meet directly with international companies to facilitate investment deals.

Since their inception, SelectUSA investment summits have attracted thousands of international companies and economic development representatives, generating more than \$98 billion in new investment projects supporting more than 81,000 jobs across the United States and its territories.

The 2023 SelectUSA Investment Summit saw record-breaking numbers with more than 4,900 participants, including EDO representatives from 55 U.S. states and territories and more than 2,300 business investors from 83 international markets. In addition, the 2023 highlights included 16 U.S. governors, six U.S. Cabinet members, 230+ speakers, 600+ economic development organizations, and 21 U.S. ambassadors.

More information about this year's summit is available at <https://www.selectusasummit.us/Home>.

Local Tax Measures Totaling \$3.9+ Billion on March Ballots

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Major Local Tax Hikes

Among the major local tax increases on the March 5 ballot are:

- **Local Sales Tax to Fund State University.** Fresno County residents will vote on [Measure E](#), a 0.25% transactions and use tax with revenue earmarked to fund academic initiatives at California State University, Fresno. The tax would cost taxpayers an estimated \$63 million annually and would make Fresno the only county to create a dedicated local funding source for a California State University campus. Currently, state universities are funded by a mix of state tax dollars and student tuition.

- **Sacramento Gross Receipts Tax.** [Measure C](#) proposes a 0.04% gross receipts tax on Sacramento businesses with receipts exceeding \$100,000 annu-

ally, and a \$50 tax for businesses that don't meet that threshold. The maximum tax would be \$25,000 in 2024, gradually increasing to \$125,000 in 2028 and then increasing annually for inflation. The measure authorizes the Sacramento City Council to reduce the tax rate and/or the maximum annual liability below these amounts. [Measure C](#) would cost taxpayers an estimated \$6.7 million in its first year, according to city officials.

- **Berkeley Parcel Tax Renewal.** [Measure H](#) proposes to renew and increase an expiring parcel tax in the Berkeley Unified School District, adding to the cost of owning a business or home in the area. [Measure H](#) would impose a \$0.54-per-square-foot tax on improved parcels and a flat \$25 tax on unimproved parcels. The annual parcel tax would amount to \$782 for the median 1,450-square-foot residential property.

[Measure H](#) will cost taxpayers an estimated \$44 million annually, with revenue earmarked to support the school district.

CalTax reports the number of tax and bond measures on the March ballot is considerably less than in 2020, when local governments placed 239 tax and bond measures on the presidential primary ballot.

More tax measures are likely to appear on the November general election ballot, when local governments anticipate voter turnout will be at its highest.

More Information

For more information, see the [CalTax local measures list](#). CalTax plans to update its list with election results after the March primary and as additional measures are placed on the November ballot.

CalChamber-Sponsored Seminars/Trade Shows

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(619) 291-8105.
The Madrid Energy Conference 2024. Institute of the Americas and IPD Latin America. April 9–11, Madrid, Spain. (858) 453-5560.
California Pavilion at Hannover Messe. GO-Biz. April 22–26, Hannover, Germany. patricia.utterback@gobiz.ca.gov.
World Trade Week Southern Califor-

nia. Los Angeles Area Chamber of Commerce. May 1, Long Beach. cluna@lachamber.com
WCF Americas Summit. International Chamber of Commerce (ICC) World Chambers Federation. May 8–10, Bogotá, Colombia.
Annual Export Conference. National Association of District Export Councils. May 13–14, Washington, D.C.
Trade Winds – Europe. GO-Biz and U.S.

Commercial Service. May 13–15, Istanbul, Turkey. Optional: May 9–10, Denmark or Romania; May 16–17, Poland or Italy. Register interest. patricia.utterback@gobiz.ca.gov.
Farnborough International Air Show: California Pavilion. GO-Biz. July 18–22, Farnborough, United Kingdom. patricia.utterback@gobiz.ca.gov.



Navigating California Business Just Got Easier!

Running a business in California is demanding. CalChamber understands and offers ways to ease your burden. Join us to save and optimize your operations.

[Join CalChamber](#)



CalChamber-Opposed Bills Stall; Dead for the Year

From Page 1

as federal courts have not recognized a compelling interest in restricting the speech of “foreign-influenced” individuals or entities, nor in regulating U.S. companies with a nominal amount of foreign ownership.

