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Dear Reader:

The start of a new legislative session and a new administration opens new possibilities for progress on some longstanding challenges facing our state. Working together, we can make sure to fulfill the California Promise: Opportunity for All.

In this annual Business Issues and Legislative Guide, the California Chamber of Commerce offers our perspective on smart solutions to help the state keep its promise to all:

• Fiscal stability for government programs and spending.
• Putting California on a path to increase available housing.
• Workplace flexibility—including mutually agreed upon options for workers and independent contractors.
• Fostering a skilled, well-prepared workforce by ensuring that every student graduates from high school prepared for the next step, whether college or career.
• Keeping energy affordable by minimizing costs due to California’s climate change policy.

We invite you to join us in working for the California Promise: Opportunity for All. Look for suggestions on how you can help at our grassroots website, calchambervotes.com. Tools available there include sample letters you can edit easily to tell your elected representatives, regulators and other government officials about your concerns.

The CalChamber Alert, our member and policy newsletter, provides regular updates on the issues in this Guide. You can download a mobile-friendly app at calchamberalert.com/app.

Collaboration is a powerful tool. With your support and active involvement, we look forward to boosting possibilities for all Californians and businesses.

Grace Evans Cherashore
Chair, Board of Directors

Allan Zaremberg
President and Chief Executive Officer
The Enterprise Way

Supporting the community. That’s the Enterprise Way.

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California Promise: Opportunity for All

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California Promise: Opportunity for All

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The People's Voice

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**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](http://www.calchamber.com).

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California Promise: Opportunity for All

2019 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE
California Promise: Opportunity for All

California’s success recovering from the Great Recession masks profound challenges that will bedevil Governor Gavin Newsom and his fellow elected California leaders.

During the teeth of the recession, California lost more than 1.3 million jobs and per capita income sagged by 6%. But since hitting bottom nearly a decade ago, we’ve added more than 3 million jobs and income has soared by 26%. High-performing industries were professional services, including tech jobs, health care, logistics, and tourism.

Job growth also was biased toward the largest Bay Area and Southern California metro counties, which gained 80% of the new jobs, while representing 70% of the state’s population.

But the California Promise is hollow for the millions of residents who are poor or stuck in dead-end jobs. Our state suffers the nation’s highest poverty rate, especially considering housing costs.

Headlines touting “prosperity” cannot drown out two unavoidable conditions facing California leaders:

• First, the boom will end: what goes up in California often comes crashing down.

• Second, during good times and bad, many Californians and their communities are left behind.

In his inaugural address, Governor Newsom welcomed a challenge: “Our politics doesn’t always reward taking on the hardest problems. The results of our work may not be evident for a long time. But that cannot be our concern.”

For these hard problems, smart solutions will pay off in opportunity for all Californians.

FISCAL STABILITY

The economic recovery has fostered a healthy state budget, allowing former Governor Edmund G. Brown Jr. to build a $14 billion prudent reserve to hedge against the next economic downturn, and boost education spending by 70% per student since 2012.

California now enjoys its ninth straight year of economic growth, approaching a modern record. But many economists believe the nation’s growth will begin to slow, with a threat of a downturn by 2020. Added factors like labor shortages and high housing prices will dampen growth.

Governor Newsom recognizes the precarious condition of state finances. The top 1% of earners pay 46% of income taxes and these taxes provide 70% of all General Fund revenues. The administration forecasts that a moderate recession would reduce state revenues by $70 billion over three years.

The Governor and the Legislature should double down on Governor Brown’s savings strategy. Pump up the budget reserve, reject new taxes, and resist demands to build into the budget new, ongoing spending that will be painful to unwind when the economy slows.

HOUSING

The 2018 CalChamber poll found that 60% of voters with children living at home agree that “My children will have a better future if they leave California.” Top of mind for these parents: cost of living, including housing. Four of five parents believe their children’s generation will have a harder time purchasing their first home in California than their own generation.

This isn’t just voters talking; many Californians are voting with their feet. From 2006 to 2016, more than a million more people moved out of California to other states than moved from other states to California. The main driver for net out-migration appears to be high housing costs, since migration rates are highest for those at lower wage levels.

Stretch solutions for the Governor to consider: dismantling litigation hurdles to already-approved housing projects, easier pathways to denser development in urbanized areas, boosting subsidies (such as tax increment financing) for new housing and economic development in distressed areas, and a moratorium on new fees and regulatory mandates that push up housing costs.

WORKPLACE FLEXIBILITY

California workers value flexibility, but public policy pushes in just the opposite direction. Generally, nonexempt workers cannot skip a 30-minute meal period and eat lunch on-duty in order to leave early. Hourly employees cannot choose to work four 10-hour days (instead of five eight-hour days) unless the boss agrees to pay
OVERVIEW

Overtime or a supermajority of the entire work unit votes to agree to the schedule. And the popular option to provide services as a freelance independent contractor may soon be out of reach.

