VOLUME 38. NUMBER 16 • MAY 18. 2012



# Revised Budget Plan Hinges on November Tax Initiative



Governor Edmund G. Brown Jr. used this week's release of his updated budget proposal to reiterate his commitment to budget austerity and his plea to voters to raise taxes in November.

Addressing a

newly calculated deficit of \$15.7 billion, the Governor claimed that "the revised May budget slashes spending in almost every part of government, but proposes a 16 percent increase in funding for K–12 education, subject to voter approval."

#### **Budget Challenges**

This sentence captured the challenge facing the Governor in achieving his solutions to return fiscal stability to the state.

• First, state revenues continue to fall short of the Governor's expectations, even as the economy has returned to modest growth.

The lagging revenues are a result of much smaller tax receipts on capital gains than forecasted by the administration.

The incorrect estimate came about from the unfortunate convergence of wishful thinking plus volatility of what has become a major source of state

See Revised: Page 4

# Supreme Court: Attorneys' Fees Not Available for Winner in Meal and Rest Break Claims



The California Supreme Court has ruled that the winning party in meal and rest break cases cannot recover attorneys' fees.

In a unanimous decision in *Kirby* v. *Immoos Fire* 

*Protection, Inc.*, the court ruled that neither employees nor employers who prevail can receive an attorneys' fees award.

The decision may potentially reduce the financial incentive to bring meal and rest break claims.

#### **Court Review**

The court was asked to review whether attorneys' fees could be awarded in meal and rest break cases under either one of two statutes:

- Labor Code Section 218.5, which provides that attorneys' fees should be awarded to the prevailing party "[i]n any action brought for the nonpayment of wages...."
- Labor Code Section 1194, which provides that prevailing employees should be awarded attorneys' fees in an action for any unpaid "legal minimum wage or...legal overtime compensation."

The court ruled that neither of these statutes allowed for an attorneys' fee

See Supreme: Page 6

# Job Creator Bill Awaits Action by Governor



A California Chamber of Commercesupported job creator bill that

encourages job growth by eliminating costly and repetitive permitting for solar thermal projects is awaiting action by Governor Edmund G. Brown Jr.

AB 1073 (Fuentes; D-Sylmar) promotes the use of cost-efficient energy by allowing a solar facility to convert from solar thermal technology to photovoltaic technology without having to file a new application.

This legislation is consistent with the goals of the CalChamber 2012 Renew Agenda and will help position California for economic recovery.

AB 1073 builds on the streamlining foundation in SB 226 (Simitian; Statutes of 2011, Chapter 469) by clarifying that the California Energy Commission has "opt-in" jurisdiction over specified solar thermal power plants that were challenged in court, but were later dismissed.

Because of this, more solar thermal projects will have the opportunity to covert to photovoltaic, making them more competitive and providing certainty for projects moving forward.

#### **Action Needed**

The CalChamber is urging its members to contact the Governor and ask him to sign AB 1073.

Staff Contact: Amy Mmagu

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#### Labor Law Corner

# Voluntary Wage Assignment Differs from Court-Ordered Garnishment



Gary Hermann HR Adviser

Are federal student loan wage garnishments and voluntary wage assignments considered the same as court-ordered garnishment notices?

If an employee executes a voluntary wage assignment for the benefit of a particular creditor, this would not constitute a judgment garnishment notice that could be counted pursuant to Labor Code Section 2929.

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Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremberg. Executive Editor: Ann Amioka. Associate Editor: Sara Espinosa. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.

E-mail: alert@calchamber.com. Home page: www.calchamber.com. Employees who have defaulted on student loans create unique questions. The Higher Education Act (Title 20, U.S. Code Section 1095a) authorizes the Education Department as well as student loan guaranty agencies to collect defaulted federally financed student loans by means of an administrative order to the employer, and without the need for a court order.

The administrative order requires the employer to withhold and pay over to the Education Department or the guarantor up to 15% of the debtor's disposable pay. This federal law supersedes any state law governing wage garnishment.

Employers should note that notices of garnishment are serious matters that can result in liability if ignored. If an employer fails to withhold or to pay over the amount the notice requires the employer to withhold, the judgment creditor may bring a civil action against the employer to recover the amount.

