

# ALERT

VOLUME 34, NUMBER 4 • FEBRUARY 8, 2008



## Economy, State Budget of Concern to Voters



FEBRUARY ELECTION 2008

Californians turned out to vote in record numbers this week, rejecting a costly community colleges proposition and protecting state revenue by approving tribal compacts. Reports indicated this was the highest level of primary election participation since 1980.

While voters focused on presidential primary decisions, they also clearly had the state budget and the economy on their minds. Voters recognized the fiscal dire straits that would have resulted if Proposition 92 were approved and wisely rejected the measure.

CalChamber-opposed **Proposition 92** failed, 57.3 percent to 42.7 percent. The measure would have amended the Califor-

nia Constitution to guarantee community college funding levels without adding any accountability structure. The proposition would have inflicted enormous pressure on California's already-stressed General Fund and possibly have required major cuts from other programs funded from the same pool of money.

More than 55 percent of voters approved CalChamber-supported **Propositions 94, 95, 96** and **97**. Those measures will allow four tribes in San Diego and Riverside Counties — the Agua Caliente, Morongo, Pechanga and Sycuan tribes — to expand the number of slot machines at casinos on their existing tribal lands.

Approval of Propositions 94-97 will protect a steady and significant funding source for the state's General Fund,

*See Economy: Page 4*

## CalChamber Invites Businesses to Join Coalition Advancing Disability Access

The California Chamber of Commerce is urging businesses, employers and others to join its Advancing Disability Access Coalition (ADA Coalition) in support of statewide efforts to achieve better compliance with disability access laws with less litigation.

"We want to encourage and facilitate greater compliance by businesses with disability access laws while reducing litigation that does not advance the goal of disability access," said CalChamber Policy Advocate Kyla Christoffersen.

### Profit-Motivated Lawsuits

In recent years, a small but widely destructive, atypical group of plaintiffs and lawyers have used the disability laws and court system to systematically extract monetary settlements from businesses rather than to seek access.

For example, one plaintiff has filed more than 700 Americans with Disabilities Act (ADA) lawsuits in California alleging toilet paper dispenser heights do not meet the ADA-required measurements and has collected millions from California small businesses in settlements.

Plaintiffs who are quick to file waves of lawsuits convey the message that they

*See CalChamber: Page 4*

## Senate Stops Misguided Foreclosure Bill



OPPOSE

Following lengthy debate on the floor, the Senate last week narrowly defeated a California Chamber of Commerce-**opposed** bill that would have created an ill-conceived,

one-size-fits-all approach to addressing the very complicated mortgage market situation.

**SB 926 (Perata; D-Oakland)** would have placed a number of impractical and costly requirements on businesses that provide mortgage services without providing tangible benefits to troubled borrowers.

Rather than addressing the underlying causes of the recent increases in mortgage defaults, SB 926 would have added numerous unnecessary and unrealistic hurdles to the foreclosure process, despite foreclosure being the choice of last resort for both lenders and consumers. Because the bill contained an urgency clause, SB 926 failed on a vote of 26-14, one vote short of the two-thirds required for passage.

### Problems with Bill

Among the numerous technical problems with SB 926 was a requirement that an in-person meeting take place between

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## Labor Law Corner

# Before Allowing Telecommuting, Review Job, Employee Performance



**Sunny Lee**  
Senior Labor Law  
Consultant

*What are the pitfalls of having people work from home?*

Many companies now allow employees to work from a home office, either on a part-time, full-time or temporary basis. With access to electronic data and the Internet, employees can connect to the

office and communicate through e-mail, telephone and text messaging.

To avoid pitfalls that might surface after putting someone to work in a home office, it is good to review various aspects of the employee's job, job performance, operational considerations and the effect on other employees.

### Questions to Consider

Consideration should be given to the following:

- Are there any job performance issues? Is the employee currently doing a good job? Is the employee new, under any improvement plan or on probation?
- Is the employee following all company policies and procedures?
- Is the employee dependable, reliable and punctual in reporting to work?
- Is the employee able to work independently without direct supervision or monitoring?
- Does the employee's job title/duties allow him/her to work outside the office?
- Does the employee have the necessary equipment to work at home? If not, who will pay for the set-up cost of equipment? Who will pay for monthly expenses such as the telephone, Internet access, equipment breakdowns, etc.?
- Does the employee have an adequate place to work at home that is free from noise and distractions?
- Does the employee have a medical condition that requires an accommodation, such as reduced working hours, no travel or bed rest? Is the employee able to

do the essential functions of the job with accommodation?