Workers in 21st century California face or choose a wide variety of lifestyles and circumstances, including single parenthood, remote living, care for aging parents, or a desire for nontraditional hours. Yet state laws force these same workers to fit an old industrial and paternalistic model.

Employers should be free to provide their employees more flexibility by agreeing, with strong mutual protections, to daily or weekly schedules that are mutually satisfactory. Californians who legitimately choose to offer their services as independent contractors should not be restricted from doing so merely because they provide services to a firm or via a platform in the same industry. The true test should be the amount of control the payer exerts over the contractor.

WORKFORCE

Besides the weather, California’s greatest competitive advantage is our skilled workforce. But unlike the weather, inattention to nurturing this workforce will squander that advantage. For the sake of economic growth, social cohesion, and personal fulfillment, California’s leaders must address the skills gap and student preparedness as top public policy priorities.

State leaders directed billions of dollars to K–12 education since the end of the recession, but outcomes are still disappointing. State leaders should re-impose rigorous accountability in schools, more choice for families, and greater collaboration between stakeholders to improve K–12 education.

The goal should be to ensure that every student graduates from high school prepared for the next step—whether that’s college or career. While college can provide the most immediate boost to mobility, graduates can profit from postsecondary choices other than a four-year college. Work-based learning, such as apprenticeships, as well as credentialing and certificate programs, can lead to fulfilling careers.

ENERGY

California energy policy has become climate change policy. This will not likely change soon, but policymakers should not lose sight of the large costs and economic impacts of this trend. Affordable energy is fundamental to California’s economic base, lifestyle and upward mobility.

Electricity rates and motor vehicle fuel costs in California are among the very highest in the nation, largely because California has historically placed a very high premium on reducing criteria air pollutants and, more recently, reducing the greenhouse gas (GHG) emissions that contribute to climate change.

These costs and their effects on ordinary households should be minimized by:

• Maintaining the integrity of the cap-and-trade program and rejecting new command-and-control regulations, mandates or limitations;
• Treating all domestic sources of energy without discrimination, provided they meet all emissions and environmental laws; and
• Implementing a regionalized electric utility marketplace to mitigate the higher costs of renewable power.

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January 2019
The People’s Voice
Voters Optimistic about Jobs, Anxious about Cost of Living

California voters are feeling better about the economy, but are still anxious about the cost of living, according to the 2018 CalChamber Poll.

JOBS
Nearly two-thirds of voters say that more new jobs have been created where they live, up steadily from just 43% in 2015. Job increases have been noticed in every region of the state, including inland California.

In addition to more new jobs overall, voters statewide say that most of the jobs being created lead to higher pay, as opposed to being dead-end jobs. A majority of residents in every region of the state, except the Inland Empire, agreed that most new jobs created may lead to the middle class.

HOUSING WORRIES
While optimistic on the job front, voters are worried about affordability. More than three-quarters of voters agree that “earning enough income to enjoy a middle class lifestyle is becoming almost impossible in my part of California.” This sentiment was felt acutely by women, young earners, renters, and families with children living at home.

Indeed, parents are among the most worried of Californians. For the fourth year running, 60% of families with children living at home agree that “my children will have a better future if they leave California.” A majority of California voters, including nearly half of homeowners, say they would pick up and move if another state offered a greater opportunity for homeownership than California.

Nearly half of voters, up from 35% in 2015, viewed the housing shortage as “very significant,” with another third of voters agreeing the housing shortage is “somewhat significant.” But even with strong concerns over the importance of this issue, voters are not sold on the solutions.

The only housing policy direction receiving broad consensus from voters is to create more jobs in areas of the state where housing is cheaper, which will require renewed state and local economic development efforts and the creation of local amenities in inland California.

Voters also were generally agreeable to policies that would reduce litigation over housing projects that local officials have already approved.

But when it comes to increasing density in their city, and especially their neighborhoods, voters turn their thumbs down.

TAX VIEWS
Even though voters have agreed to several statewide tax increases in the last six years, there is a limit to their tax-raising impulses.

Proposition 13 continues to be an object of affection for voters, viewed favorably by more than 80% of voters. A majority also would oppose a split-roll property tax initiative.

Voters by a 3 to 1 margin also oppose new taxes on services like lawyers, lawn care or automotive repair, even if applied only to businesses.

INDEPENDENT CONTRACTORS
Voters favor a resolution to the recent California Supreme Court decision on classifying independent contractors, with a strong majority agreeing that “workers should be allowed to have the choice to be an independent contractor if a worker wants more flexibility to set their own schedules, earn more income, and for their chosen quality of life.”

