

# ALERT

CALIFORNIA CHAMBER OF COMMERCE

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## Report: Enterprise Zones Keep Economy from Decline

A recent study of California's Enterprise Zone (EZ) program has shown they are a key factor in saving the state from economic decline.

The California Chamber of Commerce has joined the Coalition to Save Enterprise Zones to bring awareness to the vital role EZs play in California's economy, an effort that is especially timely because 18 of the state's 42 EZs are set to expire at the end of 2006.

### Key Competitiveness Tool

"The Enterprise Zone program is one of the few remaining ways California

can compete with other states that offer generous financial incentives to steal our jobs," said Chamber President Allan Zaremberg. "California cannot afford to diminish its ability to attract jobs and investment."

### 'Hitting the Mark'

A study compiled by Professor Ted K. Bradshaw, Ph.D., from the University of California, Davis, challenges a recent report by the California Budget Project (CBP) that failed to analyze EZ program benefits even as it charged that EZs "miss

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## Severe Costs Forecast Under California-Only Emissions Cap

### AB 32 Is Wrong Approach

A study issued this week by the American Council for Capital Formation (ACCF) highlights the potentially severe costs of implementing a California-only carbon-emissions cap as proposed in California Chamber of Commerce-**opposed** legislation pending in the Senate Environmental Quality Committee.

**AB 32 (Núñez; D-Los Angeles)** increases costs for California businesses, makes them less competitive and discourages economic growth with little or no proven environmental benefit by adopting an arbitrary California-only cap on carbon emissions.

Further, AB 32 makes California unattractive to business by setting up a costly, state-only mandatory reporting system.

### ACCF Study Conclusions

The ACCF study, entitled "California Climate Change Policy: Is AB 32 a Cost-Effective Approach?" by Dr. Margo Thorning, senior vice president and chief economist for the ACCF, finds that "Californians could expect higher energy costs, millions of dollars in lost gross state product and widespread job loss" if AB 32 becomes law.

According to Dr. Thorning's analysis, "AB 32 is likely to cause 'leakage' of

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## Chamber Hosts Visit from Danish Prime Minister



Photo by Andrew Larsen

Joining His Excellency Anders Fogh Rasmussen, Prime Minister of Denmark (second from left) at a brief reception following his international trade dinner talk at the California Chamber of Commerce are (from left) Roger Baccigaluppi, chairman of RB International and Chamber Board member; Susanne Stirling, Chamber vice president of international affairs; Anne-Mette Rasmussen, First Lady of Denmark; and The Honorable Finn Martensen, Honorary Consul of the Royal Danish Consulate. See story on Page 3.

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## Labor Law Corner

# Refusal to Hire for Lack of License OK If Driving Is Essential to Job



**Sunny Lee**  
Senior Labor Law  
Consultant

*Is there any protection for an applicant who is not hired because she/he does not have a driver's license?*

The answer depends on the reason the applicant does not have a driver's license and whether the position for which she/he is applying requires a license.

Obtaining and holding a job per se does not require an individual to have a driver's license unless an essential function of the job is driving.

An employee may take the bus to work, ride a bike, walk, carpool or be dropped off. Unless the employee's job requires driving during the work day, that requirement would not be a proper criterion for selection.

### Potential for Unwitting Bias

If driving is not an essential job function and an applicant is not hired because she/he does not have a driver's license, the employer unknowingly may be discriminating against applicants who are unable to obtain a driver's license due to a disability or medical condition.

For example, because there is a vision test requirement associated with the driver's license, those individuals who are not able to pass the vision test would not be able to obtain a driver's license. Other examples include individuals with leg or arm amputations who are not able to pass the driving test because they are not able to control the vehicle (i.e. steering, accelerating or braking) and individuals with narcolepsy (a disorder in which a person falls asleep uncontrollably).

Refusing to hire someone unless driving is an essential job function then would be discriminatory.

### Acceptable Refusal Conditions

By the same token, an employer may refuse to hire an applicant without a driver's license if the job requires driving as an essential job function irrespective of whether the applicant is disabled. Because driving could be shown as an essential job function, the individual without a license would not be a qualified applicant, and the employer could refuse to hire.

