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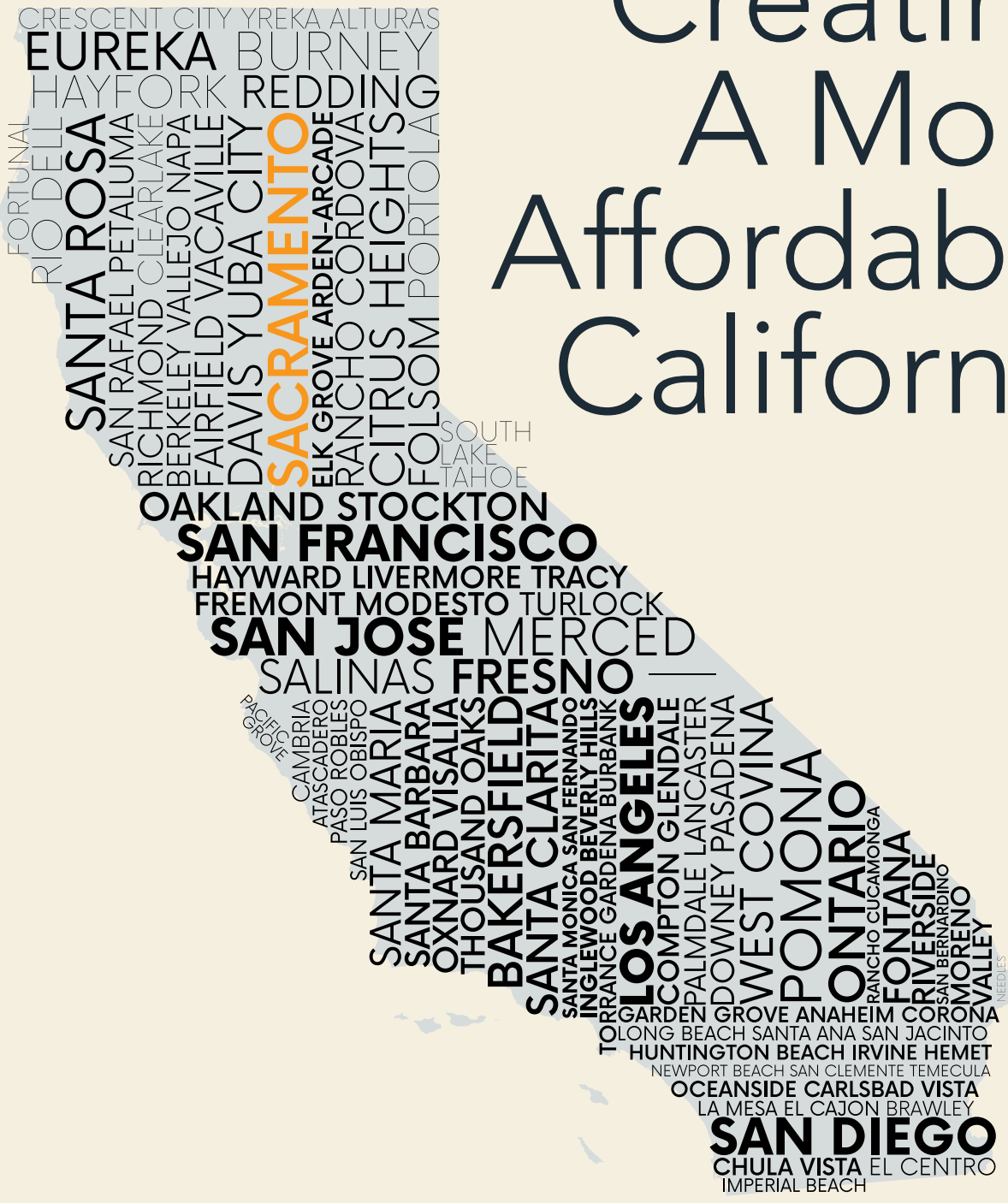
Creating A More Affordable California



2023 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

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Creating A More Affordable California

2023 Business Issues and Legislative Guide

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2023–24 Legislative Session
118th Congress, First Session

Creating A More Affordable California

2023 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Dear Reader:

High costs of essentials, from housing to energy, threaten the state's prosperity. That is why this issues guide focuses on **Creating A More Affordable California**.

Lawmakers can help reverse the affordability crisis by pursuing some of the sensible, workable ideas presented in this guide, including the following:

- Reform the California Environmental Quality Act (CEQA) to reduce time-consuming and costly litigation that discourages or prevents construction of new housing, renewable energy projects, and critical water storage.
- Reject new taxes, and hidden taxes, that penalize employers for investing or producing in California, and that increase costs or reduce availability of products or services.
- Restore a just and accessible forum for workplace disputes by replacing the broken Private Attorneys General Act (PAGA).
- Ensure that further greenhouse gas mitigation measures are technology-neutral, cost-effective, and include system reliability and public safety as guiding principles.
- Mitigate future employer costs and hiring disincentives by helping repair the Unemployment Insurance Fund deficit and reforming the program to reduce costs and increasing efficiencies.

Please join our ongoing effort to make living and working in our state more affordable for everyone. Follow us on LinkedIn, Facebook or Twitter to stay informed on what your elected representatives are doing about affordability issues and how you can influence the discussions. For inspiration, we will continue to share positive stories via California Works profiles of member companies and their employees who help our state compete in the global economy.

Together we can make sure that Californians have access to opportunities for years to come.

Gregory S. Bielli
Chair, Board of Directors

Jennifer Barrera
President and Chief Executive Officer

Creating a More Affordable California

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

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2023 Issues

Creating A More Affordable California

2023 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

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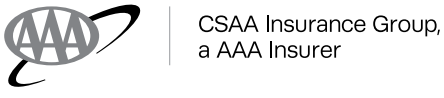


California Economy

High Cost of Public Policies Shadows Post-Pandemic Recovery

The Golden State has enjoyed as much prosperity and created as much wealth as any society on the planet.

Its economic output rivals Germany and boasts more than 370 firms with a market cap of more than $1 billion.

The great economic engine powered by California's robust private sector creates and maintains more than 17 million jobs, paying $1.6 trillion in annual wages and salaries. California has the ninth highest median household income of all states.

Taxes on businesses, entrepreneurs, and wage earners sustain hundreds of billions of dollars in state and local government spending, including jaw-dropping budget surpluses over the past couple years.

California may be one of the greatest prosperity generators the world has ever seen. But even so, it's often no match for the toll that the state's relentless cost of living takes on affordability for working and middle-income families. This crisis of affordability — much of it a result of or exacerbated by public policy — is the clearest and most immediate threat to continuing California's greatness.

The Governor agrees. "So as we go forward," Governor Gavin Newsom proclaimed in his 2023 Inaugural Address, "we must continue our quest for an honest accounting of where we've fallen short: on affordability, on housing, on homelessness."

In some ways, the great success of California sowed the seeds of the affordability crisis. Economic growth, the international renown of our high tech, biotech, entertainment and agricultural sectors, and our world class higher education systems, to name a few — these accomplishments can cloud the judgment of elected leaders, leading them to treat California as a "luxury good," believing that residents are willing to pay an ever-increasing cost to live here. This attitude gives rise to expensive and divisive policy initiatives that serve political constituencies and cultural trends, but which do not register with residents and taxpayers.

It costs a lot to make a life in the Golden State.

The good news is that California family income growth has outpaced the nation. Between 2011 and 2021, median inflation-adjusted household income increased by 27% in California, compared with 17% nationally. Hourly wages in California for private sector workers are about one-sixth higher in California than in the nation, and have climbed by 42% over the past decade, compared with a 38% increase nationally.

The typical family and worker is making more in California, which is a good thing, because it sure costs more to live here.

HOUSING: BIGGEST EXPENSE

The biggest expense for most Californians is housing, and every year costs grow for both prospective homeowners and renters. California housing costs are infamous nationally and are perhaps the biggest selling point for workers when workplaces are expanded or moved outside of the state.

But most dispiriting is that the cost of housing is among the greatest contributors to poverty in California. According to the Public Policy Institute of California (PPIC), if the cost of housing had held constant at 2013 levels, 800,000 fewer Californians (2.2%) would have been in poverty in 2019. In the San Francisco Bay Area, 12.3% fewer Californians would have been in poverty had housing costs been held in check. Unless more housing is built for every income level, which is the only solution to high housing costs, no amount of safety net relief can reverse poverty trends in the state.

HIGH-COST ESSENTIALS

In addition to the high cost of housing, Californians also face a "luxury tax" on other essentials. We have among the highest utility rates and gasoline prices in the nation, much of it a direct result of public policy. The consensus of California's elected officials is to move full speed ahead to make California a world leader to address the root causes of climate change. The resulting policies have created real-world costs for Californians.

California has among the highest retail prices for electricity in the nation, with the third-highest residential rates. Leaving aside Hawaii, California has the highest business electricity rates in the country, averaging 83% higher than the national average in the commercial sector, and industrial rates more than double the national average.

California motorists pay about 30 cents per gallon in hidden "carbon" fees, on top of our nation-leading gasoline and diesel

taxes. The clock is ticking toward the prohibition on sales of new gasoline-powered cars in 2035, and many cities are moving to ban the new use of natural gas for heating, cooking, and for restaurants.

In addition to targeting the internal combustion engine, state and local officials want to reduce vehicle use no matter the fuel technology. Local governments and regional planning agencies are considering tools to discourage automobile use like fees on housing based on homeowners' projected road use, as well as "road diets" to reduce street lanes. The Air Resources Board's Scoping Plan for carbon reduction eyes reducing vehicle miles traveled per capita by 25% below 2019 levels by 2030, and 30% by 2045.

CALIFORNIA EXODUS

Choosing to make California a luxury good means we are pricing ourselves out of the market. Residents and businesses are voting with their feet.

According to the Department of Finance, the current fiscal year marks four straight years of population decline, during which California's population has decreased by about 643,000 residents — more than the combined headcount of Long Beach and Santa Rosa.

The preponderance of the CalExodus is to nearby states, to whom we've lost residents every year since 2001. Last year alone, other states in the continental West grew by 267,000 people. On its own, Texas grew by 471,000, and Florida grew by 417,000.

Historically, residents who left California were different from those who moved into the state. In general, new Californians were more likely to be employed, better educated, and to earn high wages than those who moved away. But in the past five years that trend has changed; the flow of middle-income residents out of the state has accelerated and net gains among higher-income adults have ceased.

VOTER ANXIETY

California's cost of living is making voters consistently anxious. A March 2022 PPIC Statewide Survey found that 37% of Californians have seriously considered leaving the state because of housing costs. The CalChamber poll found that 85% of California voters agree that attaining and maintaining a middle-class lifestyle is nearly impossible throughout California. And more than 60% of voters with kids at home say their children would have a better future if they left California.

The picture painted by these trends illustrates the economic challenges faced by many lower- and middle-income Californians. The California private sector generates opportunity throughout the income spectrum, but without public policy changes that favor growth over redistribution, that opportunity will be locked away for many.

WORKABLE IDEAS

The Legislature has at hand any number of sensible, workable ideas to reverse the unaffordability trend and promote growth. To name a few:

- **Reform the California Environmental Quality Act** (CEQA) to reduce time-consuming and costly litigation that discourages or prevents construction of new housing, renewable energy projects, and critical water storage.
- **Reject new taxes, and hidden taxes**, that penalize employers for investing or producing in California, and that increase costs or reduce availability of products or services.
- **Restore a just and accessible forum for workplace disputes** by replacing the broken Private Attorneys General Act (PAGA) scheme with a responsive administrative process that puts employees first and reduces costs and uncertainties for employers.
- **Ensure that further greenhouse gas mitigation measures are technology-neutral, cost-effective, and include system reliability and public safety as guiding principles.**
- **Mitigate future employer costs and hiring disincentives** by helping repair the Unemployment Insurance Fund deficit and reforming the program going forward to reduce costs and increasing efficiencies.

SHADOW OF REALITY

California retains significant competitive advantages as a place to start or grow a business. Employers, alongside many elected and community leaders, toil diligently to make California home for their enterprises. But our economic recovery and return to the post-pandemic new-normal is shadowed by the reality of just how much it costs to live in California.

Public policies that have created these luxury taxes on essentials for living make our state increasingly unaffordable for California residents and unattractive to those who might otherwise come here to invest in our economy.

Contact
Loren Kaye
President
California Foundation for Commerce and Education

loren.kaye@calchamber.com
January 2023

The People's Voice

California Voters Prepare for Lean Economy

California voters are readying themselves to face lean economic times, and want state elected leaders to do likewise, according the latest CalChamber poll, the People's Voice, 2022.

By a 65% to 35% margin, voters believe California is in a recession. When compared to a year ago, voters by a 2-to-1 margin believe their households' finances and current economic situation are worse. On a slightly more optimistic note, looking forward, a slim majority (51%) of voters think the economy will be better a year from now, and a majority (54%) say that their own economic situation will likely improve over the next year.

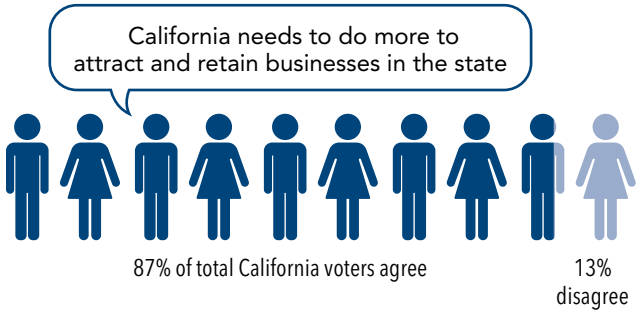
But for now, Californians are tightening their belts.

Three out of four voters say rising prices have caused them and their family to adjust their spending habits a lot (35%) or some (40%). Nearly all voters (93%) have noticed higher prices for groceries, with higher gasoline prices (87%) also top of mind, followed by eating out at restaurants/take out (81%) and utility costs (68%).

Voters point to improving California's business climate as a way through the economic doldrums.

A whopping 87% of voters believe that California needs to do more to attract and retain businesses in the state, while 63% go even further, agreeing that California has fostered an unfriendly business climate that discourages new high-quality jobs and opportunities. These concerns are shared widely among demographic groups and regions, but especially strongly with younger voters and residents of the Inland Empire and Central Valley.

NEARLY 9 IN 10 VOTERS WANT A FOCUS ON BRINGING/KEEPING JOBS TO/IN CALIFORNIA



Source: CalChamber People's Voice, 2022.

Nearly 4 out of 5 voters complained that state elected officials were not spending enough time encouraging economic development to grow new businesses in California or keeping major employers from leaving California and going to another state.

Digging deeper, voters were informed about a study from Stanford University's Hoover Institution, which reported that in 2021, California business headquarters left the state at twice the rate of 2020 and 2019, and at three times the rate of 2018. Reasons for this include high tax rates, high labor costs, high living costs, high utility and fuel costs, as well as the complicated regulatory environment at the state and local levels.

When asked how important is it that the Governor and the Legislature address this issue, nearly half of voters (48%) said it was extremely important and another third said it was very important.

Following up, voters were asked about a proposal that, before enacting any new law, the Governor and the Legislature should be required to report on its business impact, specifically whether the law will drive businesses and jobs to leave California. Nearly 90% agree with that policy, half of them strongly.

Californians are pessimistic about the direction of the

country, with 62% saying it's headed down the wrong track, and only 38% saying the U.S. is headed in the right direction. They're more upbeat on California, with a slight majority (52%) saying the state is headed in the right direction.

Voters' pessimism extends to their own prospects. When asked about the American Dream — that if you work hard, you'll get ahead — a majority (55%) responded that this once held true but does not anymore, while 13% say this has never held true. Only a third of Californians say that the American Dream still holds true; this sentiment is down by 16 points since 2018.

Just as sobering, when parents with kids living at home (about a quarter of the sample) were asked if their children would have a better future if they left California, fully 60% agreed, half of them strongly. When all voters were asked if their family would have a better future if they left California, a majority (56%) agreed, an eight-point increase since 2021.

UNADDRESSED CONCERNS

What are the most important, but unaddressed, concerns of Californians? More than 85% of voters expressed that elected officials in Sacramento are not spending enough time on the following issues:

- Making California more affordable,
- Expanding the state's fresh water supply,
- Reducing taxes,
- Addressing the economic recession,
- Reducing crime,
- Addressing homelessness, and
- Addressing high housing costs.

Left unattended, these issues certainly contribute to anxieties expressed by California voters.

PERSONAL SAFETY

One of the biggest sources of public anxiety is personal safety. Asked about crime, 69% say it has increased, with more than half of them saying it's gone up "a lot." More than 4 out of 5 voters agree that street crime, shoplifting and car theft have become rampant throughout California, and 63% agree that they no longer feel safe because of danger and disorder in society today. That last sentiment has grown stronger over the base three years.

As to possible responses, half of voters support increasing funding and resources to law enforcement and another 38% say funding should remain about the same. Nearly 9 in 10 voters (61% strongly) believe that violent offenders should be kept in prison for their entire sentence, as determined at the trial. A similar 89% of voters (56% strongly) agree that prosecutors who refuse to enforce the law should be replaced.

DROUGHT

Along with the economy, top-of-mind for voters is the drought. By a 4-to-1 margin, voters say the drought represents the new reality for California, as opposed to a short-term problem. And 87% of voters say that state leaders are not spending enough time working to expand the state's fresh water supply.

When it comes to solutions and strategies, voters overwhelmingly support new infrastructure and technology to address water shortages. By a large margin, voters support (89%, 52% strongly) expedited permitting of desalination plants along the coast and expedited permitting of off-stream water storage reservoirs (89%, 41% strongly). Similar support was expressed for expedited permitting of recycling plants that make sewage effluent (treated, reclaimed wastewater) and stormwater drinkable.

Conservation and regulatory measures also are supported by voters. Voluntary water reductions by residential users and mandatory reductions for all other users was supported by 83% of voters, while mandatory water rationing for all users was supported by 64% of voters.

CLIMATE CHANGE

A perennially popular issue with elected California leaders is climate change and regulations to mitigate its causes. A plurality of California voters (43%) agree that California is not moving fast enough when it comes to policies addressing climate change (another 30% believe the state is moving at the right pace). But when it comes to both setting priorities and the policy details, voters diverge from their leaders.

Voters strongly support measures to address wildfire suppression and mitigation. Controlled burning to eliminate dry underbrush on public and private land is supported by 85% of voters, as is limiting future housing development in areas prone to wildfires (84%).

COST CONCERNS

But voters shift gears when a policy implicates their lifestyles or pocketbooks. They oppose (52%) the ban on sales of gasoline-powered automobile engines by 2035, strongly oppose (61%) requiring any new highway expansion include only carpool or toll lanes, and overwhelmingly oppose (70%)

increasing taxes on gasoline or diesel to discourage use of internal combustion engines.

Californians understand that fighting climate change as a state will be costly. More than two-thirds of voters believe that new policies to fight climate change will cause the price of things to increase, while only a quarter of voters say these policies would have no impact on prices.

When asked directly how much more they'd be willing to spend in higher prices and higher taxes each month to combat climate change, Californians voted with their pocketbooks. Half responded that they would pay no more, and another 30% responded no more than $50 per month.

PROPOSITION 13/ LABOR LITIGATION

A bedrock issue for California voters is Proposition 13 — namely, protecting it. After 44 years, Proposition 13 is just as popular as ever, with 85% of voters having a favorable view of the property tax reform (44% very favorable).

From a venerable ballot measure to a brand new one, voters continue their strong support to reform litigation over Labor Code violations, also known as "**PAGA**" (Private Attorneys General Act). A 2024 ballot measure would require Labor Code violations to be handled by independent state regulators, and 100% of penalties for violations be paid to employees — instead of the state. The measure also would allow employees to take their case to court if they are not satisfied with the regulator's decision.

When asked about this proposal, 62% of voters indicated their support, with only 11% opposed. What's more, this is a 13 percentage point increase in support since 2021.

PUBLIC EDUCATION

Schools are a high priority for voters, but that doesn't mean they are satisfied with school performance.

After two years of the pandemic and its effect on public schools, including substantial learning loss among students and new state and federal funding, a strong majority of voters (57%) say the public education system in California needs major changes, another 36% support minor changes, and only 7% believe the system is basically fine.

Given a choice among various strategies to improve public education and recover from pandemic learning loss, voters selected as their top three: increasing the statewide budget for education and pay to recruit more teachers; substantially increasing the availability of tutors, especially for at-risk students in key subjects; and allowing parents to choose the local public school to attend that best meets their child's needs.

HEALTH CARE

Although the Legislature defeated single-payer health care earlier in 2022, proponents have not given up. But they will have to overcome substantial voter skepticism.

Asked about their current health insurance, a strong majority of voters (54%) responded they were very satisfied, and another 38% were somewhat satisfied. Among those with private health insurance (nearly half the sample), more than 7 out of 10 voters would rather keep their current private health insurance, compared with just 29% that would rather switch to a government-run single-payer approach.

METHODOLOGY

The CalChamber poll was conducted by Bold Decision and Pierrepont Consulting and Analytics with 1,000 online interviews of California 2022 general election voters from November 12–14, 2022. The margin of error for this study is +/- 3.1% at the 95% confidence level and larger for subgroups. This is the eighth year CalChamber has published The People's Voice survey.

Contact
Loren Kaye
President
California Foundation for Commerce and Education

loren.kaye@calchamber.com

January 2023

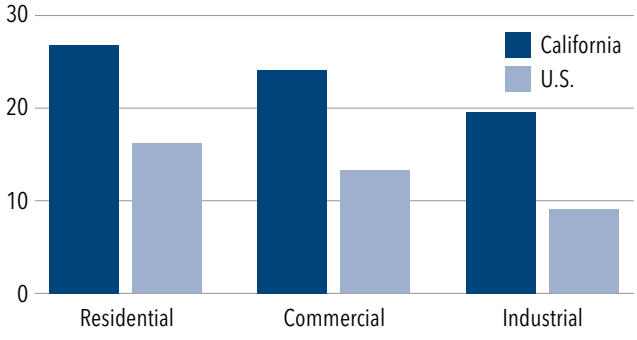
Energy Policy

Balanced, Cost-Effective, Flexible Approach Needed to Ensure Stable Supply Future

California energy policy is also California economic development policy and mobility policy, as well as poverty policy. Energy policy, and particularly the focus on addressing the causes and consequences of climate change, also is an organizing principle for much of state government's priority setting.

California residential consumers, businesses and drivers pay some of the highest energy rates in the nation — whether it's electricity for home consumption, natural gas for industrial or restaurant use, gasoline for workday commutes, or diesel for moving freight on roads or rail.

AVERAGE CALIFORNIA VS. U.S. ELECTRICITY COSTS
(cents per kilowatt hour)



Source: U.S. Energy Information Administration (September 2022).

TRANSPORTATION FUELS

California invented car culture. But while public policy is shifting toward discouraging vehicle use, most Californians still depend on their cars. About 31 million cars, small trucks and motorcycles are registered in the state, along with more than a million commercial trucks and trailers. Californians drove more than 340 billion miles in 2019, consuming more than 15.5 billion gallons of gasoline and 3 billion gallons of diesel fuel. Driving and fuel consumption flagged somewhat during the pandemic but have recovered more recently.

The price Californians pay for mobility is the very high price of transportation fuels, and in many cases a long commute to their jobs. Gasoline prices are notoriously the very highest in the nation — an average of 10% higher than any other state in the continental United States, and nearly 50% higher than the national average. The differences for diesel are somewhat smaller but directionally the same.

Reasons for the higher prices in California are well-known: the highest excise taxes on gasoline and diesel (about double the national average), regulatory levies directly applied to retail fuel prices (cap-and-trade taxes and low-carbon fuel standard fees), costlier gasoline formulations to mitigate criteria pollutants that are unique to California, and a limited — and diminishing — number of refineries capable and available to produce transportation fuels for the California market. The factors combine to limit production capacity, add costs, and reduce competitive choices.

California's political leadership has endorsed and is implementing ambitious policies to eliminate the sale of gasoline- and diesel-powered vehicles in the state, and eventually to discourage their use and presence. Notably, in 2022, the California Air Resources Board implemented Governor Gavin Newsom's proposal that by 2035 no new internal combustion vehicles be sold in the state. But in real time, this same political leadership has expressed shock and horror over the rapid rise of fuel prices in the fall of 2022 which, ironically, is probably the most reliable and stable method over time to motivate the average consumer to consider new technologies.

Governor Newsom called a special session of the Legislature

in late 2022 to enact a "financial penalty," or what he had earlier termed a "windfall profits" tax, on companies engaged in the extraction, production and refining of oil. The Legislature postponed any action under the special session until 2023, but initial polling on the subject has shown deep concern by California voters that higher taxes on energy producers would merely add to the price of gasoline. Even though the Governor has termed this charge a "penalty," to avoid triggering the constitutional two-thirds vote requirement, the effect of the new levy would be the same: discouraging investment in liquid fuels infrastructure and availability in the state, and raising their prices.

ELECTRICITY AND NATURAL GAS

California's greatest, or at least its most mentioned, aspiration of the 21st century is our leadership on climate change. For nearly two decades, governors and the Legislature have set ambitious goals, followed by tough regulations. These aggressive goals often are set far into the future, providing time for innovation and hard work to hit the target.

But sometimes aspirations run ahead of progress, and this is the case for the state's electrical grid. Much of California's new electricity generation is in the form of clean renewable power, which is better for the climate, but can be unreliable or insufficient during the hottest days of summer, or when clouds cover the sky or the wind calms. The long-term solution of massive battery storage has not yet arrived, and the persistent Western drought has diminished summertime hydroelectric resources.

The state administration and Legislature have established a goal of 100% clean electric retail sales by 2045, which involves ramping up new solar, wind (including offshore wind) and geothermal resources — along with battery storage — to serve the state's growing electricity load. At the same time, utility planners expect the retirement of more than 6,000 megawatts of natural gas-fueled electricity generation to come offline in 2024 and 2025.

California has among the highest retail prices for electricity in the nation, with the third-highest residential rates, according to the U.S. Energy Information Administration. Leaving aside Hawaii, California has the highest business electricity rates in the country, averaging 83% higher than the national average in the commercial sector, with industrial rates more than double the national average.

Natural gas is not only the most widely used home space- and water-heating fuel; it is vital for many commercial and industrial processes, including cooking, food processing, gasoline production and other major manufacturing. For 2021, California had the third highest residential price for natural gas in the continental United States, the sixth highest commercial rate, and the fourth highest industrial rate for natural gas.

As policy makers continue their pursuit of "decarbonization" of the California economy, their goal is for electricity to become the dominant fuel for what are currently enormous energy sectors: replacing gasoline and diesel in vehicle transportation and natural gas for home heating, cooking and many industrial processes. These plans would play out over a couple of decades, but the groundwork for this profound transition is being laid today.

Although this trajectory is the current preferred course by many elected leaders and regulators, it is but one path to meeting climate goals. For example, extensive and cost-effective deployment of hydrogen technologies and carbon capture and storage can transform the emissions and mitigation profile of natural gas and petroleum, respectively.

2022 LEGISLATION

California businesses that depend on reliable or affordable electricity must consider the condition and outlook of the electrical grid when planning location and expansion decisions. In this context, the Legislature and Governor acted on the following major legislation affecting state energy policy, including a "climate package" introduced by Governor Newsom, in the waning days of the 2022 session with far-reaching laws and policies cementing California's continuing leadership on this issue.

- **SB 846 (Dodd; D-Napa)**, sponsored by the Governor and supported by the California Chamber of Commerce, creates a limited-term extension of the operation of the Diablo Canyon Nuclear Power Plant. Diablo Canyon was scheduled to shut down its electricity generation operations beginning in 2024, but the bill extends its operation through 2030, with an option to continue to 2035.
- **AB 2133 (Quirk; D-Hayward)**, part of the "climate package," would have accelerated the state's already-aggressive greenhouse gas (GHG) reduction target. The current requirement to reduce GHG emissions by 40% below 1990 levels by the end of 2030 would have been ramped up to a 55% reduction in the same time frame. CalChamber opposed. Defeated.
- **SB 260 (Wiener; D-San Francisco)** would have required the California Air Resources Board (CARB) to adopt regulations requiring the reporting of GHG emission data throughout the entire supply chain to include activities such as business travel, employee commutes, procurement, waste, and water usage, regardless of location. These "Scope 3" emissions

are produced from assets not owned or controlled by the reporting entity and encompass activities both upstream and downstream of a company's main operations. CalChamber opposed. Defeated.

• **SB 1391 (Kamlager; D-Los Angeles)**, would have given CARB a blank check to undo the carefully crafted, bipartisan, five-year-old, hard-fought compromise on the state's foundational cap-and-trade system. The clear signal with this bill was to reject market-based approaches to instead rely on top-down command-and-control measures. CalChamber opposed. Defeated.

• **AB 2793 (Muratsuchi; D-Torrance)** also would have undermined the cap-and-trade program, requiring CARB to evaluate and propose changes to the program separately from the regular consideration of this measure and many other GHG reduction measures during the periodic Scoping Plan exercises. CalChamber opposed. Defeated.

• **SB 1137 (Lena Gonzalez; D-Long Beach)**, part of the "climate package," requires a 3,200-foot minimum setback from homes, schools and parks, for any oil and gas activities, and additional pollution controls surrounding active oil wells. This new policy is a reversal of the Governor's own three-year process to enact rules for health and safety around oil and gas extraction facilities. CalChamber opposed. Enacted (Chapter 365, Statutes of 2022).

• **AB 1279 (Muratsuchi; D-Torrance)**, part of the "climate package," requires net-zero GHG emissions as soon as possible, but no later than 2045, to achieve that goal with at least an 85% reduction in GHG emissions, and to achieve and maintain net negative GHG emissions thereafter. Moreover, the bill prohibits an effective tool to meet this goal by banning the use of carbon capture and sequestration in certain oil industries and bans carbon capture where it would cause any "adverse impact," broadly defined. CalChamber opposed. Enacted (Chapter 337, Statutes of 2022).

• **SB 905 (Caballero; D-Salinas)**, part of the "climate package," establishes more roadblocks to carbon capture and storage projects, which are essential to meet the state's aggressive climate goals. While purportedly boosting the technology, the bill in fact fails to provide any significant permit streamlining, delays necessary pipeline infrastructure, excludes the oil and gas industry from utilizing this technology, and bans less carbon-intensive oil production by prohibiting projects that sequester carbon permanently by utilizing carbon dioxide for enhanced oil recovery. CalChamber opposed. Enacted (Chapter 359, Statutes of 2022).

CALCHAMBER POSITION

The CalChamber supports legislative and regulatory solutions that reduce greenhouse gas emissions in the most cost-effective, technologically feasible manner while allowing flexibility to ensure a stable energy future. California businesses and our economy operate within a competitive, global environment, and state government cannot achieve its stated goals as a leader on climate change if it cannot demonstrate a sustainable balance between renewable integration, grid reliability, and cost containment.

Article written by Loren Kaye, president, California Foundation for Commerce and Education.

Staff Contact
Brady Van Engelen
Policy Advocate

brady.vanengelen@calchamber.com
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Education

Rebuilding Educational Pipeline, Refreshing California's Workforce Critical

- Addressing COVID-19 and filling the shoes of retiring baby boomers are key challenges for California's schools.
- Although California's workforce has largely returned to normal after COVID-19, the effects of the pandemic on California's students and educational pipeline are troubling.

COVID-19 changed the landscape of California's workplaces in myriad ways, with masking, social distancing, and working remotely becoming the new normal. But as workplaces across California have largely returned to the pre-existing normal, one question remains — what effect will COVID have on California's future workforce? How will COVID's disruption of California's schools affect our children and future leaders?

LEARNING LOSS DURING PANDEMIC

We are just now beginning to receive standardized test results that can help paint a picture of COVID's ripples in our schools — and the initial results are not good. Two out of 3 California students did not meet state math standards and more than half did not meet English standards on state assessments taken in the spring. The percentages of California students meeting state standards in math and English dropped significantly between 2019 and 2022 — 7 percentage points (from 40% to 33%) and 4 percentage points (from 51% to 47%), respectively. (*See* California Assessment of Student Performance and Progress. Comparison is of 2019 and 2022 results due to closure in 2020 and incomplete testing in 2021. Results available in detail at *https://caaspp-elpac.ets.org/caaspp/*.)

The test results are even more devastating for Black, Latino, low-income and other historically underserved students — 84% of Black students and 79% of Latino and low-income students did not meet state math standards in 2022.

Science-based learning, which is particularly important for many of California's technology-focused jobs, also appears to have been disrupted. (*See* Public Policy Institute, "Policy Brief: The Impact of COVID-19 on Science Education," available at *https://www.ppic.org/publication/the-impact-of-covid-19-on-science-education/*.)

Nationwide testing, called the Nation's Report Card, confirmed this learning loss: Eighth graders in nearly every state and fourth graders in a large majority of states, including California, saw drops in average math scores since the pre-pandemic 2018–19 school year. (*See* "NAEP Mathematics Assessment," again comparing 2019 and 2022. Results available in detail at *https://www.nationsreportcard.gov/highlights/mathematics/2022/*.)

With all this in mind, the question becomes: how can California policymakers help these students recover from the difficulties of COVID-19 and prepare for their future careers?

SENIOR WORKERS

In addition to the educational disruption on our youth, we also must consider the other end of the workforce — senior workers. Before the COVID-19 pandemic, experts estimated that California's educational system would likely produce approximately 1 million fewer college graduates than needed by 2025. Now, the pandemic has accelerated the so-called "Great Resignation," and will make the demands on California's educational and talent pipeline all the greater, leaving policymakers with the same profound question: how will California workplaces fill the roles of baby boomers as they leave the workforce for retirement?

Putting these two concerns together, the truth is simple. California's economy desperately needs new workers and needs a high-quality educational pipeline that can prepare workers for the jobs of tomorrow.

SKILLS FOR TOMORROW

California youth — and diverse immigrant population — must be given the skills they need to fit into California's

workforce by California's educational pipeline. The California economy needs all kinds of labor — including workers with technical skills, college degrees and even post-graduate degrees. And, looking at the situation from the perspective of individual workers, each Californian deserves a chance to earn the training and skills needed to support themselves and their families, and enjoy the opportunities of a rewarding career path.

Although advanced degrees and technical training statistically improve incomes, not all Californians have the same opportunity for those improved outcomes. According to the Public Policy Institute of California (PPIC), low-income, first-generation, Latino, and African American students — who make up most of the state's public high school students — are less likely to graduate from high school, enroll in college and graduate from college than their peers.

State leaders have directed billions of dollars to K–12 education since the end of the recession — and more in the 2021 surplus-heavy budget — but still more improvement is needed. To improve K-12 education and repair the injuries of COVID-19, policymakers should impose rigorous accountability in schools, more choice for families, and greater collaboration between stakeholders.

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

EMPLOYER INVOLVEMENT

California businesses must play a role in filling California's skills gap by working with educational programs to identify the skills that California's economy will need to grow and must help students develop those skills.

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

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

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

Legislatively, the CalChamber also has moved to increase college access by supporting AB 469 (Reyes: D-San Bernardino, 2021), which required all high school seniors complete the Free Application for Federal Student Aid (FAFSA). Although it will add no costs for students and minimal costs for schools, it will ensure that every high school student knows what financial aid is available to them to seek post-secondary education.

But legislative support is not enough. Employers also must take the lead in ensuring that educational pipelines are aligning skills with jobs. Rather than waiting for training and workforce agencies to deliver prospects with hoped-for skills, companies should treat their workforce needs like they would any supply chain: project workforce demands, identify and clearly define the necessary skills, and partner with education or training providers to develop curriculum tailored to specific jobs. This coordination allows people to enter these training programs knowing that they will lead to employment and employers can rely on a steady pipeline of talent, ready to fill open positions.

MORE WORKERS STILL NEEDED

Despite much ado being made of the California economy recovering the jobs lost since 2019 — and that is indeed good news — the truth remains that the state economy is hampered

by a lack of workers, particularly in blue collar jobs. Baby boomers are retiring, and youth employment rates remain below their 2019 levels, according to nationwide data.

Moreover, high housing costs, addiction, incarceration and federal immigration restrictions all provide barriers that prevent workers from joining California's educational pipeline and contributing to our state's economy.

CALCHAMBER POSITION

California's economy is the envy of the world — but it cannot continue to thrive without an effective educational pipeline to support a skilled workforce. For the sake of economic growth, social cohesion, and personal fulfillment of individual Californians, California's leaders must address the damage of COVID-19 to our students' learning and ensure our schools are providing the necessary skills for tomorrow's workforce.

Staff Contact
Robert Moutrie
Policy Advocate

robert.moutrie@calchamber.com

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Health Care Affordability

Coverage Mandates Increase Health Care Coverage Costs

Health care coverage affordability is a concern that plagues most, if not all, Californians. Many state residents are enrolled in an employer-sponsored health plan, meaning annual premium increases are of the utmost concern. The causes of premium increases, as well as the cost of overall health care is likely to be a component of legislation backed by health care advocates in the upcoming legislative session.

HEALTH CARE COVERAGE PREMIUMS ARE BURDENSOME

According to the California Health Care Foundation (CHCF), in 2020, California health insurers covered 33.8 million enrollees — 28.2 million were enrolled in commercial coverage or public managed care, and 5.6 million were enrolled through administrative services only (ASO) arrangements for self-insured employers. Commercial enrollment consists of small group, large group, and individual enrollment.

Furthermore, CHCF's 2020 survey found that the average monthly health insurance premium in California, including the employer contribution, was $653 for single coverage and $1,717 for family coverage. The average annual premiums were $7,838 for single coverage and $20,602 for family coverage.

GOVERNMENT-IMPOSED COVERAGE MANDATES CAUSE PREMIUMS TO INCREASE

When health plans and insurers are required to cover new services or to waive or limit cost-sharing requirements for certain services, premiums for all enrollees and purchasers go up. This is true even though only some enrollees will utilize the mandated product or services, or benefit from the reduction in cost-sharing. This legislated coverage is known as a mandate.

According to the California Health Benefits Review Program (CHBRP), the California Legislature introduced 18 bills in 2022 that, if signed into law, would have increased California employer premiums by $831.397 million. From a premium impact perspective, the largest mandate in 2022 was AB 2029 (Wicks; D-Oakland), which would have increased employer premiums $497.821 million. This bill intended to mandate health plans and insurers to cover in vitro fertilization treatment. Additionally, the cost impact of AB 1400 (Kalra; D-San Jose) — an attempt to create a state government-run, single-payer health care system (see Single-Payer Business Issue article on page 29) — was not included in the CHBRP figure but would have cost employers at least $200 billion annually while upending the entire health care model.

When looking at many of the coverage mandates in isolation, their cost implications may seem tolerable; that is, a single mandate may increase premiums by only a nominal amount. As the CHBRP analysis illustrated, however, if all coverage mandates proposed in 2022 had gone into effect, state legislators would have been responsible for increasing state employer premiums by nearly $1 billion — not including the cost of AB 1400.

GOVERNMENT MANDATES LARGELY UNNECESSARY

The Affordable Care Act requires nongrandfathered health plans in the individual and small group markets to cover essential health benefits (EHB) in 10 separate categories, which include: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including oral and vision care.

The EHB requirement does not extend to large group and self-insured plans; those plans, however, offer comprehensive coverage that can exceed EHB requirements. If a large group or self-funded plan covers any specific category of EHBs, then that plan cannot place an annual or lifetime dollar limit on

that type of coverage. In addition, a state cannot mandate how a self-insured plan is administered because these plans are regulated at the federal level by the Employee Retirement Income Security Act (ERISA).

Small and large group health care plans offer a breadth and scope of coverage that extends to a vast majority of care settings and treatment situations. Benefit design and enrollment choices made by employers should be respected and remain uninfringed. Although new mandates for health care services usually are intended to address a perceived shortcoming in access to a particular service, the mandates wind up increasing health care costs for all enrollees even though only some will utilize the expensive new service.

CALCHAMBER POSITION

Californians need to have access to affordable, quality health care. If affordability is the goal of the California Legislature, they should avoid mandating new, expensive coverage. The California Chamber of Commerce will continue to oppose these mandates while supporting legislation and regulatory action that allows health plans to offer a variety of benefit design options to employers for their employees.

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
January 2023

Prescription Drugs

Mandates Counter Efforts to Contain Health Care Costs for All

Health care spending in the United States is on the rise and a component of that increase is escalating prescription drug costs. By no means is California immune from this spending surge. Premiums in employer-sponsored health plans have increased year after year due to myriad issues, including point-of-care costs, mandated administrative expenses, and prescription drug pricing.