#### **Garnishment Defined**

The definition of garnishment in California Labor Code Section 2929 is: "any judicial procedure through which the wages of an employee are required to be withheld for the payment of any debt."

Section 2929 of the California Labor Code provides, in part, that "no employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment for the payment of one judgment."

Sometimes, employees will challenge the validity of garnishment notices by filing motions with the court to set the garnishments aside. It should be noted, however, that such a motion, before some action by the court, has no effect on the order received by the employer.

#### Assignments

Unlike a garnishment wage order, an employer has no obligation to honor an assignment. Before simply deciding to honor the assignment, however, the employer should discuss the authorization with the employee and review it with counsel.

Although the protections of Labor Code Section 2929 would not apply, the validity of the assignment is governed by the provisions of Labor Code Section 300.

Labor Code Section 300 invalidates any assignment unless:

- The assignment is contained in a separate written instrument signed by the employee.
- The assignment must specifically identify the transaction to which the assignment relates.
- If the employee is married, the written consent of the spouse must be attached to the assignment.
- If the employee is a minor, the written consent of a parent or guardian must be attached to the assignment.
- The employee must attach a statement that no other assignment exists with regard to the same transaction.
- The assignment must be notarized and be accompanied by an itemized statement of the amount then due the assignee.
- The employer must not be in possession of any other wage assignment or earnings withholding order.

Assignments are limited to not more than 50% of the employee's disposable wages (see Labor Code Section 300(c)). This obviously places an obligation on the employer to review each assignment as the employer must accept responsibility for any wage deductions based on the employee's assignment.

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.







# Investing in Higher Education Offers California a Competitive Advantage



Loren Kaye

California
has become
notorious for
its competitive
economic
disadvantages,
including
the high cost
of labor,
uncertainty
from litigation
and regulatory
delay, and
high state and

local taxes. Much of the debate about improving our economic performance has been over how to reduce these disadvantages.

A welcoming business climate is indispensable to grow jobs in the state. But perhaps more important to California's long-term prosperity is a historic competitive advantage that is slipping away: our once-world class system of postsecondary education.

Higher education, and in particular the public four-year institutions, the University of California and California State University, makes three irreplaceable contributions to California's well-being: a more highly skilled work force to meet the needs of the economy of the future; better economic opportunity for high school graduates; and more innovation that spins off into increased opportunities and better jobs.

As the Governor and Legislature ponder whether higher education should continue to suffer disproportionate reductions in their state revenues to help the state address its persistent budget deficit, the elected leaders should pay close attention to a recent report from the Campaign for College Opportunity, co-released by the California Chamber of Commerce and the California Civil Rights Coalition.

#### **Return on Investment**

A nonprofit research and advocacy organization, the Campaign found an extraordinary return on investment for state revenues provided to higher education in California.

- For every dollar California invests in public higher education, it will receive a net return on investment of \$4.50. That's a 450% return on investment.
- The return is double for those who complete college—\$4.80—than for those who enter but don't obtain a degree—\$2.40.
- Past graduates of UC and CSU return \$12 billion annually, well above the current General Fund expenditures for the UC, CSU and California Community College systems combined.
- Californians with a college degree will earn \$1.34 million more in their lifetimes than their peers with only a high school diploma.
- By entering and completing college, the average Californian will spend four years less in poverty, reducing the expected number of years they receive cash aid by more than two years.

### Guest Commentary By Loren Kaye

#### **Strong Investment Value**

"This report demonstrates the strong investment value of the state's expenditures on higher education," said Allan Zaremberg, CalChamber president and CEO. "California's leaders must ensure adequate funding of our colleges and universities to help secure our economic future."

This report provides a guidepost for state leaders wrestling with securing future economic prosperity and stable state budgets. When average incomes for Californians increase as a result of more-skilled and better-paid workers, it is natural that available tax revenues would also increase.

#### **Income Advantage**

According to the Campaign, translating the income advantage earned through college entry and completion into revenue finds that transitioning between high school graduation into college yields the state nearly \$30,000 more in revenue over the course of the individual's work

life. If that person earns a bachelor's or higher degree, it garners the state \$108,000.

The state also reaps savings, with differences in lifetime years in poverty with college attendance yielding savings of around \$5,000, and a college degree yielding savings of \$11,000 over the course of an individual's work life. Savings from decreased incarceration rates provide savings roughly double that in size, with a \$10,000 difference between high school graduates and those with some college, increasing to a \$23,000 difference for those who earn their bachelor's degrees.