- How long will the telecommuting last?
- What information can help the company structure a relationship that minimizes the risk of a workers' compensation claim?
- What will the company do about other employee requests to work from home?
- How will the employer communicate with the employee and how will work hours be tracked?
- Will the employer have an understanding about terminating the option to work from home with notice and if so, how much notice is adequate?
- Will employee performance suffer or improve from working at home?
- Is the lack of socialization from not being around other employees going to be a factor?
- Is a trial period anticipated before a decision is made about any long-term commitment?
- Will the employee have access to office space should he or she want to return to work in the office?
- Will confidentiality be compromised when information is accessed and retained off site?
- Will the employer be able to track employee performance and if so, how will the employer address problems?

### Check with Legal Counsel

Being flexible about employee needs in regard to work accommodation has helped companies retain experienced personnel who otherwise may not have been able to continue their employment due to a move, personal illness or that of a family member who needs care in the home. Before adopting any telecommuting arrangement, it is recommended that you check with your legal counsel.

For more information, visit [www.hrcalifornia.com](http://www.hrcalifornia.com).

*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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## CalChamber Calendar

### International Luncheon Forum:

February 14, Sacramento (Hong Kong Commissioner Margaret Fong)

### CalChamber Fundraising Committee:

March 13, La Jolla

### Water Committee:

March 13, La Jolla

### Board of Directors:

March 13-14, La Jolla

### Climate Change Committee:

March 14, La Jolla



# Stronger Penalties Will Send Message: Counterfeiting Crime Not Worth Risk



I have been a private investigator for over 12 years and specialize in investigations involving the sales,

manufacture and distribution of counterfeit merchandise. My company currently represents over 85 brand owners. Investigative Consultants was started as a single-person operation in 1994 and we now employ 19 full-time employees and several part-time and contracted investigators. Ninety-nine percent of our company's time is spent investigating intellectual property matters.

## Scope of Problem

Three words describe the true scope of the counterfeiting problem: "out of control."

The counterfeiting problem is not just limited to handbags, watches and other luxury goods. I have been involved in cases involving glue, children's toys, sunglasses, food and numerous other items. There have been cases where brake pads, aircraft parts, baby formula and cough syrup have also been counterfeited.

You name it and they will counterfeit it. If it will make them money, they will copy it. Counterfeiters do not care who they hurt or kill as long as they are making money.

The counterfeiting problem is similar to the war on drugs, and until some major changes are made in our judicial system and in the public's perception of counterfeiting, the problem will continue to grow and only the criminals will prosper.

## Lucrative Crime Operation

Counterfeit operations mirror the drug trade; however, counterfeiting is much more lucrative than selling drugs. A counterfeiter can sell a counterfeit handbag and make more money than the guy who is selling rock cocaine. That is why we need to amend our counterfeiting statute to take

away the opportunity for these criminals to prosper so greatly off their illegal activities.

If counterfeiters pay stiffer penalties for their crimes, it would act as a greater deterrent to not become involved in counterfeit activity. These counterfeiters should also not be allowed to keep the "fruits of their crime." That is why it is important to amend our statute to include forfeiture of all proceeds of the crime.

We also need to address the issue of

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## Guest Commentary By Kris Buckner

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unassembled component parts in our law. There have been numerous cases that have been difficult to prosecute because of the way our law is written.

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***If counterfeiters pay stiffer penalties for their crimes, it would act as a greater deterrent to not become involved in counterfeit activity.***

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I recall a recent case in San Francisco. The subject of the investigation was operating a retail store near Fisherman's Wharf. The subject was selling handbags; however, the handbags did not have the trademarked logos on them yet. The subject would sell the handbags to his customers and then provide them with the counterfeit trademarked emblem for the customers to place on the handbag themselves. The subject even taught his customers "how to" affix the counterfeit emblems on the handbags properly.