### When Is Driving Essential?

In determining whether driving is an

essential job function, the employer should not look at positions that *may* infrequently require driving, such as dropping off mail or picking up supplies.

Rather, the employer should focus on positions that essentially require driving as a major part of the job, such as outside sales reps, construction workers, service technicians who need to drive to customer sites throughout the day, delivery drivers, bus drivers, truck drivers, couriers, etc.

### Verify License and Insurance

For those job-related driving requirements, it is important for the employer to verify that the applicant has a current valid driver's license in their possession and has insurance in effect.

The employer also may want to check the individual's Department of Motor Vehicles record to determine how great a risk the employer would be taking by employing that individual to drive for the company.

*The Labor Law Helpline is a service to California Chamber preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or e-mail: helpline@calchamber.com.*

## Seminars/Trade Shows

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor Law

HR 101: Introduction to Human Resource Administration. California Chamber of Commerce. June 20, Sacramento. (800) 331-8877.

Paying Employees Web Seminar. California Chamber of Commerce. June 29. (800) 331-8877.

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## California Chamber Hosts Danish Prime Minister at Trade Dinner

The California Chamber of Commerce hosted His Excellency Anders Fogh Rasmussen, Prime Minister of Denmark, at an international trade dinner Monday to discuss how research and businesses interact to play a valuable role in promoting bilateral trade between California and Denmark.

Prime Minister Rasmussen's appearance in Sacramento followed a meeting with President George W. Bush at Camp David. The Prime Minister's visit follows the President and First Lady's visit to Denmark last summer and is the sixth meeting between the two leaders in five years.

The more than 120 guests who greeted Prime Minister Rasmussen included a delegation of officials from Denmark, representatives of California's state government and business people from California and Denmark, among them representatives from a variety of industries such as energy, pharmaceuticals and biotechnology.

"The relationship between Denmark and the United States has never been better," said Prime Minister Rasmussen. "Our bilateral, economic and trade relations are as strong as ever. Our trade is booming. Our mutual investments are historically high."

### Trade and Innovation

California is the largest U.S. exporting state to Denmark. In 2005, California exported more than \$310 million worth of goods to Denmark, with nearly half of those exports being computers and electronic products.

Prime Minister Rasmussen complimented California's universities as having some of the most innovative minds on the planet, praised the partnership that local universities have with California businesses and recommended that the European Union develop a similar model.

"I think this element of the American model is a cornerstone in what has made California become the world's sixth largest economy," Rasmussen said. "Europe can learn a lot from this. Denmark has decided to put much more emphasis on research and development. We have realized that we have to prepare our economy for globalized markets. It has been a top priority for Denmark to allocate more E.U. resources to science and innovation."



Photo by Andrew Larsen

**Danish Prime Minister Anders Fogh Rasmussen discusses Danish trade and business relations with California and the United States at an international trade dinner this week at the California Chamber of Commerce.**

Last week, His Royal Highness, Denmark's Prince Joachim, opened the new Innovation Center Denmark in Silicon Valley. It is Denmark's sixth Innovation Center Denmark location in the United States and the second in California.

"The center and its location is not a random choice," Rasmussen said. "Not only is it due to the size of the Californian economy and innovative nature of Silicon Valley, but just as much, because the Danish and Californian economies are such a perfect match."

The goal of the newly opened center is to bridge a gap between the two economies and strengthen business development. The center hopes to boost creative thinking, innovative skills and research and development between Denmark and California.

Prime Minister Rasmussen said that this second location in California would encourage matchmaking capital and business and commercial opportunities for both economies.

The Prime Minister was accompanied

by His Excellency Friis Arne Petersen, Danish Ambassador to the United States, and a top-level business delegation. He visited U.C. Berkeley and Danish biotech company Novozymes and opened a new Vestas Wind Farm along the Sacramento River.