In total, including lower expenditures and higher revenues, college entry ultimately yields around \$45,000 to the state, and a bachelor's degree yields the state more than \$140,000 per individual.

Consecutive years of budget cuts—more than a billion over the past two years and probably even more should a tax increase on the ballot fail—has weakened California's higher education systems, leading to tuition hikes and weakened faculty recruitment prospects.

#### **Consequences of Neglect**

According to CSU Chancellor Charles Reed, "For the California State University, our dollars are the same as we had in 1996, but we have 90,000 more students today. California's economic recovery is based upon funding higher education, and it has been neglected for the past several years. And if the Governor and the Legislature don't start funding higher education, California is not going to recover from this slump in the economy."

Loren Kaye is president of the California Foundation for Commerce and Education, a nonprofit think tank affiliated with the CalChamber. California's Economic Payoff: Investing in College Access & Completion, was conducted by researchers at the Institute for the Study of Societal Issues at UC Berkeley, and commissioned by the Campaign for College Opportunity.



# Revised Budget Plan Hinges on November Tax Initiative

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revenues. See the tax and spending trends in the chart at right.

• Second, having convinced the Legislature to cut state spending by some \$10 billion last year, the Governor's options for politically viable budget cuts have been further reduced.

As a result, he has dipped into the bag of one-time solutions that he had previously committed to avoid. He has justified this approach because revenue growth will bounce back with the recovering economy.

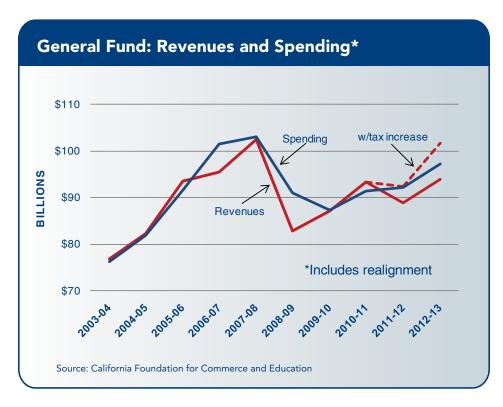
- ◆ Third, the convolutions of the state's school finance formula required that most new state revenue growth must be devoted to increasing K−12 funding. This is fortunate, since voters are most sympathetic to spending money on schools. On the other hand, it also means that should the voters reject the Governor's tax proposal at the ballot, schools will suffer proportionately higher reductions.
- Finally, the proposed tax increase in November is central to his plan for fiscal stability. Voters will be asked to raise income taxes for seven years, adding one to three percentage points on incomes of higher-income Californians. Also included will be a four-year, quarter-cent increase in state sales taxes.

The tax increases will raise up to \$8.5 billion to address next year's budget deficit, and about \$7 billion annually in the following years.

#### **Cutbacks**

The revised budget proposal continues grim news for most of the state programs, services and activities financed by the \$88 billion in state general revenues (before the tax increase; \$96 billion should the taxes pass).

Even if taxes are hiked, the University of California and California State



University will have virtually no changes in their budgets—after deep cuts last year. If the tax hikes fail, each segment would be cut by \$250 million.

Even if taxes are increased, the funding for the state's trial courts will be reduced by more than a half-billion dollars, and scheduled to be offset by using local budget reserves retained by counties, and by postponing courthouse repairs and construction.

Even if voters approve new taxes, health and welfare programs will be cut by \$800 million, including reducing payments to hospitals and nursing homes, increasing managed care systems for Medi-Cal, limiting eligibility for the state's cash welfare program, and reducing services for in-home care.

#### K-12 Schools Impact

Schools will feel the brunt of the impact should voters reject the Governor's tax plan. Funds to K–12 schools and community colleges would automatically shrink by \$5.5 billion. Since these reductions would take effect after the November election, it is highly likely that school districts will have planned on the lower amount when they open school in August or September.

Therefore, while school budgets will be extremely tight for the 2012–13 year, losing the tax election should not result in widespread aftershocks in schools.