The counterfeiters could not sell their counterfeit merchandise if the items did not have labels, emblems, or the other needed component parts. A consumer most likely will not buy a pirated CD with no artwork or packaging. By allowing subjects to deal in unassembled component parts without the fear of prosecution, we are allowing the counterfeit trade to grow and prosper.

## Organized Crime?

I am always asked if I think organized crime is involved in trademark counterfeiting. My answer is "yes." There is clear and convincing evidence that street gangs, such as 18th Street, MS 13 and others have turned to selling counterfeit merchandise.

Not only are the gangs placing their "soldiers" on the streets selling counterfeit merchandise, they are "taxing" other vendors. These street gangs pay "tribute" to the Mexican Mafia, so you can only imagine what the proceeds from their counterfeit sales are being used for.

Recently, we were involved in an investigation with the Los Angeles Police Department that involved known gang members who were operating a retail store selling counterfeit merchandise and drugs. We have also seen counterfeiting cases associated with other crimes, such as murder, robbery, extortion and other violent crimes.

In 2005, I testified, along with Lt. John Stedman from the Los Angeles County Sheriff's Department before the U.S. Senate Committee on Homeland Security regarding how the sales of counterfeit merchandise may be funding terrorism. I can tell you that there is clear evidence that counterfeiting is providing funds to terrorist organizations.

The reason gangs and other organized groups are turning to selling counterfeit merchandise is very simple — the large profits and limited risks. By amending our law, you will send a clear message that counterfeiting is not worth the risk.

Counterfeiting is all about the money. If the proposed changes in AB 1394 are made to our law, I strongly believe that this will assist in deterring individuals from becoming involved in counterfeiting activity because it will no longer be seen as a crime that is worth the risk.

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*Kris Buckner is president of Investigative Consultants, a licensed private investigation company based in Southern California. This guest commentary is based on testimony written in support of CalChamber-sponsored AB 1394 (Krekorian; D-Burbank).*

## CalChamber Seeks Participants for Coalition to Advance Disability Access

*From Page 1*

are out to generate dollars. Likewise, individuals who demand money for alleged violations but only follow up to collect the money and not to check whether the alleged violation is fixed are equally questionable.

### Businesses Closing Down

Another problem is that many lawsuits arise out of confusion or misunderstanding stemming from the highly technical and subjective nature of the disability access laws and regulations. Too often these lawsuits result in businesses closing

their doors. New construction is being approved by private and public sector entities involved in the building process, yet still is not fully compliant.

Recently, a mom-and-pop steakhouse in Willows, California was sued for alleged ADA violations just after completing a remodel intended to make the restaurant more accessible to the disabled. The owners settled for \$11,000 and subsequently sold the steakhouse, which they had operated for more than 25 years.

### Getting Involved

“Businesses have both a vested inter-

est and responsibility to comply with access laws. California’s laws should facilitate and acknowledge the efforts of businesses who desire to comply and take steps accordingly,” Christoffersen said. “Our laws should promote disability access in business establishments rather than lead to businesses closing down.”

To sign up and participate in the ADA Coalition and the CalChamber effort to promote greater compliance with disability laws with less litigation, visit [www.calchamber.com/ADA](http://www.calchamber.com/ADA).

**Staff Contact: Kyla Christoffersen**

## Economy, State Budget of Concern to Voters in February Election

*From Page 1*

helping to pay for schools, roads, bridges, public safety and health care long into the future. The measures will not solve the state’s budget deficit, but do protect an important revenue stream.

**Proposition 91**, a transportation funding initiative, was no longer needed after the

passage of Proposition 1A in November 2006. CalChamber-opposed Proposition 91 failed 58.1 percent to 41.9 percent.

Voters also rejected **Proposition 93**, 53.6 percent to 46.4 percent. Proposition 93 would have changed the total number of years that an individual can serve in the state Legislature from 14 years to 12

years, allowing the individual to serve all 12 years in either legislative house or a combination of both.

The latest election results are available at the Secretary of State website at [www.ss.ca.gov](http://www.ss.ca.gov).

## Senate Stops Misguided Foreclosure Bill

*From Page 1*

the borrower and the mortgage servicer before the filing of a notice of default.