CALIFORNIA PRESCRIPTION DRUG SPENDING

According to the Department of Managed Health Care (DMHC), health plans paid more than $10.1 billion for prescription drugs in 2020, an increase of almost $500 million or 5% from 2019, compared with an increase of 3.7% in total medical expenses, and an increase in total health plan premiums of 5.9%. On a per-member-per-month basis, health plans paid $66.90 in 2020 for prescription drugs, which is an increase of $2.59 (4%) from 2019. Prescription drugs accounted for 12.7% of total health plan premiums in 2020, which was a slight decrease from 2019.

The DMHC found that while specialty drugs accounted for only 1.6% of all prescription drugs dispensed, they accounted for 60.2% of total annual spending on prescription drugs. Generic drugs accounted for 89.1% of all prescribed drugs but only 18.1% of the total annual spending on prescription drugs.

National health expenditure data from the Centers for Medicare & Medicaid Services indicates that prescription drug spending increased to $333.4 billion in 2017 — a 40% increase from 2007. The Centers for Medicare & Medicaid Services also projected that such spending would continue, climbing to $1,635 per capita by 2027 — an increase of 60%. The price of prescription medications rose 62% between 2011 and 2015.

During last year's legislative session, two pieces of legislation attempted to address this issue. AB 933 (Daly; D-Anaheim) and SB 1361 (Kamlager; D-Los Angeles) focused on drug costs that affect pharmaceutical prices for consumers.

MANDATES AND COST SHARING RESTRICTIONS NOT THE ANSWER

AB 933 and SB 1361 would have required an enrollee's or insured's prescription drug cost sharing be calculated at the point of sale (POS) based on a price that was reduced by an amount equal to 90% of all rebates received, or to be received, in connection with the dispensing or administration of the drug. Addressing high drug prices is a laudable goal and one with which California employers agree. This proposed requirement, however, would have increased health care premiums significantly for all employers and employees while only some patients would have enjoyed a drug cost reduction.

The attention these bills directed at high drug prices was commendable. Unfortunately, the implementation of the bills would have had weighty ramifications for employer and employee health care costs. The California Health Benefits Review Program (CHBRP) concluded that if AB 933 went into effect, it would have increased employer health care premiums by nearly $109 million. Employee premiums also would have increased by more than $41 million.

In addition to cost concerns, the benefits of AB 933 would likely have been concentrated among patients who used highly rebated drugs while the global cost increase would have affected all insured and plan members in California. Specifically, patients who are prescribed lower-cost or generic drugs would pay higher premiums but not reap POS savings as the bills intended.

CALCHAMBER POSITION

There is no disagreement that health care costs are rising and making it more difficult for employers and their employees to afford quality, accessible care. Maintaining a viable health insurance market with affordable and accessible pharmaceuticals is important. However, mandates that attempt to contain drug costs for consumers in the health care market rather than other entities in the supply chain ultimately will increase premiums for employers and employees.

The California Chamber of Commerce will continue to promote efforts to contain health care costs and improve access to high-quality care while avoiding added burdens and higher costs on employers.

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
January 2023

Seismic Standards for California's Hospitals

Modernization Will Make Critical Investments Possible

In response to the 1971 Sylmar earthquake that severely damaged several hospitals, the Legislature in 1973 enacted the Alfred E. Alquist Hospital Seismic Safety Act, which established a seismic safety building standards program for California hospitals built on or after March 7, 1973.

In 1994, in response to the Northridge earthquake that year, SB 1953 was signed into law, which required the Office of Statewide Health Planning and Development (OSHPD) to establish earthquake performance categories for hospitals. Furthermore, the bill required general acute care hospitals to be retrofitted or replaced so that they would not pose a risk of collapse in an earthquake, with a deadline of January 1, 2008. Additionally, it established a deadline of January 1, 2030, for when California's hospitals had to be capable of remaining operational following an earthquake.

OSHPD categorized, or ranked, all general acute care hospital buildings based upon five structural performance categories (SPCs), which dictated when and how they would be retrofitted. According to the California Department of Health Care Access and Information (HCAI), SPC ratings range from 1 to 5 with SPC 1 assigned to buildings that may be at risk of collapse during a strong earthquake and SPC 5 assigned to buildings reasonably capable of providing services to the public following a strong earthquake. State law required all SPC 1 buildings to be removed from providing general acute care services by 2020 and all SPC 2 buildings to be removed from providing general acute care services by 2030. Therefore, a hospital facility comprising a number of hospital buildings may meet the 2020 requirements if there are no SPC 1 buildings on campus. A hospital facility meets the 2030 requirements if all the buildings on campus are either SPC 3, 4 or 5.

Although the seismic updates and structural categorization system seem straightforward, the policy implementation has been tumultuous and looming cost implications will be prohibitive.

SEISMIC UPDATE COSTS

The seismic updates California's hospitals are required to implement have a tremendous cost impact. A RAND Corporation study identified a number of general cost categories for hospital construction projects, such as preparatory or make-ready work, construction soft costs, and the construction work itself, which can be broken down further into specific elements.

The study stated that results from quantitative and qualitative analyses indicate that, despite multiple decades of investment in SB 1953 seismic compliance projects, California hospitals still face a significant financial obligation between now and 2030. Depending on assumptions regarding preferred compliance strategy (retrofit versus new construction) and future cost escalation, the statewide price tag for compliance could range from $34 billion to $143 billion. A significant proportion of hospitals already are experiencing some degree of financial stress, and the burden of future compliance is likely to exacerbate this stress.

The RAND study stated there are a variety of options for providing regulatory relief or flexibility to hospitals, including providing public subsidies to share the costs of compliance or reduce financing costs, offering additional flexibility in the timing of compliance deadlines, rethinking what it means for

hospitals to remain operational post-event, and streamlining the administrative processes associated with seismic compliance projects. Regardless, decision making regarding future changes, if any, in SB 1953 requirements would be aided by more comprehensive analysis of the benefits of the policy, as well as improved data collection and reporting regarding seismic projects and their costs.

CALIFORNIA'S SEISMIC EVOLUTION

The Alquist Act was passed in 1973 and mandated that new acute care hospitals had to be designed and constructed to remain standing and operational after a major seismic event. OSHPD was tasked with administering the new requirements.

SB 1953 was enacted in 1994 and amended the Alquist Act, establishing structural and nonstructural performance categories. Hospitals with an SPC 2 rating had a deadline of January 1, 2008, for survivability and a deadline of January 1, 2030, for when California's hospitals had to be capable of remaining operational following an earthquake.

SB 1801 was passed in 2000 to provide a five-year extension on the 2008 deadline to 2013. Subsequently, SB 306 became law in 2007 and provided another extension — this time seven years — on the deadline for city or county hospitals or hospitals that meet strict financial hardship criteria.

In 2007, the Hazus reassessment program of the Federal Emergency Management Agency (FEMA) allowed hospitals that were determined to be at lower seismic risk to be reclassified to SPC 2, thereby giving them until January 1, 2030, to meet other SB 1953 requirements.

SB 90 was passed in 2011 and provided an opportunity for a seven-year extension on the January 1, 2013, deadline (to January 1, 2020) if necessary planning and reporting requirements were met.

AB 2190 was signed into law in 2019 and required all hospitals seeking extensions to the January 1, 2020 compliance deadline for SPC 1 buildings to submit an application to HCAI by April 1, 2019. The law required HCAI to grant an additional extension of time to a hospital that was subject to the January 1, 2020, deadline if certain conditions were met. The law authorized the additional extension until July 1, 2022, if a hospital's compliance plan was based upon replacement or retrofit, or up to five years until January 1, 2025 if the compliance plan was for a rebuild.

SB 395, The Small and Rural Hospital Relief Program, was signed in 2021 and provides grants to qualifying facilities for the purpose of advancing a hospital's effort to bring its buildings into compliance. The program is administered by the HCAI Cal-Mortgage Loan Insurance Program with assistance from the Facilities Development Division. The purpose of the Small and Rural Hospital Relief Program is to support and enhance the effort of qualifying facilities to preserve access to general acute care for the communities they serve by providing state grant funding and technical assistance for building seismic safety and resiliency.

CALCHAMBER POSITION

It is imperative that California's hospitals remain standing and functional after a catastrophic seismic event. The California Chamber of Commerce supports the modernization of the 2030 seismic safety requirements for hospitals in order to make it possible for them to make critical investments in their communities, prepare for disasters of all kinds, and avoid increased health care costs while implementing these requirements.

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
January 2023

Single-Payer Health Care

Government-Run Health Care Reduces Choice, Increases Costs

Over the last several sessions, California legislators have introduced and reintroduced bills attempting to overthrow the entire state health care system and install a government-run, single-payer health care model. Although these bills were light on details regarding how the system would run, they were completely devoid of a funding plan. That changed in 2022 with the introduction of ACA 11, which outlined how the exorbitant new bureaucracy would be paid for. Not surprisingly, even assuming the new model could be put into place, its perpetual and behemoth expenses would overwhelm California's employers with new taxes and fees.

SINGLE-PAYER HEALTH CARE DEFINED

In an authentic single-payer health care system, private and employer-provided health insurance is nonexistent. Rather, health care is delivered through public or private hospitals and health care providers, and paid for by public financing, which is derived from taxing employers, employees, and individuals. Although the health care typically is delivered at low-to-no cost at the point of use, it is in no sense "free" because higher taxes and consumer copays foot the bill for the care.

SINGLE-PAYER HEALTH CARE IS NOT FREE HEALTH CARE

Single-payer health care must not be confused with free health care — there's nothing free about a government-run health plan. ACA 11 proposed increasing Californians' taxes by hundreds of billions of dollars to fund the government-run health care system. The Healthy California for All Commission determined single-payer health care would cost California approximately $400 billion annually, with a large amount of that funding derived from employers. ACA 11's proposal would have been the biggest tax increase in state history, punishing Californians by increasing personal income taxes, payroll taxes, and gross receipts taxes.

It is indisputable the potential tax revenue ACA 11 would have produced would have been in the hundreds of billions of dollars. SB 562 was a similar proposal introduced in 2017 and its analysis anticipated $200 billion could be available through federal, state and local funding and the state would need at least an additional $200 billion annually from taxpayers to fund a single-payer system.

Vermont attempted to enact a single-payer system in 2011, but the efforts were derailed in 2014 when the Legislature failed to approve an accompanying 11.5% payroll tax on all employers and an individual income tax increase of up to 9.5%. Vermont's plan would have doubled the state budget and Governor Peter Shumlin (D) said the burden would have posed "a risk of economic shock." When asked about the failed single-payer effort, Governor Shumlin said, "What I learned the hard way, is it isn't just about reforming the broken payment system. Public financing will not work until you get costs under control."

California employers and employees spent $144 billion on health care in 2019 — employees spent $27 billion on premiums while employers spent $100 billion on premiums. The 2020 Kaiser Family Foundation Employer Health Benefits Survey indicated that for job-based coverage, the average annual premium for single coverage rose 4%, to $7,470. The average annual premium for family coverage also rose 4%, to $21,342, which is nearly one-third of the state's median family income. ACA 11 would have done nothing to address the cost or trajectory of health care spending; instead, it simply would have morphed the health care affordability problem into a tax affordability problem.

The kinds of tax increases needed to finance a single-payer system would have a detrimental impact on California

businesses and certainly discourage companies from growing or relocating here. The tax hikes would likely lead to significant layoffs or relocations as existing businesses and employers would be forced to cut costs to sustain the added new tax burden.

HEALTH CARE COVERAGE ALREADY AVAILABLE

When health care data is examined, it is clear that coverage is available to Californians. In 2019, data released from the California Department of Managed Health Care and the California Department of Insurance showed that 32.7 million Californians were enrolled in health care coverage. Of this number, more than 10 million Californians had Medi-Cal coverage. As of October 2020, 6,439,998 California residents had Medicare coverage. Covered California reported that 1.6 million people enrolled in its plans in 2021.

According to data from the U.S. Census Bureau, 7.1% of Californians were without health care coverage in 2020. The Legislative Analyst's Office stated that undocumented immigrants represented 40% of California's remaining uninsured individuals. However, California has been expanding Medi-Cal coverage for undocumented residents over the last several years: 536,000 undocumented people aged 25 and under have enrolled as full-scale beneficiaries while approximately 345,000 undocumented adults are receiving limited coverage. The state's latest expansion of coverage for this population just last year qualifies all income-eligible residents age 50 and older for full-fledged benefits and is expected to enlarge Medi-Cal demographics by about 235,000 people.

CONSTITUTIONAL AND FEDERAL CHALLENGES

The state constitutional barriers to a single-payer system include the Proposition 4 appropriations limit and the Proposition 98 education finance guarantee. The Proposition 4 limit constrains overall state spending to growth based on population and inflation factors. The large tax increase required by a single-payer system would push spending above the limit.

Proposition 98 creates a school finance formula that requires a portion of any new general revenues to be dedicated to schools. The tax increases necessary to pay for single-payer health care would require a companion amendment to the California Constitution that exempts the new revenues from both the Proposition 4 appropriations limit and the Proposition 98 school finance formula. The constitutional amendment would require voter approval.

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

CALCHAMBER POSITION

Californians need to have affordable health care coverage when they access their quality health care providers. Although Californians experience premium increases on an annual basis, a $200 billion tax increase and complete restructuring of the health care system is not the answer to insuring the uninsured and improving affordability. A single-payer system abrogates the freedom individuals have to pursue health care coverage of their choosing.

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

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
January 2023

California Housing in 2023

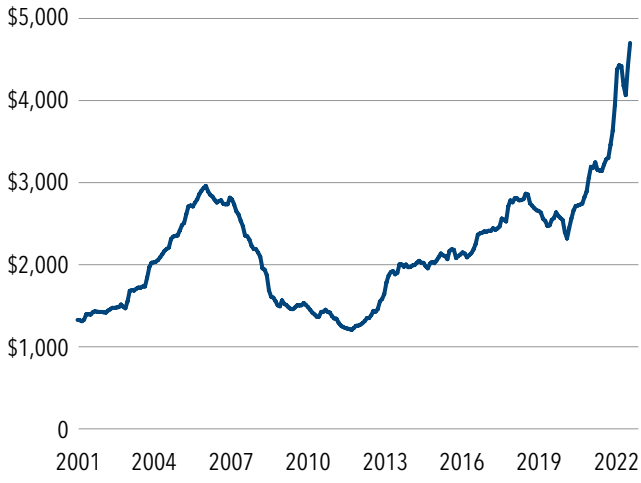
Comprehensive Environmental Law Reform Can Spur Housing Development

California's ongoing housing shortage remains a classic case of a policy-influenced supply-demand mismatch driving home prices and rental prices to record highs, and contributing to the state's homelessness crisis. California continues to have the highest median home price in the nation for existing single-family residences at $777,500 in 2022, a slight decrease from 2021 when it peaked at more than $800,000. The decrease is most likely attributable to the significant increase in interest rates in 2022 from record lows. Compare California's median home price to the national median price of $398,000 and it quickly illuminates just how much more expensive it is to own a home in the Golden State. Additionally, the average monthly mortgage cost associated with owning a median priced home on a 30-year fixed rate mortgage is approaching $5,000.

(*See https://www.car.org/aboutus/mediacenter/newsreleases/2022releases/nov2022sales*. In 2021, the median California home price was $801,190.)

California also remains one of the most expensive states in the country for renters, with further increases anticipated in 2023. For example, Los Angeles County's median rent at the time of this publication is $3,025. In San Diego, the current median rental unit is a whopping $3,230. In almost every other state, such monthly rates are equivalent to a mortgage for a three-bedroom house. According to a Moody's Analytics forecast, the rental prices this year are predicted to rise again by 5% to 7%. (*See https://www.zillow.com/rental-manager/market-trends/los-angeles-ca/*; *https://www.zillow.com/rental-manager/market-trends/san-diego-ca/*; *https://www.cnbc.com/2022/09/28/how-much-higher-rent-will-go-in-2023-according-to-experts.html*.)

MONTHLY MORTGAGE COST, CALIFORNIA



Source: Beacon Economics analysis of Redfin, Zillow, Freddie Mac (2022).

With unaffordability on the rise, a drug epidemic and a lack of sufficient mental health services across the state, it is no surprise that California has approximately 172,000 homeless people, or 30% of the nation's homeless population (up 2% from last year). New data from the U.S. Department of Housing and Urban Development reveals that California had the single largest rate of increase in its homeless population in the country at 6.2%.

Finally, California employers face an ever-increasing shortage of workers as the high cost of housing, especially in coastal areas, drives lower- and mid-skilled workers out of California and in search of more affordable states. A significant lack of affordable housing remains a formidable threat to California's economy and a barrier to upward mobility for working Californians.

CALIFORNIA EXODUS TO DEFINE CALIFORNIA'S NEW DEMOGRAPHIC ERA

From 2000 to 2020, California experienced a net loss of 2.6 million people to other U.S. states. When looking more closely at the numbers, 7.5 million people moved from California to other states since 2010, while only 5.8 million people moved to California from other parts of the country. According to the U.S. Census Bureau, the state's population continued to decline by 114,000 people in 2021 from about 39,143,000 to 39,029,000 in 2022.

The Public Policy Institute of California (PPIC) recently stated that California "appears to be on the verge of a new demographic era, one in which population declines characterize the state." (*See https://www.ppic.org/blog/whos-leaving-california-and-whos-moving-in/.*) They highlight that lower levels of international migration, declining birth rates, and increases in deaths all play a role, but the primary driver of the state's population loss over the last couple of years has been the result of California residents moving to other states.

The California exodus is not limited to individuals. A study published in September 2022 found that businesses headquartered in California also are leaving the state at a record pace. (*See https://www.hoover.org/sites/default/files/research/docs/21117-Ohanian-Vranich-4_0.pdf*

The Hoover Institution study found that the number of companies relocating their headquarters out of California in 2021 occurred at twice the rate of 2020, with 352 companies moving their headquarters to other states just in the period from January 1, 2018, through December 31, 2021. The study notes that every single month in 2021 saw twice as many companies relocating their headquarters out of California as in the prior year. Additionally, in the last three years, California lost 11 Fortune 1000 companies, whose exits negatively affect California's economy.

The California Chamber of Commerce eighth annual "People's Voice 2022" opinion survey found similar pessimism among likely voters. The vast majority of Californians believe the housing shortage in California is "very significant" (up 35% from five years ago), and almost two-thirds of voters with children living at home agreed that their children would have a better future if they left California.

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

WHAT LEGISLATURE SHOULD ADDRESS IN 2023 RELATED TO HOUSING

CEQA Abuse

The California Environmental Quality Act (CEQA) is not the sole cause of the housing shortage, but it often is a major impediment to housing development in California — no matter the size of the project. CEQA requires local governments to conduct a detailed review of discretionary projects prior to their approval. CEQA protects human health and the environment by requiring lead agencies to analyze the impacts of projects and then require project developers to mitigate any potentially significant environmental impacts. But unlike most environmental laws and regulations in California, CEQA is enforced through private litigation, which has mushroomed over time. The litigation can substantially slow or even stop housing projects when opponents do not want added density in their neighborhood, do not want a competitor locating in the area, or want to leverage the project developer for unrelated considerations, like union labor, preferential hiring, or additional environmental mitigation.

CEQA can add significant cost and time to the housing development process. Even the threat of litigation can discourage developers or substantially raise the costs to develop housing, as developers expend significant resources preparing for and defending their projects from opponents. And because housing costs are borne ultimately by future home buyers, CEQA inevitably raises housing prices in California *even* if the project is unchallenged. It may be no coincidence that California's cost of housing began to increase significantly the same decade in which the California Legislature passed CEQA and community resistance to new homes got stronger. Between 1970 and 1980, California home prices went from 30% above U.S. levels to more than 80% higher, according to a report from the Legislative Analyst's Office.

Local Finance Structures Favoring Commercial Development

Different types of developments (for example, commercial, residential, industrial) yield different amounts of tax revenues and service demands. California's local government finance

structure provides cities and counties with a much larger fiscal incentive to approve nonresidential development or lower-density housing development.

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

Lowering Development Fees

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

SB 330 (Skinner; D-Berkeley) was arguably the only significant piece of legislation signed into law in 2019 aimed at addressing sky-high development impact fees in California. Although the bill did *not* preclude a local jurisdiction from setting at the outset the development impact fee, it did prevent local jurisdictions from raising the fee midway through the permitting process. Unfortunately, the bill was watered down to sunset after just five years.

In 2021, the Legislature enacted SB 8 (Skinner; D-Berkeley), which clarified and updated some of SB 330's terms. Specifically, the bill clarified that a single residence could count as a "housing development project" for purposes of Government Code sections 65905.5 (limiting the number of hearings allowed for any "housing development project"), 65940 (requiring that public agency provide list of information required for complete housing development project application), 65941.1 (preliminary application requirements), 65943 (Permit Streamlining Act provision requiring completeness determination within 30 days), 65950 (Permit Streamlining Act provision requiring decision within certain period from completion of CEQA review), and 66300 (prohibition on enforcing new subjective standards on housing projects). Additionally, projects with two or more residences are "housing development projects" for purposes of Government Code Section 65589.5, which prohibits cities and counties from denying or making infeasible "housing development projects" that comply with objective development standards, unless specific findings are made. Data on just how many additional units were approved per SB 330 and SB 8 remains outstanding. Nevertheless, much more work needs to be done to expedite more affordable housing construction as these two bills alone will not solve the crisis.

Community Resistance to New Housing

Community resistance to new housing construction also exacerbates the housing shortage. Local communities often fear that increasing housing density will change their neighborhood character, increase traffic congestion, lower their home value, and bring new crime. Local residents often place significant pressure on their local officials to use their land use authority to suppress new development. As a result, approximately two-thirds of cities and counties in California's coastal metros have adopted growth control ordinances that limit housing development. These growth control ordinances are effective at limiting growth and consequently increasing housing costs. One study found that each additional growth control policy a city adopted had a 3% to 5% correlated increase in home prices. And even where local officials do not bend to community pressure, California's initiative process provides active residents with the ability to circumvent their local officials and intervene in local land use decisions via the initiative and referendum process.

In direct response to many cities and counties failing to approve adequate housing per their Regional Housing Needs Allocation (RHNA), the Legislature passed and Governor Gavin Newsom signed AB 215 (Chiu; D-San Francisco) in 2021. AB 215 works to clarify a three-year statute of limitations for the state to enforce potential violations of housing laws and gives the California Department of Housing and Community Development (HCD) the ability to "seek outside counsel to enforce housing laws if the Attorney General chooses not to enforce a violation." The bill also made clear that the Attorney General could enforce housing laws independently of HCD. Indeed, Attorney General Rob Bonta announced shortly after the bill's passage the creation of a Housing Strike Force within the California Department of Justice (DOJ) to enforce state housing and development laws,

which includes issuing guidance letters to local governments on state housing laws. Whether this Housing Strike Force yields any meaningful housing production remains to be seen.

CALCHAMBER POSITION

California's housing crisis is driving many residents and businesses out of state and discouraging new investments from coming in. Unaffordable housing forces many Californians into extra-long commutes, adding more air pollution and traffic congestion, and reducing worker productivity and quality of life. While work-from-home policies may help blunt these impacts, the vast majority of people want to live near the communities in which they work. Furthermore, not all businesses and jobs can accommodate a work-from-home schedule.

Comprehensive reforms of environmental and zoning laws are necessary to remove obstacles that hamper housing construction, add delay and raise new home prices. A comprehensive reevaluation and reform of CEQA is a critical step to spurring housing development in California as abuses continue to plague timely development of housing. Maintaining CEQA's legacy of protecting human health and the environment is not incongruent with more streamlined housing development.

Staff Contact
Adam Regele
Senior Policy Advocate

adam.regele@calchamber.com
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Sub-Saharan Africa Trade Relations

Sub-Saharan Africa Expected to See Growth in 2023 Amid Global Uncertainty

- Sub-Saharan Africa will be 25% of the world's population by 2050.
- Sub-Saharan Africa is home to the world's second largest rainforest and 30% of the world's critical minerals.
- California exported $705 million to the region in 2021.

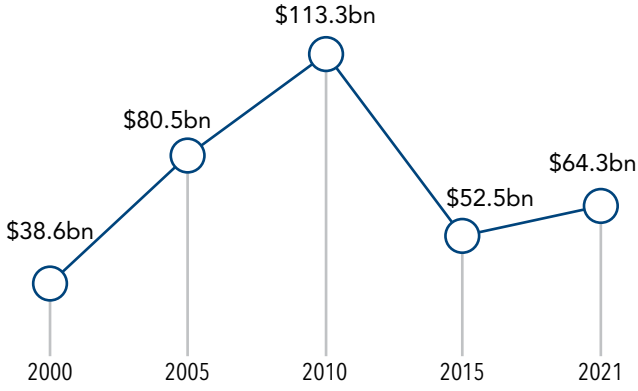
The World Trade Organization (WTO) reported in October 2022 that the sub-Saharan African region has exceeded expectations with 6% growth projected for the year, the second strongest export growth of the WTO regions. Sub-Saharan Africa has proven resilient amid the global uncertainty of the last year; high commodity prices inflating export revenues have allowed the region to import more. As a result, Africa also has had the third fastest trade volume growth in imports, amounting to 7.2% as of October 2022. In 2023, the WTO predicts real gross domestic product (GDP) to grow in the region by 3.6%, with imports seeing a 5.7% growth.

AFRICAN GROWTH AND OPPORTUNITY ACT

The African Growth and Opportunity Act (AGOA) is a trade preference program, enacted in 2000, that has been the model behind U.S.-African trade and investment since. The AGOA provides duty-free entry into the United States for almost all African products. This has helped to expand and diversify African exports to the United States. In 2015, the U.S. Congress renewed AGOA through 2025.

The Act embodies a trade and investment-centered approach to development. Enactment of the AGOA has stimulated the growth of the African private sector and provided incentives for further reform. The AGOA is aimed at transforming the relationship between the United States and sub-Saharan Africa away from aid dependence to enhanced commerce by providing commercial incentives to encourage bilateral trade. Since 2000, AGOA has helped increase U.S. two-way trade with sub-Saharan Africa.

TWO-WAY TRADE IN GOODS BETWEEN UNITED STATES AND AFRICA



Source: U.S. International Trade Commission; U.S. Department of Commerce.

As of January 2022, Ethiopia, Guinea and Mali were removed as beneficiaries under AGOA because the Biden administration identified the countries as falling out of compliance. In November 2022, the Biden administration announced the termination of Burkina Faso as a beneficiary under AGOA, to take effect on January 1, 2023.

AFRICAN CONTINENTAL FREE TRADE AREA

The African Continental Free Trade Area (AfCFTA) was brokered by the African Union in 2018, with the pan-African free trade zone taking effect on January 1, 2021.

The AfCFTA will have far-reaching benefits for the region, representing the opportunity for countries in sub-Saharan Africa to boost long-term economic growth, reduce poverty and broaden economic inclusion. The AfCFTA creates the largest free trade area in the world by area and number of participating countries, connecting more than 1.3 billion people across 54 countries with a total GDP of $3.4 trillion. As of November 2022, 54 of the 55 African Union member states have signed the AfCFTA agreement and 44 have deposited their instrument of ratification.

Supporters hope that the agreement will lift 30 million people out of extreme poverty and boost income in Africa by

$450 billion by 2035, a 7% gain. Over the next 5 to 10 years, 90% of tariffs for goods traded within the bloc will be liberalized. Intra-African trade is only a small portion of all African trade, making up about 15%–18%. According to the International Monetary Fund, eliminating tariffs could boost trade in the region by 15% to 20%. The World Economic Forum estimates AfCFTA will allow the area to generate $4 trillion in investments and goods/services transactions.

U.S.-KENYA TRADE AGREEMENT

On March 17, 2020 following the procedures laid out in the Trade Promotion Authority (TPA), the Trump administration notified Congress of the intent to enter into negotiations for a U.S.-Kenya trade agreement.

A trade agreement between the United States and Kenya would be the first between the United States and a sub-Saharan African country and would complement Africa's regional integration efforts, which include the landmark AfCFTA.

From its location on the eastern coast of Africa, Kenya serves as a gateway to the region and a major commercial hub that can provide opportunities for U.S. consumers, businesses, farmers, ranchers and workers. Kenya receives benefits under the AGOA with the objective of expanding U.S. trade and investment with sub-Saharan Africa, to stimulate economic growth, to encourage economic integration, and to facilitate sub-Saharan Africa's integration into the global economy.

In July 2022, the Biden administration launched the U.S.-Kenya Strategic Trade and Investment Partnership (STIP) to take the place of the U.S.-Kenya Free Trade Agreement that never materialized. The new STIP agreement will pursue high standard commitments on a wide range of subjects to increase investment and promote sustainable and inclusive economic growth.

U.S.-Kenya bilateral trade currently exceeds $1.24 billion annually. In 2021, U.S. exports to Kenya totaled $562 million, while imports into the United States from Kenya totaled $685 million. Apparel manufacturing product imports into the United States made up almost 65.5% of the total. California is the second largest exporting state and the largest importing state of Kenyan goods, with exports totaling $32 million in 2021. Imports to California from Kenya totaled $85 million, with agricultural products making up almost 50% of the total.

U.S. STRATEGY TOWARD SUB-SAHARA AFRICA

In August 2022, the Biden administration announced the new U.S. Strategy Toward Sub-Saharan Africa to reframe the importance of the region to U.S. national security interests. The strategy aims to advance U.S. priorities together with regional partners over the next five years outlining four objectives: foster openness and open societies; deliver democratic and security dividends; advance pandemic recovery and economic opportunity; and support conservation, climate adaptation and a just energy transition.

U.S.-AFRICA LEADERS SUMMIT 2022

The Biden administration hosted leaders from across the African continent in December 2022 in Washington, D.C. to demonstrate the United States' enduring commitment to the region, with goals that include building on shared values and fostering new economic engagement. All 50 invited delegations, representing 49 countries and the African Union, attended.

U.S.-AFRICA POLICY TOOLS

- **Power Africa** aims to add more than 30,000 megawatts of cleaner, more efficient electricity generation capacity and 60 million new home/business connections through private-public partnerships.
- **Millennium Challenge Corporation** (MCC) provides large grants (in the hundreds of millions of dollars) to promote economic growth, reduce poverty and strengthen institutions.
- **The U.S. International Development Finance Corporation** (DFC) replaced the Overseas Private Investment Corp. in 2021 and has an expanded mandate and greater resources. The DFC marked its largest fiscal year in 2022 with $7.4 billion committed to address the world's greatest challenges.
- **Prosper Africa** is a one-stop shop to facilitate increased trade and investment between U.S. and African businesses.

AGENDA 2063

Agenda 2063 is Africa's blueprint and master plan for transforming itself into the global powerhouse of the future. AfCFTA is one of the flagship projects. Agenda 2063 has been described as "a concrete manifestation of the pan-African drive for unity, self-determination, freedom, progress and collective prosperity pursued under Pan-Africanism and African Renaissance."

In affirming their commitment to Agenda 2063, African leaders called for reprioritizing Africa's agenda from the struggle against apartheid and attaining political independence for the continent, to inclusive social and economic development, continental and regional integration, democratic governance, and peace and security, among other issues.

In February 2022, the African Union released the Second Continental Report on the Implementation of Agenda 2063 marking progress made thus far, noting the continent performed strongly, making progress since 2019.

ANTICIPATED ACTION

It is hoped that the Biden administration will continue with negotiations for a U.S.-Kenya Strategic Trade and Investment Partnership, and that the African Continental Free Trade Area will continue to reap benefits for the region.

CALCHAMBER POSITION

The California Chamber of Commerce believes that it is in the mutual economic interest of the United States and sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa and that this growth depends in large measure upon the development of a receptive environment for trade and investment.

The CalChamber is supportive of the United States seeking to facilitate market-led economic growth in, and thereby the social and economic development of, the countries of sub-Saharan Africa.

In particular, the CalChamber is supportive of the United States seeking to assist sub-Saharan African countries, and the private sector in those countries, to achieve economic self-reliance.

Staff Contact
Susanne T. Stirling
Vice President, International Affairs

susanne.stirling@calchamber.com
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North / South America Trade Relations

U.S. Reset Latin America Ties in 2022 with Los Angeles Hosting Summit of Americas, Hopes for Greater Focus on Region in 2023

- The Western Hemisphere accounts for almost 32% of global gross domestic product (GDP).
- Almost 30% of total California exports are sent to the Western Hemisphere Central totaling $50.567 billion in 2021.
- The United States is the largest trading partner for all Latin America, but China is now South America's largest trading partner thanks to $17 billion in investments in the region.

LOS ANGELES HOSTED WESTERN HEMISPHERE SUMMIT OF THE AMERICAS

In June 2022, after a postponement due to the pandemic, Los Angeles hosted the Ninth Summit of the Americas for 23 Western Hemisphere leaders. Among the few leaders absent from the gathering were the presidents of Mexico, El Salvador, Honduras and Guatemala, who opted not to attend due to the White House not inviting Cuba, Nicaragua and Venezuela to participate.

The theme of the summit — "building a sustainable, resilient and equitable future" — allowed attendees to discuss common policy issues, affirm shared values and commit to concerted actions at the national and regional levels to address continuing and new challenges facing the Americas.

This was the first time the United States has hosted the meeting since the inaugural summit held in Miami in 1994. The summit, which takes place every three years, is the only one of its kind that brings together leaders from all countries in North, Central and South America and the Caribbean.

AMERICAS PARTNERSHIP FOR ECONOMIC PROSPERITY

At the Ninth Summit of the Americas, President Joe Biden announced his "new and ambitious economic agenda" called the Americas Partnership for Economic Prosperity.

The agenda will aim to mobilize new investment into the region, fortify supply chains, promote decarbonization and biodiversity, facilitate inclusive trade and update the "social contract" between governments and their people.

In addition to the United States, the partnership will include Barbados, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama, Peru and Uruguay.

UNITED STATES-MEXICO-CANADA AGREEMENT

The two-year anniversary of the U.S.-Mexico Canada Agreement (USMCA) entering into force was July 1, 2022. Trade among the three countries exceeds $2 million a minute. In 2021, the United States exported more than $584.2 billion to USMCA countries, while California exported more than $45.25 billion.

The USMCA has helped all three countries bounce back from COVID, averaging a 6% increase in trade across the region from 2019 to 2021. In 2022, the first disputes under the USMCA were concluded. Thus far the agreement's dispute settlement system has been successful.

The United States, Canada and Mexico comprise more than 500 million people (6.3% of the world's population), a $26.28 trillion GDP (27.3% of world GDP), and $6.3 trillion in trade (nearly 11% of global trade). Under the North American Free Trade Agreement (NAFTA), the three USMCA countries' bilateral goods trade totaled $1.06 trillion in 2020.

U.S. FREE TRADE AGREEMENTS IN THE AMERICAS

• The **U.S.-Chile Free Trade Agreement** (FTA) entered into force in 2004, eliminating tariffs and opening markets and allowing all goods originating in the United States to enter Chile duty free in 2015. Since the implementation of the FTA, U.S. goods exports to Chile have increased more than 470%. Chile is the 19th largest export partner of the United States with exports totaling $2.7 billion in 2021. In 2021, Chile invested $4 billion into the United States, with FDI totaling $3.43 billion. California exports to Chile totaled $1.5 billion in 2021.

• The **U.S.-Central American Free Trade Agreement** (U.S.-DR-CAFTA) was signed by President George W. Bush in 2005. The governments of El Salvador, Guatemala, Nicaragua, Honduras and the Dominican Republic implemented the agreement in March 2007, followed by Costa Rica in 2008.

The United States and the five Central American countries share roughly $68.67 billion in total (two-way) trade in goods. U.S. goods exports to Central America totaled $38.75 billion in 2021. The United States is the main supplier of goods and services to Central American economies. Approximately 40% of total goods exports to Central America come from the United States.

California is the fourth largest state exporter to the DR-CAFTA market with exports totaling $2.45 billion in 2021.

In June 2022, Vice President Kamala Harris announced more than $1.9 billion in new private sector commitments to invest in Central America to promote economic opportunity.

• The **U.S.-Colombia Trade Promotion Agreement** was signed by President Bush in 2006. It was approved by the Colombian Congress in 2007, but not approved by the U.S. Congress until 2011 and entered into force in May 2012.

Colombia is an emerging economy that is providing California with a quickly expanding export market and opportunity for future collaboration. Since 2006, both U.S. and California exports to Colombia have nearly doubled. In 2020, the United States exported $12.06 billion of goods to Colombia, with total trade amounting to $24.86 billion. In 2021, California exports to Colombia exceeded $465 million.

A U.S.-Colombia high-level roundtable took place in September 2022 to reaffirm the importance of the bilateral relationship and continued cooperation between the two countries.

• A **U.S.-Ecuador** "mini" trade deal was signed in December 2020, bringing the two countries a step closer to achieving a free trade agreement. Ecuador is the only Latin American country along the Pacific Ocean that does not have a free trade agreement with the United States.

The United States exported $5 billion worth of goods to Ecuador in 2021 and imported $8.15 billion the same year. California is one of the top five exporting states to Ecuador, exporting $293 million of goods in 2021.

• The **U.S.-Panama Trade Promotion Agreement** went into effect in October 2012. The agreement significantly increased the ability of U.S. companies to export their products to one of Latin America's fastest-growing economies. Half of U.S. agricultural goods became duty free at the time, with all tariffs on industrial goods to be eliminated by the 10-year anniversary and most of the remaining tariffs on agricultural goods to be eliminated by the 15-year anniversary.

In 2021, the United States exported $8.13 billion to Panama, making it the 34th largest U.S. export partner. California exported $332 million worth of goods to Panama in 2021.

• The **U.S.-Peru Trade Promotion Agreement** entered into force in February 2009. U.S. exports to Peru have more than tripled since then, totaling $10.3 billion in 2021. California exports to Peru more than doubled during the same period, totaling $484 million in 2021.

ANTICIPATED ACTION

It is expected the Biden administration will continue to engage with Mexico and Canada, together with the nation's trade and investment partners in Latin America.

It is hoped that the continued success of the USMCA may serve as a foundation for future trade agreements.

As a result of the Ninth Summit of the Americas, it is hoped that 2023 might see a renewed focus on Latin America.

CALCHAMBER POSITION

California Chamber of Commerce support for the USMCA and other FTAs in the Americas is based on an assessment that they serve the employment, trading and environmental interests of California, the United States, and our partner FTA countries, and are beneficial to the business community and society as a whole.

The objectives of the trade agreements are to eliminate barriers to trade, promote conditions of fair competition, increase investment opportunities, provide adequate protection of intellectual property rights, establish effective procedures for implementing/applying the agreements and resolving disputes, and to further regional and multilateral cooperation.

Staff Contact
Susanne T. Stirling
Vice President, International Affairs

susanne.stirling@calchamber.com
January 2023

Trade Promotion Authority

Reauthorization Needed to Expand Markets for U.S. Exporters in Times of Global Economic Uncertainty

- Trade promotion authority allows the United States to compete with other countries that are negotiating agreements with each other.
- Bipartisan trade package is needed to strengthen U.S. competitiveness and help U.S. workers.
- If trade promotion authority gets renewed, possible future agreements might include the United Kingdom, Kenya, Taiwan, Ecuador and the World Trade Organization.

BACKGROUND

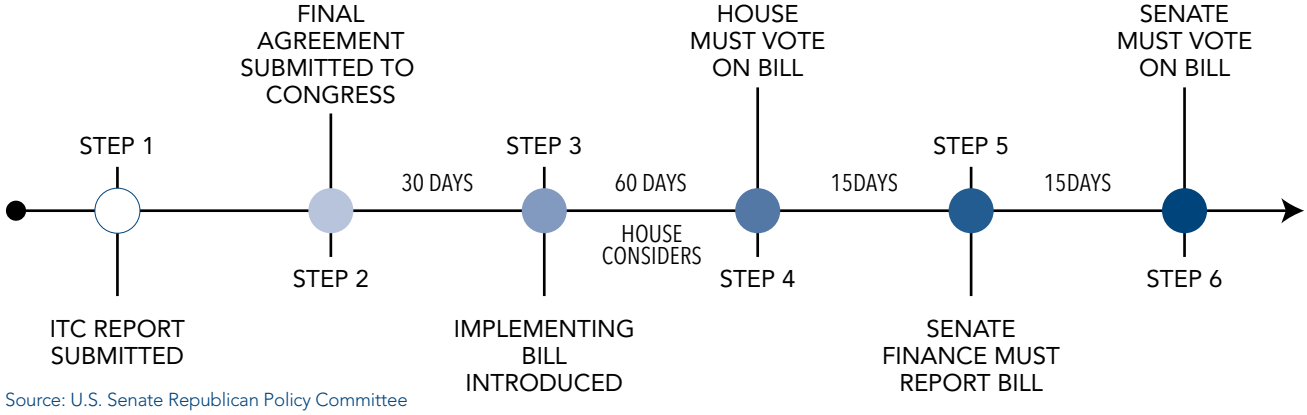
Trade promotion authority (formerly called fast track trade negotiating authority) is the process by which Congress gives authority to the President and/or U.S. Trade Representative to enter trade negotiations to lower U.S. export barriers. Traditionally, trade promotion authority follows the conclusion of negotiations for a trade agreement; enabling legislation is submitted to Congress for approval. Every president since Franklin Delano Roosevelt has been granted the authority to negotiate market-opening trade agreements in consultation with Congress.