This argument was more persuasive than that “workers should be classified as ‘employees’ so that they can receive benefits and other workplace protections.”

ENVIRONMENT
California political leaders tout their commitment to reducing our carbon footprint, and voters strongly agree (77%) that it is important that the state “set its own policies to reduce greenhouse gas emissions.”

But when it comes to individual policies to achieve those goals, voters remain skeptical. They strongly oppose policies that would:
• increase electricity bills by 30% to 50% by 2030 (66% oppose);
• purposely design roads to be more congested or not increase highway capacity (66%);
• increase the price of housing (65%);
• increase the price of gasoline by $1 to $2 by 2030 (60%); and
• impose new fees for driving (54%).

When ranking environmental challenges, voters say the highest priority for legislative attention should be drought relief and prevention (24%) and managing forests to reduce wildfire risk (23%). Other issues were far less urgent, including encouraging clean energy development (16%), safe drinking water (11%), improving air quality (7%) and reducing greenhouse gas emissions (6%).

HEALTH CARE
Voters are generally satisfied with the status quo in health care. More than 90% are satisfied with their current health insurance, whether provided by employers or the government, and by a nearly 4 to 1 margin prefer their own insurance to a government-run single payer approach.

BIPARTISANSHIP
Finally, despite the anger and frustration felt by many voters in today’s political climate, the dream of bipartisanship is not dead. More than three-quarters of voters strongly agree that politics is increasingly connected to anger and chaos, rather than achieving practical outcomes, but a like number also agree that it is important for elected officials to work together to find bipartisan solutions and solve problems.

POLL METHODOLOGY
The CalChamber poll was conducted by PSB Research with online interviews from November 9 to 13, 2018 among n=1,002 California 2018 general election voters. The margin of error for this study is +/- 3.10% at the 95% confidence level and larger for subgroups. This was the fourth year CalChamber published a voter survey.

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January 2019
Greenhouse Gas Regulation
Market-Based Approach Will Have Broadest Impact

California is regarded both nationally and internationally as a leader in climate change policy. It is important to remember, however, that California makes up a mere 1% of global greenhouse gas (GHG) emissions. Where California can make the most impact in further reducing GHG emissions is by serving as a model for a robust, cost-effective cap-and-trade system that encourages participation by other jurisdictions. This system requires buy in from all parties—not just government and environmental groups, but from the businesses and industries that will support and implement these regulations.

THE BASICS
In 2017, California enacted AB 398 (E. Garcia; D-Coachella), reauthorizing and expanding the California Global Warming Solutions Act of 2006. AB 398 was a bipartisan bill, supported by the California Chamber of Commerce, that solidified California’s future as a leader in the market-based approach to reducing GHG emissions.

Notably, AB 398 allows for the continuation of California’s cap-and-trade program, extending the program until 2030 and providing for market certainty. Among other things, the Legislature made improvements to the cap-and-trade system, directing the California Air Resources Board (CARB) to evaluate and address carbon credit banking rules to avoid speculation, and to provide additional industry assistance to California businesses that are most susceptible to “leakage”—the climate change parlance for the unfortunate fact that environmental regulations sometimes push businesses to relocate out of state, instead causing emissions in a less-regulated state.

AB 398 also sought to set a hard price ceiling on carbon credits, such that businesses could be assured that additional credits would not be astronomically high in future years. In doing so, AB 398 sought to strike a balance between ensuring continued economic growth in California while achieving measurable, tangible GHG reductions.

The CARB was directed to create regulations to implement AB 398. CARB finalized the cap-and-trade regulations on December 13, 2018. Over many objections by the business and civil rights community, CARB set price ceilings and market speedbumps for the cap-and-trade auction at a level that is inconsistent with “best available science,” and arguably inconsistent with AB 398’s bipartisan mandate. Price ceilings are designed to stabilize markets, prevent runaway costs, encourage additional governments to join our cap-and-trade system, and minimize leakage of California businesses. It is important to maintain stability of the market as we move forward with cap-and-trade.

THE POLICY CONCERNS
Duplicative Legislation. AB 398 and its companion bill, AB 617 (E. Garcia; D-Coachella), address impacts from specified
CLIMATE CHANGE/ENERGY

sources. AB 398 seeks to place a cap on emissions from entities constituting approximately 80% of specified emission sources in California. Together, these two bills address both GHG and local air emissions. Despite these far-reaching laws, California continues to enact piecemeal bans and procurement requirements for utilities, agriculture, buildings, and energy producers. For example, in 2018, a bill was introduced that sought to curtail all natural gas electricity production in California, despite cleaner natural gas being used to reduce overall emissions and provide for energy stability when solar or wind are unavailable. AB 398 attempted to address some of this duplication, banning local air districts from adopting or implementing an emission reduction rule from a stationary source that also is subject to cap-and-trade. Duplicative legislation hinders economic expansion in this state, and provides a disincentive for businesses to support wide-ranging market-based approaches in the future.