As a practical matter, there were concerns over whether this requirement was even possible — given the regional centralization of many lenders’ loss mitigation staff — and an even greater concern that this requirement was ripe for abuse by individuals who would avoid foreclosure by simply never attending the in-person meeting. In effect, this would have put the lender at the mercy of the

borrower in the foreclosure process.

The resulting disruptions in the foreclosure process would undoubtedly have had a negative impact on future lending in California. As loans secured by real property became shrouded in uncertainty and market liquidity was reduced, significant new costs would have been added to California’s prospective borrowers.

### CalChamber Position

The CalChamber believes that addressing California’s mortgage market

situation will require a more focused effort by the Legislature — one that deals specifically with the most problematic of sub-prime loans. A targeted approach will be most beneficial to consumers and businesses and will be most effective at stemming the tide of the rapid increase in mortgage defaults.

**Staff Contact: Robert Callahan**

**Mark Your  
Calendars**



**California Business  
Legislative Summit**  
May 20-21, 2008

# State Agency Report Outlines Options for Regulating Chemical Use in Products

A state agency is entering the second phase of a program that could lead to new regulations mandating how businesses manufacture, label and even educate consumers about their products.

The "California Green Chemistry Initiative" was launched last April when Linda Adams, secretary of the California Environmental Protection Agency (Cal/EPA), directed the California Department of Toxic Substances Control (DTSC) to lead other state entities in the effort.

On January 31, Cal/EPA released a report compiling policy options that more than 600 participants submitted during phase one. The 818 suggestions covered the gamut from establishing new requirements for data collection on certain products to prohibiting certain chemicals, conducting more research on chemicals, providing technical assistance to businesses and a recognition/award process.

"Green Chemistry seeks to transform industrial activity to create a zero-waste society," states the executive summary of the report.

The "green chemistry" program not only seeks to fill data gaps on chemicals in commercial use, but also to suggest how to further regulate the use of chemicals in California. It seems modeled after the all-inclusive policies used in Canada and the European Union.

The program is being implemented in two phases. In the first phase, April to December 2007, the department gathered stakeholder suggestions on options for carrying out the policy. The second phase, to include public workshops to solicit more detailed, in-depth analysis of those options, will conclude with the presentation of recommendations to the Cal/EPA secretary this summer.

## Possible Effect on Business

Options outlined in the report include:

- **Data Collection and Use:** The report states that businesses do not always know the substances that are in their products or supply chains. Therefore, California should build a statewide chemical inventory identifying chemical uses by type, industry sector and toxicity.

- **Economic Incentives and Markets:**

The report calls for an incentives and penalties mechanism to encourage businesses to change manufacturing inputs and processes should consumers be exposed to toxic chemicals in products. Incentives listed include: low interest loans, grants and tax credits.

- **Statutory and Regulatory Requirements, Enforcement:** Prohibitions on uses or bans on harmful chemicals or product labeling could be set in place for manufacturers. Also listed are requirements on data collection, reporting, disclosure and take-back programs that would require manufacturers to take back certain products after use.

- **Voluntary Measures:** Existing public-private partnerships and programs could be expanded to encourage companies to design and sell less toxic products.

- **Education and Outreach:** The report acknowledges that most of the general public, including businesses, are not aware of "green chemistry." Therefore, businesses would be encouraged to communicate the effort.

- **Research and Technology:** To advance research and discovery, laboratories and research institutions would be encouraged to conduct research in new screening methods, production methodologies and safer substitutes and alternatives.

- **Technical Assistance:** The state would be urged to provide a "green chemistry" business program to promote access to information for businesses on the topic. Such a program could include workshops, demonstration projects, training and education, and mentoring and curriculum development.

## Other Key Elements

- The majority of the stakeholders said

new laws and regulations should be among the options that decision-makers consider for the California Green Chemistry Initiative.

- Political will, public support and informed consumer choice will be necessary for a successful program, the report said. Therefore, California must train a new generation of scientists and engineers who conceive of molecules in a "societal context."

- Awards for high performance were mentioned as being important to use as marketplace signals to guide consumers to products from companies of distinction.

## Workshops

According to a draft schedule, DTSC will conduct separate workshops on each major topic beginning this month and will announce dates and locations on February 15. A "preferred framework" is to be released for public comment in mid-May.