Once legislation is submitted, under trade promotion authority, both houses of Congress will vote "yes" or "no" on the agreement with no amendments, and do so within 90 session days (not to be confused with a treaty, which is "ratified" by the U.S. Senate). During negotiations, however, there is a process for sufficient consultation with Congress.

President George W. Bush signed the landmark Trade Act, H.R. 3009, on August 6, 2002. The act helped put U.S. businesses, workers and consumers back in the game of international trade by granting the president trade promotion authority. At the request of President Donald J. Trump, trade promotion authority was renewed in July 2018 for three years. Congress was tasked with reauthorizing trade promotion authority in 2021; unfortunately, the Biden administration did not request renewal of trade promotion authority and it expired on July 1, 2021.

After the expiration, a few U.S. House Republicans called on President Biden to end his trade moratorium and begin consulting with Congress to renew the authority. The last time trade promotion authority expired, in 2007, it took Congress eight years

TRADE PROMOTION AUTHORITY PROCESS TIMELINE



Source: U.S. Senate Republican Policy Committee

to renew it. It is hoped that with the new Republican Congress, a trade promotion authority bill might be possible in 2023.

IMPACT: U.S. COMPLETED AGREEMENTS

Since the Trade Act of 2002 granted the President trade promotion authority, the United States has completed the following free trade agreements: U.S.-Australia; U.S.-Bahrain; U.S.-Chile; U.S.-Colombia; U.S.-Dominican Republic/Central American; U.S.-Israel; U.S.-Jordan; U.S.-Mexico-Canada Agreement; U.S.-Morocco; U.S.-Oman; U.S.-Panama; U.S.-Peru; U.S.-Singapore; and U.S.-South Korea.

Financially, these free trade agreements translate into the removal of billions of dollars in tariffs and nontariff barriers for U.S. exports.

FUTURE AGREEMENTS

Major U.S. trading partners are participating in numerous agreements, and trade promotion authority is a prerequisite to meaningful U.S. participation.

Without trade promotion authority, the United States has been compelled to sit on the sidelines while other countries negotiate numerous preferential trade agreements that put U.S. companies at a competitive disadvantage. Trade promotion authority not only opens markets and broadens opportunities for U.S. goods and firms; it keeps the United States a leader in global trade.

By reauthorizing trade promotion authority, Congress can help strategically address the range of U.S. trade negotiations being pursued: conclusion to a U.S.-United Kingdom free trade agreement; a possible U.S.-European Union free trade agreement, conclusion to a U.S.-Kenya free trade agreement; and even a possible re-admission to the Trans Pacific Partnership (TPP) — now Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) — as well as other future trade negotiations.

The United States is among the world's leading exporters due to increased market access achieved through trade agreements. Trade promotion authority is vital for the President of the United States to negotiate new multilateral, bilateral and sectoral agreements that will continue to tear down barriers to trade and investment, expand markets for U.S. farmers and businesses, and create higher-skilled, higher-paying jobs for U.S. workers.

ANTICIPATED ACTION

It is hoped that with the new Republican majority in Congress, trade promotion authority might be reauthorized in 2023, and Congress will once again take up a trade-focused agenda.

U.S. Trade Representative Katherine Tai has said that she will support a Republican effort to give the White House trade promotion authority only if it is "broadly bipartisan." Tai said the Biden administration's goal is to advance trade policy that is "robustly supported" and bipartisan.

It is possible that Congress might explore a "skinny" trade promotion authority that is sector- or country-specific. This would be aimed specifically at providing fast track authority to complete a trade agreement with the United Kingdom.

Historically, renewal of trade promotion authority has been tied to other trade-related legislation such as the Trade Adjustment Assistance program, which provides job training assistance to workers who were displaced as a result of trade.

CALCHAMBER POSITION

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

The CalChamber, therefore, supports the extension of trade promotion authority so that the President of the United States may negotiate new multilateral, sectoral and regional trade agreements, ensuring that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

Staff Contact
Susanne T. Stirling
Vice President, International Affairs

susanne.stirling@calchamber.com
January 2023

Trans-Atlantic Trade Relations

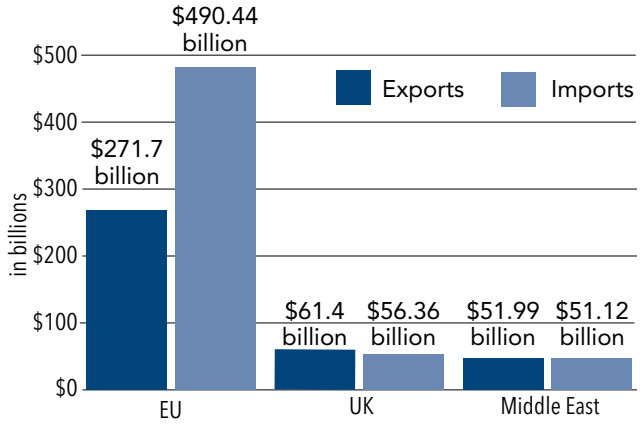
Trading Relationship with UK and EU More Important Than Ever in Times of Global Uncertainty

- Trans-Atlantic trade in goods reached an all-time high of $1.1 trillion in 2021.
- 45 out of 50 states, including California, export more goods to Europe than to China.
- California has more jobs supported by European investment than any other state, totaling 474,200 in 2019 and accounting for 56% of foreign affiliate jobs in the state.
- Over the last decade, Europe has attracted 57.3% of total U.S. global investment. So far this decade, Europe's share of U.S. foreign direct investment outflows has increased to 62.6% of the total, reflecting a redirecting of U.S. investment away from China.
- The trans-Atlantic economy accounts for $6 trillion in commercial sales a year, makes up one-third of global GDP, and accounts for half of total global personal consumption.

BACKGROUND

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

U.S. TRADE WITH UNITED KINGDOM, EUROPEAN UNION, MIDDLE EAST



Source: U.S. Department of Commerce

The United Kingdom officially left the European Union on January 1, 2021 and entered into the EU-U.K. Trade and Cooperation Agreement, which has now been in force for more than a year. In addition, the United Kingdom has embarked on a whirlwind tour entitled "Global Britain." It has entered into trade deals and agreements with 71 countries since leaving the EU, including entering the second and final stage of joining the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP, formerly the TPP).

The U.K. also has signed agreements with Australia and New Zealand, in December 2021 and February 2022, respectively, is negotiating an agreement with India, and still is hopeful for a U.S. deal. In the interim, the United Kingdom is pursuing a state-by-state approach to building closer trade ties with the United States while the Biden administration has shown little interest in negotiating new free trade agreements.

Post-Brexit, the EU now consists of 27 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Mediterranean Island of Malta, Netherlands, Poland, Portugal,

Romania, Slovakia, Slovenia, Spain and Sweden.

The EU-27 market represents an estimated 447.5 million people and has a total gross domestic product (GDP) of $15.29 trillion, as of 2021, while the United Kingdom has an estimated population of 67.32 million people and a GDP of $3.19 trillion. The United States has 331.89 million people and a GDP of $23 trillion as of 2021 (World Bank).

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

U.S.-EUROPEAN UNION RELATIONS

In October 2018, then-U.S. Trade Representative Robert Lighthizer notified Congress, in keeping with Trade Promotion Authority (TPA) protocol, of the Trump administration's intent to start negotiations with the European Union. Negotiating objectives published in January 2019 included removing tariff and nontariff barriers and creating more balanced, fairer trade. In 2021, the Biden administration held a U.S.-EU Summit where the two parties renewed their trans-Atlantic partnership. However, a U.S.-EU agreement has not yet been pursued by the Biden administration. Instead, a U.S.-EU Trade and Technology Council has been established to advance trans-Atlantic cooperation and democratic approaches to trade, technology, and security.

In October 2022, the EU expressed concern that the Biden administration's Inflation Reduction Act could be in breach of international trade rules. A U.S.-EU Task Force on the Inflation Reduction Act was launched and met in November, where the EU is seeking to secure exemptions. Both partners would like a quick resolution, but the EU has said that bringing the issue before the World Trade Organization is not off the table.

Total bilateral trade between the European Union and United States was more than $1 trillion in 2021, with goods trade accounting for $762.14 billion. The United States exported $271.7 billion worth of goods to EU member nations. The U.S. and EU are each other's primary source and destination for foreign direct investment (FDI). The $3.6 trillion invested by the U.S. in the EU in 2018 represented 61% of total U.S. investment abroad; the EU investment of $3 trillion in the U.S. represents 68% of total FDI in the U.S. (AmCham Europe). California exports to the EU were $30.9 billion in 2020, making up nearly 20% of all California exports.

U.S.-UNITED KINGDOM RELATIONS

The Biden administration inherited the U.S.-U.K. Free Trade Agreement that President Donald J. Trump had initiated in October 2018 and chose to shelve the agreement until a later date. In 2022, the United States and United Kingdom began the U.S.-U.K. Dialogues on the Future of Atlantic Trade and met in Baltimore and Scotland to discuss how the United States and United Kingdom can collaborate to "advance mutual international trade priorities rooted in shared values, while promoting innovation and inclusive economic growth for workers and businesses on both sides of the Atlantic."

The two countries agreed to reestablish the U.K.-U.S. Small and Medium-Size Enterprises (SME) dialogue, which convened its sixth meeting in November 2022. As a result of the November meeting, the two nations agreed that over the next six months the two governments would enhance toolkits aimed at helping SMEs navigate trade between the two countries, specifically targeting underserved communities. The two countries also will hold special expert-level discussions in 2023 on digital trade and customs and trade facilitation, with the United States agreeing to host the Seventh SME Dialogue in the U.S. in May 2023.

According to the U.S. Department of Commerce, the U.S.-U.K. investment relationship is the largest in the world, valued at more than $1.5 trillion in 2021 and creating more than 2.6 million jobs, about 1.46 million in the United Kingdom and 1.17 million in the United States. Moreover, U.K. FDI into the United States in 2021 totaled $512.4 billion, while FDI from the United States into the United Kingdom topped $1 trillion. Two-way trade between the United States and the United Kingdom was $117.8 billion in 2021 and the United Kingdom was the seventh largest importer of U.S. goods; the total value was $61.4 billion. The United Kingdom is California's 12th largest export destination, with more than $4.35 billion in exports. In California, the United Kingdom is the second largest source of FDI through foreign-owned enterprises (FOEs). British FOEs in California provide more than 94,604 jobs through 2,358 firms, amounting to $9.363 billion in wages (World Trade Center Los Angeles 2022).

FREE TRADE AGREEMENTS IN MIDDLE EAST

The United States has five free trade agreements with countries in the Middle East, along with Trade and Investment Framework Agreements (TIFAs).

- The **U.S.-Bahrain Free Trade Agreement** (FTA), first enacted in 2006, is now responsible for $2.165 billion in

bilateral trade, of which $934 million is U.S. exports to Bahrain. California is one of the top exporting states to Bahrain with $95 million in goods exported to Bahrain in 2021.

• The **U.S.-Israel Free Trade Agreement** was the first U.S. FTA. Since it entered into force in 1985, exports to Israel have increased by more than 450%. In 2021, Israel was the 25th largest export destination for U.S. exports, which topped $12.86 billion. In the same year, California exported $1.43 billion to Israel, making it the 24th largest export destination for California goods. Israeli FDI into the United States totaled $27.67 billion in 2021, while U.S. investment into Israel totaled $41.3 billion.

• The **U.S.-Jordan Free Trade Agreement** went into effect in 2010. In addition to increasing trade, the agreement also aimed to improve labor standards in Jordan. The United States is one of the largest exporters to Jordan, having exported $1.2 billion of products in 2021. The United States imported $2.74 billion worth of goods in 2021. California is the largest exporting state to Jordan, exporting $214 million worth of products in 2021.

• The **U.S.-Morocco Free Trade Agreement** entered into force in 2006 to support economic and political reforms in Morocco and give improved opportunities for U.S. exports to Morocco. In 2021, goods exports to Morocco totaled $2.79 billion, compared to $79 million in 2005, the year before the FTA went into force. The United States also is one of the largest importers of Moroccan goods, importing $1.27 billion in 2021. California exported $179 million worth of goods to Morocco in 2021 and imported $245 million the same year.

• The **U.S.-Oman Free Trade Agreement**, enacted in 2009, continues to promote trade and investment liberalization and openness in the region. The United States exported $1.39 billion to Oman in 2021. California exports to Oman totaled $85 million in 2021.

ANTICIPATED ACTION

The California Chamber of Commerce is hopeful that the United States and trans-Atlantic region will continue to strengthen relations in 2023 to deepen the world's largest trading and investment relationship, with a focus on trade and investment initiatives.

It is expected the Biden administration will continue to revitalize U.S. alliances with European nations and to cultivate the trade and economic ties with U.S. strategic partners in the Middle East.

CALCHAMBER POSITION

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

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

Free trade agreements can ensure that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.

Staff Contact
Susanne T. Stirling
Vice President, International Affairs

susanne.stirling@calchamber.com
January 2023

Trans-Pacific Trade Relations

U.S. Focus Shifts Toward Indo-Pacific; Region More Important Than Ever as China Influence Looms

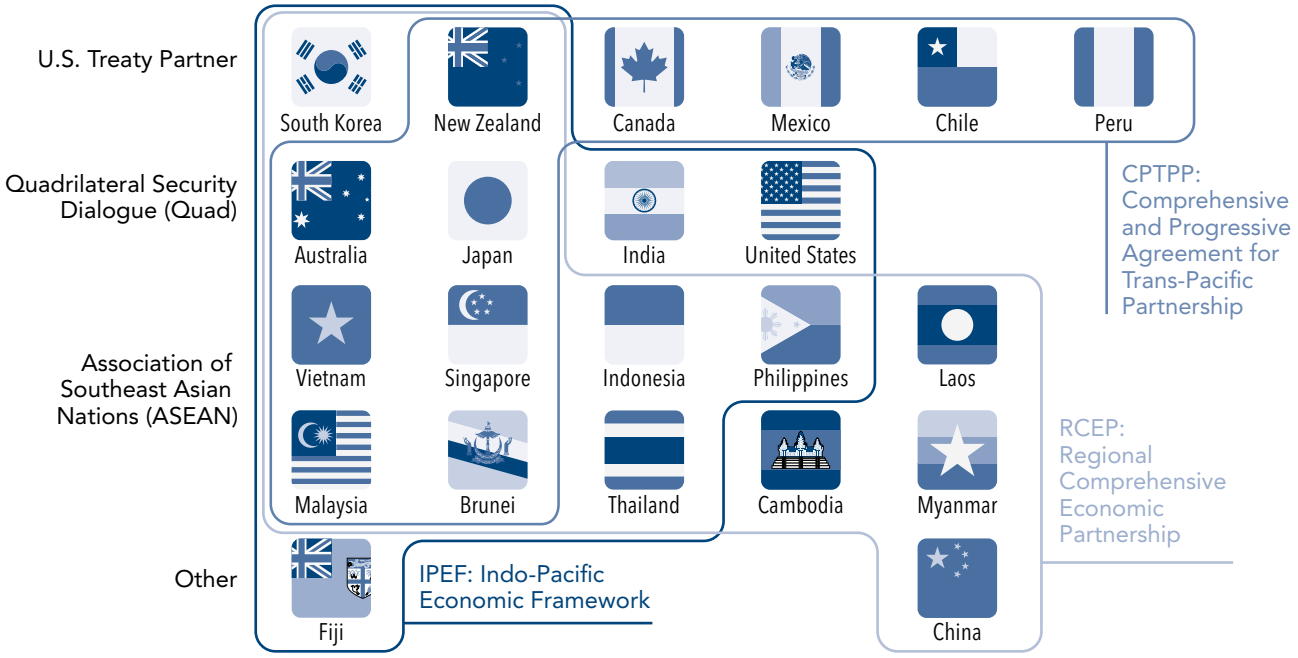
- Trade with the Indo-Pacific supports more than 3 million U.S. jobs and is the source of nearly $900 billion in foreign direct investment in the United States.
- The 14 partners of the new Indo-Pacific Framework represent 40% of global gross domestic product (GDP) and 28% of global goods and services trade.
- The United States will host Asia-Pacific leaders in 2023; San Francisco will be the host city for the fall 2023 Asia-Pacific leaders summit.

BACKGROUND

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

The trans-Pacific is the most populous, fastest-growing and most economically dynamic part of the world. By 2030, it will represent 66% of the world's middle class, and 59% of all goods and services sold to middle class consumers will be sold in the trans-Pacific. The region is expected to drive two-thirds of global economic growth in the years ahead. Developing nations in the region will need about $1.5 trillion

MAJOR ASIA-PACIFIC STRATEGIC AND TRADE ALLIANCES



Source: China Briefing/Asia Briefing Ltd graphic.

in investment every year for the next decade to develop the infrastructure necessary to sustain their growth.

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

IMPACT

Two-way investment and trade in the trans-Pacific region totals $1.75 trillion, supporting more than 3 million jobs in the United States and more than 5 million jobs in the trans-Pacific in 2020. The United States has made foreign direct investments of almost $1 trillion into the Indo-Pacific region in 2020. The region contains seven of the world's 30 freest economies — Singapore, Australia, New Zealand, Taiwan, Malaysia, South Korea and Japan. The sea routes of the trans-Pacific facilitate 50% of world trade.

STATUS OF FREE TRADE AGREEMENTS IN TRANS-PACIFIC REGION

• **U.S.-Korea Free Trade Agreement**. In 2018, President Donald J. Trump renegotiated the U.S.-Korea Free Trade Agreement (KORUS), which originally entered into force in March 2012. The renegotiated deal went into effect on January 1, 2019 and included an extension to phase out U.S. tariffs on trucks, as well as harmonized vehicle testing requirements, Korean recognition of U.S. standards on parts, and improvements to fuel economy standards. There also were modifications to Korea's customs and verification processes, and its pharmaceutical pricing policy.

South Korea is the fifth largest export partner for both the United States and California, exporting $65.77 billion and $11.625 billion to the country, respectively.

• **U.S.-Singapore Free Trade Agreement**. The U.S.-Singapore Free Trade Agreement went into effect in January 2004. All tariffs have been phased out now. Singapore is a strategic partner for the United States in the Trans-Pacific region and is the 12th largest U.S. export partner; U.S. exports total $35.76 billion. Singapore is California's 11th largest export partner; state exports exceed $4.95 billion.

Singapore has consistently ranked among the top countries for doing business, according to the World Bank, and is regional headquarters for hundreds of U.S. companies.

• **U.S.-Australia Free Trade Agreement**. The U.S.-Australia Free Trade Agreement came into effect in January 2005 and eliminated tariffs on 99% of U.S.-manufactured goods exported to Australia at the time. Two-way trade between the United States and Australia was $38.92 billion in 2021. Australia is one of the United States' oldest and closest allies due to sharing common values and major interests in each other's economies. The United States is the largest investor in Australia.

In 2021, the United States exported $23.38 billion worth of goods to Australia, making Australia the 16th largest U.S. export partner. The United States enjoys a trade surplus with Australia that reached $13.98 billion in 2021. Australia is the 14th largest export partner for California, which exported $3.5 billion to the country in 2021.

• **U.S.-Japan Limited Trade Deal**. The U.S. and Japan have a limited trade deal, which went into effect in January 2020. The deal opened market access for certain U.S. agricultural and industrial goods in Japan. The agreement helped to give U.S. farmers and ranchers the same advantages as Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries selling into the Japanese market. In return, the United States reduced or eliminated tariffs on agricultural and industrial imports from Japan. A high-standard digital trade agreement also was reached separately but concurrently and went into effect in January 2020, as well.

In November 2021, the U.S. and Japan agreed to establish a new Japan-U.S. Commercial and Industrial Partnership on trade. The two countries will collaborate more closely on trade issues, including labor, the environment, digital commerce, and confronting other countries. President Joe Biden traveled to Japan in May 2022 and praised the April 2021 U.S.-Japan Competitiveness and Resilience (CoRe) Partnership between the world's two largest democratic economies to strengthen the rules-based economic order in the Indo-Pacific.

Japan is the fourth largest export partner of the U.S. and California; exports total $74.97 billion and $11.86 billion, respectively. Japan is one of the largest markets for U.S. agricultural products. The country also is the largest investor into California through foreign-owned enterprises as of 2021. The Japanese and U.S. markets together cover approximately 30% of global gross domestic product (GDP). The trade deal is an important step in furthering the long-shared partnership between the U.S., Japan and California.

• **U.S.-Taiwan Trade**. The United States and Taiwan first signed a Trade and Investment Framework (TIFA) in 1994. Under the previous administration in 2020, the U.S. showed

more support for Taiwan and a possible trade agreement with Taiwan, relaxing some regulations to show good faith in starting talks. Support for a trade agreement is popular among some in the U.S. Congress. Taiwan's September 2021 bid to join the CPTPP remains on track and has received vocal support from other CPTPP members. The move to join the CPTPP is important to the country's long-term economic growth and stability in the region. Taiwan was notably left out of the China-led Regional Comprehensive Economic Partnership (RCEP).

In June 2022, the U.S. and Taiwan met for an inaugural trade meeting in Washington to begin talks on the newly agreed upon U.S.-Taiwan Initiative on 21st Century Trade, meant to strengthen ties as a counter to China's influence in the Indo-Pacific region. The talks will cover many of the same areas as the new Indo-Pacific Economic Framework.

Taiwan was the 11th largest export partner for the United States in 2021, with a total of $36.94 billion in goods exported to Taiwan. For California, Taiwan is the sixth largest export partner with $8.94 billion in goods being exported, including $264 million worth of California agricultural products.

INDO-PACIFIC ECONOMIC FRAMEWORK

In May 2022, the Biden administration launched the Indo-Pacific Economic Framework (IPEF) with 12 other countries: Australia, Brunei Darussalam, India, Indonesia, Japan, South Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam. The IPEF is a non-traditional trade agreement that seeks to improve trade relations by reducing "behind-the-border" trade barriers; leaves enforceability intentionally vague; and does not guarantee that the agreement won't be voided if a new administration takes over in 2024.

The official statement states this framework is intended to advance resilience, sustainability, inclusiveness, economic growth, fairness, and competitiveness and aims to contribute to cooperation, stability, prosperity, development, and peace within the region. The first IPEF ministerial took place in September 2022 with a goal of finishing negotiations within the next 18 to 24 months, coinciding with the U.S. hosting of the annal Asia-Pacific Economic Cooperation Leaders' Summit at the end of 2023.

ASIA-PACIFIC ECONOMIC COOPERATION

The United States is the 2023 host for the Asia-Pacific Economic Cooperation (APEC). California will host two of the 2023 meetings, one in Palm Springs, and the other, the APEC Leaders' Summit, will take place in San Francisco in fall 2023.

Formed in 1989, APEC serves as a multilateral forum in which Asian and Pacific economies can solve economic problems and cooperate in developing key economic sectors. The 21 APEC economies are home to 2.9 billion people and represent approximately 60% of world GDP, and 48% of world trade as of 2018.

CHINA, THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS, AND THE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP

After many rounds of tariffs on each other's goods, China and the United States signed a Phase One Agreement on trade on January 15, 2020. This historic agreement required structural reforms and changes to China's economic and trade model, including intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange. The Phase One Agreement also included a commitment by China to purchase U.S. agricultural goods. The commitment fell to the wayside during the global COVID-19 pandemic and later due to China's ongoing zero-COVID policy, falling short by more than 40% of the target, according to a number of observers. U.S. Trade Representative Katherine Tai continues to hold China accountable to the Phase One agreement. Tai continues to explore weaknesses in China's performance and is gaining traction. The Biden administration continues to use Section 301 tariffs as part of its strategy to compete more effectively with China.

While China and the United States have a complex relationship, China's relationship with Association of Southeast Asian Nations (ASEAN) countries continued to deepen in 2022. The Regional Comprehensive Economic Partnership (RCEP) deal officially went into force on January 1, 2022, encompassing the 10 member nations of the ASEAN, as well as China, Japan, South Korea, Australia and New Zealand. The RCEP deal covers nearly one-third of the global population and about 30% of global GDP, making it the largest trading bloc in the world.

The nations in ASEAN, established in 1967, have the goal of creating an ASEAN economic community (AEC) by 2025. The region's combined GDP topped $3 trillion in 2020. AEC already has eliminated 99% of intra-ASEAN tariffs and continues to strive for deeper economic integration. In May 2022, the Biden administration hosted the first U.S.-ASEAN Special Summit noting the U.S. has provided more than $12.1 billion in investments into the region since 2002.

ASEAN represents the world's fourth largest market and the United States is ASEAN's largest source of foreign direct investment, with two-way trade exceeding $379 billion in 2021.

COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP AND THE ORIGINAL TRANS-PACIFIC PARTNERSHIP

The original Trans-Pacific Partnership (TPP) was signed in February 2016 and included the United States as a member. When President Trump took office, however, he pulled the United States out of the TPP. The remaining countries formed the CPTPP, which then came into force on December 30, 2018 for Australia, New Zealand, Canada, Japan, Mexico and Singapore, followed by Vietnam on January 14, 2019, Peru in August 2021 and Malaysia in November 2022. The agreement will come into force for Brunei and Chile 60 days after they complete their ratification process.

The CPTPP agreement retained all the tariff reductions and eliminations from the original version signed in 2016; however, it suspended 22 other provisions, including some intellectual property rules. The CPTPP will reduce tariffs in countries that together amount to more than 13% of the global economy — a total of $10 trillion in GDP. With the United States, the agreement would have represented 40% of the world economy. Even without the United States, the deal will span a market of nearly 500 million people, making it one of the world's largest trade agreements.

In 2021, the United Kingdom announced its intent to apply for membership to the CPTPP and has since moved to the second and final step in the process as of February 2022. In September 2021, China also applied to join CPTPP, preempting Taiwan's own bid six days later. The dueling bids have created opposing sides within the trading bloc; the outcome remains to be seen. Meanwhile, South Korea also has expressed interest in the possibility of joining the CPTPP.

The end of 2022 saw a renewed push for the Biden administration to consider re-entering the agreement. Supporters of that approach argue that a revamped agreement would fit current political realities and that the new IPEF does not do enough to combat China's influence in the region. Re-engagement in the TPP/CPTPP could be beneficial for California, which in 2021 exported $72.39 billion to the CPTPP member countries.

ANTICIPATED ACTION

The California Chamber of Commerce is hopeful that the Biden administration will continue to develop relations in the trans-Pacific and strengthen partnerships within the region — including consideration of multilateralism rather than bilateralism.

In 2023 in partnership with our regional allies, the Biden administration will continue to negotiate an Indo-Pacific Economic Framework, while the U.S. takes a special focus on APEC during America's host year. The U.S. expects the new "flexible and inclusive" frameworks of IPEF and the Initiative on 21st Century Trade to set standards in digital areas like cybersecurity and privacy, address infrastructure investments, clean energy, and export controls. U.S. Secretary of Commerce Gina Raimondo expects to negotiate the framework with Indo-Pacific nations within an aggressive timeline, finishing by the end of 2023.

CALCHAMBER POSITION

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

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

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

Staff Contact
Susanne T. Stirling
Vice President, International Affairs

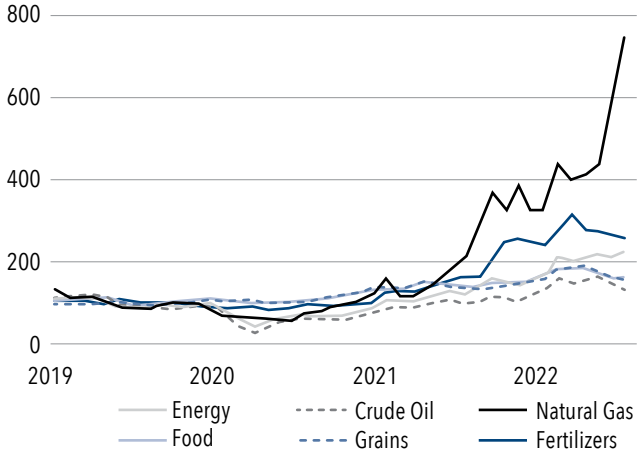
susanne.stirling@calchamber.com
January 2023

World Trade Organization

Multiple Global Shocks Challenge World Trade as Momentum Slows

- Agreements reached at 12th Ministerial Conference, two years after scheduled date with 13th Ministerial expected for 2023.
- Global trade slowed in second half of 2022; slowdown expected to continue into 2023.
- Energy prices rose 78% year-on-year in August 2022 while food prices were up 11%, grain prices were up 15% and fertilizer prices were up 60%.

PRIMARY COMMODITY PRICES
(January 2019–August 2022)



Source: World Bank/World Trade Organization.

BACKGROUND

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

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

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

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

WTO FUNCTION

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

- administering WTO trade agreements;
- providing a forum for trade negotiations;
- handling trade disputes;
- monitoring national trade policies;
- offering technical assistance and training for developing countries; and
- cooperating with other international organizations.

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

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

IMPACT

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

For U.S. businesses, successful implementation of WTO negotiations would translate to:

- expanded market access for U.S. farm products;
- expanded market access for U.S.-manufactured goods;
- reduced cost of exporting to some countries; and
- improvement in foreign customs procedures that currently cause shipment delays.

2022 ACTIVITY

In 2022, the WTO finally held its 12th ministerial conference, which originally had been planned for June 2020 in Kazakhstan. The conference, which was held in Geneva and co-hosted by Kazakhstan, was extended by two days to allow for more discussion.

U.S. officials at the meeting, including U.S. Ambassador to the WTO Maria Pagan, who was confirmed in March 2022, were optimistic about meeting outcomes. WTO members agreed to formally launch a discussion on reforms, extend a moratorium on digital trade, partially curb fishing subsidies, allow developing countries to authorize generic production of COVID vaccines, and approve statements to discourage countries from imposing food export restrictions.

In 2022, world trade lost momentum due to multiple shocks on the global economy with import demand softening, high energy prices in Europe, the Russia-Ukraine war, tightening monetary policy, zero-COVID policy in China, and the food insecurity and debt in developing countries. The congestion and backlogs at U.S. West Coast ports at the beginning of 2022 that compounded supply disruptions worldwide decreased by the end of the year, resulting in a small positive impact on the resurgence of imports.

At the end of 2022, global merchandise trade will have grown by about 3.5%, which was slightly better than what the WTO forecast earlier in the year, while world gross domestic product (GDP) will have increased by 2.8%. In the first half of 2022, total merchandise trade was up 32% compared to 2019, reflecting a change in prices as merchandise trade values grew at double-digit rates while trade growth in volume remained in the low single digits.

ANTICIPATED ACTION

The WTO is expected to stay on its previous pre-pandemic timeline and hold the 13th Ministerial Conference by December 2023, with either Cameroon or the United Arab Emirates hosting the gathering.

According to the WTO's trade outlook for 2023, trade momentum is expected to remain subdued as a result of multiple shocks on the world economy. World merchandise trade is expected to slow to 1% growth in 2023, with total world GDP growing by 2.3%.

Among the many potential risks to world trade in 2023 are a prolonged Russia-Ukraine war, rising inflation, global recession and a potential decoupling of major economies from global supply chains, which could exacerbate supply shortages and eventually reduce productivity. Despite these risks, the WTO is predicting the Middle East will see the strongest trade growth in 2023.

Conversations on WTO reform will continue in 2023, focusing on a dispute settlement system that can better help members resolve disputes in an efficient and cost-effective manner.

U.S. farm groups also are hopeful for new agricultural talks in the coming year to address core issues of market access, domestic support and export competition, as well as new issues of trade liberalization, biotech, agricultural sustainability, and climate change mitigation.

CALCHAMBER POSITION

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

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

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

Staff Contact
Susanne T. Stirling
Vice President, International Affairs

susanne.stirling@calchamber.com
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Flexible Scheduling

California Should Embrace Individual Alternative Workweek Schedules

In nearly every state, workers can agree individually with their employer to work four 10-hour days or another alternative workweek schedule (AWS). That is not the case in California. Here, employers and employees must go through a complex, time-intensive process to implement an AWS. The COVID-19 pandemic caused both employers and workers to find new routines and meet a demand for increased flexibility, but California's AWS process in fact often prohibits flexible work schedules.

An AWS is desirable for many workers. It provides them more flexible personal time with an extra day off per week, reduces commute time and therefore lessens greenhouse gas emissions, and can create more effective workplaces. Due to these benefits, The California Chamber Commerce has repeatedly advocated for a process that would allow an individual employee to enter into a one-on-one agreement with their employer whereby they could implement an AWS. That is currently unavailable under California law.

CONCERNS WITH CURRENT AWS PROCESS

The existing AWS election process is cumbersome. The CalChamber receives calls almost daily from our members about AWS and its procedures. The current process also is disadvantageous to employees, notwithstanding claims by advocates of the current model. A few examples of the disadvantages include:

- Employees who voted against the AWS must follow it.
- New employees who did not vote in the AWS election must follow it.
- An employee who needs an individualized AWS for care obligations or other personal needs cannot obtain one unless two-thirds of their "work unit" agrees, limiting flexibility for employees.
- If an employee's personal circumstances change and they no longer wish to follow the AWS, they would need either to convince other employees to repeal it or convince the employer to repeal it.
- Not all employees are eligible for an AWS and, in some cases, some of an employer's employees may be eligible while their co-workers are not.

Employees who do not want an AWS adopted under the existing legal framework must abide by it and there essentially is no flexibility for employees whose circumstances change or who cannot convince their coworkers to vote for an AWS. The law does say that the employer must provide reasonable accommodation for employees who are "unable" to work the AWS, but there is very little guidance on this, and it has been interpreted narrowly — for example for those with a medical condition. Someone whose child care needs no longer work with the AWS would likely not qualify.

INDIVIDUALIZED AWS SOLVES ISSUES ABOVE

Over the years, multiple bills have been introduced to allow individual workers to enter into an agreement with their employer to adopt a one-on-one AWS. This would allow workers to maintain different schedules that work better for their needs rather than having to adhere to the schedule of their entire work unit. Historically, the bills have failed to pass or even to be set for a hearing by both the Assembly and Senate Labor committees.

Opponents argue that employers will force employees to sign

these agreements to avoid overtime pay. Opponents do not believe that an employee can ever really consent to an agreement with an employer. This argument does not hold up for several reasons.

• First, nothing about an AWS is "avoiding overtime." It is simply re-shuffling the 40 hours a week that an employee works so that they, for example, get an entire extra day off, a significant benefit for the employee, and changing the inflexible 8-hour daily overtime cap to match the newly agreed upon daily hourly maximum. As before, if an employee works longer than their scheduled shift in a day or more than 40 hours in a week, they will earn overtime.

• Second, under the existing procedure, a work unit could be one person if there is a department or shift of one. The employer will know how the employee voted because there is only one vote. If that person can consent to or reject an AWS, why can't an individual employee do this with their employer when they work in a department with more than one person? There are procedural safeguards that can be implemented to ensure there is no coercion and give the employee the right to revoke the AWS at any time.

Voters support individual alternative workweek schedules. In a poll conducted by the CalChamber, 88% of voters agree (49% of them strongly) that the state's overtime laws should be changed to make it easier for employees to work alterative schedules, such as four 10-hour days. Indeed, when one of the individual AWS bills was being debated in recent years, one *Los Angeles Times* article called Democrats' rejection of the idea "shortsighted." Historically, fewer than 4% of California employers have an AWS under the current system, demonstrating that the AWS is severely underused compared to its popularity.

In the era of remote working and increased demands for workplace flexibility, the individual AWS agreement is an idea worth pursuing.

CURRENT PROCEDURE TO IMPLEMENT AN AWS IS COMPLEX

California Wage Orders outline the process to implement an AWS. It should be noted that not every Wage Order even allows for an AWS. For example, Wage Order 14 – Agricultural Occupations does not. An agricultural employer may have some workers eligible for an AWS (for example, the accounting department, which falls under Wage Order 4), but some who are not. Further, some procedures differ slightly between the Wage Orders.

The general procedure is as follows. Employers first must present the proposed AWS or a menu of options in the form of a written agreement. They must provide written disclosures to all potentially affected employees regarding the effects of the proposed AWS on wages, hours and benefits. They must then hold a meeting 14 days prior to a secret ballot election. A secret ballot election then must be held during regular working hours and at the work site.

At least two-thirds of a "work unit" must approve the proposed AWS in the election. The work unit must be "readily identifiable," which could be a division, job department, job classification, shift, location, or more. If, for example, the legal department comprises a single person, that individual could be their own work unit. They still would be required to vote by secret ballot. Before the AWS can be implemented, it must be approved by the Department of Industrial Relations.

If the employees wish to repeal the AWS, there must be a petition followed by an election. According to a 1999 Division of Labor Standards Enforcement (DLSE) Memorandum, if the employer wishes to unilaterally terminate the AWS, it may do so without an election as long as there is reasonable advance notice to employees.

CALCHAMBER POSITION

Increased flexibility in work schedules primarily benefits employees. The CalChamber supports legislation that makes it easier for employees to gain flexibility while also removing cumbersome, unnecessary procedures like the current AWS process that stand as a barrier to flexible work arrangements.

Staff Contact
Ashley Hoffman
Policy Advocate

ashley.hoffman@calchamber.com
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Private Attorneys General Act

Reform Needed to Curb Costly Litigation, Help Workers/Employers

California labor and employment laws are complex and burdensome in comparison to the rest of the nation. There is no better example of California's distinction in this area than the Private Attorneys General Act (PAGA). PAGA allows an aggrieved employee to file a representative action on behalf of themselves, all other aggrieved employees, and the state of California for alleged Labor Code violations.

INCREASED LITIGATION BUT NO IMPROVED COMPENSATION FOR EMPLOYEES

PAGA has significantly increased employment litigation in California yet has left unfulfilled its promise of improved compensation for employees for alleged harm. PAGA lawsuits have increased more than 1,000% since the law took effect in 2004. By 2014 and every year since, the Labor and Workforce Development Agency (LWDA) has received approximately 4,000 PAGA notices. *See* 2019 Budget Change Proposal, *PAGA Unit Staffing Alignment*, 7350-110-BCP-2019-MR (hereinafter PAGA BCP). There was a significant increase during the COVID-19 pandemic, with a record high 6,502 notices filed in 2021, according to LWDA data reviewed in a July 2022 article by law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C.

The popularity of these lawsuits is likely due to the significant monetary awards that can be levied against an employer. The threatened penalties can be staggering. The default penalty for a violation of the Labor Code is $100 per employee per pay period for an initial violation and $200 per employee per pay period for each subsequent violation. The threatened penalties therefore often are very high, especially in relationship to the actual alleged harm. For example, in *O'Connor v. Uber Technologies, Inc.,* a group of drivers sued Uber claiming they were misclassified as independent contractors and were owed expense reimbursements and converted tips. The LWDA submitted a statement to the court saying that if the drivers were successful on their PAGA claim, PAGA penalties would exceed *$1 billion*, which was more than half of the highest possible verdict value of the case. See 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

PAGA DATA CONFIRMS IT BENEFITS ATTORNEYS, NOT WORKERS

A review of PAGA case data demonstrates that the law benefits trial attorneys, not workers. The current average payment that a worker receives from a PAGA case filed in court is $1,300, compared to $5,700 for cases adjudicated by the state's enforcement agency. Even though workers are receiving higher awards in state-adjudicated cases, employers are paying out 29% less per award. This is likely because of the high attorney fees in PAGA cases filed in court. Attorneys usually demand a minimum of 33% of the workers' total recovery, or $372,000 on average, no matter how much legal work actually was performed. In addition to receiving lower average recoveries in PAGA cases, workers also wait almost twice as long for their owed wages. The average wait time for a PAGA court case is 23 months compared to 12 months for the state-decided cases.

LABOR AGENCY RECOGNIZES PAGA ABUSE

Even the LWDA recognizes PAGA abuse. In its budget proposal for PAGA, the LWDA stated "the substantial majority of proposed private court settlements in PAGA cases reviewed by the [PAGA] Unit fell short of protecting the interests of the state workers." The analysis continues, "Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, *reflecting the failure of many private plaintiffs' attorneys to fully protect the interests of the aggrieved employees and the state.*" (emphasis added).