Contact: Loren Kaye, California Foundation for Commerce and Education

## CalChamber Positions on June Ballot Propositions

Proposition	Subject	Position
Proposition 28	Limits on Legislators' Terms in Office	Support
Proposition 29	Additional Tax on Cigarettes for Cancer Research	Oppose



# Action Needed to Keep Illegal Tax Holding in Legislative Fiscal Committees



Two California
Chamber of
Commerceopposed "job
killer" bills that
will increase
energy costs,
including fuel prices,

on consumers and businesses were placed on the Assembly Appropriations Committee Suspense File this week pending a review of their fiscal impact.

A third similar bill is scheduled to be considered on May 21 in the Senate Appropriations Committee.

The bills are AB 1532 (J. Pérez; D-Los Angeles), AB 2404 (Fuentes; D-Los Angeles) and SB 1572 (Pavley; D-Agoura Hills). All three allocate funds from an illegal tax to various programs that are not necessary to cost-effectively implement the market-based trading

mechanism under AB 32, the 2006 climate change law.

In opposing the bills, the CalChamber has pointed out that the California Air Resources Board (ARB) lacks authority and has been unable to justify the need to raise billions of dollars in revenue for the purposes anticipated in the bills.

ARB's plan to impose a "cap-and-tax" will hurt jobs, and increase costs to the state and consumers. AB 32 was not intended to be a revenue source. If the state moves forward with a billion-dollar auction, the impacts on the state's economy would be devastating.

Entities subject to the illegal tax include manufacturers, public agencies, universities, refineries, food processors and others. The impact on these entities will be severe and on top of the higher fuel and energy costs due to other climate change regulations.



Not only is an auction unnecessary for a successful cap-and-trade program, but the planned collection and distribution of auction revenues raises legal uncertainties.

#### **Action Needed**

The CalChamber is asking members to contact their legislators to urge them to keep AB 1532 and AB 2404 on the Assembly Appropriations Suspense File and to put SB 1572 on the Senate Appropriations Suspense File.

Easy-to-edit sample letters are available at www.calchambervotes.com. Staff Contact: Brenda M. Coleman

# CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

#### Labor Law

Paid or Unpaid—Leaves of Absence for California Employees Webinar. CalChamber. June 21. (800) 331-8877.

Hiring and Onboarding Basics Webinar. CalChamber. July 19. (800) 331-8877.

Conducting Effective Performance Appraisals Webinar. CalChamber. August 16. (800) 331-8877.

Employee Discipline Webinar. CalChamber. September 20. (800) 331-8877.

#### **Business Resources**

YBITS 2 Bidder's Conference/Outreach & Networking. Caltrans. June 14, San Francisco. (510) 286-0974.

#### International Trade

Consular Corps Luncheon. Northern California World Trade Center. May 22, Davis. (916) 312-9146. Webinar: Understanding Export Controls.

U.S. Department of Commerce. May 23. (202) 482-4422. Webinar: Protect Your Intellectual Property Abroad. U.S. Department of Commerce. May 24. (202) 482-4422.

Webinar: Certificates of Origin, Free Trade Agreements, eCertification. U.S. Department of Commerce. May 30. (202) 482-4422.

California Ag Trade Mission to China/ South Korea. Fresno Center for International Trade Development. June 9–16, China and South Korea. (559) 324-6401.

Webinar: Financing Your Exports and Getting Paid. U.S. Department of Commerce. June 13. (202) 482-4422.

U.S.-Africa Infrastructure Conference.Corporate Council on Africa. June 18–20, Washington, D.C. (202) 835-1115.

California Meets Panama–Trade Conference. Monterey Bay International Trade Association. June 22, San Jose. (831) 335-4780.

Webinar: Temporary Exports. U.S. Department of Commerce. June 27. (202) 482-4422.

California Pavilion at Chile-Expo Hospital 2012. Los Angeles Area Chamber of Commerce and CalChamber. June 27–29, Santiago, Chile. (213) 580-7570.

Food Taipei 2012. Taiwan Trade Center, San Francisco. June 27–30, Taiwan. (408) 988-5018.

2012 India Trade Conference. Port of Los Angeles, U.S. Commercial Service, Quanta Consulting. June 28, Cerritos. (949) 480-9466.

California Pavilion at Farnborough 2012. U.S. Department of Commerce. July 9–15, Farnborough, England. (949) 660-7105.