The department will be asking members of the public and interested parties questions such as how an option will be implemented; by whom and in what way; how much will it cost and who pays; what is the timeframe; and what are the pros and cons.

## CalChamber Efforts

The California Chamber of Commerce is actively involved in building a coalition of business representatives to develop a collective response to Cal/EPA. CalChamber members who are interested in joining the coalition are invited to contact Jason Schmelzer at (916) 444-6670, [jason.schmelzer@calchamber.com](mailto:jason.schmelzer@calchamber.com).

**Staff Contact: Jason Schmelzer**

Make a difference on proposed laws

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# Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchambervotes.com](http://www.calchambervotes.com) 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.

## CalChamber-Opposed Workers' Comp Bill Passes Senate



OPPOSE

A California Chamber of Commerce-**opposed** bill that erodes a fundamental principle of the workers' compensation system — that the system is the exclusive remedy for on-the-job injuries — passed the Senate on January 30.

**SB 940 (Yee; D-San Francisco)** aims to resolve terminal pay timing for employees of temporary staffing agencies, but instead exposes employers to joint and several liability for workers' compensation with temporary staffing agencies.

The CalChamber recognizes that temporary staffing agencies hoped the bill would provide clear guidelines for the timing of the payment of wages when an employee of the staffing agency completes an assignment with the client. It is unreasonable, however, to include workers' compensation requirements that

extend client liability beyond current law for workers' compensation of that staffing agency employee.

Under current law, joint liability is permissive but not mandatory. The change in SB 940 could eliminate the benefits to a business of using the employees of a temporary services agency.

SB 940 would create a situation where an employee of a temporary services company could easily sue the client of the company in civil court if that client did not secure workers' compensation insurance, even if that client believed the temporary services company had secured the payment of workers' compensation insurance.

SB 940 passed the Senate on a vote of 25-14 on January 30. It awaits assignment to a policy committee in the Assembly.

**Staff Contact: Marti Fisher**

## CalChamber Supports Federal Economic Stimulus Package



The California Chamber of Commerce is **supporting** the economic growth package passed by the U.S. House of Representatives last week with broad bipartisan support.

**H.R. 5140**, the Recovery Rebates and Economic Stimulus for the American People Act of 2008, includes tax rebates, a temporary increase in limitations on expensing certain depreciable business assets and a temporary loan limit increase for Fannie Mae and Freddie Mac.

The measure's provisions will encourage new investment, job creation and provide immediate added value.

The loan limit increase for Fannie Mae and Freddie Mac is of particular interest to Californians because the current limit of \$417,000 is ill-matched to high home prices in the state. As a result, families are forced to buy median-priced homes using higher-rate "jumbo" loans.

Increasing the loan limit will benefit the state's economy quickly, generating new home sales and related economic activity.

As **Alert** went to press, the package had just been approved by the U.S. Senate.

**Staff Contact: Kyla Christoffersen**

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## CalChamber-Opposed Bill Puts Burden on Homebuyers



### OPPOSE

A California Chamber of Commerce-**opposed** bill that burdens homebuyers with costly and inefficient energy standard requirements is awaiting action in the Senate.

**AB 1065 (Lieber; D-Mountain View)** substantially increases the cost of housing and development in California by implementing tight energy efficiency measures for all new residential and commercial buildings without taking into account the additional costs that will be passed on to consumers.

The CalChamber believes that the energy efficiency goals set forth in AB 1065 are unnecessary and complicate the building community's ongoing efforts to build "green." In order to meet these goals, very expensive "on-site" generation of electricity will have to be combined with increasingly stringent (not to mention costly) energy efficiency measures.

Moreover, although the mass application of photovoltaics (PV) solar energy

system technology is farther along than at-home fuel cell technology, neither of these technologies is cost-effective yet. This sets the stage for a regulatory conflict because the California Energy Commission is also required by statute to adopt cost-effective energy efficiency standards.

In fact, instead of going down in cost by 6 percent to 8 percent per year (estimates used in the Legislature over the last three years), PV solar energy system costs have actually increased 25 percent over the last 18 months.