Despite this analysis, the California Legislature has consistently rejected PAGA reform bills except for two unionized industry carveouts. Notably, in support of one of those carveouts, the author acknowledged that PAGA puts "enormous pressure on employers to settle claims regardless of the validity of those claims." *See* Assembly Appropriations Committee analysis of SB 646 (Hertzberg; D-Van Nuys) (2021).

WHY ATTORNEYS BENEFIT

Attorneys benefit because PAGA often is leveraged for a high settlement amount in settlement agreements. The attorneys walk away with a considerable amount of money while the employees and/or the LWDA receive hardly anything. In *Price v. Uber Technologies, Inc.*, the plaintiffs' attorneys were awarded $2.325 million, while the average Uber driver was awarded $1.08. *See California Business & Industrial Alliance v. Becerra*, Case No. 30-2018-01035180-CU-JR-CXC (Cal. Super. Ct. 2018).

Although PAGA requires 75% of any penalty award go to the state of California, most settlement agreements are written to allocate little if any proceeds to the state. They reserve most of the settlement for the plaintiffs' attorneys, representative plaintiffs, and employees, even if it was the PAGA claim that allows them to get such a high settlement amount in the first place. Some courts catch on and deny approval of those settlements, but others approve them. *See*, for example:

- *Ruch v. AM Retail Group, Inc.*, 2016 WL 5462451 (N.D. Cal. Sept. 28, 2016) (approving settlement agreement allocating $10,000 to PAGA and attorney fees of $365,000 out of a total settlement amount of $1.15 million);
- *McLeod v. Bank of America, N.A.*, 2018 WL 5982863 (N.D. Cal. Nov. 14, 2018) (approving settlement agreement allocating $50,000 to PAGA and attorney fees of $3.3 million out of a total settlement amount of $11 million);
- *Lacy T. v. Oakland Raiders,* 2016 WL 7217584 (Cal. Ct. App. Dec. 13, 2016) (affirming trial court's approval of allocating $10,000 to PAGA and attorney fees of $400,000 out of a total settlement amount of $1.25 million);
- *Diamond Reports Wage and Hour Cases*, 2020 WL 4188098 (Cal. Ct. App. July 21, 2020) (affirming trial court's approval of allocating $130,000 to PAGA and attorney fees of $933,333.33 out of a total settlement amount of $2.8 million).

PAGA REFORMS NEEDED

Despite the failing grade from the LWDA, proponents of PAGA still maintain it is an important enforcement tool that encourages compliance and protects employees. But a review of PAGA case law shows that it is abused to evade procedural safeguards typically found in litigation and to force employers into costly settlements for minor, innocent mistakes:

- **There is no requirement under PAGA that an employee actually suffer harm**, such as unpaid wages, as a result of the violation. For example, you can recover PAGA penalties if your paycheck says "XYZ, Inc." instead of "XYZ, LLC."
- **PAGA has a unique standing requirement**. PAGA defines "aggrieved employee" as any person who was employed by the employer and against whom "one or more of the alleged violations" was committed. This language means that the representative employee pursuing a civil action for multiple Labor Code violations needs to have suffered only one of the alleged violations. You can then recover penalties for all alleged violations. Recent cases also held that an employee has standing even where they settled their own individual claims, where the statute of limitations has expired, and where they do not live in the venue where the case is filed if another employee does.
- **PAGA penalties are imposed regardless of intent or the extent of any harm**. Thus, employers are held liable even if they make a good faith error.
- **PAGA applies to all employers regardless of size.**
- **Legal precedent has established that PAGA provides a "civil penalty."** This means that employees can recover both the statutory penalty associated with the Labor Code provision at issue, as well as civil penalties under PAGA, thereby creating a stacking of penalties against the employer.
- **PAGA lawsuits are a "representative action" rather than a class action** and, therefore, the aggrieved employee does not have to satisfy class action requirements. Thus, PAGA actions are much easier to file and it is easier to include much

larger groups of employees than in a class action. Additionally, the employee often files a PAGA action and a class action simultaneously so they can recover the PAGA penalties, but not allocate the correct amount owed to the LWDA as demonstrated by the above cases.

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

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

FATE OF ARBITRATING PAGA CASES UNDECIDED

In June 2022, the U.S. Supreme Court held in *Viking River Cruises v. Moriana* that where a plaintiff has signed an enforceable arbitration agreement, they do not have standing to maintain a non-individual PAGA claim in court on behalf of others. This was viewed as a victory for the employer community because prior case law holding PAGA claims were exempt from arbitration had led to an explosion of PAGA filings and nullified many benefits of arbitration for both employers and workers.

Despite the majority's holding, however, many saw Justice Sonia Sotomayor's concurrence as opening the door for *Viking River's* undoing. Her concurrence provides, in pertinent part:

"Of course, if this Court's understanding of state law is wrong, California courts, in an appropriate case, will have the last word. Alternatively, if this Court's understanding is right, the California Legislature is free to modify the scope of statutory standing under PAGA within state and federal constitutional limits. With this understanding, I join the Court's opinion."

This leaves the fate of PAGA undecided in two ways: through the California courts and the California Legislature. Indeed, shortly after the *Viking River* decision was issued, the California Supreme Court granted review in *Adolph v. Uber Technologies*. *Adolph* requested the court to address whether *Viking River* correctly interpreted state law in holding that the plaintiff loses their standing to bring a PAGA claim if their individual claims are compelled to arbitration. There is concern that, by granting review, the court intends to undo *Viking River* by saying that the U.S. Supreme Court misunderstood California law.

Even if *Adolph* does not undo *Viking River*, we will likely see legislation pushed by the California plaintiffs' bar. At least one legislator stated publicly after *Viking River* that they would author such legislation. The likely legislative "solution" would be ***broadening*** PAGA's standing requirement because the issue in *Viking River* was that once a plaintiff's individual claims have been compelled to arbitration, they lose their standing requirement. In the U.S. Supreme Court's reasoning regarding standing, it specifically noted that PAGA could have been written more broadly, for example giving standing to anyone in the general public, not just to "aggrieved employees," but the Legislature chose not to do so. This and Sotomayor's concurrence imply then that broadening the definition of who has standing under PAGA is the legislative solution to undo *Viking River*. Amending PAGA to specifically allow workers who have had individual claims arbitrated or who no longer even have individual claims (for example, they are time barred or have been settled) will return California to a state of allowing workers who have not suffered any harm to be allowed to maintain PAGA lawsuits on behalf of all other workers and will further embolden the trend of rising PAGA claims. If the Legislature were to go a step further and allow the general public to file, there surely would be an explosion of these predatory lawsuits to further enrich plaintiffs' attorneys.

THE CALIFORNIA FAIR PAY AND EMPLOYER ACCOUNTABILITY ACT

In light of PAGA's failure to protect workers or employers, the California Chamber of Commerce, the New Car Dealers Association, California Restaurant Association, California Grocers Association, California Retailers Association, California Manufacturers & Technology Association, and the Western Growers Association are sponsoring a ballot initiative titled "The California Fair Pay and Employer Accountability Act." The initiative qualified for the 2024 ballot.

The initiative replaces PAGA with alternative enforcement mechanisms in the hands of the Labor Commissioner to ensure workers recover more of their unpaid wages in a timely manner. Those mechanisms include creating additional penalties where one is not statutorily provided and providing for double penalties where the Labor Commissioner determines the employer willfully withheld wages. The measure requires 100% of penalties for violations be paid to employees

— instead of the state. The initiative also creates a Consultation and Publication Unit to provide confidential consultation to employers and binding compliance letter advice to be posted on the unit's website. Finally, this initiative prohibits arbitration of hearings before the Labor Commissioner.

POLL SHOWS STRONG VOTER SUPPORT FOR REFORM

The CalChamber annual voter poll showed strong support to reform litigation over Labor Code violations. When asked whether they would support a ballot measure to 1) require Labor Code violations to be handled by independent state regulators, 2) require 100% of penalties go to employees instead of the state, and 3) allow employees to take their case to court if they were dissatisfied with the regulator's decision, **62%** of voters indicated their support. Further, when asked what is the best way to deal with Labor Code violations, **51%** said independent state regulators and only 11% said trial attorneys.

CALCHAMBER POSITION

PAGA is a primary concern of the employer community due to the financial leverage it provides to plaintiffs' attorneys to pursue claims for minor violations of the California Labor Code, especially as thousands of business struggle to survive the recession created by the COVID-19 pandemic. Questionable litigation that results in significant monetary settlements wherein the plaintiffs' attorneys retain a majority of the money for fees and employees are provided a minimal amount is not fulfilling the stated intent of PAGA.

The CalChamber supports any efforts to reform PAGA to ensure that labor law is enforced appropriately, and that it is not used as a vehicle to enrich trial attorneys.

Staff Contact
Ashley Hoffman
Policy Advocate

ashley.hoffman@calchamber.com
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Wage Theft

How Can California Combat It?

Intentionally withholding wages from employees is a crime, and rightfully so. The term "wage theft" has emerged in recent years to describe this act. This straightforward term, however, is being stretched now to include not only intentional wage violations, but also good faith disputes, misunderstandings of California's complex labor laws, conflicting advice offered by the State Labor Commissioner's Office, or violations resulting from changing interpretations of the law. Labor advocates and publications about workplace issues are conflating legitimate differences of opinion or misunderstandings into the separate and serious category of criminal behavior. The audience is left with the inaccurate perception that a large number of California businesses are intentionally defrauding their workers. This is not the case.

HOW IS WAGE THEFT DEFINED?

The California Department of Industrial Relations (DIR) describes the following as "wage theft":

- Being paid less than minimum wage per hour;
- Not receiving agreed upon wages (including overtime, commission, piece rate, regular wages);
- Not accruing or not allowed to use paid sick leave;
- Not being paid promised vacations or bonuses;
- Not being paid split shift premiums;
- Not receiving final wages in a timely manner;
- Unauthorized deductions from your pay
- Not being allowed to take meal breaks, rest breaks, and/or preventative cool-down breaks;
- Owners or managers taking tips;
- Failing to be reimbursed for business expenses;
- Bounced paychecks
- Not receiving reporting time pay;
- Failure to provide timely access to personnel files and payroll records.

Other unofficial parties, such as the Economic Policy Institute (EPI), cite examples such as failing to pay tipped workers the difference between tips and minimum wage or misclassifying employees as independent contractors.

Journalists and advocates use the examples developed by DIR — as outlined above — to define wage theft unconditionally, but never clarify whether the employer has *knowingly or intentionally* committed these acts, which is an essential feature of a criminal act. Therefore, these examples of wage theft can be overbroad and misleading when applied to the many circumstances when an employer makes a good faith mistake or is not familiar with the evolution of workplace wage and hour laws.

Bad actors — an employer who intentionally violates the law or withholds wages as leverage over an employee — must be penalized. But when we see sweeping reports of employees who have experienced wage theft or total dollars of wage theft committed, those statistics should be examined carefully if they conflate wage theft crimes with mistakes and misunderstandings that are resolved subsequently.

WHAT WAGE THEFT IS NOT

Intentionally failing to pay employees or providing them with required meal breaks is illegal and should be punished. But those criminal acts are categorically different from a non-English-speaking small business owner who is trying to decipher one of the 109 exemptions in AB 5 or who mistakenly does not go back and recalculate the overtime regular rate of compensation to include a bonus given to employees at the end of the year while doing their payroll by hand.

Not only are California labor laws complex; their

interpretations are ever-changing. Further, many of the laws leave room for discretion where an employer may genuinely believe they are adhering to the law, but an employee disagrees. Considering the following examples:

• **Reimbursement**: Labor Code Section 2802 provides that an employer must reimburse all "necessary expenditures or losses" incurred by the employee, which includes all "reasonable costs." A business owner would have to wade through case law to know what "reasonable costs" means, with some courts disagreeing with one another. When the COVID-19 pandemic emerged and many employees transitioned to working at home, interpreting the statute became even more difficult. Must the employer now reimburse the employee's home internet? Heating or air conditioning costs? Part of the mortgage? There was no guidance to follow, so the employer had to make their best good-faith guess, with which some employees disagreed and filed claims.

• **Worker Classification**: In 2018, the California Supreme Court dramatically changed the test for classifying workers as independent contractors. This new test is the ABC test. Later, the court decision was held to apply retroactively, meaning an employer was responsible for following the test years before they even knew it existed. The decision was codified in AB 5 and AB 2257, which now contain a combined 109 exemptions. Some, such as the business-to-business exemption, are complex and require discretion in interpretation. A small business owner is required to weigh *12 factors* to figure out whether the business-to-business exemption applies. If a worker disagrees with the business owner, they could owe astronomical penalties for overtime, meal/rest break violations, wage statement violations, sick leave violations, and penalties under the Private Attorneys General Act (PAGA).

• **Salaried Employee versus Hourly Employee**: California has 17 Industrial Wage Orders with which employers must comply. The salaried employee exemptions listed in the Wage Orders are exceptionally vague, such as a requirement that an exempt (salaried) employee is one "who customarily and regularly exercises discretion and independent judgment." Unlike the test under federal law, in California an employee must spend at least 50.1% of their time engaged in exempt duties each pay period, or an employer can be liable for overtime payments and meal and rest break payments under the Labor Code. An employee can even claim that one pay period they were exempt and the other they were not. Similar to the reimbursement and worker classification examples above, the employer is making their best, reasonable estimation as to whether their employees spend more than 50% of their time performing qualifying activities. Under the definition above, any disagreement by the employee on the percentage of time spent on exempt duties may result in the employer being held liable for wage theft.

• **Meal and Rest Breaks**: California has strict rules regarding when employees must take meal and rest breaks. Many employers have lawful policies instructing workers to take their breaks by the required times. Yet the employers may face claims of denied meal or rest breaks. The claim often comes in the form of a PAGA lawsuit filed by one employee, who has the power to allege missed breaks for every single other employee without proof that the missed break ever happened.

Although *Brinker Restaurant Corp. v. Superior Ct.*, 53 Cal. 4th 1004 (2012) technically held that employers need not "police" employees to ensure they take their breaks on time, in reality, that is not the case. This is because time records showing an employee had a late or short meal break create a presumption that the employer violated the law and denied a meal break, meaning the employer is required to prove that the employee did so voluntarily. *Donahue v. AMN Services, LLC*, 11 Cal. 5th 58 (2021). Therefore, it is nearly impossible for the employer to prove otherwise, especially in a class action or PAGA lawsuit.

• **Reporting Time Pay**: Before 2019, the Labor Commissioner and California employers believed that reporting time pay was owed to an employee only if the employee physically reported to work and was sent home early. Under these circumstances, the employer would pay the employee for half of their shift, up to four hours. In 2019, the California Court of Appeals issued an opinion in *Ward v. Tilly's*, 31 Cal. App. 5th 1167 (2019), that significantly changed the interpretation of the reporting time pay requirement. To the surprise of many, the court held that employees who made a single phone call two hours before their shift to ask whether they were required to come in to work and were told not to come in should have been paid reporting time pay. The court refused to address whether its interpretation was retroactive, and the California Supreme Court denied review, leaving employers exposed to liability. *Ward* demonstrates how drastically California labor law can change in an instant and how a small business with no general counsel or human resources department could easily miss these kinds of decisions.

• **Personnel and Time Records**: Labor Code Sections 226 and 1198.5 require employers to provide personnel records and time records to employees if requested. These requests usually are submitted together. Each statute has a different strict

timeframe within which the records must be provided. It is easy to see a small business owner not being aware of the different requirements under each of these separate laws buried in the Labor Code. By the above definition, even accidently providing these records one day late would be considered "wage theft."

AB 1003 (Lorena Gonzalez; D-San Diego) (2021) is a good example of the importance of distinguishing between employers who know they are violating the law and those who do not. The bill as introduced originally would have made any failure to pay wages a felony, regardless of intent. The California Chamber of Commerce and others strongly opposed the original bill based on the reasons above: that the law ultimately would punish honest employers doing their best to comply with the nation's most complex, ever-changing set of labor laws. The Assembly Public Safety Committee agreed and forced amendments to clarify the law would apply only to those who intentionally violated the law.

As explained in the Assembly Public Safety Committee analysis of AB 1003:

"The committee amendments would also narrow the conduct that would qualify as wage theft under the bill. Rather than defining wage theft as any violation of law that results in the loss of wages, benefits, or other compensation, the conduct would instead be limited to instances of deprivation of wages, benefits, or other compensation by fraudulent or other unlawful means, where the employer has knowledge that they are legally obligated to pay them to the employee. This amendment is aimed at trying to focus the bill's attention on the bad actors who are truly attempting to steal from their employees, as identified in the EPI's report, as opposed to employers who make a genuine mistake about owed wages, or employers who have a good-faith belief that they owe less than what the employee claims to be owed."

SOLUTIONS TO ADDRESS WAGE THEFT

There is no question that California must dedicate resources to stopping true, intentional instances of wage theft, ensuring that workers receive owed wages in a timely manner, and making it easier for businesses to understand and comply with the law so that they are not making mistakes or exposed to liability for a reasonable interpretation of a statute.

One of the most important ways to prevent wage theft is to ensure that employees have access to justice through the Labor Commissioner's office. In 2015, the CalChamber partnered with labor groups to enact SB 588, which provided the Labor Commissioner with unprecedented tools and authority to address wage theft. Specifically, SB 588 allows the Labor Commissioner to engage in the following actions against bad actor employers:

- Labor Commissioner can place a lien on any of the employer's property in California to satisfy wages owed to an employee – the lien lasts for up to 10 years;
- Requires an employer to post a surety bond if they haven't paid a final judgment within 10 days;
- Allows the Labor Commissioner to issue a stop order if any employer operates without a bond;
- Allows the Labor Commissioner to impose successor liability for unpaid wages, so that an employer cannot shut down and reopen as a different company to avoid liability;
- Creates joint and several liability for listed employers;
- Imposes personal liability for managing agents of employers.

Staffing shortages, however, are hampering DIR's ability to utilize these resources effectively and to timely adjudicate wage claims. According to a report last year by *CalMatters*, the division is presently failing to meet statutory deadlines. Instead of the 135-day statutory timeline within which wage claims are supposed to be adjudicated, some employees are facing wait times of several years. The delay is attributed largely to a 30% staffing vacancy rate.

California must examine the cause of these vacancies and deploy strategies to remedy the problem. It is critical, however, that the solution *not* be to shift more enforcement to the private plaintiffs bar. Abuses of PAGA demonstrate that attorney fees and high settlements are prioritized over fair adjudication of claims in private litigation.

Another solution is to ensure that all employers have access to guidance regarding application of labor laws. For example, the DIR website is available only in English. Few resources are available in Spanish and most of the Spanish resources are contained just in a lengthy "index" that is not organized by topic like the rest of the website. No online resources are available in other languages commonly spoken in California, such as Chinese, Tagalog or Vietnamese. Translating DIR's website in full into more languages, and providing better outreach from the agency, would help both small business owners and employees understand how to apply California law.

CALCHAMBER PERSPECTIVE

It is important that the term "wage theft" be used accurately to describe bad actors who are intentionally violating the law. Otherwise, unintended consequences of any related legislation or regulatory action are likely to unfairly punish honest

employers, especially small businesses that are simply trying to decipher California's complex, lengthy, and ever-changing labor laws.

The CalChamber supports combatting wage theft by ensuring that the Labor Commissioner is able to timely adjudicate wage claims and increasing understanding about labor laws, such as through increased translation of online resources for both workers and employers.

Staff Contact
Ashley Hoffman
Policy Advocate

ashley.hoffman@calchamber.com
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California Privacy Rights Act

Employee and Business-to-Business Information Must Be Permanently Exempted from Privacy Rights Act to Avoid Unintended Consequences

- California Consumer Privacy Act (2018) created eight core privacy rights for consumers, with various exemptions.
- California Privacy Rights Act (2020), a voter-approved initiative, revised/expanded rights enacted by the 2018 law.
- Privacy law exemptions for employees and business-to-business transactions were part of both the original law negotiated in 2018 and the 2020 initiative.
- Reinstating the exemptions permanently provides certainty to employers that "consumers" are not "employees" and can prevent negative unintended consequences harmful to workers and employers.

HISTORY OF PRIVACY ACTS

In 2018, the Legislature unanimously passed AB 375 (Chau et al., Chapter 55, Statutes of 2018), enacting the California Consumer Privacy Act (CCPA), to increase transparency and consumer control over the collection and sale of their personal information (PI), and to supplant a pending ballot measure, as discussed below.

The CCPA is a landmark, comprehensive, technology-neutral, and industry-neutral consumer privacy law, meaning that it applies to businesses of all sizes, across all industries, and irrespective of the specific technology (if any) used to collect or sell consumer PI. Modeled in part on the European Union's General Data Protection Regulation (GDPR), which took effect in May 2018, the CCPA was the first comprehensive consumer privacy statute of its type in the United States.

Since then, similar statutes modeled after the CCPA have passed in Colorado and Virginia. Similar legislation has been proposed in more than 20 states, including New York and North Carolina.

The CCPA created roughly eight core privacy rights for consumers, subject to various exemptions:

1. **Right to be told** (right to disclosure, for example, per a privacy policy) the following:
   a. A description of a consumer's rights under the CCPA (Civil Code Section 1798.130(a)(5)(A)).
   b. The categories of personal information (PI) that a business collects about consumers, and the purposes for which they will be used, at or before the point of collection (Civil Code Section 1798.100).
   c. Specified categories of information relating to the collection and/or sale or disclosure of PI for a business purpose, such as the categories of sources from which the PI was collected, the categories of third parties with whom information is disclosed, and the business or commercial purposes for collecting/selling consumer PI (Civil Code Sections 1798.110 and 115).
2. **Right to know/request access to** certain categories of information from a business that *collected* PI about a particular consumer in the preceding 12 months (Civil Code Section 1798.100 and .110), and/or *sold or disclosed PI for a business purpose* about a particular consumer in the preceding 12 months (Civil Code Section 1798.115), upon receipt of a verifiable consumer request. Among other things, the consumer also has the right to know the categories of sources from which the PI is collected and categories of third parties to whom the business discloses PI (Civil Code Section 1798.110), as well as the third parties to whom the business sold its particular information, including the category or categories of PI sold to each category of third party (Civil Code Section 1798.115). The consumer also has the right to **request access to specific pieces of information** collected about them, from a business that collects PI about the consumer (Civil Code Section 1798.110).

3. **Right to request deletion** of data collected *from* that consumer, subject to additional exceptions. (Civil Code Section 1798.105).

4. **Right to opt-out** of the "sale" of PI, or opt-in if under the age of 16. (Civil Code Section 1798.120).

5. **Right against discrimination** for exercising rights under the CCPA. (Civil Code Section 1798.125).

6. **Right to a limited private right of action** for specified statutory damages for certain data breaches involving non-encrypted, non-redacted PI. (Civil Code Section 1798.150).

7. **Right of notice and opportunity to opt-out of sales of PI sold to third parties**. A third party is prohibited from selling PI about a consumer that was sold to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to exercise their opt-out rights. (Civil Code Section 1798.115).

8. **The right to portability of PI,** if delivered in electronic form (Civil Code Section 1789.100).

In creating the CCPA in 2018, however, stakeholders were explicit in ensuring that the law exempted employee and business-to-business information from these rights, as stakeholders recognized there already were existing regulations in these areas and that this data is used in a very different way than consumer data.

The CCPA had a delayed operative date of January 1, 2020, contingent upon the withdrawal of a then-pending ballot initiative (initiative measure No. 17-0039, Consumer Right to Privacy Act of 2018) sponsored by Californians for Consumer Privacy. This ensured that the CCPA would not become operative at all if the initiative was not withdrawn from the ballot as its proponents promised (Civil Code Section 1798.198).

All parties involved in the negotiations and passage of the CCPA recognized that the law had flaws, but generally felt it was the preferred alternative to the initiative for two key reasons.

• First, by negotiating to have the statute passed through the Legislature, the CCPA was opened to input from a broader group of legislators and stakeholders.

• Second, the law also ensured that the CCPA could be amended in the future based on a majority vote of the Legislature, as opposed to the two-thirds requirement mandated in the competing initiative.

CALIFORNIA PRIVACY RIGHTS ACT

Following up on their legislative success in 2018, proponents of the CCPA qualified and passed Proposition 24 in 2020, enacting the California Privacy Rights Act of 2020 (CPRA). Among other things, the CPRA revised, or otherwise expanded, the rights afforded under the CCPA by:

• Extending the exemptions for employee and business-to-business information until January 1, 2023.

• Requiring additional disclosures/notices at or before the point of collection.

• Adding a new right to correct data.

• Expanding the right to delete so that it extends to any third parties, service providers, or contractors to whom a covered business discloses the consumer's data.

• Applying existing CCPA consumer rights, including the right to opt-out, to the sharing of a consumer's PI, and not just selling or sharing PI for monetary or valuable consideration.

• Providing the consumer an expanded right of access to all their data (starting on January 1, 2022), not just data collected or disclosed in the last 12 months.

• Incorporating the concept of data minimization, defining a new category of PI, called sensitive personal information (SPI), and establishing a consumer's right to direct businesses to limit use of SPI.

WHY EMPLOYEE EXEMPTION IS NECESSARY

An employee exemption is necessary to ensure that records which employers are required to maintain are not inappropriately disclosed or destroyed. For example, an employee facing a human resources complaint could have information destroyed that would be essential in an internal or criminal investigation.

The CCPA was designed to apply only to consumer "personal information," defined as information that "identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly, or indirectly, with a particular consumer or household." The definition of "personal information" also includes a consumer's "professional or employment-related information." Thus, the exemption exists to prevent this broad definition from being interpreted to capture information that falls outside of the consumer context.

As a practical matter, for an employer, this provided assurance that the CCPA does not apply to all information found on an employee's computer or work phone, information found in their physical office or workspace, handwritten materials or post-it notes, and any other information that potentially falls under the broad umbrella of "personal information" as defined in the CCPA. Such broad application would not only be inconsistent with legislative intent, but it would create tremendous legal consequences for both employers and employees

and cause the CCPA to conflict directly with existing laws and rights under the Labor Code or other employment laws.

For example, in many cases, employers are *required* by state and federal law to collect employee information; thus, the application of CPRA's privacy rights would be fundamentally inconsistent with existing laws and policies designed to protect workers. Indeed, courts have even acknowledged limited rights to privacy when using employer-issued computers or email software, years before the CCPA was even enacted. *See*, for example, *Holmes v. Petrovich Development Co., LLC*, 191 Cal. App. 4th 1047, 1068-70 (2011) (employee emailing personal attorney on her work computer was akin to talking to them in a "conference room, in a loud voice, with the door open"). Accordingly, the employee exemption was placed in the CCPA.

WHY BUSINESS-TO-BUSINESS EXEMPTION IS NECESSARY

Similarly, the CCPA was designed to apply only to PI collected in the context of a consumer transaction or communication. Naturally, businesses that contract with one another for products or services will exchange information to carry out contracts and daily business functions — information that would invariably include the PI of any employee(s) involved in that exchange of business-to-business information based on the breadth of the CCPA and CPRA definition of "personal information."

Thus, to prevent the disclosure of confidential information and to avoid interference with the daily operations of businesses with overwhelming compliance obligations, certain business-to-business information was exempted expressly from much of the CCPA's application. As part of the compromise, however, it was clarified that such information still is subject to the new, limited private right of action for data breaches.

The exemption applied to information that allows businesses to conduct business transactions with one another when no individual consumer is involved. Specifically, it applied to "personal information reflecting a written or verbal communication or a transaction" between the business and an employee or contractor of another business where the communication or transaction occurs in the context of a business conducting due diligence on another business, or the business providing or receiving a product or service to or from such organization. This included, for example, information contained in emails between two companies regarding a purchase order or contract.

Small and large businesses relied upon this exemption to carry out regular day-to-day operations and tasks, examples of which range from supply chain and logistics to retail operations to producers of digital media and content. The exemption also allowed businesses to carry out philanthropic, good-will work with efficiency. Similar to employee information, CCPA's framework was not intended for and does not make sense in this non-consumer context but could be misinterpreted to give people the right to request access to proprietary information or delete pertinent documents.

CONTEXT BEHIND EMPLOYEE AND BUSINESS-TO-BUSINESS EXEMPTIONS

To understand the implications of and policy issues related to the expiration of the employee and business-to-business exemptions, it is important to consider the context of this conversation against the text of the CCPA.

• **First, business, labor and the Legislature saw the exemptions as entirely consistent with how the Legislature interpreted the existing CCPA, where these exemptions originally were enacted.** It never intended for the term "consumer" to encompass employees. Given the rushed nature of passing the CCPA in time for the competing initiative to be pulled off the ballot, significant clean-up legislation was warranted and work on that began immediately upon the passage of the CCPA.

The Legislature was clear in its intent not to weaken any of the CCPA rights in passing clean-up legislation, which included the "employee" and "business-to-business" exemptions. Stated another way, implicit in the genesis of these clarifying, "clean-up" amendments to the CCPA was that the Legislature was providing clarity on these issues. It was not changing how the law would have operated in the absence of those express statements.

• **Second, the exemptions turned on the reality that an individual could be wearing one of two hats when interacting with a business: one as a consumer, and one as an employee.** Whereas the former clearly was captured by the CCPA as the focus of the new consumer privacy law, the latter was not. The exemptions also centered on the potential misreading of incredibly broad definitions used throughout the act.

Specifically, the term "consumer" was drafted broadly under the CCPA to mean a natural person who is a California resident, however that person might be identified (such as by way of a unique identifier). While it generally was understood that "consumers" are not "employees," many entities wanted additional certainty in the plain text of the law to avoid any incorrect interpretations of that term in the future. This ultimately led to the "employee" exemption. Although a

sunset was added to this exemption, it was done solely to bring stakeholders back to the negotiation table for conversations around that data, specifically — not to imply that applying the CCPA only to consumers would be temporary. To further aid in those future conversations, a narrow limitation also was placed on this exemption to ensure that businesses provided their employees disclosures as to what data is collected per Civil Code Section 1798.100.

WHY THE SUNSETS EXISTED

For the above reasons, stakeholders agreed upon separate exemptions for employee and business-to-business information to avoid the problematic results that would ensue, as well as conflicts with existing laws. Due to the timing of the negotiations, stakeholders agreed to a sunset to both exemptions in order to encourage discussions around how best to address employer and employee data privacy issues, but to date no solution has been enacted by the Legislature. Those sunsets initially were set to expire on January 1, 2021, but were extended by way of Proposition 24, the CPRA, to January 1, 2023. In the event that Proposition 24 did not pass, the January 1, 2021, sunsets also had been extended by way of legislation with unanimous approval of the Legislature and without any objection from stakeholders. (*See* AB 1281 (Chau; D-Monterey Park; Chapter 268, Statutes of 2020.)

Given the expiration of the sunsets on January 1, 2023, applying the CCPA to employee and business-to-business information will not only create serious issues and unnecessary complications for employers and workers, but also unnecessary litigation if conflict were to arise over the interpretation of the privacy law, in the absence of these express exemptions.

EVEN WITHOUT CCPA, EMPLOYEE DATA IS PROTECTED UNDER THE LABOR CODE

Even before passage of the CCPA, California law provided workers with certain rights regarding employment-related documents. These protections are memorialized in the Labor Code and are separate from the CCPA. This means that the CCPA exemption for employee data does not diminish existing employee data protections.

Thus, even if there was no sunset on CCPA's exemption for employee data, employees would retain these same protections under the Labor Code. For example:

- **Right to Access**: payroll records (Labor Code Section 226), personnel records (Labor Code Section 1198.5), documents signed by employee (Labor Code Section 432).
- **Right Against Retaliation**: unlawful to retaliate for exercising rights (Labor Code Sections 1024.6, 1102.5; Government Code Section 12940(h)).
- **Right to Correct**: may correct contact information, employment status, Social Security number, etc. (Labor Code Section 1024.6).

The CCPA does not, and should not, apply to employees' "personal information" because the results would be untenable. An employee should not have the ability to request access to all their personal information, requiring the employer to go through thousands of electronic and physical documents, including every email ever sent or received by the employee or even containing their name; paper files; payroll records; and notes and objects in physical offices. For any employer that has experienced electronic discovery for litigation, even limited electronic searches and reviews cost thousands of dollars and take hundreds of hours to complete. Putting this burden on employers is impractical and does not align with the true purpose of the CCPA: to provide consumers with more control over their personal information in their relationships with businesses.

For example, an employee considering filing a claim against their employer could try to use the consumer right to know as a means of side-stepping civil discovery rules. Use of that consumer right by an employee also could lead to the disclosure of proprietary information or communications that normally would be protected under privilege, such as the attorney-client privilege, depending on how the CCPA exemptions are interpreted, such as the exemption for exercising or defending legal claims.

In addition, the right to delete could be problematic as well. Despite specific exemptions to this right under the CCPA, granting this right to employees could be interpreted by some as creating a nearly unfettered right to delete emails or other files. An employee who has acted inappropriately toward others in the workplace (for example, sexual harassment) should not be allowed to demand deletion of any incriminating emails, texts or instant messages. Continuing the exemption would have assured employers that, even under the CCPA, they can retain evidence for any future litigation or investigation.

Applying this right to delete in the employer-employee relationship conflicts with existing laws that require employers to maintain certain documents and records. Determining which law governs would ultimately become a question for the courts to decide. This would not only create unnecessary litigation (given the implicit understanding of how the CCPA operated even before the inclusion of the express exemptions), but it

also would put judges in the position of policymakers. These layers of statutory conflict also would leave employers confused about their legal obligations under the CCPA as opposed to the California Labor Code, federal record-keeping requirements, and agency regulations. The impact would not be just to covered businesses; it also would affect other businesses that serve as contractors, service providers or the like in engaging in communications or transactions with covered businesses.

Another example is the right to correct, which is not limited expressly in statute to information that can be verified factually. Without the exemption, employees may be allowed to "correct" any information they personally deem to be inaccurate. Whether a piece of PI is "inaccurate" would be subjective to the employee and conceivably could include investigations or performance reviews involving that employee.

The above issues are just examples of the potential consequences and confusion that affect both employers and workers.

It is evident why other states with CCPA-styled privacy laws or pending bills have chosen to permanently exclude employee data. Because the CCPA's framework is inappropriate in the employee/employer context, the employee exemption should be reinstated and remain in place indefinitely, consistent with the underlying intent of the Legislature when passing the CCPA and subsequent clean-up legislation, as well as with the voter-approved CPRA, which maintained those exemptions.

CALCHAMBER POSITION

CalChamber supports reinstating the employee and business-to-business exemptions permanently. To the extent the State wishes to address the subject of employee privacy or employee data, that issue should be addressed through a separate statutory framework. Permitting the exemptions to expire could have serious unintended negative consequences that would harm both workers and employers.

Staff Contacts
Ashley Hoffman
Policy Advocate

ashley.hoffman@calchamber.com

Ronak Daylami
Policy Advocate

ronak.daylami@calchamber.com

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California Consumer Protection Act

Regulatory/Compliance Issues

- Regulations to implement the California Privacy Rights Act (CPRA) are delayed and it is unclear when the final regulations will be adopted, in part or in full.
- Delay in regulations hurts businesses and consumers alike, making it harder to effectuate the CPRA rights in a timely and cost-efficient manner and deliver the benefits of those rights to consumers, as required as of last January 1.
- The California Chamber of Commerce will continue to participate fully in regulatory activities while also opposing and highlighting efforts of the California Privacy Protection Agency (CPPA) that exceed its statutory authority.
- The CalChamber supports efforts to provide businesses additional time to come into compliance and a longer moratorium against enforcement actions by both the CPPA and the Office of the Attorney General, given the agency's delays.

BACKGROUND

When voters approved Proposition 24 in 2020, enacting the California Privacy Rights Act (CPRA) effective January 1, 2023, they also established a brand-new privacy agency (the CPPA) and mandated that the agency adopt implementing regulations for the CPRA. Specifically, the voter-approved law provided businesses six months between the date that final

regulations were due from the agency (July 1, 2022) and the date the CPRA takes effect (January 1, 2023) to ramp up and prepare for full implementation of the law, and an additional six months from the effective date and one year from the regulations being adopted to work out any compliance issues prior to enforcement actions commencing.

These regulations are integral to business compliance. They directly affect businesses' ability to operationalize the CPRA correctly, and in a privacy protective manner, as approved by voters.

As of the end of December 2022, those regulations have not yet been adopted by the agency. The regulations remain in draft form, and it is unclear when they will be finalized and whether additional CPRA regulatory packages still are anticipated.

What is clear is that the regulations: (1) will not take effect before January 1, 2023, even though businesses are legally required to be fully compliant with the law; and (2) will be incomplete (draft regulations have not addressed topics such as risk assessments, automated decision making, and more). This is not merely a case of dilatory rulemaking — it has created an untenable position for businesses attempting to comply with the law. For example, businesses will be subject to a requirement to conduct audits under the CPRA, without any information as to what those audits need to include to be compliant. Although enforcement cannot commence until July 1, 2023, it is possible that these regulations will not be in place by the time enforcement commences or will be finalized so late

that businesses will have little time to implement the rules.

Further, with the expiration of the employee and business-to-business exemptions, the lack of any regulations on applying the CPRA to the employment context will make it impossible for businesses to comply with the law, regardless of effort.

The absence of regulations in place as of the effective date of the act requires businesses to waste critical resources, dedicating personnel, time and cost to implementing the law based on the business's best interpretation, leaving the business at risk of needing to make potentially significant and costly changes immediately when the final regulations are adopted. Finally, businesses inevitably will be held accountable for errors that could have been avoided if regulations had been in place on time and as required by voters.

The CalChamber has been and will continue to be an active participant in all rulemaking activities of the California Privacy Protection Agency. The CalChamber provided written comments during both rounds of public comments thus far and plans to provide written public comment on future draft regulations, with an overarching goal of identifying any operational issues, unintended consequences to either businesses or the customers they serve, and/or any regulations that exceed the CPPA's authority or requirements that otherwise should be reserved for legislative action. The CalChamber endeavors to keep the Legislature and key policy committees (Assembly Privacy and Consumer Protection Committee and Senate Judiciary Committee) apprised on both the agency's progress and the CalChamber's regulatory priorities/concerns as the regulatory effort moves forward.

CALCHAMBER POSITION

The CalChamber strongly supports greater legislative oversight over the current rulemaking process and would support legislation that is both privacy protective (by ensuring regulations are not rushed which will inevitably lead to unintended consequences) and realistic in setting compliance expectations that consumers and businesses can rely upon (by adjusting compliance and enforcement deadlines such that businesses can operationalize the law correctly). The CalChamber also supports legislative or executive efforts that will help avoid any potential unintended harms of allowing the employee and business-to-business sunsets to lapse.

The CalChamber opposes regulations that conflict or otherwise go beyond the scope of the California Privacy Protection Agency's statutory authority, including on topics such as the optional global opt-out preference signal. The CalChamber also opposes regulations that either would create compliance issues or undermine consumer privacy when operationalized; implement vague standards that add to confusion/lack of clarity; or otherwise conflict with other important public policy goals.

To reduce compliance burdens, the CalChamber generally supports regulations that reduce operational challenges or which harmonize with other states' laws and regulations.

Staff Contact
Ronak Daylami
Policy Advocate

ronak.daylami@calchamber.com
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Data Privacy Laws

Pausing Changes Will Give Businesses Time Needed to Put Current Law into Effect

- The California Privacy Rights Act (CPRA) is not yet fully operationalized and it is unclear when it will be, given the delay of regulations.
- Efforts to identify "gaps" in the CPRA or to otherwise expand the CPRA are premature, since the CPRA is not yet in effect. New laws would only make compliance more difficult and elusive, ultimately undermining/weakening consumer rights.
- The CPRA is a comprehensive, technology-neutral and industry-neutral law, which is critical on an operational level. As such, the California Chamber of Commerce: (1) will oppose new efforts to implement special restrictions for specific types of personal information (PI) that already are protected by the CPRA, or specific restrictions based on types of technologies or industries collecting PI; (2) will not support efforts that wholly remove or restrict consumer choices by blanketly prohibiting certain activities; and (3) will actively oppose any efforts that would create confusion to applicable rules to certain subsets of PI or the industries or technologies used to collect personal information and/or would add a new private right of action to the CPRA or to PI-, industry-, or technology-specific legislation.

- The CalChamber believes it is critical to focus on enforcing existing rights and will advocate in favor of efforts to address compliance and help ensure that businesses can effectuate existing rights for consumers, as well as efforts that help make compliance less costly and burdensome.