### Prime Minister Rasmussen's Career

Mr. Fogh Rasmussen became Prime Minister of Denmark in November 2001 following a long career in Danish politics. In 1978, at the age of 25, he became the youngest member of the Danish Parliament. The Prime Minister also has held posts as Minister of Economic Affairs and Minister of Taxation and has been the National Chairman for his Party since 1992.

Prime Minister Rasmussen holds a master's degree in economics and previously was a consultant for the Danish Federation of Small and Medium-Sized Enterprises.

**Staff Contact: Susanne Thorsen Stirling**

## Report: Enterprise Zones Keep Economy from Decline

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the mark” in economic development.

Dr. Bradshaw has found that California’s EZs, in fact, “hit the mark,” creating much-needed jobs and economic stimulus in the depressed parts of the state. Dr. Bradshaw warns that the CBP report entirely misses the point of why California’s EZ program works.

In his report, “How California’s Enterprise Zones Have Saved the State from Decline,” Dr. Bradshaw claims that the CBP report released in April 2006 is seriously biased. He also concludes that

massive downsizing of the program or draconian new restrictions on its operations are misguided and premature before the Department of Housing and Community Development completes its current updating of the regulations.

### Huge Job Generators

In an earlier examination of the cost benefits of the EZ program, Dr. Bradshaw estimated that California’s EZs conservatively could take credit for generating nearly 300,000 jobs over a 10-year period, and that these jobs returned to the

state treasury enough new tax revenues to compensate for the program costs.

The California EZ program stands out as an example nationwide because it targets disadvantaged areas and promotes the hiring of disadvantaged workers. This is the right way to run Enterprise Zones, and overall, the California program has been successful in transforming many distressed areas that otherwise would remain in the spiral of decline.

To learn more about the effort to save EZs, visit [www.saveezones.com](http://www.saveezones.com).  
**Staff Contact: Kyla Christoffersen**

## Severe Costs Forecast Under California-Only Emissions Cap

*From Page 1*

industry to states and countries with no mandatory emission caps resulting in job losses and no net reduction in [greenhouse gases].”

Furthermore, the study concludes that implementation of AB 32’s mandates “will negatively impact California without materially slowing the growth of global emissions,” and, therefore, “policymakers in California should consider carefully whether they want to proceed down this path alone.”

### Specific Study Findings

The study includes the following findings:

- The technologies simply do not exist to reduce total and per capita emissions over the next 14 years by the amounts mandated in AB 32 without severely reducing the growth in California’s gross state product (GSP) and in employment.

- Population growth compounds the difficulty of reducing emissions because more people increase energy demand for home heating, industry and transportation. Over the period from 1990-2000, per capita emissions in California fell by only 2.9 percent. Meeting the AB 32 target would require a 30 percent drop in per capita emissions between 2000 and 2020.

- If the United States adopted the Kyoto Protocol (a target of 7 percent below 1990 emission levels by 2010), rising energy prices would reduce real GSP in California by 3.0 percent in 2010, income

would fall by \$1,600 per family of four (in 2006 dollars) and there would be 278,000 fewer jobs. In addition, the state would lose \$14.3 billion in tax revenue (in 2006 dollars).

This analysis is applicable to a scenario in which AB 32 requirements are coupled with a 2002 California law requiring that a 20 percent renewable fuels portfolio standard be implemented by 2017 and takes into account the fact the California would be “going it alone” with an emissions cap.

- Many climate strategies under consideration could have adverse economic impacts. For example, of 33 climate strategies being considered, each additional job created would reduce California’s total income by \$200,000 in 2020.

- The state should not move forward with various greenhouse gas reduction strategies without a detailed, peer-reviewed economic analysis.

Dr. Thorning concludes, “Climate change is a global problem, and reducing emissions in the developed countries should not take priority over maintaining the strong economic growth necessary to keeping California one of the key engines for global economic growth.”

### SEE California Concurs

Leaders of Sustainable Environment and Economy for California (SEE California), a broad coalition dedicated to ensuring that any climate change policies adopted in California protect our

environment and our economy, agreed with the ACCF’s findings.