Intersolar-North America. NorthernCalifornia Regional Center forInternational Trade Development. July10–12, San Francisco. (916) 563-3222.

Webinar: Satisfying International Product Certification. U.S. Department of Commerce. July 11. (202) 482-4422.

Webinar: Website Optimization. U.S. Department of Commerce. July 25. (202) 482-3787.



# National Research Council Concludes No Easy Fix for Delta

The significant environmental problems in California's Delta cannot be solved through one single policy solution, according to a new study published by the National Research Council.

The study determined that only difficult choices lie ahead if California wants to restore fish species and still meet the state's water demands.

The study, conducted at the request of members of Congress, as well as the Obama administration, included 17 scientists from various disciplines. The study took nearly two years to complete and was widely anticipated in hopes that it would have unveiled a specific answer that directly pointed to the Delta's decline.

#### **Coequal Goals**

The Delta Vision Initiative, an executive order issued by Governor Arnold Schwarzenegger in September 2006, was enacted to develop a risk assessment for the Delta and to provide both a vision and strategic plan for the Delta.

The initiative established a Blue Ribbon Task Force that was responsible for recommending future actions to achieve a sustainable Delta. The task force recommended one coequal goal: restore the Delta ecosystem and create a reliable water supply in California.

The study found that efforts to implement the coequal goal of restoring the Delta ecosystem and creating a



reliable water supply have not led to further clarity on how the inevitable trade-offs between the two goals should be managed, particularly when water is in short supply.

#### **Confirming Previous Conclusions**

The independent panel largely confirmed what other scientists have found regarding the significant management issues throughout the Delta. Furthermore, the study points to the various levels of water management responsibilities that lie with multiple state and local agencies, which the study cites as a structure that currently hinders the

development and implementation of an integrated, comprehensive plan.

Governance of the Delta has long been a controversial subject. Heavy opposition from residents, farmers and local governments in the Delta, and some Delta-area legislators continues even though the package has been signed and implementation has begun.

The water package passed in 2009 was supposed to address many of these problems, primarily by dealing with the fragmented approach to the management of the Delta.

#### **Multiple Stressors**

The study concluded that there are multiple stressors affecting the Delta, and that the impacts from these stressors make pinpointing causes almost impossible. Furthermore, any one stressor could have significant effects on the Delta depending on when and where specific endangered species are being examined.

Henry Vaux, professor emeritus of resource economics at the University of California, Riverside, and one of the study's co-authors, said time is running out to address these problems.

He estimated that California has about 10 years to address these problems; otherwise, the frequent crisis will make planning effective and realistic solutions extremely difficult.

"There is not now in the Delta, or in the state of California as a whole, sufficient quantities of water to satisfy all wants for it, at all times, everywhere," Vaux said.

Staff Contact: Valerie Nera

# Supreme Court: Attorneys' Fees Not Available for Winner in Meal and Rest Break Claims

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award in meal and rest break cases.

Under Section 218.5, the court found that a meal and rest break action is not an action for nonpayment of wages but an action for failure to provide meal and rest periods. Although the remedy for the failure is a wage, one hour of premium pay, the nature of the violation is failure to provide a break, not failure to pay wages.

Under Section 1194, the court found that its plain meaning and history show it was meant to apply to minimum wage and overtime violations, and not to encompass meal and rest violations.

In the case before the court, the employer was the winning party, and the

employer was not allowed to recover the attorneys' fees it incurred as a result of having to defend against the meal and rest claim.

#### **Reduced Incentive for Claims**

The fact that the court's ruling will also prevent plaintiffs/employees from using these statutes to recover attorneys' fees in meal and rest break cases may help stem the ongoing flood of such claims.

Plaintiffs' attorneys may still add on other claims, such as PAGA (Private Attorney General Act) claims or other Labor Code violations, to obtain fees. Staff Contact: Gail Cecchettini Whaley

### CalChamber Calendar

International Forum:
May 21, Sacramento
Water Resources Committee:
May 21, Sacramento
Host Reception/Host Breakfast:
May 21–22, Sacramento
Board of Directors:
May 21–22, Sacramento
CalChamber Fundraising Committee:
May 22, Sacramento
Environmental Regulation Committee:
May 22, Sacramento

Public Affairs Council Workshop: June 18, Sacramento



# Congress Approves Reauthorization of Export-Import Bank on Bipartisan Votes



In action supported by the California Chamber of Commerce, both houses of Congress have voted to reauthorize the Export-Import Bank of the United States (Ex-Im) to prevent the

loss of U.S. jobs to foreign competitors.