CALIFORNIA CONSUMER PRIVACY ACT

In 2018, the Legislature passed AB 375 (Chau; D-Monterey Park et al., Chapter 55, Statutes of 2018), enacting the California Consumer Privacy Act (CCPA), in lieu of a competing initiative effort that was eligible for the ballot (initiative measure No. 17-0039, Consumer Right to Privacy Act of 2018). By undertaking this legislative effort, the Legislature was able to accomplish three major objectives:

• Allow greater participation and input from a variety of stakeholders to strike a better balance between competing interests;

• Incorporate tradeoffs that would add or enhance various consumer rights and protections on the one hand, and remove certain provisions to address workability issues/legitimate business practice concerns and otherwise limit liability exposure for businesses on the other; and

• Ensure that the Legislature could amend that law with a simple majority vote in most cases, as opposed to a two-thirds vote that was mandated by the initiative. As described in the AB 375 Assembly Privacy and Consumer Protection Committee analysis at the time of the bill's passage:

"…in order to reach a legislative compromise on the issues surrounding the collection and sale of a consumer's PI by a business, the authors of this legislation have sought to both add protections to the initiative, and remove various provisions that raised workability issues/legitimate business practice concerns and otherwise limit liability exposure. The tradeoffs to address industry concerns and counterbalance the consumer rights added within this bill, include the following:

"• the removal of the initiative's whistleblower provisions;

"• a significant reduction of business' liability exposure pursuant to consumer-initiated actions;

"• a right to cure, when possible, both in the public and private enforcement provisions;

"• a limitation of public enforcement to actions by the AG [Attorney General] and explicit authorization to receive guidance from the AG on compliance as the single regulatory entity;

"• a recognition of the ability of businesses to engage in various research-related activities, such [as] for internal research and development, or other allowable forms of research with specified safeguards that would both ensure informed consent and better protect the consumers' information used in the research;

"• additional express exemptions, such as to exercise or defend legal claims, or for PI collected, processed, sold, or disclosed pursuant to certain federal laws, if the handling of the PI is in conflict with that [of] those laws.

"• language clarifying that businesses are not required to retain PI in situations where they would not ordinarily maintain that information (which would also undermine consumer protections);

"• authorization to engage in certain financial incentive programs, as specified, such as free subscription services in exchange for advertising where the value to the consumer is based on the consumer's data, as long as the financial incentive program is not unjust, unreasonable, coercive, or usurious and is directly related to the value provided to the consumer by the consumer's data;

"• a narrowing of the definition of 'sell' to remove reference to situations that do not involve valuable consideration; and

"• limit the obligation of businesses to reveal to consumers to whom the consumer's PI was collected and shared with, or sold to or disclosed for a business purpose to, to 'categories' of third parties, as opposed to specific third parties."

(*See* June 27, 2018 Assembly Privacy and Consumer Protection Committee analysis of AB 375 (2017–2018 Reg. Session), pp. 15-16.)

CALIFORNIA PRIVACY RIGHTS ACT

Notably, although AB 375 was passed in 2018, the CCPA became operative January 1, 2020, which allowed businesses time to take necessary steps to operationalize the law. However, by November 2020, the 2018 initiative proponents, who were heavily involved in the AB 375 negotiations to obtain their agreement to remove the initiative from the ballot, succeeded in winning voter approval for Proposition 24, enacting the California Privacy Rights Act (CPRA). The CPRA not only changed and/or added new rights to the CCPA, such as the right to correct, but also removed key elements of the AB 375 negotiated compromises even before the ink on that law had dried. Two of the critical negotiation points that Proposition 24 removed included:

• the limitation of public enforcement to actions by the AG and explicit authorization to receive guidance from the AG on compliance as the single regulatory entity;

• the narrowing of the term "sell" to remove reference to situations that do not involve valuable consideration.

Like the CCPA, the CPRA included delayed implementation for nearly all of its provisions. Specifically, the act takes full effect on January 1, 2023. And once again, like what happened on the heels of passing the CCPA, the passage of the CPRA has not deterred efforts by consumer advocacy groups to move the goalpost again even though the updated data privacy law has not even taken effect, and implementing regulations for that act are not only behind schedule but will not be in place come January 1, the putative effective date.

In the prior 2021–2022 legislative session, a significant number of bills were introduced on the premise that there are gaps in the law for consumer protection in relation to specific types of PI; or the CPRA does not go far enough and should be strengthened because of the importance or sensitivity of particular data. That reasoning ignored that the CPRA is not yet operationalized, making such determinations premature,

and that different consumers may consider different PI to be more or most sensitive.

Stakeholders should not be allowed to substitute their judgment for that of consumers when it comes to making such determinations. We saw multiple examples of this proposed in 2022 with SB 346 (Wieckowski; D-Fremont) and SB 1189 (Wieckowski; D-Fremont), which, if implemented, would have restricted the options consumers have in how their PI could be used.

Neither consumers who are the subject of protections, nor businesses that are the target of restrictions are monolithic. Such diversity of priorities does not necessitate or warrant separate restrictions for every type of PI or every industry or every technology; it merely speaks to the importance of a comprehensive-yet-flexible framework that applies uniformly. This approach recognizes that the more laws and regulations passed that take a piecemeal, PI-specific, technology-specific or industry-specific approach to privacy rights and public policy in this state, the harder it becomes for businesses to effectuate and deliver those rights to consumers in a comprehensive and effective manner. At minimum, it cannot be assumed that more restrictions will translate into better protections. A comprehensive, flexible framework has the added benefit of avoiding the Legislature picking and choosing winners and losers among industries and companies, where the privacy concern of the consumer is equitable.

In the last year, the California Chamber of Commerce opposed and defeated numerous bills that would have, for example:

• Applied extensive prohibitions regarding student PI when in the hands of proctoring service businesses only.

• Established significant new restrictions for biometric information along the lines of the Illinois Biometric Information Privacy Act (BIPA), ignoring not only that biometric information is protected under the CPRA, but that Illinois does not have a comprehensive data privacy statute along the lines of the CPRA — nor do any other states that have a BIPA-type statute. Having the CPRA in California directly undercuts the need for a BIPA statute.

• Imposed new restrictions based on the collection of PI by an in-camera vehicle or a smart speaker, but not for phone or home computers, which may capture the same data.

With alarming frequency, the argument has been that "the CCPA was the floor, not the ceiling." This post hoc rationalization ignores the ramifications of returning to a piecemeal approach to data privacy. Relying on this logic as justification for adding to or changing the CPRA now ignores the reality that the so-called floor has not yet settled. Without a solid foundation, any effort to build that second or third floor is bound to crumble and potentially bring the whole house down to the detriment of both businesses and consumers alike.

This argument also relies on the false premise that to strengthen consumer rights, new laws must be passed. There can be as much, if not more impact, if adequate attention were provided on the back end to implementing regulations and compliance efforts, as well as public awareness efforts that help consumers understand and exercise their existing rights.

The CalChamber strongly believes that businesses and consumers alike would benefit more — that privacy laws could be strengthened — if the Legislature simply stopped moving the data privacy goalpost long enough for businesses and consumers to effectuate and exercise existing rights. Hitting the pause button on changing the rules long enough to allow the California Privacy Protection Agency to adopt implementing regulations in a stable legal environment will allow businesses the time necessary to put those rules and regulations into action.

CALCHAMBER POSITION

The CalChamber opposes any new privacy legislation that creates carve-outs or special/disparate rules that would layer on top of the CPRA for only certain types of personal information, industries, or technologies used to collect the personal information. We also oppose any efforts to add a private right of action to either the CPRA, or to separate statutes that would apply to information that is otherwise protected under the CPRA.

Staff Contact
Ronak Daylami
Policy Advocate

ronak.daylami@calchamber.com

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Cybersecurity

Collaborative Training Better Defense Against Cyberattacks than Punitive Rules

- There is more than one way in which the state can increase data protections.
- The state is increasingly vulnerable to cybersecurity attacks in a post-COVID world. The California Department of Finance just suffered a cyberattack in December 2022.
- The responsibility to prepare and defend against such attacks falls on all: government, business and individuals.
- There is no silver bullet solution when it comes to cybersecurity and increasing restrictions or passing increasingly punitive laws upon businesses cannot change that. Moreover, humans are the weakest link in our cybersecurity preparedness and defense.
- Other states have incorporated interesting concepts such as cyber ranges to help educate and train their current/future workforce. California has made great strides in cybersecurity preparedness, particularly by partnering with experts across government, academia and the private sector. But more needs to be done to improve the cyber awareness, hygiene and skills of not only current and future information technology (IT) staff, but also ordinary citizens.

BACKGROUND

Data protection laws share an underlying goal: to prevent the misuse and/or unauthorized access and use of private or otherwise confidential data.

There is a tendency to associate the concept of "data protections" with data privacy laws regulating the collection, use, retention and dissemination of personal data by an industry or industries, particularly in the post-General Data Protection Regulation (GDPR), post-California Consumer Privacy Act (CCPA) world. Such laws commonly entail:

• Transparency requirements, such as disclosures around data practices in privacy policies to help empower consumers to make informed decisions;

• Limitations around the permissible data practices of businesses based on the business purpose, commercial purpose, or other purposes for which the data may be used; and

• Granting consumers rights that enable them to exert control or make choices limiting how their personal data is collected, used, retained and/or otherwise disseminated, such as by way of giving them the ability to delete data, the ability to correct data, and/or the right to restrict (that is, opt out of or opt in to) certain transfers or disclosures of their data.

But those laws are not the end-all, be-all when it comes to data protection.

In reality, data protection can come in many different forms,

including data breach or cybersecurity laws aimed at protecting against and responding to the unauthorized access and use of data such as by way of cyberattacks, cybercrimes, or other "hacks." (*See*, for example, California's Data Breach Notification Law, Civil Code Section 1798.82.) Such laws can, for example, include mandated security standards and procedures to help protect against attacks, set the obligations of an entity that is breached or attacked, and can seek create deterrents by way of criminalizing the activities.

Our social compact presumes that if reasonable care is taken, negative outcomes can (largely) be prevented; that compliance with safety regulations ensures safety. In the realm of cybersecurity, however, there is widespread recognition that failure is inevitable. An entity — be it a private or government entity — could undertake every reasonable precaution, properly/adequately train its employees on a regular basis, use the most secure technologies available, and follow best practices — and still fall victim to some form of data breach or hack. Stated another way: ***when it comes to cybersecurity, there is no silver bullet solution that can guarantee protection***. As Ivan Novikov, CEO of the prominent data security firm Walleye stated: "After spending $157 billion over the last two years on data security … it is unclear what needs to be protected from (whom)." (*"Why Is There No Silver Bullet In Cybersecurity?" Forbes Technology Council, August 4, 2017*)

Another commonly understood reality? ***Humans are cybersecurity's weakest link***.

That is not to suggest that it is pointless to try to protect against attacks. It is only to say that the problem goes much deeper than businesses "taking more care" or "not taking enough care."

Accepting these realities and knowing that new vulnerabilities are being found constantly calls into question whether we do enough as a *society* to prevent attacks. Is the best use of societal resources imposing new data privacy restrictions on businesses or mandating increasing statutory or civil damages, if the goal of these laws and regulations is to ensure data protection? If humans pose our weakest link, then it is with our behavior where we have the most room for improving or bolstering our cybersecurity defenses.

CALIFORNIA CYBERSECURITY ENTITIES

It is worth noting that in the last 10 years, California has taken significant steps in recognizing the gravity of the threat posed by cyberattacks, both by creating the California Cybersecurity Task Force and establishing the California Cybersecurity Integration Center (Cal-CSIC). Officially a statewide partnership comprising key stakeholders, subject matter experts, and cybersecurity professionals from California's public sector, private industry, academia and law enforcement, the task force advises senior administrative officials in cybersecurity matters. Cal-CSIC, which was created initially by way of Executive Order B-34-15 in 2015, exists within the Governor's Office of Emergency Services (CalOES) and has the primary mission of reducing the likelihood and severity of cyber incidents that could damage California's economy, its critical infrastructure, or public and private sector computer networks in our state. Cal-CSIC also is responsible for coordinating with federal and state partners to provide warnings of cyberattacks, develop a statewide cybersecurity strategy, and establish a Cyber Incident Response Team to serve as California's primary unit to lead cyber threat detection, reporting, and response.

At the same time, there are more opportunities for bad actors through phishing, ransomware or other cyberattacks, given the state's increasing and massive reliance on virtual/online tools for everything from shopping for groceries to work meetings, to providing access for education and health care.

To be clear, these threats exist in both the private and public realms. In such an environment, it becomes even more critical that the people, businesses, and state work collaboratively to proactively enhance the tools we have at our disposal to thwart such attacks. Shortages in IT staff are nothing new and neither are the vulnerabilities posed by human error as attacks become more sophisticated and harder to identify.

CYBER RANGES

We should consider new, innovative ways to approach the issue of cyberattacks. For example, five other states in the United States currently operate a "cyber range": Virginia, Michigan, Arizona, Georgia and Florida. Such ranges function like shooting or kinetic ranges, facilitating training in weapons, operations or tactics, where people can train, develop and test cyber range technologies to ensure consistent operations and readiness for real-world deployment. Others have described these ranges as a lab environment or a "secure sandbox" that provides a flexible and secure environment for cybersecurity education, training exercises and software testing wherein the workforce can be trained to defend their digital assets.

Instead of passing laws that heap restrictions upon businesses, the state should increase its efforts to identify new ways

in which we can collectively shape a society where children and future workers are equipped with better cyber awareness, hygiene and skills.

CALCHAMBER POSITION

The California Chamber of Commerce has significant concerns regarding new proposals that would be overly restrictive or punitive toward businesses that fall victim to cyberattacks, despite taking reasonable efforts, and which would create less flexibility in developing future technologies. Although businesses can and must do their part, cybersecurity is a multi-faceted issue that requires action from many different fronts. The CalChamber would support new proposals that would better equip California and its workforce to meet the challenges ahead.

Staff Contact
Ronak Daylami
Policy Advocate

ronak.daylami@calchamber.com
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Single-Use Packaging Legislation

Global Push from Linear to Circular Systems

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

Almost all economies around the world use a traditional linear economy, sometimes referred to as a "take, make, waste" model, where raw materials are extracted, used to create products and packaging, and eventually disposed of when no longer needed. In recent years, however, the linear model is being viewed increasingly by various nongovernmental organizations (NGOs), some governments and the general public as unsustainable and disfavored. Instead, circular approaches that aim to keep materials in use for as long as possible and avoid increased landfill waste are desired.

TRANSITION OF ECONOMIES

Governments around the world are beginning to force a transition of economies away from the "take, make, waste" approach. This transition will require significant upfront investments in educating consumers, research and development of new packaging/products, new infrastructure to collect and new technologies to process packing/products in order to change fundamentally how modern societies around the globe operate. If the transition is done carelessly and disjointedly, a circular economy has the potential to significantly disrupt global supply chains, cause excess waste from food spoilage and product breakage, increase prices and make life more inconvenient for consumers. Conversely, not transitioning toward a more sustainable economy and continuing with a "take, make, waste" model could lead ultimately to resource depletions, more environmental pollution and ecological harm (including the prevalence of microplastics), additional government regulation and new liabilities for companies.

In a circular economy, resources are used, recovered, and re-used rather than discarded after use. The goal of a circular economy is to eliminate as much unnecessary waste and to promote the sustainable use of resources by keeping them in the economy for as long as possible, and then recycling the used packaging and products back into new ones rather than landfilling. In concept, a circular economy reduces the amount of raw resources extracted, improves energy efficiency, reduces landfill and incentivizes recycling. However, a paradigm shift in how modern society currently produces and distributes goods consumers rely upon has significant risks of raising costs to manufacture and deliver goods, disrupting global supply chains, or instigating regrettable substitutes that have their own negative externalities, like additional food waste or loss of sterility. Public policy driving the transition must appropriately balance the exigency of addressing environmental and public health goals with real world realities such as whether the technologies exist that can create circularity for that package or product, whether the consumers will accept it, major changes to how they consume and the likelihood of increased costs.

A phased transition to a circular economy that gives business sufficient time to adapt may have the potential to create new business opportunities in the future. However, there are too many variables, products, companies and known unknowns to predict accurately what the future holds for all sectors. In concept, a circular economy should reduce the need for new raw material by extending the life of existing packaging and products and reusing discarded material. This could help to lower the costs not only of production but also distribution, as

products are designed for multiple uses or otherwise sold with options to refill. If new policies push disposal costs upstream to producers, circularity would be a cost-saving measure. Additionally, consumer sentiment for more sustainable goods could create additional market competitiveness for innovative companies and early adopters of circularity. Notably, how consumers respond to these changes will be very important for businesses. Surveys asking consumers whether they would give up single-use packaging and products for bulk bins and refill stations show mixed results as consumers weigh highly convenience and price.

CIRCULAR ECONOMY: NEW OPPORTUNITIES, NEW TECHNOLOGIES

The transition to a circular economy will inevitably stimulate innovation and create new markets for recycled packaging. New technologies, such as advanced recycling systems, should play an integral role in achieving circularity as production, distribution and recycling transition away from a linear systems approach. This is especially true for plastic packaging where mechanical systems cannot always recycle mixed plastics or plastics contaminated from use or disposal.

Advanced recycling would assist dramatically in the creation of circular economies for plastic packaging and products by breaking down plastic waste into its chemical building blocks that then can be used to make virgin-grade plastic packaging and products, such as food-grade packaging, medical supplies and homebuilding products. This type of recycling is promising because it can capture and recycle mixed plastic materials where mechanical recycling traditionally has been unable to or is prohibitively expensive. Advanced recycling reduces the demand for virgin resources where extraction and processing of raw materials often can have the highest financial and environmental impacts.

If the goal of transitioning to a circular economy is to reuse products and packaging over and over again, advanced recycling is the most promising technology to achieve it. Some environmental NGOs, however, oppose the technology on the basis that it could obscure how much material is actually being recycled, is too expensive or has other negative externalities. These alleged issues can be addressed easily through legislation and regulations that force industry to bear all costs, require technologies not produce hazardous wastes, and establish guard rails to ensure inputs and outputs are tracked accurately. With any new technology, there always will be naysayers — but to achieve circularity, innovative 21st century technologies that transition global supply chains and revamp waste disposal systems will be essential.

CALIFORNIA LEADS ON CIRCULAR ECONOMY

SB 54 (Allen; D-Santa Monica), titled the California Circular Economy and Plastic Pollution Reduction Act, was first introduced in December 2018 and quickly amended to focus on achieving unprecedented recycling rates for single-use plastic packaging and single-use plastic service ware. The bill was amended further to broaden the scope of what is regulated from single-use plastic packaging to all single-use packaging of any material type, rendering the bill material-neutral. For a number of reasons, the California Chamber of Commerce, numerous agricultural organizations, some waste haulers and virtually all of the business community opposed the bill.

After numerous defeats year after year in the California Legislature, Bay Area waste hauler Recology and environmental groups filed a proposed ballot initiative in December 2019 for a single-use plastic tax and ban of certain plastic food packaging. The proponents qualified the initiative for the ballot in July 2021, all but ensuring California voters would see it on the November 2022 ballot — unless a legislative solution emerged before then that could convince the proponents to pull their measure from the ballot.

The plastic tax ballot initiative required that all producers of single-use plastic packaging, individually, be taxed up to $0.01 per plastic package or certain plastic products. The tax, which ultimately would be borne by the consumer through higher prices, would apply to just about every conceivable consumer good, including food products. A prominent business organization conducted a study that estimated the cost of the ballot initiative to be approximately $9 billion annually, or approximately $900 per family of four per year, with $3 billion of the money permanently diverted to special interest groups. (*See* report at *https://centerforjobs.org/ca/special-reports/regulation-and-recycling-report*, noting "Direct Annual Costs of $8.9 Billion. … direct costs to California businesses and households are estimated at $8.9 billion annually consisting of: (1) $4.3 billion in higher taxes; (2) $4.1 billion in higher other direct costs to expand required recycling collection and sorting, comply with the extensive data and reporting requirements, and maintain general fund expenditures at specified state agencies; and (3) $0.5 billion based on expected costs to replace non-complying materials on a lowest-cost alternative basis.")

Additionally, the initiative included a source reduction mandate of 25% by weight and 25% by number of items

for all single-use plastic packaging regardless of technological feasibility. Further, the initiative picked winners and losers by banning certain packaging regardless of source reduction or recycling targets, setting a dangerous precedent and eliminating packaging used by tens of thousands of businesses. Finally, the initiative delegated broad authority to CalRecycle to effectively act as a packaging czar to ban or create additional requirements at the sole discretion of the agency. These issues, and the reality that should the ballot initiative pass there would be no plausible way to amend inevitable issues that arise, motivated a coalition of business interests to seek a compromise with the ballot proponents and other environmental NGOs.

After seven months of negotiations with virtually all stakeholders, the California Legislature passed SB 54 and the ballot proponents pulled their initiative from the 2022 ballot. SB 54 became California's model for creating a circular economy in the Golden State. Notably, it allowed businesses to create producer responsibility organizations to develop statewide plans to achieve legislative mandates.

Under this "extended producer responsibility" program, the law created a more flexible source reduction mandate, mandated over 10 years that all packaging be recyclable or compostable, incentivized recycling by creating a phased approach to reaching 65% recycling rates by 2032, allowed industry to work together to figure out compliance, provided limited CalRecycle oversight, contained no bans, and created a plastic clean-up fund of $500 million annually versus the $3 billion in the ballot.

Most stakeholders and the California Legislature ultimately agreed that the compromise, while not perfect, tried to balance the exigency of addressing environmental and public health concerns without destroying local and state economies and the tens of thousands of jobs directly and indirectly affected by this policy.

CALCHAMBER POSITION

The CalChamber supports cost effective recycling programs that the regulated community can comply with, that are scalable and that yield environmental benefits. In making statewide policy decisions regarding the management of California's waste, the Legislature must balance a plethora of policy impacts on businesses, supply chains, and the cost of living for California consumers against the perceived environmental benefits. The CalChamber supports maintaining strong legislative oversight to ensure that any proposed regulations are balanced properly against other state goals and policies.

Staff Contact
Adam Regele
Senior Policy Advocate

adam.regele@calchamber.com
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Proposition 65

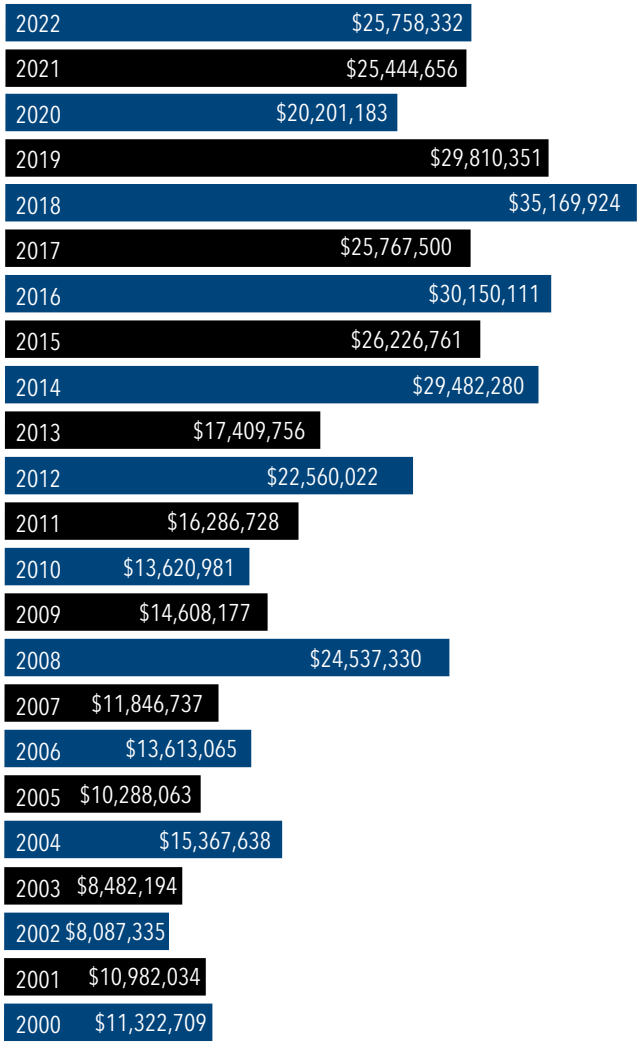
CalChamber Leads in Legislative, Regulatory, Judicial Arenas to Bring Law in Line with Original Intent

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

The statutory and regulatory provisions in Proposition 65 have no analog in any California statute or common law. Proposition 65 is unique because it allows private citizens to act as private attorneys general, enforce a public health statute on behalf of the California public, retain a portion of civil penalties that otherwise would be earmarked for the public treasury, and places the burden of proof onto defendants to prove their innocence. These features inherent to Proposition 65 have led to the growth of a multimillion-dollar cottage industry of "citizen enforcers" or "bounty hunters" who enrich themselves by abusing the statute's warning label requirements as a pretext to file 60-day notices and lawsuits in order to exact settlements from businesses.

The business community's concern regarding Proposition 65 litigation abuse is supported by statistical data from the California Attorney General's Office in its Annual Summary of Proposition 65 Settlements. Every year, businesses pay bounty hunters tens of millions of dollars in settlements — not necessarily because the businesses did anything wrong, but too often because it is far too expensive to defend a Proposition 65 lawsuit under the "guilty until proven innocent" legal framework. In 2022, there were more than 860 Proposition 65 settlements totaling over $25.7 million. And since 2010, businesses have settled more than $200 million in Proposition 65 lawsuits.

PROPOSITION 65 SETTLEMENTS



Source: California Attorney General

BASIC REQUIREMENTS OF PROPOSITION 65

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

• Assess whether it releases, or its products contain, Proposition 65-listed chemicals;

• Determine whether individuals, whether consumers or bystanders, may be exposed to a listed chemical at levels that necessitate a warning (that is, "when" to warn); and

• Determine what the warning must say, if a warning is required (that is, "how" to warn).

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

Of the approximately 900 substances that are on the list of chemicals known to cause cancer, birth defects or other reproductive harm, the Office of Environmental Health Hazard Assessment (OEHHA) has developed threshold levels for about 300 to guide businesses in determining whether a warning is necessary. If the chemical is at or below the levels listed, the business has a "safe harbor" from providing a warning.

Companies often warn under Proposition 65 because not doing so brings substantial liability, even if the exposure to a Proposition 65-listed chemical is *de minimis*. Private enforcers alleging exposure to a Proposition 65-listed chemical need only demonstrate the presence of the Proposition 65-listed chemical and include a certificate of merit. It is the business that carries the heavy burden of proving that the exposure is below the safe harbor level, a highly technical and often difficult-to-prove analysis that rarely justifies the high cost. The "guilty until proven innocent" liability structure therefore incentivizes bounty hunters to troll businesses looking for easy marks to extract settlements, knowing a company will do what is most financially prudent and settle. Additionally, Proposition 65's liability framework leads companies to warn out of an abundance of caution, leading to an over-warning marketplace where the average consumer either perceives "everything must cause cancer," or worse, "nothing does" and ignores all warnings.

PROPOSITION 65 REFORM IN CALIFORNIA ILLUSORY

As originally adopted by the California voters, Proposition 65 prohibits any amendments by the California Legislature unless such amendments are approved by a two-thirds majority in both the Senate and Assembly. Further, any amendment must "further the purposes" of Proposition 65. These twin limitations have prevented any serious efforts at reform for decades in the California Legislature.

Even minor Proposition 65 reform failed in the 2022 legislative session when Assemblymember Mike Fong (D-Monterey Park) introduced AB 2743, a bill seeking modest changes to Proposition 65, requiring additional notice to defendants and the factual information underlying the basis of a certificate of merit be provided to an alleged violator. The bill never even received a committee hearing,

CALCHAMBER'S FIRST AMENDMENT LAWSUIT AGAINST CALIFORNIA ATTORNEY GENERAL

With year-after-year failures in the California Legislature to address known Proposition 65 problems, the California Chamber of Commerce took a different approach by filing a lawsuit against the California Attorney General challenging the need to warn for acrylamide in food and beverage products as a violation of the First Amendment.

At the heart of the issue is a growing number of bounty hunters exploiting the fact that acrylamide is a naturally occurring chemical formed in certain food and beverage products when cooked or heated. Common sources of acrylamide in the human diet include, among others, breakfast cereals, crackers, bread crusts, coffee, grilled or roasted asparagus, French fries, potato chips and other fried and baked snack foods, canned sweet potatoes, canned black olives, prune juice, roasted nuts, and toast. These bounty hunters have filed more than 500 60-day notices for alleged violations of the Proposition 65 warning requirement with respect to alleged exposures to acrylamide in food products.

In 2021, CalChamber successfully secured a preliminary injunction by the Federal District Court. The case was appealed to the Ninth Circuit, where CalChamber again prevailed on the merits with a favorable ruling on March 17, 2022. The intervenor in the case appealed again, this time to the U.S. Supreme Court. That decision is pending at the time of this article.

OEHHA ISSUES NEW SAFE HARBOR WARNINGS IN RESPONSE TO LAWSUITS

OEHHA issued notices for two rulemakings fundamentally altering Proposition 65 safe harbor warnings for glyphosate and acrylamide after two major Proposition 65 litigation victories by the business community. (*See National Association of Wheat Growers, et al. v. Becerra*, 468 F. Supp. 3d 1247 (E.D. Cal. 2020), challenging warnings for glyphosate; and the *California Chamber of Commerce v. Becerra* , No. 2:19-cv-02019-KJM-EFB (E.D. Cal. Mar. 29, 2021), challenging warnings for acrylamide in food and beverage products.)

Both rulemakings break with the agency's historical position that warnings shall contain an unequivocal statement that the chemical is "known" to cause cancer and/or reproductive toxicity and instead place the competing science in the warning for the consumer to decide.

OEHHA's proposed rulemakings appear to be strategic due to pending litigation. The Initial Statement of Reasons as much as confirms this, stating that "OEHHA is aware of the District Court decision in the National Association of Wheat Growers case in which Plaintiffs challenged a potential Proposition 65 warning for glyphosate," and that "OEHHA has developed the proposed regulation taking into account the concerns expressed in the District Court decision in that case." (*See* Initial Statement of Reasons, Title 27, California Code of Regulations, Proposed Amendments to Article 6, Clear and Reasonable Warnings, New Sections 25607.48 and 25607.49, Warnings for Exposures to Glyphosate from Consumer Products dated July 23, 2021, p. 12.)

The CalChamber, the Consumer Brands Association and a large coalition of industries affected by these rulemakings submitted lengthy opposition letters articulating why both proposals are inconsistent with OEHHA's longstanding approach to safe harbor warnings, not based in sound policy, and neither needed nor justifiable. (The CalChamber-led coalition letter re: glyphosate rulemaking can be found at *https://oehha.ca.gov/media/dockets/20428/20504-california_chamber_of_commerce_consumer_brands_association_et_al_comments_re_warnings_for_exposure_to_glyphosate/calchamber_cba_coalition_comment_letter_-_glyphosate_warning.pdf*. Coalition letter re: acrylamide can be found at *https://oehha.ca.gov/media/dockets/20484/20548-consumer_brands_association_calchamber_et_al._comment_letter_re_proposed_amendments_to_article_6_clear_and_reasonable_warnings_acrylamide/consumer_brands_calchamber_et_al._prop_65_acrylamide_letter.pdf*.)

Both rulemakings were adopted by OEHHA and approved by the Office of Administrative Law in 2022. Nevertheless, the CalChamber's lawsuit continues as both safe harbors run afoul of the First Amendment. Forcing companies to warn for acrylamide in food and beverages is a violation of the First Amendment as acrylamide in food and beverages is not known to cause cancer in humans. As the National Cancer Institute (NCI) explains, "a large number of epidemiologic studies (both case-control and cohort studies) in humans have found no consistent evidence that dietary acrylamide exposure is associated with the risk of any type of cancer." (*See* NCI, Acrylamide and Cancer Risk, *https://www.cancer.gov/about-cancer/causes-prevention/risk/diet/acrylamide-fact-sheet*.)

OEHHA SEEKS TO FUNDAMENTALLY CHANGE SHORT-FORM WARNINGS

For years, the OEHHA has proposed regulatory amendment packages that it often describes as "merely clarifying existing law," but which, from the perspective of the business community, often have undermined existing protections provided for businesses.

Such was the case on January 8, 2021 when OEHHA gave notice to the public of proposed "clarifying" amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings. These "clarifying amendments" completely upended one of the most widely used and relied upon warning methods, known as "short-form warnings." The CalChamber and Consumer Brands Association led a coalition of 119 organizations, representing tens of thousands of companies, opposing the agency's major changes to Article 6 warning requirements on the basis that the proposed changes were not supported by substantial evidence, injected substantial confusion into the market, failed to consider reasonable alternatives, and imposed substantial financial burdens and additional litigation risks on businesses.

In December 2021, nearly a year after the rulemaking began, OEHHA published a notice of its plan to move forward — but with some notable modifications. Again, the CalChamber and coalition drafted comments opposing the entire rulemaking. Finally, on May 20, 2022, OEHHA announced that it was not moving forward with the proposed rule upending short-form warnings at that time. Notably, the agency publicly stated its intent to restart the rulemaking process at some later juncture. At the time of this publication, OEHHA has not restarted the rulemaking.

CALIFORNIA SUPREME COURT AGREES WITH CALCHAMBER

On December 21, 2022, the California Supreme Court agreed with the CalChamber and its coalition partners who submitted a letter pursuant to Rule 8.1125(b) asking the high court to deny a bounty hunter's attempt to depublish its own case that they lost at both the lower court and appellate levels in *Environmental Health Advocates, Inc. v. Sream, Inc.*, 83 Cal. App. 5th 721, 725, 299 Cal. Rptr. 3d 736, 741 (2022), review denied (Dec. 21, 2022).

In *Sream*, the Court of Appeal shed light on a decades-old issue under California Proposition 65: how should the statute's warning requirement apply to consumer products that do not themselves contain a listed chemical but that may be used in conjunction with other products to create a listed chemical? Although the lead agency responsible for implementing Proposition 65 and the California Attorney General have provided guidance on this "indirect exposure" issue several times in different situations, private plaintiffs have not heeded this guidance and have continued to raise variations of this issue in new contexts. The *Sream* court correctly synthesized the prior guidance and Proposition 65's implementing regulations to provide much-needed clarity for all interested stakeholders of Proposition 65, including plaintiffs, regulated entities, and the California public. The California Supreme Court agreed and denied the Environmental Health Advocates request to depublish the case, thereby preserving this critically important Proposition 65 appellate decision upon which businesses rely.

CALCHAMBER POSITION

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

Although achieving these goals legislatively has proven nearly impossible, the CalChamber remains committed to initiating or supporting legislative efforts that seek to restore the original intent of the law. Additionally, CalChamber will continue to utilize the judiciary to address Proposition 65 issues having a negative impact on businesses trying to operate in California. Whether the forum is legislative, regulatory or judicial, the CalChamber continues to lead on Proposition 65 issues for the business community to instigate changes necessary to bring the statute back in line with its original intent.

Staff Contact
Adam Regele
Senior Policy Advocate

adam.regele@calchamber.com
January 2023

California's Gas Tax

Transportation Infrastructure Depends on Long-Term, Reliable Revenue Stream

California's gasoline tax is notorious for being the highest state gas tax rate in the country. What is the gas tax and how did we get here?

California imposes a motor vehicle fuel tax and diesel tax on each gallon of fuel entered or removed from an in-state refinery or terminal rack. Gasoline is currently taxed at 18.4 cents per gallon while diesel is taxed at 24.4 cents per gallon. This tax is applied any time fuel is removed at the refinery or terminal rack, enters California, or is sold to an unlicensed person.

GAS TAX RATE HISTORY

According to Governor Gavin Newsom's 2022–23 Proposed Budget, the motor vehicle fuel taxes generated $6.5 billion in revenue in 2021–22 and will produce an estimated $7.4 billion in 2022–23. Diesel fuel taxes generated $1.269 billion in 2021–22, with an estimated $1.4 billion for 2022–23. The revenue generated by the fuel tax is deposited into the Highway Users Tax Account and is used to construct and maintain public roads and mass transit systems, airports, and waterways. The diesel fuel tax revenue is placed into the State Transportation Fund, which is used to construct and maintain public roads and mass transit systems.

Proposition 111 was approved by voters in 1990 and increased the tax rate on motor vehicle fuels from 9 cents to 14 cents per gallon. The initiative further increased the excise tax rate by 1 cent per gallon per year until the rate reached 18 cents per gallon on January 1, 1994, where it remained until the Legislature enacted the fuel tax swap.

In 2010, the budget bill ABx6 8 was signed into law and reduced the state sales tax on gasoline and replaced it with an increase in the fuel excise tax. This "tax swap" reduced the gasoline state sales tax to 2.25%, but added an excise tax of 17.3 cents per gallon. The budget bill's goal was to raise the same amount of money as the previous system, but the new excise tax was slowly increased and adjusted each July to retain revenue neutrality. Furthermore, the bill shifted past and future transportation-related debt service repayments on general obligation bonds from the General Fund to the fuel excise tax fund.

The gas tax/sales tax swap was supposed to be revenue-neutral at the time, and indefinitely into the future. Thus, the bill mandated that the Board of Equalization (BOE) annually adjust the excise tax rates for gas and diesel so the revenues obtained from the swap would reflect what the growth rate would have been in the absence of the swap. A recent Senate Governance and Finance Committee analysis aptly stated:

"[the] BOE then calculated an adjustment to the excise tax, which is measured as a flat amount per gallon, to reflect sales and use taxes, which apply based on a percentage of [what] the sales prices would have been but for the swap.

"As a result, the motor vehicle fuel tax rate increased $0.17 to $0.35 on July 1, 2010 to compensate for the removal of the state share of the sales and use tax rate that was measured at 6% of the sales price. The diesel fuel tax rate went down from $0.18 to $0.136, but the sales tax rate increased by 1.75% of the sales price. When voters approved Propositions 22 and 26 in November 2010, the Legislature reenacted the swap in 2011, with some modifications."

CURRENT STATE OF AFFAIRS

SB 1 was authored by Senator Jim Beall (D-San Jose) in 2017 in an effort to address the erosion of purchasing power of the fuel excise taxes and resulting numerous delayed maintenance projects on California's roads. SB 1, supported by the California Chamber of Commerce, augmented the state's motor

vehicle fuel taxes while directing the revenue to road maintenance and construction. The bill increased the excise tax on gasoline by 12 cents per gallon and diesel fuel by 20 cents per gallon, and increased the sales and use tax on diesel by 4%. Additionally, SB 1 required an annual adjustment of the motor vehicle and diesel excise tax rates based on the California Consumer Price Index.

In 2018, Proposition 6 was placed on the ballot and opposed by the CalChamber. Although the initiative ultimately failed, it aimed to repeal all the transportation taxes adopted by the Legislature in 2017, including higher gasoline and diesel excise taxes, a new tax on vehicles, and a new tax on zero-emission vehicles. The measure also proposed requiring any future legislatively imposed taxes on fuels and vehicles to take effect only upon a statewide vote of the people.

Repealing the gas tax would have stopped transportation improvement projects already underway in every community in California, eliminated funds already flowing to every city and county to fix potholes, make safety improvements, ease traffic congestion, upgrade bridges, and improve public transportation. The Legislative Analyst's Office estimated that the measure would have reduced spending on state and local transportation projects by nearly $5 billion annually.

By 2021–2022, the fuel tax rate had increased to 51 cents per gallon based on inflationary adjustments. In July 2022, the gas tax rate increased 5.6%. That takes the current tax up to 54 cents per gallon. The state tax is separate from the federal excise tax of 18.4 cents per gallon, 23 cents for California's cap-and-trade program, 18 cents for the state's low-carbon fuel programs, 2 cents for underground gas storage fees, plus state and local sales taxes, which average 3.7%

CALCHAMBER POSITION

Our transportation infrastructure is critical to California's economy. The CalChamber supports revenue to repair and maintain our roads and bridges and to expand congestion management. Every day, California drivers experience more delays, more potholes and more frustration without these services. In order to be effective, the revenue must be a long-term, reliable stream, to complete multi-year projects for maintenance, safety, rehabilitation and congestion reduction, and should not be diverted from transportation spending.

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
January 2023

Homelessness Program Spending

Have Multibillion-Dollar Allocations to Date Reduced Crisis?

Homelessness in California is a humanitarian crisis. While the problem consistently worsens, leaders from across the state have wide-ranging opinions regarding what will solve this human tragedy. Although the proposed solutions vary, there is something all Californians can agree on — state and local governments have allocated an epic amount of money toward solving homelessness.

STATE SPENDING ON HOMELESSNESS

California's homelessness issue is chronic, daunting, and requires a strong humanitarian effort. According to a 2022 poll conducted by the California Chamber of Commerce, homelessness remains an issue of great concern to voters. Nearly 75% of Californians believe homelessness has gotten worse since the start of the COVID-19 pandemic, with voters in Los Angeles, the Inland Empire and Central Valley reporting severe worsening in their regions.