When those owners could just as easily be isolated from decisions concerning electoral spending, the law was not narrowly tailored to serve the broader interest of keeping U.S. elections free from foreign influence.

Non-Compete Agreements

The CalChamber opposed AB 747 because it expanded the scope of prohibited non-compete agreements. New language in Section 3 of the bill appeared to expand the term “contract in restraint of trade,” and the bill also prohibited any discussion of such terms with prospective employees or contractors because the language of the bill provided that even presenting someone with such language would result in the \$5,000 penalty.

Additionally, the bill jeopardized existing business models, implementing a 10% threshold for the sale of business exception. This threshold was problematic because one or more business owners

under the 10% threshold could sell all of their interest in the entity to a third party, receive payment for that interest, and immediately compete with the entity. It was arbitrary that most partners could compete while the one who owns an interest greater than 10% could not compete.

In a letter sent to legislators last month, the CalChamber pointed out that the Legislature addressed non-compete agreements just last year, so AB 747 was unnecessary. In 2023, two bills were enacted to bolster enforcement against non-compete agreements and require employers who use them to notify current and former workers: AB 1076 (Bauer-Kahan; D-Orinda) and SB 699 (Caballero; D-Merced).

Renewable Hydrogen

AB 1550 would have had devastating consequences for the launch of a clean, sustainable, and affordable hydrogen market in California—risking approximately \$10 billion in private sector investment needed for California’s Hydrogen Hub (ARCHES).

Starting in 2028, AB 1550 would have required hourly matching for all renewable production pathways, meaning electricity production would need to be equal

to the electricity consumption for hydrogen on an hourly basis, which does not exist for Renewable Portfolio Standard (RPS) compliance or the grid today.

According to a recent study done by E3, the same entity responsible for modeling the Scoping Plan and Integrated Energy Policy Report, hourly matching will increase production costs up to 108%.

The hourly matching requirement was also problematic because California law does not currently permit physical power purchases by industrial consumers (like electrolytic hydrogen facilities), making time-matching of power that is not self-generated infeasible.

Moreover, the technology and accounting systems to ensure hourly matching do not exist for the Western Energy Coordinating Council (WECC) or RPS.

In its opposition to AB 1550, the CalChamber pointed out that AB 1550 took what was meant to be an incentive and turned it into a standard.

“Like the fuels market today, AB 1550 would again isolate the California market and add unnecessary production costs,” the CalChamber said.

Staff Contacts: [Ben Golombek](#), [Ashley Hoffman](#), [Brady Van Engelen](#)

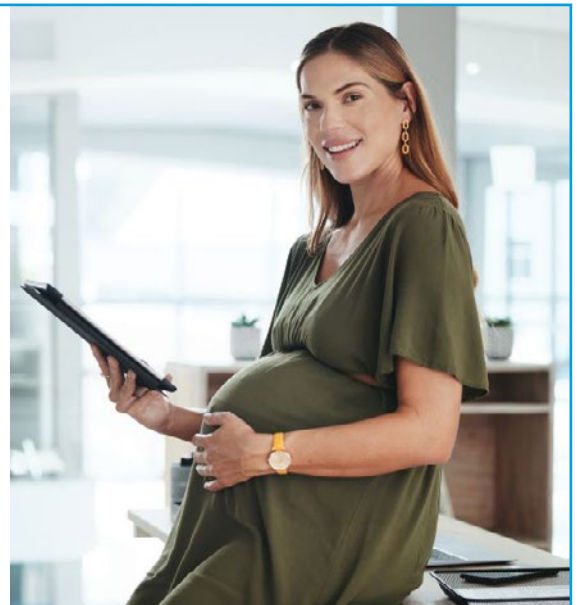


FEBRUARY 15, 2024 | 10 AM - NOON PT | WEBINAR

Workplace Requests Related to Pregnancy and Childbirth

This two-hour live webinar will guide California employers through compliance rules for pregnancy and child bonding leaves, assisting them in seamlessly administering these leaves and providing tools to respond to any related requests in the workplace.

Preferred Members and higher receive their 20% member discount.



Approved for 2 HRCI, MCLE, and PDC credits.

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