The U.S. House of Representatives passed the reauthorization bill May 9 on a bipartisan vote of 330-93.

On May 15, the U.S. Senate approved the reauthorization bill on a bipartisan vote of 78-20.

The Ex-Im Bank's temporary authorization was due to expire on May 31. Failure to reauthorize the bank's operations would have seriously disadvantaged U.S. companies, both small and large, in foreign markets, potentially resulting in the loss of thousands of U.S. jobs.

In the five years since Congress last reauthorized the bank's operations, Ex-Im has refunded more than \$3.4 billion to the U.S. Treasury above all costs and loss reserves, including \$700 million for the 2011 fiscal year alone.

#### California Impact

Since the last reauthorization, the bank has helped nearly 1,000 businesses from California, the vast majority being small businesses.

The four-year reauthorization for the Ex-Im Bank also should increase its lending cap sufficiently, the CalChamber said in its earlier letter of support to congressional representatives.

As the official credit agency of the United States, Ex-Im Bank's mission is to assist in financing the export of U.S. goods and services to international markets.

#### **Small Business Help**

Ex-Im Bank reports that small businesses account for 87% of its transactions. The 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 Congressional Delegation Vote on Reauthorizing Ex-Im Bank

U.S. Senate Ayes (2 of 78) Boxer (D-Greenbrae) Feinstein (D-San Francisco)

U.S. House of Representatives Ayes (47 of 330) Baca (D-Rialto)

Bass (D-Los Angeles) Becerra (D-Los Angeles) Berman (D-Los Angeles)

Bilbray (R-Carlsbad) Bono Mack (R-Palm Springs)

Calvert (R-Corona) Campbell (R-Irvine) Capps (D-Santa Barbara)

Cardoza (D-Merced) Chu (D-Monterey Park)

Costa (D-Fresno)

Davis (D-San Diego) Denham (R-Atwater)

Dreier (R-San Dimas)

Eshoo (D-Palo Alto)

Farr (D-Carmel)
Gallegly (R-Simi Valley)

Garamendi (D-Walnut Grove)

Hahn (D-San Pedro) Honda (D-San Jose)

Issa (R-Vista)

Lee (D-Oakland)

Lewis (R-Redlands) Lofgren (D-San Jose)

700

Lungren (R-Gold River)

Matsui (D-Sacramento) McCarthy (R-Bakersfield)

McKeon (R-Santa Clarita)

McNerney (D-Pleasanton)

Miller, Gary (R-Diamond Bar) Miller, George (D-Martinez)

Napolitano (D-Norwalk)

Nunes (R-Tulare)

Pelosi (D-San Francisco)

Richardson (D-Long Beach)

Roybal-Allard (D-Los Angeles)

Sánchez, Linda (D-Lakewood) Sanchez, Loretta (D-Anaheim)

Schiff (D-Burbank)

Sherman (D-Sherman Oaks)

Speier (D-Hillsborough)

Stark (D-Fremont)

Thompson (D-St.Helena) Waters (D-Los Angeles)

Waxman (D-Los Angeles)

Woolsey (D-Petaluma)

Nays (5 of 93)

Herger (R-Chico) Hunter (R-Alpine)

McClintock (R-Roseville)

Rohrabacher (R-Huntington Beach)

Royce (R-Fullerton)

Not Voting (1 of 8) Filner (D-San Diego)

In the 2011 fiscal year, the Ex-Im Bank provided more than \$6 billion in financing and insurance for U.S. small businesses, an increase of nearly 90% since the 2008 fiscal year.

The bank has set a goal of providing \$9 billion each year in small-business export financing and adding 5,000 new small businesses to its portfolio by 2015.

Since its creation in 1934, Ex-Im Bank has supported more than \$456 billion of U.S. exports, primarily to developing markets worldwide.

#### **CalChamber Position**

The CalChamber, in keeping with long-standing 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 Stirling** 



#### MANDATORY HARASSMENT PREVENTION TRAINING

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