According to recent reports, the total number of unsheltered Californians varies. One report stated that the number of people staying in tents, tarps, cars and other spaces unfit for human habitation grew by about 7% in California between 2019 and 2022, to 116,600 people. In February 2022, the Legislative Analyst's Office (LAO) stated that, according to federal data, as of January 2020 California had about 161,500 individuals experiencing homelessness, which represents about 28% of the total homeless population in the nation.

While the problem worsens, it's important to remember that California state and local agencies have been attempting to address this issue for many, many years. Since 2018, $1.45 billion has been provided to local governments for the Homeless Emergency Aid Program and the Homeless Housing, Assistance and Prevention Program (HHAPP) to support regional coordination and immediate homelessness challenges.

Over the last five years, four of the largest and most impacted counties in the state — Los Angeles, Santa Clara, Alameda and San Francisco — have approved billions in new taxes to address homelessness. In addition, the cities of Los Angeles, San Jose, Oakland and Richmond, and Sonoma County each have passed billions of dollars in tax increases for homelessness and housing programs. Furthermore, California voters approved a $2 billion bond issue in 2018 to provide housing for mentally ill homeless.

Since 2019–20, the state budget has authorized $2.95 billion in flexible aid to large cities (populations greater than 300,000), counties, Continuums of Care (CoCs) — local entities that administer housing assistance programs within a particular area, often a county or group of counties — and more recently to tribal governments through HHAPP to fund a variety of programs and services that address homelessness.

The LAO stated that California's 2021–22 budget allocated $9 billion for housing and homelessness programs. This budget provided the California Interagency Council on Homelessness (Cal ICH) (formerly the Homelessness Coordinating and Financing Council) $1 billion for HHAPP for two consecutive years. The 2022–23 budget continues this practice by providing $1 billion in 2023–24 for HHAPP. Prior budgets have provided one-time and temporary discretionary augmentations for this program since 2019–20 for a total of $3.95 billion over five years.

The LAO indicated that amendments to the 2021–22 budget provide the California Department of Housing and Community Development (HCD) with an additional $150 million for the Homekey program. This is in addition to $3.55 billion authorized previously since 2020–21 to Homekey. This program allows properties, such as hotels and motels, to be converted and rehabilitated to provide permanent housing for persons experiencing homelessness and who also are at risk of COVID-19 or other communicable diseases. The 2020–21 budget allocated $800 million in one-time federal funding for the Homekey program. As of December 2020, HCD had

awarded $846 million to 51 local agencies for 94 projects, which housed 6,000 people experiencing homelessness. The 2021–22 budget provided Cal ICH a one-time allocation of $50 million to establish a competitive grant program for cities, counties and CoCs to support encampment resolutions.

The LAO reported that the 2022–23 budget authorized an additional $4.8 billion over three years to nearly 20 major housing and homelessness programs within the Business, Consumer Services and Housing Agency and HCD. The vast majority of funding is one-time or temporary. However, the budget does provide $34 million in ongoing funding beginning in 2023–24 for housing assistance for foster youth and former foster youth. Most of the funding — $2.9 billion — is primarily for housing-related proposals, while $1.9 billion is allocated primarily toward homelessness-related programs.

The 2022–23 State budget provides Cal ICH $700 million from 2022 through 2024 for a competitive grant program for cities, counties and CoCs to support encampment resolution and the transition of individuals into housing. This program was established in the 2021–22 budget with a $50 million appropriation at the time.

Clearly, funding is not an issue when it comes to this crisis.

HIGHER TAXES WILL NOT FIX HOMELESSNESS

Between state and local spending, over the last several years, tens of billions of dollars have been directed toward solving homelessness, including dedicated local sales tax and parcel tax increases. Clearly, funding isn't the issue, since many of these agencies and programs have large reserves of unspent funds.

Before the Legislature considers imposing even more taxes to address homelessness, they should consider how Los Angeles, San Francisco, San Jose and Oakland, not to mention state agencies, and the others have used the billions in new spending authority and whether the spending has made homelessness rare, brief and nonrecurrent.

CALCHAMBER POSITION

Increasing taxes on entrepreneurs and corporations will continue to communicate that businesses are not valued in this state — ultimately harming California's economy and the beneficiaries of these tax revenues. It also is irresponsible to increase taxes for homelessness programs that already are allocated billions of dollars from state and local sources, without an understanding of whether these programs are even effective.

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
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Tourism in California

Recovering from COVID-19: Are We There Yet?

Historically, California's multibillion-dollar travel industry has been a vital and growing part of California's economy. Tourism-related spending supports a wide swath of California businesses, including lodging establishments, attractions, restaurants, retail stores, gas stations, and a host of other businesses that sell their products and services to travelers. In addition, the tourism industry employs more than a million Californians, including thousands in entry-level jobs that provide many Californians with their first step on the economic ladder.

RECOVERING FROM COVID-19 (OR 'ARE WE THERE YET?')

The travel and tourism industry has been a flagship of California's economy for decades, sharing our state's natural beauty and cultural leadership with the world. But when COVID-19 effectively shut down local, domestic and international travel, California's tourism and travel industry was hit harder than any other industry.

For comparison — in 2019, California generated just shy of $145 billion in travel-related spending. In 2020, with international and domestic travel severely restricted and public health restrictions in effect, tourism spending plunged to *$65 billion* — a decline of approximately *$80 billion* from its prior level of *$144 billion*, or more than *50% of all tourism-related spending*. (Data comparisons between 2019 and 2020 based on statistics from California Travel and Tourism Commission (Visit California) in "Economic Impact of Travel in California 2011–2021" (April 29, 2022), available at *https://industry.visitcalifornia.com/research/economic-impact*.)

The pandemic's effects on the tourism industry echo throughout the economy, with local governments and workers feeling the pain as well. State and local government revenue from tourism decreased by around 50%, from $12.2 billion in 2019 to approximately $6 billion in 2020. Certain tourism-dependent cities were hit even harder, including those with major theme parks, convention centers, performance venues, and tourist destinations. California workers and their families felt the loss of tourism spending as well, with more than 315,000 jobs lost in 2020.

Now, as we look toward 2023 and the status of California's tourism industry, the proverbial question of impatient children on long trips hangs in the air: "Are we there yet?" With Governor Gavin Newsom preparing to end California's state of COVID-19 emergency in early 2023, and with life largely back to normal, has California's tourism sector been able to rebuild itself?

Sadly, the answer (just as so many weary parents know) is: "Not quite yet." On the whole, tourism has continued to rebound in 2022 vis-à-vis 2020 and 2021, as measured in both total visitor trips and in spending — with spending reaching an estimated $137.8 billion and visits reaching 259.8 million — but those numbers remain below 2019's baseline. (Data comparisons between 2022 and prior years (as well as 2023 and 2024 estimates) based on estimated statistics from Visit California in "California Travel-Related Spend & Visitation Forecast (October Update)"(October 18, 2022), available at *https://industry.visitcalifornia.com/*. Because final 2022 data will not be available until mid-2023, estimates were used at the time of publication.)

Visit California also estimates travel-related spending will return to pre-coronavirus levels in 2023, but total visits will not return to pre-pandemic levels until 2024.

BUSINESS/INTERNATIONAL TRAVEL LAG BEHIND LEISURE

Notably, significant differences exist between leisure and business travel as part of this recovery. Whereas personal travel appears to be returning more quickly, business travel remains

significantly slower. Business travel trips in 2022 are estimated at roughly 80% of 2019's travel numbers, whereas leisure travel is estimated to have risen to 93% of 2019.

Although we cannot say for certain the cause of the slower recovery in business travel, multiple potential causes deserve consideration.

• First, for domestic professional travel, the shift toward "work-from-home" and teleconferencing may be removing the need for some of the pre-pandemic business travel.

• In addition, with many sectors accommodating higher inflation costs, rebuilding their markets, and anticipating an economic recession, many businesses may be in a "belt tightening" posture, and travel expenses may be one victim of that mindset.

• Finally, international travel lags significantly behind domestic travel in recovering, with 2022 estimates for both visits and total spending 37% and 42% below pre-pandemic levels, respectively.

Of course, these spending levels also reflect an incomplete recovery in both employment and in tax revenue generated for California's state and local governments, with $9.8 billion in tax revenue and 927,100 travel-generated jobs, down from $12.3 billion in revenue and 1.1 billion travel-related jobs in 2019. (Comparison based on 2021 data and 2019 data in Visit California's "Economic Impact Report for Revised CA Legislative Districts" (December 5, 2022). Again, due to complete data for 2022 being unavailable until mid-2023, estimates based on partial data available at publication were used for 2022. Available at: *https://industry.visitcalifornia.com/research/report/economic-impact-by-updated-leg-districts-2021*.)

BARRIERS TO RECOVERY IN 2023: REGULATIONS, RECESSION, RELATIVE COST

As the tourism industry works toward recovery, various clouds are on the horizon in 2023. At a macro level, inflation and a potential recession could easily drive down consumer and business spending, particularly in the already-lagging areas of business and international travel.

Inside our own state, cost increases in the form of new regulations and legislation are always a concern, as California costs for both businesses and guests vis-à-vis other states is a constant competitive disadvantage in attracting out-of-state visitors.

CALCHAMBER POSITION

The California Chamber of Commerce supports policies that will help California return safely to its status as a premier tourist destination for both domestic and international travelers, while also ensuring visitors and employees are protected from COVID-19. This includes supporting policies that promote tourism, including Visit California and tourism improvement districts, as well as new incentives to bring significant events or attractions to California. As an example of these policies, the 2021–2022 budget included $95 million in funds for Visit California to promote tourism as California re-opened (a push championed by Senator Mike McGuire (D-Healdsburg) and Assemblymember Sharon Quirk-Silva (D-Fullerton) via SB 285, which was subsumed into the budget) and the 2022–2023 budget included another $15 million for this purpose.

Conversely, the Legislature should reject measures that increase costs or create new burdens on the tourism industry, which still is struggling to recover from the deepest pandemic-caused losses of any California industry.

Staff Contact
Robert Moutrie
Policy Advocate

robert.moutrie@calchamber.com
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Unemployment Insurance Fund

State Funding Commitment Needed to Offset Pandemic-Induced Insolvency

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

In addition to maintaining federal standards, each state has primary responsibility for the content and development of its UI laws and administration of the program. California administers its UI program through the Employment Development Department (EDD).

BACKGROUND: HOW EMPLOYERS FUND THE PROGRAM

California's UI program is funded exclusively by employers, via state and federal taxes on wages. The only exceptions to this rule are temporary federal grants for administration and certain emergency and extended benefits that have been paid from federal general revenue — some of which were utilized during 2020 in response to COVID-19 and are discussed below. Employees do not pay any UI taxes.

Employer contributions are deposited in the Unemployment Trust Fund (UI Fund) of the U.S. Treasury Department. States withdraw money from their accounts in the trust fund exclusively to pay UI benefits. If a state trust fund does not have adequate funds to pay benefits, a loan is made from the federal fund so that all claims are paid.

Generally, the federal UI tax is fixed at 6% of wages up to $7,000 per year per employee for all employers in the state (FUTA taxes), offset by a 5.4% credit in states that comply with federal UI laws (FUTA tax credit), resulting in a payable rate of 0.6%. Assuming the state is in compliance and the state's UI Fund is solvent, this comes to $42 per employee per year. FUTA taxes are due January 31 following the year in which the taxes are applied (for example, 2022 taxes are due January 31, 2023).

If a fund remains insolvent for two consecutive years, then FUTA tax credits are reduced annually and cumulatively by 0.3 percentage points until the fund returns to solvency, creating a steadily growing tax increase on the state's employers.

COVID-19 AND UNEMPLOYMENT INSURANCE

COVID-19 and the related economic shutdown brought UI policy to the forefront in California and nationally. As COVID-19 crashed across the nation, and businesses complied with state-mandated safety precautions and shutdowns, unemployment rapidly rose to levels not seen since the Great Depression. In just two months, from March to May 2020, the unemployment rate in California rose from 5.5% to 16.1%. Unemployment insurance was used to backfill this economic crater, keeping food on the table for many Californians and providing critical stability to the economy.

Unlike prior recessions (such as the recent Great Recession), entire sectors of the economy were forced to shut down or operate at severely reduced capacity, due to self-isolation by customers, mandates from government, or broken supply chains. This meant many employers were compelled to terminate much or all of their workforce, and then pay unemployment compensation for this compelled termination.

Although the economy has largely reopened, some businesses (particularly the greatly diminished restaurant and hospitality sectors) continue to struggle to rebuild. For employers, including those that have fully re-employed their

workforce, the considerable UI Fund debt that arose during the pandemic remains outstanding.

The question in front of California policymakers is: given that the present debt was caused largely by a collapse of the economy from a global pandemic and California forcing employers to shut down on a statewide scale, how can the state help fix the present insolvency of the UI Fund and prevent tax increases on California employers?

By November 9, 2020, California had accumulated $15.7 billion in debt, and debt peaked in late 2021 at approximately $20 billion. By the end of 2022, that debt remained at a staggering $18.4 billion — more than twice the next highest state (New York with less than $8 billion in debt).

BUDGET ACTIVITY IN 2022 AND ONGOING NEED FOR ASSISTANCE

Heading into 2022, many other states — led by both Democrats and Republicans — had used federal or state moneys to pay down their UI Fund debts and help avoid tax increases on employers. Those states included Delaware ($209 million), New Hampshire ($50 million), Massachusetts ($181.8 million), Georgia ($1.5 billion), and Hawaii ($3.4 million). As late as November 2021, the Texas legislature allocated $7.1 billion of its CARES Act funds to fully repay its remaining insolvency.

Although California had given no aid to the UI Fund in 2020 or 2021, California appeared on the cusp of making a significant contribution to reduce the debt in the 2022 budget with a significant budget surplus of nearly $100 billion. Governor Gavin Newsom proposed a direct payment of $3 billion to help with the UI Fund's insolvency in his initial proposal and May Revision. In addition, Assemblymember Tom Daly (D-Anaheim) proposed AB 2570, supported by the California Chamber of Commerce, which would have committed $7.25 billion to reducing the debt. Despite support for restoring the solvency of the UI Fund from numerous legislators in both parties, the amount of aid was reduced significantly in the final budget. The 2022 budget contained a small and short-term commitment to aiding the UI Fund, comprised of two parts:

- Two small payments toward the UI Fund insolvency, with $250 million in the 2022–2023 budget, and a commitment to an additional $750 million in 2023–2024.
- A commitment to allocate $500 million in the 2024–2025 budget to provide tax breaks to small businesses to compensate for a portion of the unemployment-related tax increases those businesses will face.

Most of the 2022 budget's aid was comprised of future commitments — with $750 million in 2023–2024, and tax relief in 2024–2025. However, the Governor's initial 2023–2024 budget proposal did not include these critical funds. It remains to be seen if any will be added back in the coming months and what will actually materialize in the 2024–2025 year.

2023 AND BEYOND: TAX INCREASES AND RECESSION CONCERNS

Because the UI Fund remained insolvent for two years, employers across California will suffer a payroll tax increase in 2023 by $21 per employee. The tax will continue to rise by this amount every year until the debt is repaid to the federal government. It is hard to speculate how many years this will take — but the Great Recession provides a useful comparison.

During the Great Recession, California's UI Fund bottomed out at $10.3 billion in debt. This was a record at the time, and was *not* a result of a statewide shutdown, but a result of a financial panic and other economic factors. The subsequent recession created massive unemployment, but nothing compared to the rapidity and extent of the pandemic economic crisis. Employers paid elevated per-employee taxes from 2011 to 2017, when the fund returned to solvency.

Presently, the UI Fund is significantly deeper into debt, with a total debt of $18.4 billion heading into 2023. Assuming no federal or state relief, California employers will face an increased tax burden on a per-employee basis — which will disincentivize hiring — for years to come. Although the duration of the debt (and increased taxes) will depend on economic circumstances and workforce participation, we estimate that California employers will likely pay increased UI taxes through the year 2030.

What does that look like for a normal employer, as opposed to pre-pandemic times? In a normal year, employers pay $42 per employee for the UI Fund (with some adjustment depending on their past experience and industry). In 2023, an employer will pay $21 more per employee, or $63 per employee … then $84 in 2024, and $105 in 2025. Looking down the road to 2030, employers may be paying $210 per employee in FUTA taxes — an increase of 400% over a normal year.

There also is considerable concern about a nationwide recession, with significant belt tightening at the federal level throughout 2022 to confront inflation. Should a recession

develop, California employers will be even less able to absorb these tax increases, and decreased labor force participation (as businesses contract or close) will mean that California's UI Fund may remain in debt even longer.

EDD CAPABILITIES AND FRAUD CONCERNS

The unprecedented surge of unemployment applicants caused by the state-mandated economic shutdowns also laid bare the technological and logistical shortcomings in the EDD. Outdated technology and organizational bottlenecks around claims processing caused a huge backlog of applications, with some claimants waiting months for their claims to be processed. The EDD also failed to catch significant fraud due to its rush to distribute benefits. EDD estimates that California paid around $20 billion in fraudulent payments, with at least $1 billion coming from California's UI Fund, although the Legislative Analyst's Office recently asserted that it disputes this number and believes the total fraud attributable to California's fund is lower.

Regardless of the exact amount, the core issue for California employers is the same: when EDD makes mistakes in its distribution of funds (either through fraud or unintentional overpayments), employers end up paying the bill to replace the mistakenly distributed funds. As a matter of fairness, EDD must take proactive steps to improve its distribution process and minimize fraudulent (or mistaken) distribution of benefits.

A slew of legislation from both parties aimed to increase fraud detection and improve practices at the EDD during the 2022 legislative session. Notably, AB 110 (Petrie-Norris; D-Laguna Beach) passed and allowed for improved information sharing to prevent fraud by inmates in California's penal system. In addition, SB 390 (Laird; D-Santa Cruz) will compel the EDD to create a recession plan to improve future performance. Although this legislation is an improvement, employers remain concerned with EDD's ability to distribute benefits accurately to deserving recipients.

CALCHAMBER POSITION

Unlike in the Great Recession or in normal times, the massive unemployment in 2020 and 2021 was not the result of the business cycle or business decisions made by individual employers. A global pandemic caused customer insecurity and state and local shutdown orders, which directly led to job terminations. Similarly, employers had no ability to prevent the EDD's mismanagement of fraud detection during the pandemic.

California's policymakers must acknowledge this partial responsibility in creating the unprecedented insolvency of California's UI Fund and should, following the lead of other states, help restore the solvency of the fund.

Although the 2022–2023 Budget began this process, it was mostly future commitments and was altogether too little to materially affect the fund's condition. The CalChamber supports future proposals to reduce the UI Fund's insolvency and mitigate future employer tax increases.

Staff Contact
Robert Moutrie
Policy Advocate

robert.moutrie@calchamber.com
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Groundwater

Extended Drought Continues Heavy Impact on Agricultural Economy

Few parts of the California economy are untouched by drought, but no sector is as deeply affected as agriculture. The extended drought, beginning in 2020, has had significant impacts on agricultural production and those businesses and jobs that surround production, processing, and shipping of crops and other goods.

The University of California, Merced and the Public Policy Institute of California (PPIC) recently estimated that in 2021 alone, the drought directly cost $1.2 billion for agriculture, with a total economic cost of $1.7 billion.

These costs include increased groundwater pumping costs, increased idled or fallowed acreage, and reduced crop yield due to water shortages. The drought also is estimated to have resulted in the loss of 14,600 jobs.

CALIFORNIA AGRICULTURE: KEY COMPONENT OF ECONOMY

California agriculture is first in the United States in the number of products and the value of those crops, bringing in an average income of $50 billion annually over the last three years, according to the U.S. Department of Agriculture. The top three commodities in 2021 by value were milk/dairy products, grapes, and almonds. Other top commodities include strawberries, beef cattle, pistachios, tomatoes, and rice.

During a drought, the producer's approach to dealing with water shortages depends on the commodity being grown, whether it is a permanent or annual crop. Annual crops like rice and tomatoes, which are planted anew each growing season, lend themselves more easily to short-term fallowing. A grower can decide against planting certain fields due to constraints such as water. Growers have less flexibility with permanent crops, like fruit and nut trees and grapevines, in determining year-to-year changes in overall acreage. In these cases, growers must be strategic to preserve their plants and investments. For instance, pistachio trees can take up to 10 years to produce their first nut crop, which means that planning must look beyond a single year or two of conditions.

Many of the agricultural commodities grown in California cannot be grown elsewhere in the nation or simply are of higher quality when grown here. For example, table oranges are grown primarily in California, while other states' oranges are suitable only for juicing. According to the California Department of Food and Agriculture (CDFA), California is the only U.S. producer of plums, olives, nectarines, artichokes, and garlic, as well as almonds and pistachios. Consumers depend on California for high quality and a diverse selection of food.

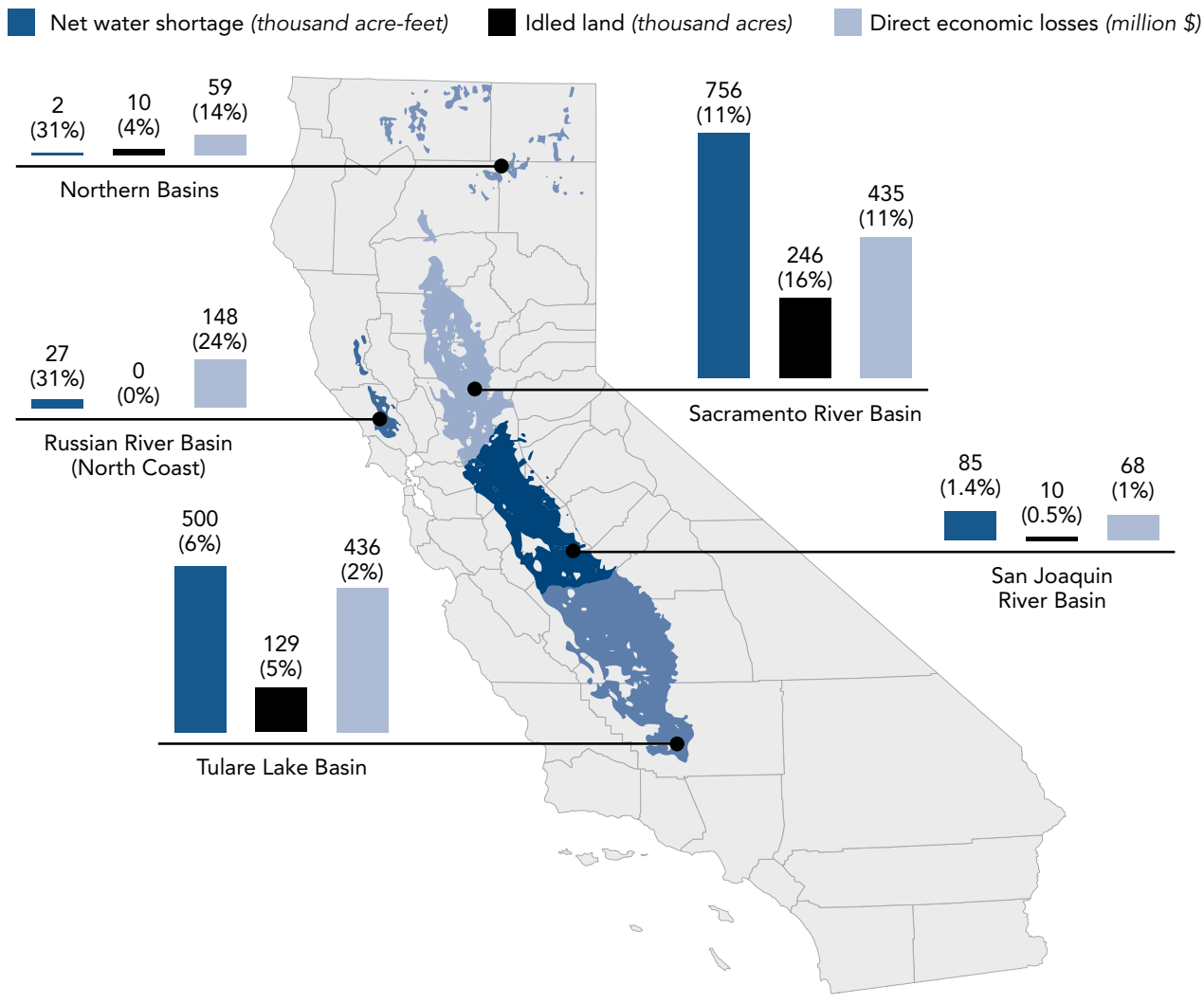
INTERSECTION OF DROUGHT AND AGRICULTURE

Pressures on the agricultural economy due to the current drought are tied not only to lower-than-normal rainfall, but also to dry climactic conditions. Specifically, heightened evaporative demand means that the air takes more moisture from soil and vegetation (whether a crop or native flora). Thus, plants need comparatively more water to grow. These conditions united in 2021 to make it the year with both the lowest precipitation and the highest evaporative demand in the last 40 years.

Low precipitation naturally translates to reductions in allocations from the state's major water conveyance systems: the State Water Project and the federal Central Valley Project. When reduced allocations are coupled with the increased evaporative demand, growers are faced with significant water shortages. In 2021, the rain patterns meant that the normally water-rich region of the Sacramento Valley was unusually dry. That meant that far fewer rice fields were planted, and farmers who frequently transfer water south were less able to do so.

In times when surface water supplies are low, water users historically have turned to groundwater to make up for losses.

DROUGHT IMPACT ON CALIFORNIA AGRICULTURE



Notes: Analysis focused on most deeply affected areas of state in 2021. Numbers above bars show values for each variable; numbers in parentheses show percentage of impact with respect to the regional baseline. Net water shortage is reduction in surface deliveries minus groundwater augmentation in 2021 relative to 2002–16. Idled land is relative to 2018. Direct economic losses are lost crop revenue relative to 2018, plus the increase in pumping costs.

Source: Public Policy Institute of California, "Drought and California Agriculture" (April 2022).

In that sense, groundwater in many areas has been viewed as a "savings account" to draw upon in times of shortage. There are areas that are groundwater-dependent for a variety of reasons, including but not limited to hydrology and/or lack of connection to imported water supplies.

As droughts become more frequent and more intense, groundwater supplies often are unable to recover before again being called upon. Even with groundwater replacement, in 2021, California's agricultural areas experienced an overall net water shortage.

SUSTAINABLE GROUNDWATER MANAGEMENT ACT ADDS TO COMPLEXITY OF CURRENT DROUGHT

The Sustainable Groundwater Management Act (SGMA), passed in 2014, makes water management now significantly different than even during the most recent drought from 2012–2015. Previously, there was little regulation of groundwater use, aside from the standard rule that landowners have the right to use groundwater without harming other users.

SGMA created a new regulatory scheme for the sustainable use and replenishment of groundwater. The focus is on local conditions, where local governments and interested

parties form a Groundwater Sustainability Agency (GSA). The GSA then creates a Groundwater Sustainability Plan (GSP), which must be approved by the state, and which sets forth how groundwater will be monitored and managed to achieve sustainability over time.

LOOKING FORWARD

Local agencies and users currently are near the middle of the initial implementation phase of SGMA. The addition of the SGMA regulatory scheme adds another layer of complexity to agricultural water management in drought years. Even without the drought, full implementation of SGMA will result in more acres fallowed or otherwise taken out of production. This raises questions about how to strategically repurpose land without critically wounding agriculture, disrupting local economies, or causing other unintended consequences.

The amount of land that will be taken out of production also will cause ripple effects on the agricultural economy, jobs, and food security. This drought alone has cost more than 14,000 jobs, according to the PPIC. This figure includes direct agricultural jobs as well as those in industries that provide goods and other services to farming operations. Less acreage in production necessarily means that production will decrease, which may decrease the availability of key crops and increase costs for consumers.

Policymakers should consider carefully a full suite of potential impacts when attempting to address groundwater issues specifically. In addition, it is important to keep in mind that groundwater conditions (demand, supply and quality) vary throughout the state and sometimes even within the same basin. For that reason, local experts are invaluable resources on the specific challenges and opportunities that exist in various places.

In addition to managing demand on groundwater, elected leaders and regulators should incentivize and streamline options for groundwater recharge. Groundwater recharge and banking projects historically have met regulatory hurdles related to permitting and securing rights to use water for recharge purposes. These are not insurmountable challenges, but will require communication and coordination among a variety of stakeholders to develop a framework that helps secure groundwater supplies for future use while minimizing possible adverse impacts to businesses and communities.

The challenges to the use and reuse of groundwater also heighten the necessity for solutions to surface water shortage conditions. Because groundwater is the savings account for agriculture, ensuring there is sufficient surface water in the state's "checking account" will assist in reducing overdraft. Drought-proof water supplies and improved storage and conveyance infrastructure can help ease the reliance of certain areas on groundwater alone.

CALCHAMBER POSITION

The California Chamber of Commerce supports measured approaches to ensuring that groundwater and surface water are managed in a way that supports the many needs of Californians without damaging the state's productive agricultural sector and local communities dependent on agriculture.

Staff Contact
Brenda Bass
Policy Advocate

brenda.bass@calchamber.com
January 2023

Stormwater Runoff

Increased Regulation of Runoff from Commercial Properties Not Best Strategy

- 2022 marked the 50th anniversary of the Federal Clean Water Act, and water quality vastly improved in those decades.
- Stormwater traditionally has been considered a mere conduit for pollutants gathered in rainwater runoff, but more recently it has begun to be viewed as another source of water supply.
- Challenges remain for harnessing this resource, which is variable and relatively unpredictable in flows and possible contaminants.
- To make stormwater a more viable supply resource, elected leaders should focus on ways to meaningfully incentivize projects that capture and filter stormwater, rather than punishing owners of property onto which rain falls.

The Los Angeles Regional Water Quality Control Board (LA Regional Board) exemplifies the regulatory approach with its recent draft National Pollutant Discharge Elimination System (NPDES) permit for stormwater runoff from commercial, industrial, and institutional properties (CII Permit). This permit is the first attempt to regulate stormwater discharges from CII properties; historically, the NPDES permitting program has been directed to municipalities (which manage the storm drain systems in urban and suburban areas) and truly industrial facilities, pursuant to federal statute.

In short, this is the first time that a broad range of CII properties would be subject to state-level regulation of stormwater runoff quality, including the risk of being sued under a private right of action.

WHAT IS AN NPDES PERMIT?

An NPDES permit provides the U.S. Environmental Protection Agency (EPA) — or a state with delegated federal authority — a mechanism to allow the discharge of pollutants, as defined, from a "point source" to surface waters. The owner or operator of a defined location from which water carrying pollutants enters a waterway usually must obtain an NPDES permit.

The NPDES permit itself prescribes the conditions under which the discharge can occur. For municipal stormwater NPDES permits, this often includes the use of "best management practices" to reduce the amount of pollutants (typically trash, oil, debris, etc. that collect on paved surfaces over time) entering the waterway. These permits are focused more on the actions that the permittee should take to avoid pollutants entering waterways than whether certain pollution thresholds are met.

Some permits have numerical effluent limits — that is, the water leaving the drain or pipe must be below a certain concentration of a pollutant, focusing on whether the water leaving a facility meets a specific quality with regard to a list of pollutants. This is particularly challenging in the stormwater sense, where the amount, timing and pathway of rainfall is highly unpredictable, which makes it hard to dial in treatment and filtration options that will consistently meet limits for potentially wildly varying quality of water entering storm drains. This method also requires a relatively robust sampling and analysis program to determine compliance.

The failure to comply with every provision of an NPDES permit exposes a permittee to two possible forms of enforcement: administrative enforcement by a regional water quality control board or the State Water Resources Control Board (State Water Board) ***or*** an aggrieved citizen can file a lawsuit against the permittee in federal court. Because essentially all required stormwater NPDES permit reporting is available online, it is easy for potential plaintiffs to gather potential

violations. A potential plaintiff need only provide notice of the intention to file suit, and then wait 60 days to proceed to court.

Although a successful citizen plaintiff does not receive any monetary penalties, successful plaintiffs can receive an award of attorney fees. These lawsuits often are settled in their infancy to control costs, but plaintiffs nonetheless typically will recover substantial attorney fees. Sending demand letters can be particularly lucrative. For example, in 2018, the U.S. Department of Justice noted that a single law firm had sent more than 150 demand letters for alleged stormwater violations in a two-year period — all in California. (*See* United States' Statement of Concern and Recommendation That Plaintiff File a Motion to Enter the Proposed Consent Decree*, Garcia v. Miller Castings Inc.*, No. 2:17-cv-07408-AB-AGR (C.D. Cal. May 18, 2018), available at *https://legacy-assets.eenews.net/open_files/assets/2018/05/24/document_gw_06.pdf*.)

DRAFT LA CII PERMIT

The unprecedented current draft CII Permit released by the LA Regional Board highlights the challenges that an NPDES permit creates for the commercial, industrial and institutional sector. First, the draft CII Permit would require property owners or businesses to incur considerable expense to meet all conditions and includes options that are not available or implementable. Most stormwater pollution prevention depends on the use of best management practices, which in turn is determined in part by using "best conventional pollutant control technology" or "best available technology economically achievable." There are no established technologies for many of the facilities that would be regulated by the CII Permit. It will be difficult if not impossible to adequately show compliance, and any difficulty in demonstrating compliance increases the risk of litigation.

The costs associated with compliance may not correspond to a meaningful improvement in water quality. EPA research shows that institutional sources, such as hospitals, universities and schools, contribute a relatively small total loading of copper and zinc on a per-acre basis when compared with other land uses. (*See* Paradigm Environmental, *Analytical Support for Stormwater Source Analysis* (April 24, 2015)). For these types of facilities, the costs of compliance would be much higher than any resulting benefit to water quality in the receiving water.

As of this article's publication, the LA Regional Board was considering extensive public comment provided by various stakeholders on the draft CII Permit. It remains to be seen whether some of the identified issues and ambiguities can be resolved before businesses and organizations must obtain coverage.

CALCHAMBER POSITION

The California Chamber of Commerce believe that other solutions can avoid unnecessary risks and achieve water quality benefits.

Using an NPDES permit to regulate runoff from commercial properties is not the most efficient way to address water quality concerns. The benefits must match the risks that are presented to these properties. Regional projects that treat businesses and property owners as partners may be preferable approaches to both reduce stormwater pollution impacts and utilize stormwater flows as part of the region's water supply.

Staff Contact
Brenda Bass
Policy Advocate

brenda.bass@calchamber.com
January 2023

Water Rights

No Overhaul Needed; Partnerships Help Manage Complex System

Water rights in California are an interesting amalgamation of different property right concepts. While perhaps not intuitive, this system is nonetheless the basis upon which all water infrastructure is founded. Despite recent criticism of the water rights doctrine, the current system is valuable, and a complete overhaul is both unnecessary and would be disruptive to every water user in the state. Instead, the focus should be on how water rights could be improved and how to achieve that improvement in a practical, meaningful and fair way.

WHAT ARE WATER RIGHTS?

Water rights are a notoriously complex area of law and policy, but in essence they are property rights that are associated with the ability to use a certain amount of water at a certain period of time. A water right does not convey ownership over individual molecules of water.

Surface water rights are based primarily on a priority appropriative system: the first person to divert water from a waterway for a beneficial use obtains the right to use a certain amount of water. Often referred to as "first in time, first in right," this means that a right claimed earlier in time takes priority over a more recent — or junior — right. The highest priority rights are referred to as "pre-1914," because they were claimed before the State Water Resources Control Board was formed in 1914, and thus are less regulated by the State Water Board. Landowners who have property adjacent to or encompassing a stream may have riparian rights, which also are considered a high priority right.

Relative priorities become most critical in times of water shortage: when there is insufficient flow to satisfy all claims on a waterway. In those circumstances, more senior rights typically will be satisfied, and the most junior rights will be reduced or curtailed. Priorities also affect how large water infrastructure projects work. For instance, California and the United States had to enter into contracts with very senior water rights holders in order to obtain the ability to construct and operate the State Water Project and Central Valley Project.

Groundwater rights are tied to property ownership of the overlying land. Landowners have a right to access the common benefit of groundwater, but use cannot harm neighboring landowners.

DEDICATION OF WATER RIGHTS HOLDERS TO SOLUTIONS

The last three years of drought have stressed the existing water system to its limits, and water users have risen to the challenge of finding solutions that work for a broad swath of the state. For example, in 2022 the Russian River Voluntary Water Sharing Agreement was created, borne out of an acknowledgment by the State Water Board and local stakeholders that drought impacts in the Russian River watershed in Sonoma County would be severe.

The agreement was the result of lengthy negotiations, where water rights holders of all priority levels would enter into a sophisticated agreement that allows senior water rights holders to forgo a percentage of water per year so that juniors can receive some amount of water rather than being completely curtailed. In essence, the program created a water allocation and communication system among water rights holders and water users within the agreement.

The program ran for about six months in 2022 before operations of the upstream hydroelectric dam cut flows to the area to a very low level. The Russian River program nevertheless stands as an example of creative solutions that can be achieved even in severe drought conditions. Water agencies involved in the development of the agreement intend to take lessons learned from 2022 and continually improve the program in the future. The success of the program is tied directly to the collaboration and trust that was built between all stakeholders and with the state.

POSSIBLE IMPROVEMENTS IN SYSTEM WITHOUT DISRUPTION

The regulation of water rights has worked to date, but more recently, and especially during the drought, the existing administration of rights may have proven to be too cumbersome to respond quickly to changing circumstances. The system therefore should be stabilized and modernized at the margins to achieve efficiency.

A wholesale overhaul of the water rights system is not only unnecessary but also disruptive to a state that relies on a complex network of water conveyances to ensure that Californians have access to water. An overhaul would upend decades of property rights and would undo contracts and conveyance agreements under which water is moved from one area of the state to another, which could strand expensive assets, and would instigate expensive and lengthy litigation. It also inevitably would pit every water user in the state against each other.

As seen in the Russian River example, state and local partnerships can be helpful to achieving better water management without touching the underlying water rights system. Local stakeholders have the benefit of deep knowledge of their watersheds and also would be tasked with any program implementation, but the state provides important resources with data and support. Additionally, the State Water Board could focus on enforcement of the existing system in order to protect existing rights and reduce illegal diversions.

CALCHAMBER POSITION

With something as fundamental as the system through which all Californians receive their water, policymakers must make strategic improvements that make the system more nimble, efficient and predictable, and avoid disruptions.

Staff Contact
Brenda Bass
Policy Advocate

brenda.bass@calchamber.com
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Water Supply

Persistent Drought Means New Storage, Water Sources More Critical Than Ever

Forecasts at the beginning of the 2023 water year (beginning October 1) indicated yet another below average year in terms of precipitation. Large storms in December and early January brought snowpack up to higher-than-average levels, which is a potentially optimistic sign that 2023 will not be as dry as recent years. However, increasingly variable precipitation and longer and more frequent droughts mean that California cannot afford to let one wet year lull us into a false sense of water security.

Meteorologists and climate scientists are arriving at a consensus that precipitation patterns are changing in the state, with more precipitation falling as rain and less as snow. Because the Sierra Nevada snowpack has long been one of California's most significant "reservoirs," the state may not be able to count on a reliable snowpack to feed rivers and reservoirs throughout the year. This puts into sharp relief that California must prioritize new and improved water storage and conveyance options, as well as pursue alternative, drought-resistant water supplies. Although conservation remains necessary, it is not sufficient to ease the pain of increased drought and other rainfall changes due to climate change.

SUPPLY CHALLENGES REMAIN, BUT CAN BE MET

Access to an adequate and reliable water supply is critical for a thriving economy, human comfort, and convenience, and for healthy ecosystems. A hotter and drier climate, combined with population and economic growth, will continue to create demand for water that outstrips the current supply. Policymakers should not foreclose any legitimate solutions to developing, conserving, or recycling water to increase Californians' ability to use it — whether using old technologies or new.

Even with average or better levels of rainfall and snowfall this winter, California's water supply challenges would remain. This is not an insurmountable challenge, as long as we pursue a variety of strategies to secure water supplies when and where they arrive, as well as from sources less affected by drought. There is no single silver bullet for solving California's water shortages, but rather any and all viable options should be pursued.

The Governor recognized the need for a multifaceted approach to water supply in his August 2022 Water Supply Strategy, which outlined steps the state must take to replace lost supply and includes the use of recycling, groundwater recharge, additional conveyance and supply infrastructure, and desalination technologies.