“AB 32 is a lose-lose situation for all Californians,” said Chamber President and SEE California member Allan Zaremborg. “First, by placing an arbitrary carbon emissions cap on California employers, we would be encouraging them to leave our state and take jobs to countries or states that do not impose caps. Second, when employers move to other global locations, they may produce even more carbon emissions. We must stop AB 32 before it becomes law.

“California can become a leader in reducing global carbon emissions by proposing tax incentives at the state and federal levels, by advocating for intellectual property protections in other countries for our technology and working with the Asia Pacific Partnership to encourage economic development that employs energy efficient technology,” concluded Zaremborg. “Strong economic growth will lead to newer technologies that require less energy and produce fewer emissions. AB 32 takes us in exactly the opposite direction!”

### Action Needed

The Chamber strongly encourages employers to contact members of Senate Environmental Quality to **oppose AB 32**.  
**Staff Contact: Jeanne Cain**

## Chamber Joins Federal Effort to Keep Taxpayers in Charge of Returns



The California Chamber of Commerce and a coalition of state and national business groups are **supporting** federal legislation to keep taxpayers in charge of preparing their tax returns.

California Congresswoman Anna Eshoo (D-

Palo Alto) is a co-author of H.R. 5114 with Congresswoman Melissa Hart (R-PA). Titled the "Tax Return Choice Act of 2006," the bill is designed to preserve voluntary compliance with the U.S. tax system.

### Tax-Prep Autonomy Preferred

In a recent poll by the *Wall Street Journal*, 70 percent of the 3,000 respon-

dents said they don't want the government to play the dual roles of tax collector and tax preparer.

A recent California public opinion survey by David Binder Research found that 86 percent of Californians would rather calculate their own taxes than accept a return prepared by state government.

The Chamber and other supporters of H.R. 5114 believe the government should not be in the business of preparing tax returns. There is an inherent conflict of interest in the government taking on the role of tax preparer when it already is the tax collector and enforcer.

### Services Already Available

The U.S. government, 21 states and the private sector already work together to offer free tax preparation services to more than 93 million Americans at no cost to the consumer or the public treasury. This partnership ensures free tax services are available for those who need them while keeping the taxpayer in-

charge of the process.

H.R. 5114 will keep taxpayers in control of the process of figuring out every tax deduction and credit they deserve.

### State Bill Currently Inactive

The Chamber is **opposing** state legislation to require the state Franchise Tax Board (FTB) to develop a tax return for a ReadyReturn program. In this program, the FTB calculates tax returns for taxpayers using the wage information submitted by a taxpayer's employer, then presents the taxpayer with a form ready to sign at the taxpayer's option.

The state legislation, **AB 2905 (Frommer; D-Glendale)** was placed on the inactive file at the end of May at the author's request.

To learn more about the campaign to stop ReadyReturn, visit [www.taxthreat.com](http://www.taxthreat.com).

**Staff Contact:** Kyla Christoffersen

## Court Says Federal Law Pre-Empts Proposition 65 for Canned Tuna



A San Francisco County Superior Court judge ruled in May on two consolidated cases that federal food and drug laws pre-empt state Proposition 65 warning requirements for canned tuna.

The ruling is a victory for proponents of uniformity in public health and food safety requirements and businesses being unfairly targeted for Proposition 65 lawsuits.

### Conflicts with Federal Law

Superior Court Judge Robert L. Dondero found that any Proposition 65 warning for canned tuna conflicts with federal law and therefore is pre-empted.

California Attorney General Bill Lockyer had filed a lawsuit against Tri-

Union Seafoods, LLC, and other canned tuna manufacturers, arguing they should provide a Proposition 65 warning label on tuna cans because of the methylmercury content in tuna. The attorney general's lawsuit was consolidated with a similar case, *Public Media Center v. Tri-Union Seafoods*.

The lawsuits allege the companies were violating the state's unfair business practices law (Section 17200 of the Business and Professions Code) by failing to provide the Proposition 65 warnings on their products.