In addition, new homes make up only 1 percent of the total housing stock each year. Of the 13 million existing homes and apartments that make up the total housing stock in California, well over 9 million units were built before 1983 (when the first set of statewide energy efficiency standards took effect). This means that three out of four homes in California were constructed under building standards containing no requirements for energy efficiency.

Focusing solely on new construction is going to have a very limited impact

on overall statewide energy consumption while serving as a strong deterrent for companies considering the location of new business facilities within California.

AB 1065 places a huge and unfair economic burden on all new residential and commercial construction while focusing no attention on the massive amount of energy consumed by the existing and "energy-inefficient" infrastructure.

### Key Vote

AB 1065 passed the Assembly on January 29 on a vote of 42-32.

**Ayes:** Arambula (D-Fresno), Bass (D-Los Angeles), Beall (D-San Jose), Berg (D-Eureka), Brownley (D-Santa Monica), Caballero (D-Salinas), Calderon (D-Montebello), Coto (D-San Jose), Davis (D-Los Angeles), De La Torre (D-South Gate), De León (D-Los Angeles), DeSaulnier (D-Concord), Dymally (D-Compton), Eng (D-Monterey Park), Evans (D-Santa Rosa), Feuer (D-Los Angeles), Fuentes (D-Sylmar), Hancock (D-Berkeley), Hayashi (D-Castro Valley), Hernandez (D-La Puente), Huffman (D-San Rafael), Jones (D-Sacramento), Karnette (D-Long Beach), Krekorian (D-Burbank), Laird (D-Santa Cruz), Leno (D-San Francisco), Levine (D-Van Nuys), Lieber (D-Mountain View), Lieu (D-Torrance), Ma (D-San Francisco), Mendoza (D-Artesia), Mullin (D-South San Francisco), Nava (D-Santa Barbara), Núñez (D-Los Angeles), Portantino (D-La Cañada Flintridge), Price (D-Inglewood), Ruskin (D-Redwood City), Salas (D-Chula Vista), Saldaña (D-San Diego), Swanson (D-Oakland), Torrico (D-Newark), Wolk (D-Davis).

**Noes:** Aghazarian (R-Stockton), Anderson (R-La Mesa), Benoit (R-Bermuda Dunes), Berryhill (R-Modesto), Blakeslee (R-San Luis Obispo), Cook (R-Yucca Valley), DeVore (R-Irvine), Duvall (R-Yorba Linda), Emmerson (R-Redlands), Fuller (R-Bakersfield), Gaines (R-Roseville), Galliani (D-Stockton), Garcia (R-Cathedral City), Garrick (R-Solana Beach), Horton (R-Chula Vista), Houston (R-San Ramon), Huff (R-Diamond Bar), Jeffries (R-Lake Elsinore), Keene (R-Chico), La Malfa (R-Richvale), Maze (R-Visalia), Nakanishi (R-Lodi), Niello (R-Fair Oaks), Parra (D-Hanford), Plescia (R-La Jolla), Silva (R-Huntington Beach), Smyth (R-Santa Clarita), Spitzer (R-Orange), Strickland (R-Moorpark), Tran (R-Costa Mesa), Villines (R-Clovis), Walters (R-Laguna Niguel).

**Absent/abstaining/not voting:** Adams (R-Hesperia), Carter (D-Rialto), Runner (R-Lancaster), Solorio (D-Santa Ana), Soto (D-Pomona).

### Action Needed

AB 1065 is awaiting assignment to a policy committee in the Senate. Contact your senator to voice your **opposition** to **AB 1065**.

For more information on the bill or a sample letter of opposition, visit [www.calchambervotes.com](http://www.calchambervotes.com).

**Staff Contact: John Hooper**

## CalChamber Hosts Mayor of Gangnam, Korea



CalChamber President Allan Zaremberg exchanges business cards with the Mayor Maeng Jung Ju of Gangnam, Korea on January 31 before briefing the mayor and a delegation of Korean officials on California issues, as well as the CalChamber support for the pending U.S.-Korea Free Trade Agreement. Accompanying the Korean delegation is Ronnie Guyer (center), field representative for Assemblyman Van Tran (R-Costa Mesa).

## Last chance to find out what's new for 2008. Attend HR 201: Labor Law Update Live Web Seminar

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