NEW WATER STORAGE AND INFRASTRUCTURE NEEDED

New storage projects are necessary in the face of a less reliable snowpack reservoir for California. Both above- and below-ground projects can and should make up for lost storage capacity in the landscape, including maintaining and

Desalination, Rain Barrel, Permeable Pavement and Wastewater Treatment

improving existing infrastructure that can move water more efficiently to where it is needed.

Projects slated to receive Proposition 1 funding, including Sites Reservoir, continue advancing through regulatory approval processes. Sites Reservoir will create a new lake in the Sacramento Valley that, when full, could hold enough water to supply 3 million households for one year. It does not rely on snowmelt, but captures winter storm flows from uncontrolled streams below the existing reservoirs in the Sacramento Valley. Because of this, it will inherently adapt to future climate conditions and will be operated to improve water supply resilience to the predicted changes in weather.

By operating in conjunction with other California reservoirs, Sites Reservoir substantially increases water supply flexibility, reliability, and resiliency in drier years. Sites Reservoir is the only proposed storage facility in California that will help with statewide operational effectiveness of the State Water Project and federal Central Valley Project. The California Water Commission has set aside $800 million in state bond funds for Sites, which will help offset the approximately $4 billion total cost of the project, most of which will be financed by water users.

The commission is considering another six proposed water storage projects for funding. Collectively, the projects will add 4.3 million acre-feet of water storage capacity. The applicants will need to complete remaining requirements, including feasibility studies and environmental reviews, before the commission can award final funding for each project. The commission's timeline anticipates that most of the applications will be finalized in the early part of this decade, with the earliest receiving funding in the near future.

In addition to new storage projects like Sites, existing infrastructure must be improved to better handle intense rain events and direct those flows to storage of some kind. Much of the rainfall from extreme events — especially those that occur back-to-back when the ground is saturated — runs off before it can be captured for maximum environmental, urban and agricultural benefit. If conveyance infrastructure is improved, however, more of these flows can be directed safely to above- or below-ground storage rather than lost to sea.

The newly reconfigured Delta Conveyance is one such project that would greatly improve the ability to redirect high storm flows and keep them in the system for later use. For example, if the Delta Conveyance had been operational during the massive storms California experienced at the end of 2021, an additional 236,000 acre-feet of water could have been moved to storage without adverse impacts to the environment. That is enough water for more than 2.5 million people, or nearly 850,000 households.

PERMIT STREAMLINING EXPEDITES PROJECTS, SAVES MONEY

In addition to these large projects, more localized projects are needed to maximize above- and below-ground storage. Opaque and slow permitting processes often grind these projects to near halts, which delays water supply reliability and increases prices. California's numerous existing above-ground reservoirs need critical structural improvements to be used at full capacity. Streamlining the permitting processes for these projects means that storage capacity can be brought back online more quickly, which benefits both supply and flood control concerns. Streamlining also keeps costs of projects low—relatively speaking—when compared with a delayed project approval. A one-year permitting delay on a large-scale water supply project can cost $50 million more.

Groundwater recharge projects have been slowed historically by confusing and onerous permitting requirements. In recognition of the need to bring online more recharge projects, the Governor's March 2022 drought Executive Order created an exemption from the California Environmental Quality Act (CEQA) for groundwater recharge projects that would utilize excess winter storm flows. The next few months will determine if this exemption succeeded in bringing online more recharge projects.

Wholesale exemptions may not be viable for all types of water infrastructure projects, but strict timelines for permit review and approval will help get projects started and avoid significant cost escalations for ratepayers.

ALTERNATIVE WATER SUPPLIES

• **Recycled Wastewater**. California's history of cyclical droughts and long-term water shortages also has led to innovative strategies to save and reuse water. Water flushed down drains or toilets — once considered waste — is now being cleaned and recycled for reuse. Taking advantage of technologies developed by water-scarce countries, local water agencies are considering advanced treatment of wastewater as a possible source of drinking water.

Water recycling is used widely in countries like Israel, Saudi Arabia, Australia and Singapore. Israel reclaims about 80% of its wastewater and uses it to irrigate agricultural lands and recharge aquifers. Singapore reclaims almost 100% and uses it

for industrial purposes. California water districts are beginning to invest in water recycling to provide a locally controlled, drought-proof water supply.

Orange County Water District and the Orange County Sanitation District built a groundwater replenishment system, which is the world's largest advanced water purification system for potable reuse. The system takes highly treated wastewater that normally would be discharged into the Pacific Ocean and purifies it. The plant produces up to 100 million gallons per day of high-quality water that exceeds state and federal drinking water standards.

Water agencies in the Los Angeles and San Diego areas are on the heels of Orange County in planning and implementing large-scale recycled water projects. Wastewater treatment entities throughout the state already perform to high standards and create treated water of a very high quality. Water exists, but the challenge lies in getting that water to where it can be reused.

• **Desalination**. Desalination of ocean and brackish groundwater is rapidly becoming a reality in California. According to the Department of Water Resources, 26 desalination plants were operating in California in 2013. Twenty of the plants desalt brackish groundwater and six plants desalt seawater. The largest ocean desalination plant in North America went online in Carlsbad in December 2015. The plant supplies 50 million gallons of drinking water daily to San Diego.

This year, the California Coastal Commission approved two new ocean desalination plants, one in Orange County and one in the Monterey Peninsula. This followed the commission's earlier disapproval of the Poseidon ocean desalination project in Huntington Beach and followed the Governor's August 2022 Water Supply Strategy. The Governor's strategy expressly listed ocean desalination projects as critical to augmenting the state's water supply. Nowhere can this be seen more easily than with California American Water's Monterey Peninsula project. This project will convert ocean water into high quality desalinated potable water and will restore flows to the Carmel River, providing benefits to endangered species and habitat that depend on the river, and provide the Monterey Peninsula with a reliable, drought-proof water supply.

These plants must undergo a rigorous permitting process, sometimes lasting up to 20 years. Nonetheless, the limited options for developing surface and ground storage or runoff makes these plants attractive to deliver quality potable water for urban use.

• **Capturing Stormwater Runoff**. Capturing stormwater runoff from impervious surfaces like streets, sidewalks, rooftops and parking lots in urban and suburban areas is another way to increase water supply. Stormwater treated to reduce pollutants can be used to replenish groundwater aquifers or recycled for use in landscaping.

New building techniques incorporate the use of low-impact designs that keep stormwater runoff rates and volumes as close to predevelopment rates as possible. Examples include the use of natural or manmade swales or green belts to allow stormwater to percolate into the ground; the use of permeable paving for streets, pedestrian pathways and driveways that allows for infiltration of fluids in the ground; and designs that incorporate rooftop systems to capture rainwater for landscaping.

In general, developing these alternative water supplies is more expensive per unit of water produced than building new surface or groundwater storage, but each alternative supply project can get off the ground less expensively than the huge storage projects. Along with the initial cost of construction, recycling and desalination processes also can have significant ongoing energy costs. The benefit of alternative sources of water, however, is availability and reliability. These benefits cannot be understated in light of longer and more intense drought periods that may come in the future.

CALCHAMBER POSITION

The California Chamber of Commerce supports a comprehensive solution to the state's chronic water shortage to ensure all Californians have access to clean and affordable water. Conservation, desalination, recycling, reuse, water use efficiency, conveyance and storage should be pursued vigorously to help increase water supply.

Staff Contact
Brenda Bass
Policy Advocate

brenda.bass@calchamber.com
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Cal/OSHA Regulatory Roundup

What's Coming for Businesses in 2023

The California Division of Occupational Safety and Health (Cal/OSHA) was busy before the pandemic – and COVID-19 pushed the understaffed agency into overdrive. From 2020–2022, Cal/OSHA's COVID-19 workplace emergency temporary standard — California Code of Regulations, Title 8, Section 3205 et seq. (the Workplace ETS) — and the related guidance was arguably the most important regulatory issue for employers in California. The ETS was constantly evolving and has potentially found its final form heading into 2023. In addition, Cal/OSHA has a number of long-term rulemakings that may become regulations in 2023, including the update to California's lead regulation, and new indoor heat and workplace violence regulations.

Following is a brief primer on the state's COVID-19 regulations, as well as some of the other high-profile regulations and concerns that employers should be aware of heading into 2023.

Note: Workers at healthcare facilities and other workplaces covered by California's Aerosol Transmissible Disease (ATD) Standard (California Code of Regulations, Title 8, Section 5199) face a different set of COVID-19 regulations and are exempted from the Workplace ETS for that reason. In that vein, Cal/OSHA convened an advisory committee on a proposal to require vaccination for COVID-19 in ATD settings in October 2021. Details regarding this rulemaking, which was completed in early 2022, are available at *https://www.dir.ca.gov/dosh/doshreg/AirborneInfectious-Meetings.html*.

COVID-19 REGULATION HEADING INTO 2023

Thankfully, California has been among the most successful states in the nation in combatting COVID-19 and reducing transmissibility, despite predictable holiday surges. Despite a labor shortage and considerable vaccine hesitancy among workers, California employers largely embraced vaccination during 2021 and reaped the benefits of reduced workplace cases and workplace disruption.

In 2022, workplaces reopened more fully and life largely returned to normal. Although that return brought an increase in case rates, the cases were significantly more manageable due to increased vaccination, improved scientific understanding, less severe forms of the virus, and newly developed treatments (such as Paxlovid). It remains to be seen, however, how the virus will evolve and whether Californians will continue to update their COVID-19 vaccines as those evolutions occur.

TIMELINE FOR THE COVID-19 REGULATION

Cal/OSHA initially approved an emergency regulation on COVID-19 in November 2020. In an unprecedented regulatory process, stakeholders were given *no public opportunity to comment* before the Standards Board's hearing and vote on November 19, 2020, and the text was made public only five business days before the vote. As the Workplace ETS and its guidance evolved through 2021 and 2022, this pattern of minimal notice and communication continued, with some improvement. Through 2022, unexpected changes by

California Department of Public Health (CDPH) guidance prompted corresponding changes in the COVID-19 regulation, leading to confusion and operational difficulties as California employers attempted to keep pace.

Looking toward 2023, the Workplace ETS has reached its likely final form, as it was approved for a two-year, nonemergency extension on December 15, 2022. This extension will carry forward until December 31, 2024, when it will expire.

SUBSTANTIVE ISSUES IN TWO-YEAR, NONEMERGENCY COVID-19 REGULATION

With its December 15, 2022 vote, the Cal/OSHA Standards Board approved what is likely to be the final form of the COVID-19 regulation in California — which means employers will be adjusting their compliance regimes and settling in for the next two years. Thankfully, this final iteration has some noticeable improvements for California employers over prior versions, but also a few added complexities. Below are a few of the key changes from prior versions of the regulation:

• **Exclusion Pay Removed**: Exclusion pay was ***not*** extended in the two-year, nonemergency regulation, which means employers' sick leave calculations and costs will be reduced. This is a significant improvement, particularly for smaller businesses, who have been forced to shoulder the cost of employees' COVID-19 cases that often were caught outside the workplace.

• **Change to More Easily End Outbreaks:** Prior versions of the regulation required that outbreak precautions continue until a workplace had ***zero*** cases in a two-week period. This difficult standard meant that larger workplaces might remain in an outbreak for weeks (or months) after any workplace outbreak occurred due to unrelated social spread creating one new case and extending outbreak protocols. Under the new version, employers need to continue their outbreak protocols only if ***two or more*** cases occur in a two-week period. This also is a considerable improvement for employers.

• **"Close Contacts" Definition Changed Based on Size of Room**: Many of the COVID-19 regulation's provisions hinge on whether a worker is a close contact for a COVID-19 case. However, the regulation's definition of the term "close contact" has been changed significantly during the latter half of 2022. Because of a change made by the CDPH, the definition of a "close contact" was changed from the longstanding "6 feet / 15 minutes" standard to a new hybrid definition, based on the size of the indoor space. For indoor airspaces exceeding 400,000 cubic feet, a close contact will be anyone within 6 feet of a positive COVID-19 case for 15 minutes in a 24-hour period. For indoor airspaces smaller than 400,000 cubic feet, close contacts will be anyone "sharing the same indoor airspace" for 15 minutes in a 24-hour period. Notably, this definition was in effect ***before*** the nonemergency regulation was adopted in December, but still is a significant change that employers should focus on adapting to as they head into 2023.

As employers adapt to these changes, another silver lining is that the California Chamber of Commerce does not anticipate additional frequent changes to the text between January 2023 and December 2024 as there were over the last few years. This should ease compliance, as employers should be able to "set it and forget it" for their policies because the regulatory text will be locked in for the next two years — although employers will continue to need to watch for frequently asked questions (FAQ) changes from Cal/OSHA.

OTHER REGULATIONS THAT MAY ARISE IN 2023

Although COVID-19 has dominated the lion's share of Cal/OSHA's focus for the last few years, other regulations are likely to show some movement in 2023. Keep an eye out for the following changes:

• **Indoor Heat**: California's draft Indoor Heat Regulation has been in final draft form since April 2019 and completed the required economic analysis — Standardized Regulatory Impact Analysis (SRIA) — in 2021. If your workplace temperature exceeds 82 degrees Fahrenheit, then this regulation is one to watch as it may apply to your workplace. Substantively, it will require temperature monitoring, cool down areas, and other heat-related precautions to protect employees. We expect this regulation to be especially problematic for smaller employers in tight quarters, such as restaurants. The text of the regulation is finalized and available online, and we are waiting for the Cal/OSHA Standards Board to begin formal rulemaking. Estimated potential passage would be late 2023 at the earliest.

• **Lead Standards**: California's lead exposure standards in construction and in general industry have been creeping through the Cal/OSHA regulatory process since 2011 (California Code of Regulations, Title 8, Sections 1532.1, 5198). Generally speaking, the draft regulation will greatly lower thresholds for testing and medical removal related to blood lead levels, and consequently greatly expand the number of workplaces and employees that will need to undergo blood lead monitoring. In 2019, the SRIA was finally completed, allowing the standard to move to formal rulemaking. After

comments from the Department of Finance, the SRIA was subsequently revised in late 2020. With that hurdle cleared, we are now waiting for the Cal/OSHA Standards Board to begin formal rulemaking, which involves public notice at a Board meeting, and a 45-day comment opportunity, then analysis of comments. Estimated potential passage would be late 2023 at the earliest.

• **Workplace Violence**: Cal/OSHA has been preparing a workplace violence standard to cover all industries since 2017 and circulated its last draft text in May 2022. Substantively, this draft requires employers to log and categorize any workplace violence occurrences, as well as adopt a "workplace violence prevention plan" with specific requirements. This draft has not yet been finalized, and we anticipate another advisory committee meeting, as well as an SRIA analysis, before the text is finalized. We estimate potential adoption no sooner than mid-2024.

CALCHAMBER POSITION

The CalChamber supports effective workplace safety policies and believes that such policies must be based on sound science, must be clearly drafted, and must be feasible to implement. The CalChamber also believes stakeholder input, even in times of crisis, is critical to drafting effective, successful regulations. Regarding COVID-19, the CalChamber supports a managed transition away from emergency-footing workplace precautions. The CalChamber will continue to advocate sound, effective, and feasible policy at Cal/OSHA in all rulemaking processes.

Staff Contact
Robert Moutrie
Policy Advocate

robert.moutrie@calchamber.com
January 2023

Workers' Compensation

Reform on the Horizon?

California's workers' compensation system is a 100-year-old, constitutionally guaranteed system that provides workers the right to compensation for workplace injuries. This compensation includes medical treatment to "cure and relieve" the injury and, when appropriate, indemnity benefits in the form of temporary or permanent disability.

The system is rooted in an agreement between employers and employees, sometimes referred to as the "The Grand Bargain," where employers accept responsibility for all injuries and illnesses that occur in the course and scope of employment, even when they would otherwise have no legal liability. The workers, in exchange for the guaranteed coverage, relinquish the right to sue their employers in civil court.

When an employee files a workers' compensation claim, the employer generally has 90 days to accept or reject the claim (this timeline was shortened by SB 1127 (Atkins; D-San Diego; 2022) for certain presumption claims). The employer is required to pay for up to $10,000 in health care services while the claim is being reviewed, even if it ultimately is denied. If the employer rejects the claim, the employee has the right to have his or her claim heard by a workers' compensation administrative law judge.

PRIOR REFORMS

The last two administrations under Governors Arnold Schwarzenegger and Edmund G. Brown Jr. both oversaw significant workers' compensation reforms. In 2004, SB 899 (Poochigian; R-Fresno)) sought to address increased volatility in the workers' compensation insurance market by making reforms to nearly every aspect of the system.

In light of some of the unintended consequences of SB 899 and the 2008 recession, stakeholders resumed discussions about another reform around 2010. The result was SB 863 (De León; D-Los Angeles) in 2012. SB 863 included, among other items, benefits increases, liens reform, and the creation of Independent Bill Review (IBR) and Independent Medical Review (IMR).

DISCUSSIONS REGARDING REFORM EMERGE

The present system is relatively stable, but expensive. It is the fourth most expensive workers' compensation system in the country. Employers are growing concerned about increased frictional costs and inefficiencies within the system while many workers' advocates seek increased benefits as well as improved timely access to medical treatment.

Discussions about possible systemwide reforms were overshadowed in the last few years by the COVID-19 pandemic. Governor Gavin Newsom declared that he intends to end the COVID-19 state of emergency in February 2023, so it is likely that discussions about workers' compensation reform will re-emerge. Indeed, the Department of Workers' Compensation (DWC) has started having stakeholder meetings, hosting a public forum "to hear ideas to improve the State's workers' compensation system" at the end of last year, and promising continued discussion on other topics into the new year.

It is essential that any reforms be negotiated between the two cornerstones of the workers' compensation system: employers and workers. It also is important that any legislation be the product of a transparent, data-driven process. All too often in the workers' compensation space there are troublesome bills driven by anecdotes rather than actual data.

For employers, several issue areas call out for improvement:

- **Cumulative Trauma (CT) Claims**: There is a low burden to file CT claims, so the number of them continues to grow, especially post-termination claims. These claims are extremely costly, with some studies finding that as many as 90% of them are litigated before the Workers' Compensation Appeals Board.
- **Qualified Medical Evaluators (QME) Process**: The DWC recently revised the medical-legal fee schedule, including increasing reimbursements for QME reports. The department should have taken additional actions in this area, including unaddressed recommendations from the California

State Auditor's 2019 report. Most significantly, further action is necessary to ensure that QMEs produce high-quality reports that help resolve disputes in a timely manner. The DWC increased the cost for these reports, but the quality of the product received remains low.

• **Independent Medical Review (IMR)**: A small number of physicians and attorneys who drive much of the IMR activity are abusing the IMR system. The most active 1% of requesting doctors (about 106) account for more than 40% of all disputed service requests. The top 10 doctors alone account for about 10% of all disputed requests. This means that in 2019, 10 doctors filed more than 16,000 IMR requests. Some law firms send 90% of all Utilization Review (UR) denials to IMR. The data shows that UR decisions are being upheld by IMR about 92% of the time, so many of these IMR requests are not legitimate, yet they continue to be filed and employers bear the cost of IMR.

• **Employer Assessments**: Employer assessments will rise significantly in 2023, an estimated 13.9% increase from 2022. One of the causes of this increase includes the Subsequent Injuries Benefits Trust Fund, which now tops $430 million. The increases in this fund have gone out of control and are in part responsible for the continued ballooning assessments. The cost of the fund must be reined in.

• **Medical Provider Networks (MPN)**: These networks must be preserved. MPNs are essential to providing quality care within the California workers' compensation system. Presently, employers and insurance providers have the opportunity to determine which providers may or may not be part of their network. This allows for the exclusion of inexperienced and low-quality providers that have low return-to-work rates, produce low-quality reports, or engage in poor or abusive billing practices. The right to control MPN quality benefits both workers and employers by ensuring that workers are getting the care they need in a timely manner and that frictional costs and litigation in the system remain low. MPNs were a critical part of prior negotiated reforms to the workers' compensation system to provide quality care and control cost.

CALCHAMBER POSITION

The workers' compensation system was created to provide a cost-efficient and expedited way to compensate employees for workplace injuries. Once an employee establishes that an injury is work-related, the employee is entitled to compensation, regardless of fault. Any changes to the system must be accomplished through a transparent, data-driven process between labor and management. The Legislature must be cautious when proposing changes to the workers' compensation structure, to maintain a balanced system that provides fair benefits to workers, while minimizing costs and unfair pressures on employers.

Staff Contact
Ashley Hoffman
Policy Advocate

ashley.hoffman@calchamber.com
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CalChamber
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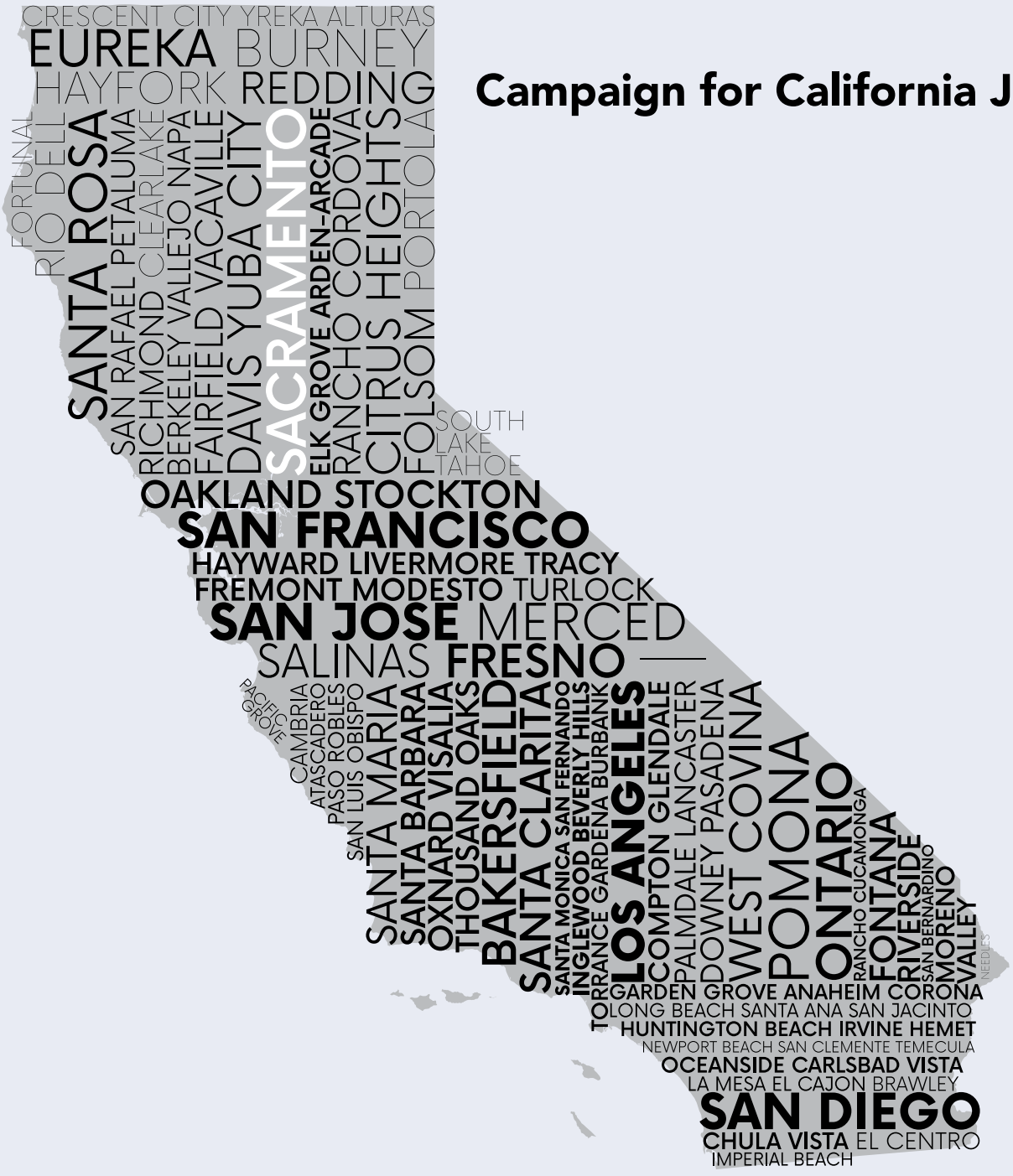


Campaign for California Jobs

Creating A More Affordable California

2023 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

CalChamber Job Killer Tag Identifies Worst Proposals

Economic growth and job creation are the keys to making California a great place to live, work and do business. To help lawmakers focus on the full ramifications of proposed laws, the California Chamber of Commerce identifies each year the legislation that will hinder job creation. The job killer list highlights those bills that truly are going to cost the state jobs. The CalChamber policy staff is very judicious about the difference between legislation that merits opposition and a job killer.

The goal is to remind California policymakers to keep their focus on the No. 1 issue affecting their constituents—economic recovery and job creation. Each bill designated as a job killer would increase uncertainty for employers and investors, and lead to higher costs of doing business, which will undermine the economic health of the state. Individually, the job killer bills are bad, but cumulatively they are worse.

Jobs are killed when employers lay off workers or can't afford to hire workers to provide goods and services to consumers. Workers are laid off (or wages are reduced) if consumers do not buy goods and services from businesses, or because the cost of providing those goods or services has increased to the point where the business is not competitive. Consumers will not buy goods and services if they have less money to spend, or if the goods and services are a lesser value (higher cost/lesser quality) than alternatives in the marketplace. Lower wages and fewer jobs are the result of an employer not being successful in the marketplace—when an employer is not competitive and/or consumers have no money to spend.

Government kills jobs when it passes laws, rules and regulations that discourage investment and production, that add unnecessary cost and burdens to goods and services, or that make California employers uncompetitive.

Job killer bills make employers less competitive, forcing them to reduce employee benefits, or take resources from consumers.

CRITERIA

Factors that have earned job killer status for legislation include:

- imposing costly workplace mandates;
- creating barriers to economic development/economic recovery;
- requiring expensive, unnecessary regulations;
- inflating liability costs;
- imposing burdensome or unnecessary requirements that increase costs on businesses;
- expanding government at businesses' expensive;
- criminalizing inadvertent business errors;
- imposing new or higher fees and taxes;
- discouraging businesses from expanding their workforce in or to California.

BILLS STOPPED

Since starting the job killer bill list in 1997, the CalChamber has prevented 93% of these onerous proposals from becoming law. Every job killer stopped means the state will at least do no more harm to businesses and their ability to compete in the national and global markets.

Updates appear at *cajobkillers.com* and *calchamber.com/jobkillers*.

Job Creator Bills Help California Economy Grow

Alongside the California Chamber of Commerce list of job killer legislation is the job creator bill list. Since 2008, the CalChamber has identified and strongly supported legislation that will stimulate the economy and improve the state's jobs climate. The *Business Issues and Legislative Guide* explains the policies that would improve California's business climate and nurture our economy—the principles that determine which bills are job creators. If adopted, job creator legislation would encourage employers to invest resources back into our economy and their local communities rather than spend on unnecessary government-imposed costs. Job creating legislation promotes the following policies:

- Keeping taxes on new investment and business operations low, fair, stable and predictable.
- Reviving local economic development tools.
- Reducing regulatory and litigation costs of operating a business—especially when hiring and keeping employees.
- Reducing the cost and improving the certainty and stability of investing in new or expanded plants, equipment and technology.
- Investing in public and private works that are the backbone for economic growth.
- Ensuring the availability of high-quality skilled employees.

SIGNED INTO LAW

Among the 32 job creators signed into law to date are bills:

- Protecting employees and employers from being sued for defamation in sexual harassment cases simply for reporting and investigating harassment.
- Giving employers a limited opportunity to cure technical violations in an itemized wage statement before being subject to costly litigation.
- Reforming disability access requirements and limiting frivolous litigation related to disability access compliance.
- Expediting the environmental review process for projects related to energy or roadway improvements, repair and maintenance.
- Creating a predictable and easy-to-track schedule for implementing new regulations.
- Extending and expanding the film and television tax credit.
- Stopping drive-by Proposition 65 lawsuits for alleged failure to post specific required warnings.
- Repealing a retroactive tax on small business investors.
- Encouraging aerospace projects to locate in California.
- Restoring funding to the California Competes Tax Credit Program.
- Increasing loan access for small business.
- Helping businesses rebuild after disasters by allowing state agencies to establish a procedure to reduce licensing fees for businesses affected by a federal- or state-declared emergency.

Removing regulatory hurdles makes it easier for California employers to create the jobs needed to maintain the state's economic recovery.

Updates on the job creator bills appear at *calchamber.com/jobcreators*.

CalChamber
CALIFORNIA CHAMBER OF COMMERCE

About CalChamber

Creating A More Affordable California

2023 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

Policy/Executive Team

PRESIDENT AND CHIEF EXECUTIVE OFFICER

Jennifer Barrera took over as president and chief executive officer of the California Chamber of Commerce on October 1, 2021.

She has been part of the CalChamber team since 2010 and stepped into the top position after serving as CalChamber executive vice president, overseeing the development and implementation of policy and strategy for the organization, as well as representing the CalChamber on legal reform issues.

Barrera is well-known for her success rate with the CalChamber's annual list of job killer legislation, efforts to reform the Private Attorneys General Act (PAGA) and leadership working with employers on critical issues, including most recently those arising from the COVID-19 pandemic.

In addition, she advises the business compliance activities of the CalChamber on interpreting changes in employment law.

She led CalChamber advocacy on labor and employment and taxation from September 2010 through the end of 2017. As senior policy advocate in 2017, Barrera worked with the executive vice president in developing policy strategy. She was named senior vice president, policy, for 2018 and promoted to executive vice president on January 1, 2019.

From May 2003 until joining the CalChamber staff, she worked at a statewide law firm that specializes in labor/employment defense. She represented employers in both state and federal court on a variety of issues, including wage and hour disputes, discrimination, harassment, retaliation, breach of contract, and wrongful termination. She also advised both small and large businesses on compliance issues, presented seminars on various employment-related topics, and regularly authored articles in human resources publications.

Barrera earned a B.A. in English from California State University, Bakersfield, and a J.D. with high honors from California Western School of Law.

EXECUTIVE VICE PRESIDENT AND CHIEF OF STAFF FOR POLICY

Ben Golombek joined the California Chamber of Commerce on January 17, 2022 as executive vice president and chief of staff for policy.

In this role, Golombek heads the CalChamber policy staff, providing strategic oversight and management of CalChamber's legislative and regulatory priorities.

Most recently, Golombek served as the West Region vice president for public affairs for AT&T, where he managed a team of 20 to create and implement legislative campaigns and media strategies to educate and influence lawmakers, regulators and consumers for eight states, including California.

Golombek has previous experience serving as chief of staff to three members of the California State Assembly, including the chairs of the Assembly Revenue and Taxation, and Assembly Appropriations committees.

Prior to his State Capitol experience, Golombek worked at Los Angeles City Hall, where he served as deputy city controller, communications director for a city councilmember and deputy press secretary for Mayor Antonio Villaraigosa.

Golombek graduated from Northwestern University, has an M.B.A. from the University of California, Davis, and completed the prestigious Coro Fellows Program in Public Affairs.

SENIOR POLICY ADVOCATE

Adam Regele joined the California Chamber of Commerce in April 2018 as a policy advocate specializing in environmental policy, housing and land use, and product regulation issues. He was named a senior policy advocate in April 2021 in recognition of his efforts on behalf of members.

He came to the CalChamber policy team after practicing law at an Oakland-based law firm—Meyers, Nave, Riback, Silver & Wilson, PLC—where he advised private and public clients on complex projects involving land use and environmental laws and regulations at the local, state and federal levels. His extensive environmental and waste regulatory compliance experience includes defending in litigation matters related to the California Environmental Quality Act (CEQA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA).

Before joining Meyers Nave, Regele handled state and federal environmental litigation and administrative proceedings as an associate at a Bay Area law firm that focused on environmental, natural resources, land use, labor and local government law.

He served as a federal judicial law clerk to the Honorable Edward J. Davila of the U.S. District Court, Northern District of California and as a legal fellow with the Oakland City Attorney's Office prior to entering private law practice.

Regele earned a B.S. in environmental science at the University of California, Berkeley, and a J.D. from UC Hastings College of Law, where he was symposium editor and research and development editor for the *Hastings West-Northwest Journal*.

***Staff to**: Environmental Policy Committee, Housing Committee*

POLICY ADVOCATE

Brenda Bass joined the California Chamber of Commerce in January 2022 as a policy advocate specializing in water supply and storage issues. She also tracks agriculture, food and natural resources issues.

She came to the CalChamber policy team from the Sacramento office of Downey Brand, where she was a senior associate. She advised public agency and private clients on environmental review requirements, as well as applying for and complying with water quality permits.

Bass logged experience with California Environmental Quality Act (CEQA) litigation and groundwater quality issues for clients throughout California. She also advised clients on Clean Water Act matters, compliance with state and federal laws governing stormwater and wastewater quality, as well as assisted agricultural enterprises with rapidly changing irrigation discharge regulations.

Before joining Downey Brand, Bass practiced at a California boutique environmental firm. She also externed for a federal bankruptcy judge in Sacramento.

Bass earned a B.A. in linguistics at the University of California, Davis, and a J.D. with distinction from the McGeorge School of Law, University of the Pacific, where she was primary editor of the *McGeorge Law Review*.

***Staff to:** Food and Agriculture Committee, Water Resources Committee*

POLICY ADVOCATE

Ronak Daylami, an experienced attorney, joined the California Chamber of Commerce in March 2022 as a policy advocate specializing in privacy issues.

She came to the CalChamber policy team from Nielsen Merksamer, where she served as senior counsel in the firm's government law section specializing in privacy issues, state regulation of business practices, consumer protection, and legislative process.

Before joining Nielsen Merksamer, Daylami worked for nearly 10 years in the Capitol. Most recently, she was the chief consultant of the Assembly Privacy and Consumer Protection Committee, where she provided expertise on privacy, cybersecurity, consumer protection, and deployment of technology by state government. As chief consultant, she provided counsel to Committee Chairman and AB 375 joint author Assemblymember Ed Chau during the negotiations and passage of the California Consumer Privacy Act.

Daylami previously served as senior counsel to the Senate Judiciary Committee, where she worked for nearly six years on various high profile, complex, and controversial issues involving constitutional and civil rights, corporate/securities laws, tort liability, and access to the justice system. She worked at the California Department of Technology during the Brown administration and at the Office of the State Chief Information Officer during the Schwarzenegger administration.

Daylami earned a B.A. in political science with a minor in English at the University of California, Berkeley, and a J.D. from University of California, Hastings College of the Law, where she was a senior articles editor for the *Constitutional Law Quarterly*.

***Staff to**: Privacy and Cybersecurity Committee*

POLICY ADVOCATE

Ashley Hoffman joined the California Chamber of Commerce in August 2020 as a policy advocate specializing in labor and employment and workers' compensation issues.

Before joining the CalChamber policy team, she was an associate attorney in the Sacramento office of Jackson Lewis P.C., representing employers in civil litigation and administrative matters as well as advising employers on best practices, including compliance with laws such as the California Labor Code, California Wage Orders, and the Fair Employment and Housing Act.

She previously worked as a litigation associate at Gibson, Dunn & Crutcher, LLP, Los Angeles, representing clients in a variety of matters, including employment discrimination, consumer protection class actions, trademark disputes, immigration matters, and other issues.

She also was a law clerk at the U.S. District Court for the Western District of Tennessee in Memphis and a judicial extern for the Ninth Circuit U.S. Court of Appeals in Pasadena.

Hoffman holds a B.A. with high honors in political science from the University of California, Santa Barbara, and earned her J.D. from the UCLA School of Law where she was a Michael T. Masin scholar, an editor at the *UCLA Law Review*, and staff member for the *Women's Law Journal*.

***Staff to**: Labor and Employment Committee, Workers' Compensation Committee*

POLICY ADVOCATE

Robert Moutrie joined the California Chamber of Commerce in March 2019 as a policy advocate. He leads CalChamber advocacy on occupational safety, legal reform, tourism, insurance, unemployment insurance and immigration, as well as representing employer interests on education issues.

He is CalChamber's expert on the COVID-19 workplace regulation, and was closely involved in its drafting and amendments process at Cal/OSHA.

Moutrie has represented clients on matters such as consumer fraud litigation, civil rights, employment law claims, tort claims, and other business-related issues in federal and state courts.

He previously served as an associate attorney at the Oakland-based firms of Meyers, Nave, Riback, Silver & Wilson, and at Valdez, Todd & Doyle; and as a junior associate attorney at the Law Offices of Todd Ruggiero in San Francisco. He also served as a legal intern for the San Francisco Public Defender's Office and the Los Angeles District Attorney's Office.

Moutrie earned a B.A. in political science from the University of California, Berkeley, and a J.D. with honors from the University of California, Hastings College of the Law. He is an instructor for the nationally ranked UC Hastings Trial Team.

Staff to: *Education Committee, Legal Reform and Protection Committee, Workplace Safety Subcommittee, Tourism Committee, Immigration Committee*

POLICY ADVOCATE

Preston R. Young joined the California Chamber of Commerce in October 2019 as a policy advocate, specializing in health care policy and taxation issues.

Young came to the CalChamber from the Sacramento law firm of Schuering Zimmerman & Doyle, LLP, where he had been a partner. He specialized in multiple aspects of health care law, medical malpractice, the Health Insurance Portability and Accountability Act (HIPAA), product liability, and elder abuse litigation.

He previously was an attorney with Powers & Miller in Sacramento, specializing in insurance defense and product liability litigation. He also worked as an attorney at State Farm Insurance in San Francisco.

Young holds a B.A. in communications from Saint Mary's College of California, and earned a J.D. from Golden Gate University School of Law, where he was associate editor of the *Environmental Law Journal.*

Staff to: *Health Care Policy Committee, Taxation Committee*

POLICY ADVOCATE

Brady Van Engelen joined the California Chamber of Commerce in November 2022 as a policy advocate specializing in energy issues. He also leads CalChamber advocacy on climate change, environmental regulation and transportation matters.

Before joining the CalChamber policy team, Van Engelen served as a senior policy manager at Bloom Energy, representing the company before the California Legislature and California Public Utilities Commission.

He previously was a gubernatorial appointee to the California Geologic Energy Management Division (CalGEM) and served as special assistant to the state oil and gas supervisor. Van Engelen also was defense legislative assistant to then-U.S. Senator John Kerry and prior to working on Capitol Hill, worked in policy and advocacy roles at Veterans For America.

Van Engelen served in the U.S. Army from 2002 to 2005, and received a Purple Heart and Bronze Star.

He holds a B.A. in business administration from Seattle University, earned a master's degree in government from Johns Hopkins University, and has an M.B.A. from the University of California, Davis.

Staff to*: Environmental Policy Committee, Transportation and Infrastructure Committee*

EXECUTIVE VICE PRESIDENT, COMMUNICATIONS

Denise Davis, executive vice president of communications, oversees communications strategy and outreach, media relations, and manages the CalChamber's involvement in select issue advocacy and ballot measure campaigns.

Before joining the CalChamber, Davis was a senior-level communications consultant working on a number of high-profile campaigns, legal matters and policy issues. She was Governor Arnold Schwarzenegger's chief deputy communications director and has 14 years of experience serving three California attorneys general as a spokesperson and victim advocate. She also directed media relations for a national, nonprofit legal foundation.

Over the course of her career, Davis has worked closely with statewide officeholders, Cabinet members, major corporations and a variety of trade associations. As such, Davis has developed expertise in the areas of environmental law, land use regulation, water law, resource management, criminal justice issues, correctional law, consumer law, health care and labor relations.

Davis graduated from the University of California, Davis, receiving a B.A. in communications.

EXECUTIVE VICE PRESIDENT, PUBLIC AFFAIRS

Martin R. Wilson, executive vice president of public affairs, joined the California Chamber of Commerce in October 2011.

Wilson oversees all CalChamber public affairs and campaign activities, including the Public Affairs Council, a political advisory committee made up of the CalChamber's major members; its candidate recruitment and support program; and its political action committees: ChamberPAC, which supports pro-jobs candidates and legislators, and CalBusPAC, which qualifies, supports and/or opposes ballot initiatives.

He is the CalChamber liaison to JobsPAC, an employer-based, independent expenditure committee that supports pro-business candidates.

Wilson has more than 40 years of experience in California politics, playing leadership roles in the election and re-election of two governors, and a U.S. senator. He also has orchestrated numerous successful ballot measure and public affairs campaigns.

In addition to his campaign experience, Wilson has served in government as a senior staff member at the local, state and federal levels.

Before joining the CalChamber, Wilson was managing partner of Wilson-Miller Communications, where he also advised Governor Arnold Schwarzenegger as head of the Governor's political and initiative committee, the California Recovery Team. Before founding his own firm, Wilson was managing director for Public Strategies Inc. in Sacramento for five years and held a similar position with Burson-Marsteller for six years.