Dondero agreed with the U.S. Food and Drug Administration (FDA), which argued that state requirements governing how Proposition 65 warnings are to be presented conflict with the FDA's approach of advising consumers about both the benefits and possible risks of eating fish and shellfish.

### Levels Small, Occur Naturally

The judge also agreed with canned tuna manufacturers that the levels of methylmercury in canned tuna are far

below the level at which a Proposition 65 warning would be required.

Moreover, the judge agreed with the manufacturers that almost all of the methylmercury found in tuna is naturally occurring and therefore exempt from Proposition 65's warning requirement under the "naturally occurring" exception.

### Claim Dismissed

Because the court found that Proposition 65 was pre-empted by federal law, the court dismissed the claim that the lack of a warning label was a violation of the state's unfair business practices law.

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, requires businesses to provide "clear and reasonable" warnings before exposing people to substances known to the state to cause cancer or reproductive toxicity.

The attorney general has not yet announced whether he will appeal the superior court decision.

**Staff Contact:** Erika Frank

## Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchamber.com/positionletters](http://www.calchamber.com/positionletters) for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

### Coalition Backs Economy-Friendly Greenhouse Gas Measure



SUPPORT

The California Chamber of Commerce-led Sustainable Environment and Economy for California (SEE California) Coalition is **supporting** a bill that would facilitate development of parameters by the state to accelerate the adoption of cost-effective geologic sequestration strategies for the long-term management of industrial carbon dioxide.

**AB 1925 (Blakeslee; R-San Luis Obispo)** requires the state Energy Resources Conservation and Development Commission to submit a report to the Legislature with recommendations on strategies and incentives to reduce carbon dioxide emissions during the generation of electricity.

#### Implement Known Processes

SEE California views this bill as an important step in expanding the use of known processes such as carbon sequestration, as well as encouraging the

development of new technologies and processes, to capture and contain carbon. The ultimate result will be a reduction in greenhouse gas emissions without risking the state's energy supply or sources or harming California's growing economy and jobs climate.

#### Action Needed

AB 1925 passed the Assembly floor on a 80-0 vote and is scheduled to be heard in the Senate Energy, Utilities and Communications Committee on June 20. Urge committee members to **support AB 1925**.

Visit [www.seeca.org](http://www.seeca.org) for more information on the SEE California Coalition.

To obtain letters of support, visit [www.calchamber.com/positionletters](http://www.calchamber.com/positionletters).

**Staff Contact: Amisha Patel**

### Chamber Urges Support for Bill Promoting Energy Efficiency



SUPPORT

A California Chamber of Commerce-**supported** bill that would further California's progress toward energy efficiency and meeting the state's future energy needs has passed the Assembly and is awaiting assignment to a Senate committee.

**AB 2021 (Levine; D-Van Nuys)** helps California achieve its energy-saving targets by requiring municipal utilities to invest in cost-effective, energy-efficient technologies.

The bill requires the California Energy Commission to identify all potentially achievable cost-effective electricity and natural gas efficiency savings and establish statewide annual targets for energy-efficiency savings and demand reduction over 10 years.

#### State on Right Path

According to the Energy Action Plan II released by the Energy Commission, "per capita electricity consumption in the

U.S. has increased by nearly 50 percent," while "California electricity use per capita has been approximately flat."

This trend demonstrates California is on the right path in increasing energy efficiency and preparing for future energy demands. AB 2021 would further this progress by requiring municipal utilities to meet energy-efficiency targets.

California's annual population growth rates would appear to preclude elimination of future energy demands. AB 2021, however, is a good step in promoting a more energy-efficient future for the state by encouraging even greater energy-production efficiency.

The Chamber urges **support** for **AB 2021**.

**Staff Contact: Amisha Patel**

## Chamber Hosts Peruvian Ambassador at International Luncheon Forum

The California Chamber of Commerce hosted the Honorable Eduardo Ferrero, Ambassador of Peru to the United States, at an international luncheon forum this week to discuss the future of California trade in Latin America and the pending U.S.-Peru Free Trade Agreement (FTA).