Wilson has served as senior fellow for the UCLA School of Public Affairs, board member for the California State Fair and director of the Coro Foundation, a public affairs training organization.

He graduated from San Diego State University with a B.A. in history.

***Staff to**: Public Affairs Council, ChamberPAC Advisory Committee, ChamberPAC, CalBusPAC, Candidate Recruitment and Development Fund*

***Also**: JobsPAC Executive Director*

VICE PRESIDENT, COMMUNICATIONS

Ann Amioka has been a communications specialist at the California Chamber of Commerce since 1980. Since 1982, she has been editor of the CalChamber's legislative newsletter, *Alert*. She oversees editing and production of CalChamber communications and the corporate website.

Before joining the CalChamber staff as editor of the CalChamber's agricultural labor relations newsletter, Amioka was a reporter for a daily newspaper in Yolo County. She has a B.A. in history from Stanford University and an M.A. in history from California State University, Sacramento.

VICE PRESIDENT, CORPORATE RELATIONS

Drew Savage was named vice president of corporate relations at the beginning of 2001. The position is dedicated to enhancing the CalChamber's profile with major corporations.

Savage came to CalChamber in 1990 as a membership specialist following three years in a similar position at the Illinois Chamber. He was named manager of the CalChamber's membership sales team in October 1994. After taking on additional responsibilities for working with the state's growth industries and developing relationships with larger companies, Savage was promoted to vice president of membership in late 1999.

He holds a B.A. in political science from the University of Illinois at Chicago.

VICE PRESIDENT, INTERNATIONAL AFFAIRS

Susanne Thorsen Stirling has headed CalChamber international activities for more than four decades.

She is an appointee of the U.S. Secretary of Commerce to the National Export Council, and serves on the U.S. Chamber of Commerce International Policy Committee, the California International Relations Foundation, and the Chile-California Council.

In previous years, Stirling was an appointee of Governor Edmund G. Brown Jr. to the California International Trade and Investment Advisory Council, and served on the Board of Directors of the International Diplomacy Council, the World Affairs Council of Northern California (Sacramento), and the Danish-American Chamber of Commerce.

The CalChamber is a past recipient of the U.S. Presidential Award for Export Service, and received the Presidential Citation from the government of the Republic of Korea. In November 2019, Stirling was presented with the "Outstanding Woman of the Year in International Trade" award by the Women in International Trade, Los Angeles (WIT-LA).

In March 2021, Senator Bill Dodd named Stirling "Woman of the Year" for Sacramento County, praising her as having been an ambassador for international trade for many years.

Before joining the CalChamber, Stirling held positions in public affairs and public relations for Burmeister & Wain A/S, an international shipbuilding company based in Copenhagen.

Stirling, originally from Denmark, studied at the University of Copenhagen and holds a B.A. in international relations from the University of the Pacific, where she served as a member of the Board of Regents for nine years. She earned an M.A. from the School of International Relations at the University of Southern California.

***Staff to**: Council for International Trade*

California Foundation for Commerce and Education

PRESIDENT

Loren Kaye was appointed president of the California Foundation for Commerce and Education in January 2006.

The Foundation is affiliated with the California Chamber of Commerce and serves as a "think tank" for the California business community. The Foundation is dedicated to preserving and strengthening the California business climate and private enterprise through accurate, impartial and objective research and analysis of public policy issues of interest to the California business and public policy communities.

Kaye has devoted his career to developing, analyzing and implementing public policy issues in California, with a special emphasis on improving the state's business and economic climate.

Kaye also was a gubernatorial appointee to the state's Little Hoover Commission, charged with evaluating the efficiency and effectiveness of state agencies and programs. He served in senior policy positions for Governors Pete Wilson and George Deukmejian, including Cabinet Secretary to the Governor and Undersecretary of the California Trade and Commerce Agency.

Kaye also has represented numerous private sector interests, managing issues that affect specific business sectors to promote an improved business climate or to resist further regulation or costs on business.

Kaye is a graduate of the University of California, San Diego, with a degree in political science.

Policy Issues and Staff Index

CalChamber Committees

California Chamber of Commerce policy committees draft and review policy and make recommendations to the Board of Directors on a range of issues. The CalChamber also establishes ad hoc committees as the need arises to address other policy issues. Committees range in size from eight to 100 members, and meet between two and four times a year (or, as needed) in virtual meetings or via telephone conference calls. Committee chairs generally are members of the CalChamber Board of Directors and work closely with CalChamber policy team members, permitting the CalChamber to act quickly as issues emerge. Membership in committees (other than those whose membership is by appointment) is open to managers, technicians and/or policy experts with member firms (Advocate level or higher). To get involved, submit the form at *www.calchamber.com/getinvolved*.

POLICY COMMITTEES

EDUCATION

Goal: Foster greater business involvement to improve both teacher and student performance, and administrative accountability in schools throughout California. (Membership by appointment.)

Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

ENVIRONMENTAL POLICY

Goal: Oversee issues related to the environment, such as air quality, climate change and AB 32 implementation, energy, the California Environmental Quality Act (CEQA), Proposition 65 and green chemistry, hazardous and solid waste, surface mining and land use. Recommend policies that meet the mutual objectives of protecting human health and the environment while conserving the financial resources of business to the fullest extent possible to help California businesses grow and promote their technologies/services.

Staff Contacts: Adam Regele, *adam.regele@calchamber.com*
Brady Van Engelen,
brady.vanengelen@calchamber.com

FOOD AND AGRICULTURE

Goal: Shape policy impacting the entire food and agricultural supply chain, from growing and distribution to packaging, transportation, retail and end of life management.

Staff Contacts: Brenda Bass, *brenda.bass@calchamber.com*

HEALTH CARE POLICY

Goal: Promote a sound and affordable health care system. Work to contain costs and avoid unnecessary and expensive regulatory controls, including mandates.

Staff Contact: Preston R. Young, *preston.young@calchamber.com*

HOUSING

Goal: Support housing policies that focus on increasing California's housing supply for the benefit of all Californians' quality of life.

Staff Contact: Adam Regele, *adam.regele@calchamber.com*

IMMIGRATION

Goal: Recommend policies on issues concerning immigration.

Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

LABOR AND EMPLOYMENT

Goal: Protect employers' rights to organize, direct and manage their companies' employees in an efficient, safe and productive manner.

Staff Contact: Ashley Hoffman, *ashley.hoffman@calchamber.com*

LEGAL REFORM AND PROTECTION

Goal: Seek comprehensive tort reform that will halt runaway liability risk and promote greater fairness, efficiency and economy in the civil justice system.

Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

PRIVACY AND CYBERSECURITY

Goal: Proactively develop and promote privacy principles and policies that protect consumers without stifling innovation and that avoid costly and unnecessary legal liability and compliance burdens on businesses.

Staff Contact: Ronak Daylami, *ronak.daylami@calchamber.com*

TAXATION

Goal: Monitor legislation and regulatory activity to ensure that California tax laws are fair and can be administered easily. Review state spending plans to make certain that economy and efficiency are the primary goals of government.
Staff Contact: Preston R. Young, *preston.young@calchamber.com*

TOURISM

Goal: Encourage increased travel to California by fostering investment in advertising and improvements to tourism infrastructure, considering the important role of tourism in the state's economy and plans for economic recovery. (Membership by appointment.)
Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

TRANSPORTATION AND INFRASTRUCTURE

Goal: Work toward developing and maintaining a statewide transportation network that is adequate for the needs of business, agriculture and individual citizens.
Staff Contact: Brady Van Engelen,
brady.vanengelen@calchamber.com

WATER RESOURCES

Goal: Encourage responsible water quality goals and water development policies to meet the increasing demand for reliable water supplies. (Membership by appointment.)
Staff Contact: Brenda Bass, *brenda.bass@calchamber.com*

WORKERS' COMPENSATION

Goal: Promote legislative, judicial and regulatory actions that maintain an efficient workers' compensation system that provides adequate worker benefits while protecting the competitive position of California employers.
Staff Contact: Ashley Hoffman, *ashley.hoffman@calchamber.com*

SUBCOMMITTEE

WORKPLACE SAFETY

Goal: Advocate cost-effective and practical safety and health regulations while protecting the competitive position of California employers. (Subcommittee of Labor and Employment Committee.)
Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

SPECIAL COMMITTEES

PUBLIC AFFAIRS COUNCIL

Goal: Advise CalChamber on key political issues affecting the business community. (Must be CalChamber Advocate-level member to join.)
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

COUNCIL FOR INTERNATIONAL TRADE

Goal: Work with state and federal administrations and lawmakers to support expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.
Staff Contact: Susanne T. Stirling
susanne.stirling@calchamber.com

CHAMBERPAC ADVISORY COMMITTEE

Goal: Provide guidance and assistance to the CalChamber in its political fundraising efforts. (Must be a member of the CalChamber Board of Directors to join.)
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

POLITICAL ACTION COMMITTEES

The California Chamber of Commerce has established two political action committees (PAC) to help focus business efforts to provide financial support to pro-jobs candidates or issues campaigns.

CHAMBERPAC

Goal: Provide financial support to business-friendly incumbent legislators and candidates for state legislative and local office.
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

CALBUSPAC

Goal: Provide funding to help qualify, support and/or oppose statewide ballot initiatives.
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

The California Chamber of Commerce is the largest broad-based business advocate to government in California.

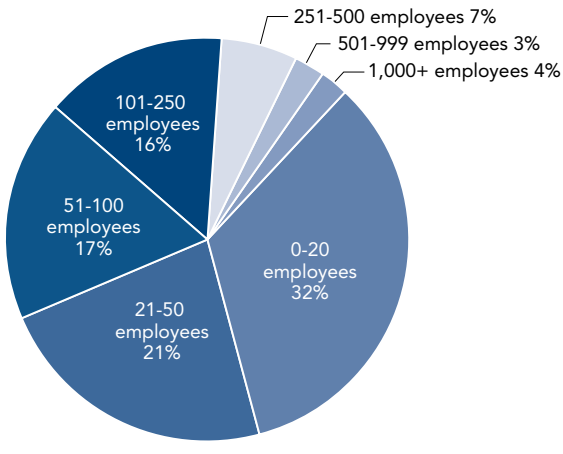
Membership represents one-quarter of the private sector jobs in California and includes firms of all sizes and companies from every industry within the state. More than 230 local chambers of commerce are affiliated with the CalChamber, and are solid partners in CalChamber efforts to promote business-friendly policy.

Based on a survey of members in January 2023:

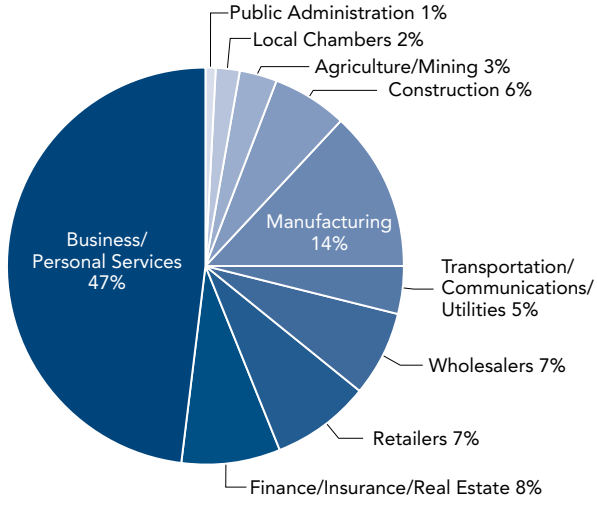
- 67% have been in existence for 25 years or more; 31% for 50 years or more; 6% for 100 years or more.
- 9% have been in existence for nine years or fewer.
- 19% are owned/co-owned by women.
- 37% are owned/co-owned by ethnic minorities or persons of mixed ethnicity.
- 31% do business internationally.
- 43% plan to add employees in 2023, while 53% plan to maintain the size of their workforce.
- 91% offer health insurance coverage and 91% offer a retirement savings plan.

MORE THAN TWO-THIRDS OF CALCHAMBER MEMBERS HAVE 100 OR FEWER EMPLOYEES

By Employer Size



By Industry Classification



CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Candidate Recruitment/Development

Creating A More Affordable California

2023 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

California Legislature

New Faces, New Opportunities and Planning for Next Election

The critically important role of candidate recruitment was thrust under a luminous spotlight in the California 2022 midterm elections. Freshly drawn legislative and congressional boundaries drafted by the California Citizens Redistricting Commission met up with term limit-imposed legislative vacancies to serve up an unprecedented number of open seats across the Golden State. In the California Capitol on Monday, December 5, 2022, 80 members of the Assembly and 40 members of the Senate took their oath of office. Of these 120 newly sworn-in legislators, close to one-third are serving their first term in either the Senate or Assembly.

Had the California Chamber of Commerce not had in place a time-honored and robust process for candidate recruitment, many of the newly minted legislators would potentially be unknown to us and our members in the broader business community. Fortunately, that was not the case due in large part to our local chamber network plus our policy and public affairs units, which participated in candidate interviews and vetting as well as helping to marshal the campaign funds needed to support the candidates' legislative campaigns.

The 2022 election results had been barely certified and CalChamber's planning for the 2024 election cycle had begun. For the 2024 legislative elections, there are two key imperatives that are front and center of our planning. First, 2024 is a presidential election year and California's primary election will move up three months from June to March. Second, term limits will again trigger at least 20 open seats — nine Assembly and 11 Senate — with more vacancies expected. The early primary date forces candidates to accelerate their campaign timetables as filing for the 2024 election will open in October 2023. By then we will be far down the road regarding our interview and vetting processes.

CALCHAMBER, LOCAL CHAMBER INVOLVEMENT

Many times, the CalChamber's introduction to a first-time legislative hopeful comes to us via our local chamber network. This incredibly unique and valuable resource provides us with on-the-ground intelligence about the quality of potential candidates and their willingness to work with the business community.

By being equipped with this information in an open legislative district, the CalChamber is in position to make the preliminary judgment on whether to support a candidate. Our local chambers are important partners in this process.

TRACK RECORD

Open legislative districts present the CalChamber with several new opportunities to recruit and elect business-friendly candidates from both political parties. It is through the political process that we can best affect policy outcomes by selecting and electing business-friendly candidates willing to stand with the employer community to defeat job killing legislative proposals. The CalChamber consistently has maintained a better than 90% kill rate on bills given the job killer tag.

Our success is attributable to our track record of electing legislators willing to stand up to the public unions and other liberal interests, and to defeat bills that will be harmful to the California economy.

CANDIDATE RECRUITMENT

Although not a political action committee, the Candidate Recruitment and Development Program provides the resources necessary to build a bench of electable, pro-jobs candidates for state legislative and local office. The CalChamber partners with our local chamber network, as well as state and local member businesses, to ensure the recruitment efforts are bipartisan and locally driven.

The primary component of this program is to identify potential candidates and put them on the path to elective office. The secondary component is training and developing candidates for their positions. The program has successfully recruited numerous local candidates who have won election to state legislative seats.

POLITICAL ACTION COMMITTEES (PACS)

The CalChamber's Political Action Network includes three political entities:

- **ChamberPAC** is a bipartisan political action committee that makes direct contributions to incumbent office holders and select candidates who promote and vote for an agenda of private sector job creation. Contributions to this committee are limited to $9,100 per year, person, organization or political action committee.
- **JobsPAC** is an independent expenditure committee, meaning it speaks directly to voters on behalf of the business community to elect pro-jobs candidates. Co-chaired by the CalChamber and the California Manufacturers and Technology Association, JobsPAC may accept contributions in unlimited amounts.
- **CalBusPAC** is a CalChamber committee that is formed to primarily support or oppose ballot measures having an impact on the state's business climate. CalBusPAC may accept contributions in unlimited amounts.

CALCHAMBER POSITION

California's business community is under constant pressure due to the disproportionate influence that special interest and government employee organizations have on the legislative and regulatory process. CalChamber is committed to standing up for and speaking out on behalf of the state's employer community through political action, our advocacy network, and constant and direct contact with elected officials.

Staff Contact
Martin R. Wilson
Executive Vice President, Public Affairs

martin.wilson@calchamber.com

January 2023

CalChamber

CALIFORNIA CHAMBER OF COMMERCE

Legislative Guide

Contacting Your Legislators: Protocol

California Senate and Assembly members want to hear from their constituents—you—the voters in their districts. At times, your association may call on you to do some grassroots lobbying. Often, the contact from a district constituent can sway a legislator's vote.

Here are some guidelines for you to follow in contacting your legislators in person, by phone or by letter.

- **Be thoughtful.** Commend the right things which your legislator does. That's the way you'd like to be treated.
- **Be reasonable.** Recognize that there are legitimate differences of opinion. Never indulge in threats or recriminations.
- **Be realistic.** Remember that most controversial legislation is the result of compromise. Don't expect that everything will go your way, and don't be too critical when it doesn't.
- **Be accurate and factual.** The mere fact that you want or do not want a piece of legislation isn't enough. If an issue goes against you, don't rush to blame the legislator for "failing to do what you wanted." Make certain you have the necessary information and do a good job of presenting your case.
- **Be understanding.** Put yourself in a legislator's place. Try to understand his/her problems, outlook and aims. Then you are more likely to help him/her understand your business and problems.
- **Be friendly.** Don't contact your legislator only when you want his/her vote. Invite him/her to your place of business or your group meetings. Take pains to keep in touch with him/her throughout the year.
- **Give credit where it is due.** If an issue goes the way you wanted, remember that your legislator deserves first credit. He/she has the vote, not you. And, remember also that many organizations and individuals participated on your side.
- **Learn to evaluate issues.** The introduction of a legislative bill doesn't mean that it will become law. Whether you're for it or against it, don't get excited about it until you learn the who, what and why of it.
- **Support your legislator.** If he/she is running for re-election and if you believe he/she deserves it, give him/her your support. He/she needs workers and financial supporters. Don't become aloof at the time when your legislator needs your help.
- **Don't, don't, don't even hint that you think certain bills, campaigns or politics in general are not worthwhile or may be dishonest.**
- **Don't demand anything.** And don't be rude or threatening. There is always "the future," and in many cases a legislator may disagree with you on one issue and be supportive on another.
- **Don't be vague or deceptive, righteous or long-winded, and please don't remind the legislator that you are a taxpayer and voter in his/her district.** (He/she knows it!)
- **Don't be an extremist.** Remember, your legislator represents all his/her constituents—those you consider liberal and those you consider conservative. Don't condemn a legislator just because he/she supports a piece of legislation that you think is too liberal or too conservative.
- **Don't be a busybody.** Legislators don't like to be pestered, scolded or preached to. Neither do you.
- **Be cooperative.** If your legislator makes a reasonable request, try to comply with it. You can help him/her by giving him/her the information he/she needs. Don't back away for fear you are "getting into politics."

Letter Writing

Following are guidelines for an effective letter:

- Be brief.
- Refer to bill numbers whenever possible.
- Make sure the legislator knows this communication is from a constituent who lives and/or does business in the legislator's district.
- Explain how the proposed legislation affects your business, and why you support/oppose it.
- Don't attempt to give "expert" opinions. Tell how the legislation would affect your business, based on your experience and knowledge.
- Ask for the legislator's support or opposition.
- Write the letter without copying any association-provided background information verbatim.
- Request that your legislator take a specific action by telling him/her what you desire. State the facts as you see them. Avoid emotional arguments. If you use dollar figures, be realistic.
- Ask the legislator what his/her position is.
- Keep all communications friendly and respectful. Be sure to thank your legislator for considering your views.
- Write on your personal or business letterhead if possible, and sign your name over your typed signature at the end of your message.
- Be sure your exact return address is on the letter, not just the envelope. Envelopes sometimes get thrown away before the letter is answered.
- Be reasonable. Don't ask for the impossible. Don't threaten. Don't say, "I'll never vote for you unless you do such and such." That will not help your cause; it may even harm it.
- Be constructive. If a bill deals with a problem you admit exists, but you believe the bill is the wrong approach, tell what the right approach is.

- Send your association a copy of your letter and a copy of the response you receive from your legislator.
- Address all letters in the following manner, unless you are on a first name basis:

State Legislature:

- *Assembly Member*
  The Honorable Joe/Jo Doe
  California State Assembly
  State Capitol
  Sacramento, CA 95814
  Dear Assembly Member Doe:
- *Senator*
  The Honorable Joe/Jo Doe
  California State Senate
  State Capitol
  Sacramento, CA 95814
  Dear Senator Doe:

Local Elected Officials:

- *Council Member*
  The Honorable Joe/Jo Doe
  Councilman/woman,
  City of—
  City Hall
  City, State and Zip Code
  Dear Mr./Ms./Mrs./Miss Doe:
- *County Supervisor*
  The Honorable Joe/Jo Doe
  Supervisor, —County
  County Seat
  City, State and Zip Code
  Dear Sir/Madam:
  or Dear Mr./Ms./Mrs./Miss Doe:

Guidelines for District Visits

The following guidelines may be helpful when you make district visits:

- Members of the state Legislature rely heavily on their staffs for a major portion of their responsibilities, i.e., scheduling, advice on specific legislation, constitutent problems, etc. This is why it is important to maintain some familiarity with the district office staff. However, you do want to become acquainted and develop a working relationship directly with the legislators in your district.
- Generally, the legislative schedule permits each legislator to visit the district office on Fridays and holidays.
- Always call in advance for an appointment and briefly explain the purpose of the meeting. As a business person, you are an important constituent and the politician and his/her aides are eager to get acquainted.
- If the meeting with the member of the Senate or Assembly is for the purpose of discussing specific legislation, review the background information and position statements available from your association and use the bill numbers when possible.
- Ask the legislator for his/her position on issues and how he/she will vote.

Other activities

We encourage you to consider other activities as ways of effectively maintaining liaison with your district legislators:

- Invite other members of your profession to join you and your legislator for lunch.
- Invite your legislator to visit your company. You may want to have a short meeting between your employees and the legislator. The legislator could make brief remarks, followed by a question-and-answer period.
- Offer to help organize an information business advisory group to meet regularly with your legislators to discuss business and key industry issues.

Telephone Procedures

- When the Legislature is in session, call the Capitol office; during recess and on Fridays, call the district office.
- Ask to speak directly to the legislator. If he/she is not available, ask to speak to the administrative assistant or legislative aide.
- When the legislator or his/her assistant is on the line, identify yourself and mention the name of your company and the fact that you are from the legislator's district.
- State the reason for the call. Use bill numbers whenever possible.
- Explain how the proposed legislation affects your business and why you support or oppose it.
- Discuss only one issue per telephone call.
- Ask the legislator's position.
  - ✔ If the legislator's position is the same as yours, express agreement and thanks.
  - ✔ If your position differs from the legislator's, politely express disappointment and offer some factual information supporting your views.
- Don't attempt to give "expert" opinions. Tell how legislation would affect your business, based on your experience and knowledge.
- Request that your legislator take a specific action by telling him/her what you desire. State the facts as you see them. Avoid emotional arguments. If you use dollar figures, be realistic.
- Keep all communication friendly and respectful.
- Thank the legislator or aide for his/her time and for considering your views.

The Legislative Process

- **Senate:** 40 members
- **Assembly:** 80 members
- **Regular Session:** Convenes on the first Monday in December of each even-numbered year and continues until November 30 of the next even-numbered year.
- **Special Session:** May be called by the Governor and is limited to a specific subject. Length is not limited and may be held concurrently with the regular session.
- **Effective Date of Laws:** January 1 of the year after enactment unless an urgency measure, which takes effect immediately upon being signed, or a different effective date is specified.

Procedure

- **Introduction:** The bill is introduced by a member of the Senate or Assembly, read for the first time, then assigned to a committee by either the Senate Rules Committee or the Assembly Speaker.
- **Committee:** Hearing(s) are held in committee and testimony is taken from proponents and opponents. Generally, the committee will then amend, pass or fail to pass the bill.
- **Second Reading:** Bills that are passed by committee are read a second time and sent to the full floor for debate.
- **Floor Debate (in house of origin):** The bill is read a third time, debated and voted on. Most bills need a majority to pass (21 for the Senate, 41 for the Assembly). Bills with urgency clauses, appropriation measures and some tax-related bills need a two-thirds majority (27 for the Senate, 54 for the Assembly). If the bill is passed, it is sent to the second house.
- **Second House:** Procedures for a bill to pass the second house are similar to consideration and passage in the house of origin.
- **Amendments:** If the second house passes a bill with amendments, then the bill must be passed a second time by the house of origin for concurrence. If the amendments are rejected, a conference committee is formed to iron out the differences between the two houses.
- **Governor:** The Governor must act on (sign or veto) any bill that passes the Legislature within 12 days during the legislative session. However, the Governor has 30 days in which to act at the end of each year of the legislative session. Bills not acted on by the Governor automatically become law. A two-thirds vote of the Legislature is required to override a Governor's veto.

How to Write an Effective Lobbying Letter

Address lobbying correspondence to the author of the bill with copies to members of the committee hearing the bill and to your local legislator.

Indicate immediately which bill you're addressing by its bill number (AB__ if it originates in the Assembly, SB__ if it originates in the Senate), by an identifying phrase and whether you support or oppose the bill. This will help legislative staff in routing your letter.

Be sure to make clear for whom you're speaking.

Be sure to be clear about what action you want the legislator to take.

If you have a personal relationship with the legislator, take a moment to write a quick, handwritten note to draw his or her attention to your letter.

Be sure to send a copy of your letter to the Governor. Also please send a copy to the CalChamber staff members assigned to the bill so they can include information on your support or opposition in their committee testimony.

Use your business letterhead when communicating your position on a bill.

CalChamber

March 18, 2021

The Honorable Marc Levine
California State Assembly
State Capitol, Room 5135
Sacramento, CA 95814

SUBJECT: AB 819 (LEVINE) CALIFORNIA ENVIRONMENTAL QUALITY ACT: NOTICES AND DOCUMENTS: ELECTRONIC FILING
HEARING SCHEDULED – MARCH 24, 2021
SUPPORT – AS AMENDED MARCH 16, 2021

Dear Assembly Member Levine:

The California Chamber of Commerce is pleased to **SUPPORT** your **AB 819**, as amended on March 16, 2021, which would require lead agencies to post notices and environmental review documents pursuant to the California Environmental Quality Act (CEQA) on the lead agency's website, require notices of determination and notices of exemptions to be filed electronically and require the lead agency to submit to the State Clearinghouse these documents in an electronic form.

AB 819 is a commonsense measure that simply codifies existing best practices that many, but not all, lead agencies across California do already. By requiring lead agencies to post pertinent CEQA notices and environmental review documents electronically, **AB 819** aligns with the core purpose of CEQA to identify and disclose to decision makers and the public the significant environmental impacts and mitigation measures of a proposed project prior to its consideration and approval. The bill also provides a much-needed update to CEQA, which when passed about 50 years, did not contemplate the internet nor the digitization of documents. Requiring lead agencies to provide the public with easily accessible electronic information, rather than forcing interested parties to go into the lead agency's office to view or photocopy hard copy documents, is not only common practice but an expectation by members of the public.

AB 819 would complement the Office of Planning and Research's (OPR) new online-only submission portal for CEQA documents, thereby saving not only time and money for lead agencies and members of the public, but also vast amounts of paper that would be saved by electronically posting and submitting CEQA documents.

For these reasons, the CalChamber is pleased to **SUPPORT** your **AB 819**, as amended.

Sincerely,

Adam J. Regele
Policy Advocate

Cc: Legislative Affairs, Office of the Governor

AJR:mm

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com

Keep your letter short. A succinct, one-page letter will have more impact than a longer one. If you have documentation of the bill's impact on your business, enclose it, but keep the letter short.

In many committees, staff members file correspondence according to the date of the bill's next hearing. If you know the date, be sure to include it. Including such information will help ensure your letter is read in time to have an impact.

Get to the point of your letter quickly: your support for or opposition to the bill.

Provide concrete, credible information on the impact of proposed legislation on your business.

Elected officials prefer to hear from persons in authority rather than just from staff members. A letter will have more impact if the business owner or person in a management position signs the letter.

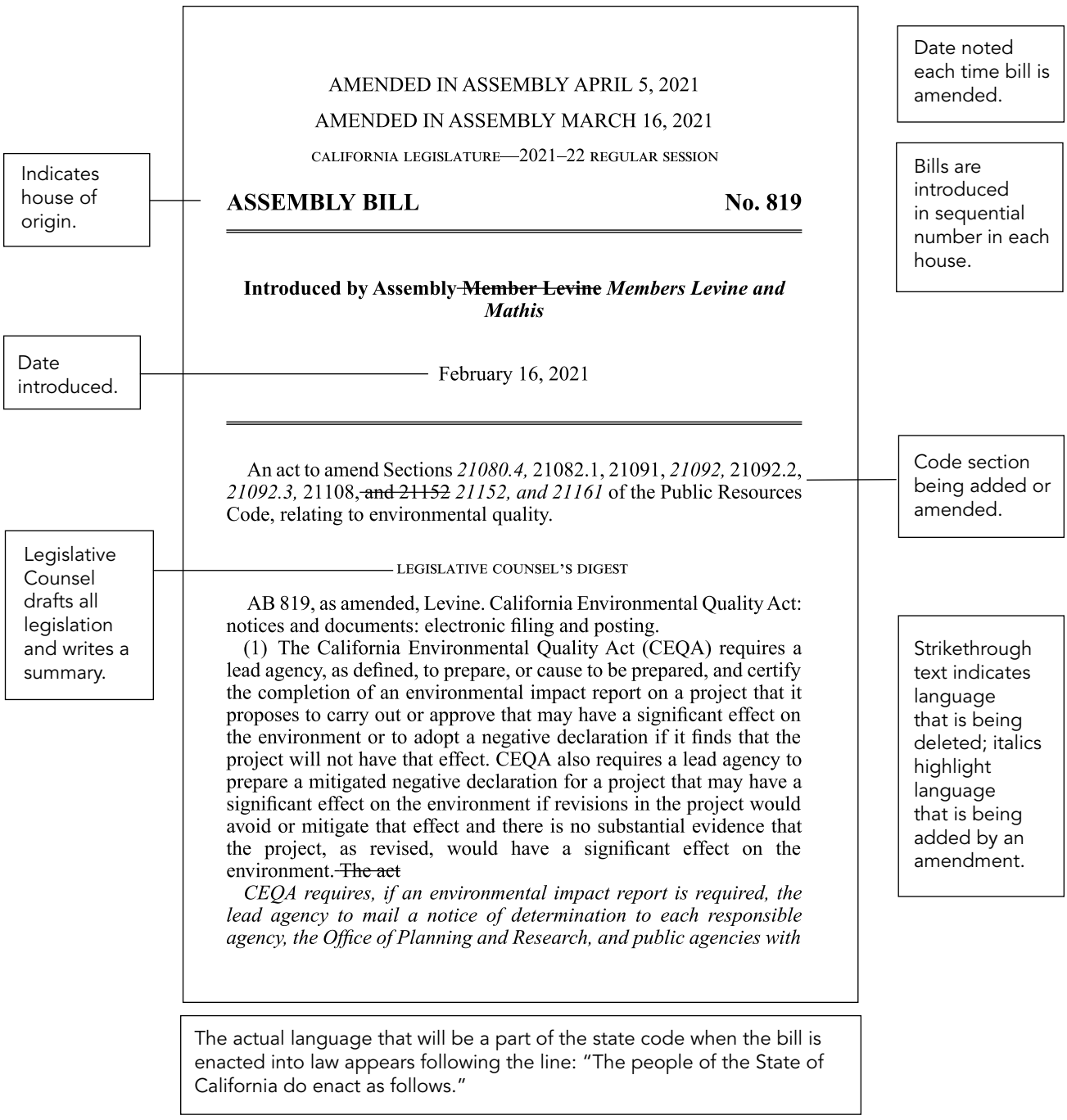
Use boldface type, underlining or italics sparingly to emphasize important points.

Act promptly. Too many good lobbying letters arrive after a vote already has been taken.

Later…If the legislator does what you ask, be sure to send a thank you letter.

Impact California
Make a difference by using easy-to-edit sample letters and links to more information about bills and legislators at **www.impact-california.com**.

Guide to Reading a Bill



California Government Glossary

Legislature

The two "houses" that pass or reject proposed new laws.

Assembly: 80-member lower house of the Legislature. Its members serve two-year terms. 80 members are elected every two years.

Senate: 40-member upper house of the Legislature. Its members serve four-year terms. 20 members are elected every two years.

Legislation

Bill: A proposed law or statute that amends or repeals existing laws or proposes new laws. Most bills require a majority vote. If there is a fiscal impact, a bill requires a two-thirds vote.

➤ AB 0000—Assembly Bill
➤ SB 0000—Senate Bill

Constitutional Amendment: A proposed change in the state Constitution, which, after approval of two-thirds of the legislators, is submitted to the voters, who also must approve the change.

- ACA 0000—Assembly (authored) Constitutional Amendment.
- SCA 0000—Senate (authored) Constitutional Amendment.

Concurrent Resolution: A legislative proposal that commends individuals or groups, adopts legislative rules or establishes joint committees.

- ACR 0000—Assembly Concurrent Resolution.
- SCR 0000—Senate Concurrent Resolution.

Joint Resolution: A legislative opinion on matters pertaining to the federal government, often urging passage or defeat of legislation pending before Congress.

- AJR 0000—Assembly Joint Resolution.
- SJR 0000—Senate Joint Resolution.

Assembly and Senate Resolutions: An expression of sentiment of one house of the Legislature. Resolutions usually ask a committee to study a specific problem, create interim committees or amend house rules. Resolutions take effect upon adoption.

- AR 0000—Assembly Resolution.
- SR 0000—Senate Resolution.

Spot Bill: Bill introduced that usually makes nonsubstantive changes in a law. The spot bill is substantially amended at a later date. This procedure evades the deadline for the introduction of bills.

Legislative Process

Legislative Counsel: A staff of more than 80 attorneys who draft legislation (bills) and proposed amendments, review, analyze and render opinions on legal matters of concern to the Legislature. The Legislative Counsel's Digest is a summary of a bill's content contrasting existing law with proposed law (in lay language) and appears on the face of each bill.

Legislative Analyst: Provides advice to the Legislature on anything with a fiscal implication, which can cover virtually every major bill. The analyst annually publishes a detailed analysis of the Governor's budget, which becomes the basis for legislative hearings on the fiscal program.

Author: Member of state Senate or Assembly who submits or introduces a bill and carries it through the legislative process.

Floor Manager: Speaks as author when the bill is being heard in the second house. (Assembly members are not allowed to present bills on the Senate floor and vice versa.)

Sponsor: Interest groups or constituents from the legislator's district who bring suggested legislation to the attention of the prospective author (legislator).

Standing Committee: The forum used in the Senate and Assembly for studying bills and hearing testimony from the author, proponents and opponents.

- Many bills are heard by two or more committees in each house.
- If a majority of the committee members approve the bill, it is sent to the floor (or, if it has fiscal impact, to the Senate or Assembly Appropriations Committee) with a recommendation "Do Pass." It takes a majority vote of committee members present to amend a bill.
- Your association's legislative advocate and other members often testify before such committees.

Committee Consultants and Aides: Every legislator has a personal staff plus the assistance of specialists assigned to committees and to the party caucuses. This research staff is responsible for analyzing the pros and cons of the proposed legislation.

Introduction and First Reading: Bill is submitted by member of Senate or Assembly, numbered and read. It is assigned to a committee by the Senate Rules Committee or Assembly Speaker and printed.

Second Reading: When the bill passes the policy committee, it is read on the house floor for a second time.

Third Reading: Bill is read a third time and debated. A roll call vote follows. If passed or passed with amendments, the bill is sent to the second house (or, if it already is in the second house, it is returned to the house of origin) for consideration of amendments.

Enrollment: Legislation that has passed both houses is sent to enrollment for proofreading for consistency before being sent to the Governor for approval.

Item Veto: Allows the Governor to veto (return unsigned a legislative proposal or indicate points of disagreement) objectionable parts of a bill without rejecting bills in their entirety.

Chaptered: A bill that has passed both houses and has been signed by the Governor is said to be "chaptered." The bill becomes law January 1 of the following year unless it contains an urgency clause (takes effect immediately) or specifies its effective date.

Sunset Clause: Acts of the state Legislature that expire after a certain date unless renewed by the Legislature.

Voter Responses

The techniques of direct democracy enable citizens to bypass elected government bodies and act directly on policy matters.

Initiative: A local or state measure that is placed on the ballot after a certain number of registered voters sign petitions supporting its placement on the ballot. Initiatives often are used by groups or individuals when the Legislature fails to pass a law they want to enact.

Referendum: A procedure whereby the voters may approve or disapprove proposals recommended by a legislative body, such as a proposal for an increase in the tax rate.

Recall: A procedure whereby petitions are circulated calling for removal of a public official from office. If a sufficient number of signatures is obtained, an election is held in which voters decide whether to keep the official in office.

PAC: A Political Action Committee is a nonprofit committee that provides a lawful means to help elect and re-elect political candidates selected on the basis of their positions on industry-related issues, committee assignments and leadership in the Legislature. PACs make contributions to candidates or in support of or opposition to ballot measures.

Adapted from California Grocers Association publication.

California State Government — The Executive Branch

The executive branch administers and enforces the laws of California. Led by the Governor, the California executive branch is made up of more than 200 state entities.

The executive officials of the branch—such as the Governor, Lieutenant Governor, Secretary of State and Attorney General, to name a few—are elected by the people of California. Each of these officers is elected to serve a four-year term, and may be elected to an office a maximum of two times.

Within the executive branch there are four types of entities: agencies, which are headed by a secretary; departments, which are headed by a director; and boards and commissions, which are headed by an executive officer or board member.

A number of entities, such as the Regents of the University of California and the Public Utilities Commission, are intended to be independent of direct control by all three branches of the state government. Most of the leaders of these entities are appointed by the Governor and confirmed by the California Senate.

The Governor also is responsible for appointing the secretaries/directors of 11 Cabinet-level state agencies/departments: Business, Consumer Services and Housing; Corrections and Rehabilitation (department); Environmental Protection; Finance (department); Food and Agriculture (department); Natural Resources; Government Operations; Health and Human Services; Labor and Workforce Development; Transportation; and Veterans Affairs (department).

Each Cabinet-level agency includes multiple departments, whose leaders also are appointed by the Governor and usually subject to confirmation by the Senate. The Cabinet-level Natural Resources Agency, for example, includes the Department of Water Resources, the Department of Parks and Recreation, and the California Energy Commission, to name three of 13 entities within that agency.

Each state entity wields significant power and plays a large role in interpreting and applying the laws of the state.

To find a state agency, department, board or office, visit *www.ca.gov/agencysearch/*.

The organization chart is available at *https://www.gov.ca.gov/orgchart/*.

Referral number for state agencies: (800) 807-6755.

2023 BUSINESS ISSUES AND LEGISLATIVE GUIDE

The California Chamber of Commerce is the largest broad-based business advocate to government in California. Membership represents one-quarter of the private sector jobs in California and includes firms of all sizes and companies from every industry within the state. More than two-thirds of CalChamber members are companies with 100 or fewer employees.

The CalChamber's full-time lobbying staff meets with legislators, regulators and other key government staff members year-round to assure that they consider employer concerns when proposing new laws and regulations. Backing up this lobbying team are the representatives of member firms who serve on the CalChamber's standing committees, 200 member trade associations, 230 affiliated local chambers of commerce and a statewide network of 300,000 small business owners. The CalChamber promotes international trade and investment in order to stimulate California's economy and create jobs. In addition, the CalChamber is involved in a number of coalitions on policy issues of concern to business. Updates on coalition activities appear on the CalChamber website.

Leveraging its front-line knowledge of laws and regulations, the CalChamber provides products and services to help businesses comply with both federal and state law. The CalChamber is the authoritative source for California labor law and safety resources and products. Each year, the CalChamber helps thousands of California employers understand laws and regulatory issues, and alerts employers when changes happen. In addition to California and federal, local ordinance, and out-of-state labor law posters, the CalChamber offers online tools, print and digital publications, harassment prevention training and other compliance seminars/webinars to help businesses meet changing employment law requirements.

CalChamber members have access to time-saving membership benefits such as ***HRCalifornia.com***, a continually updated website for answering tough human resources questions. The Labor Law Helpline gives Preferred and Executive members with specific labor law and safety questions a chance to talk to experienced HR advisers for an explanation of laws and prompt, nonlegal advice. If you need to consult your attorney, they'll let you know.

For more information about membership benefits or to receive a complete catalog of products, call 1-800-331-8877 or visit ***www.calchamber.com.***

The CalChamber is a not-for-profit organization.

P.O. Box 1736
Sacramento, California
95812-1736
916 444 6670
www.calchamber.com