The more than 110 guests who greeted Ambassador Ferrero included a delegation of officials from Peru, representatives of California's state government and business people from California and Peru, including representatives of agriculture, manufacturing and mining.

### Important Trade Partnership

"The United States is Peru's number one trading partner," said Ambassador Ferrero. "More than 17 percent of Peru's total imports come from the United States. In fact, California is the third exporter of products to Peru among states in the Union."

Peru is the third largest country in South America and is approximately three times the size of California. Peru is the fifth most populous country in Latin America and has an annual gross domestic product (GDP) of more than \$67 billion. Peru's economy is one of the most dynamic in Latin America, showing particularly strong growth over the past three years. Recent economic expansion has been driven by construction, mining, investment, domestic demand and exports.

Two-way trade between the United States and Peru has increased from \$2.6 billion in 1995 to \$7.1 billion in 2005. About 200,000 U.S. citizens visit Peru annually for business, tourism and study. Nearly 16,000 Americans reside in Peru, and more than 400 companies are represented in the country.

In 2004, California exported \$117 million in goods to Peru, making it California's 49th largest trading partner. California's main exports to Peru include computers and electronic products, machinery and agricultural goods. California is the third top exporting state to Peru, after Florida and Texas.

### Pending Trade Agreement

The Chamber-supported U.S.-Peru FTA currently is pending before Congress and may be voted on this year. President George W. Bush has formally notified



Photo by Andrew Larsen

**The Honorable Eduardo Ferrero, Ambassador of Peru to the United States, discusses the future of California trade in Latin America and the pending U.S.-Peru Free Trade Agreement during a question-and-answer session moderated by Susan Corrales-Diaz, chair of the California Chamber of Commerce International Trade Committee, at an international luncheon forum this week at the Chamber.**

Congress of his intent to sign the FTA.

With the recent presidential election in Peru and current developments in political leadership in Latin America, trade is becoming an increasingly vital part of the U.S.-Latin American relationship. The U.S.-Peru FTA serves as a building block toward the potential establishment of a wider U.S.-Andean FTA.

"Implementing this free trade agreement will level the playing field for Peru," Ferrero said. "The FTA would create new markets for exports, which would translate into new business opportunities, especially for small and medium businesses in Peru."

The United States launched free trade negotiations with Peru, Colombia, Ecuador and Bolivia in November 2003. The combined population of these four countries is 93 million, and the collective GDP is \$507 billion.

Most Andean exports to the United States have duty-free status under a special arrangement aimed at boosting the regions' economies; however, FTAs are more comprehensive and do not require ongoing U.S. Congressional reauthoriza-

tion. U.S. exports to the region currently have an average 12-percent tariff.

"Sixty-six percent of U.S. farm exports to Peru will become duty-free immediately after the FTA is approved," Ferrero explained. "This will include ninety-nine percent of current U.S. exports to Peru. All the rest of the products will be phased out in a maximum of 17 years."

The U.S.-Andean FTA will expand on the Andean Trade Promotion and Drug Eradication Act (ATPDEA), signed by President Bush in 2002. The ATPDEA is an amended version of the Andean Trade Preference Act, which was extended through 2006 and provides the four Andean countries with duty-free access to U.S. markets for more than 6,000 products.

Most importantly, passage of the U.S.-Peru FTA will create access to more and better jobs, access to reduced prices for consumers and access to a major variety of quality goods and services for both California and Peru.

**Staff Contact: Susanne Stirling**

## Learn the costly mistakes you'll want to avoid when paying California employees

Attend the **Paying California Employees — Top 10 Mistakes** live web seminar and learn the most frequent mistakes (and how to avoid them) employers make involving violations of federal and/or California state laws when paying exempt and non-exempt employees. If mishandled, those mistakes can result in expensive lawsuits and backpay settlements. Here are some of the key points that will be discussed:

- Misclassifying employees as exempt from overtime
- Misclassifying an employee as an independent contractor
- Failing to properly pay overtime
- Improperly creating an alternative workweek schedule
- Failing to provide for meals and rest periods
- Not making and keeping payroll records
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