Efficient Use of Greenhouse Gas Reduction Funds. Profits from the credits produced in the cap-and-trade auction have generated more than $8 billion in funding to state agencies for emission reduction programs and projects. The Legislature intentionally left flexibility in determining appropriate projects. However, AB 398 established GHG reduction fund spending priorities, including:

- Air toxic and criteria air pollutants from stationary and mobile sources.
- Low- and zero-carbon transportation alternatives.
- Sustainable agricultural practices that promote transitions to clean technology, water efficiency, and improved air quality.
- Healthy forests and urban greening.
- Short-lived climate pollutants.
- Climate adaptation and resiliency.
- Climate and clean energy research.

The bill also contained certain reporting and oversight requirements to ensure market performance and track progress on emission reductions to ensure California meets its ambitious climate change goals. The Legislature should ensure that GHG reduction funds are creating measurable and substantial reductions in GHG emissions, which is the goal of the cap-and-trade program.

LEGISLATIVE ACTIVITY IN 2019

The Legislature will continue to advance climate policies, including introducing bans or limits on industry that already is subject to the cap-and-trade laws. It is important to maintain economic stability of the market-based program. If California is to be a leader in climate change, it must successfully balance scientifically proven GHG emissions with economic growth.

Given the major objections to CARB’s setting of price ceilings for future cap-and-trade auctions, there may be some push to redirect CARB to follow AB 398’s mandate. With a supermajority in both houses, however, such a push may prove challenging.

CALCHAMBER POSITION

Cal Chamber supports climate change laws and regulations that are cost-effective, technology-neutral, and promote the use of market-based strategies to reduce GHGs. The Legislature should ensure that any changes to California law safeguard the economy while having a demonstrable impact on GHG reduction and attract private capital to the state.

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Choosing Winners and Losers

The Externalities of Banning Energy Sources

California is known nationally and internationally for its leadership in setting ambitious climate goals and spurring innovation that has evolved how the world thinks about energy production, efficiency, and transmission. With each new legal and regulatory enactment, California policy should remain technology-neutral to protect jobs, encourage innovation, and maintain growth while looking at ways to reduce greenhouse gas (GHG) emissions.

To that end, California passed the first of its kind cap-and-trade program, applicable to stationary sources and transportation fuels, including oil and gas production, manufacturing, and electricity generation, allowing market prices to drive down emissions while maintaining its strong economy. This approach is prudent since California contributes only 1% to global GHG emissions.

In the energy field, California utilizes a Renewable Portfolio Standard, setting a percentage goal for renewable energy while allowing electric utilities to undertake long-term Integrated Resource Planning to figure out how to transition the energy grid to accommodate a growing portfolio of renewable sources. California also is the leading regulator of automotive emissions in the country, pioneering limits on tailpipe emissions and control technologies years before federal requirements. This balanced approach has likely led to California maintaining its leadership in the global economy and energy world, and has served as a model that California should continue to follow.

On the other hand, the California Legislature is not immune to the urge to force the market to adopt specific technologies or services, either by an outright ban on certain energy sources or a mandate on a certain energy mix. For example, in 2018 Governor Edmund G. Brown Jr. signed SB 834 (Jackson; D-Santa Barbara) banning any future expansion of offshore oil and jeopardizing existing infrastructure necessary for existing in-state production to continue. Also last year, AB 1745 (Ting; D-San Francisco) was introduced in an attempt to ban all combustion engines in the state, but failed to garner sufficient votes in committee.

Despite state leadership in reducing GHGs, California’s economy still relies on fossil fuels. As the state transitions away from this traditional source to renewable energy, the Legislature must account for the effects on consumers, motorists, and residents’ quality of life that come with legislated bans and mandates. Renewable energy and fossil fuels should not be viewed as diametrical opposites. A mix of both is required to maintain a secure energy grid and protect jobs. An appropriate balance can be struck to set forth a model for other states and the world to follow.

THE POLICY ISSUES

- Combustion Engine Bans Have Disproportionate Impact on Poor and Working Class Californians. Transportation accounts for a large portion of California’s GHG inventory. Legislators have introduced bills to ban combustion engines in each of the last two years, and no doubt will continue to sponsor similar legislation in the future. A targeted ban disproportionately harms poor, minority, and middle class workers who commute long distances in older vehicles due to the high housing costs in California’s major metropolitan areas. Most working Californians cannot afford and do not choose to purchase electric vehicles. Solutions need to be developed that are even-handed and take into account all the costs of climate policy.

California lays claim to the country’s most developed electric vehicle market in the nation. As California leaders push for even more purchase and use of electric cars, the blessings of fewer GHG emissions are limited by the serious logistical challenges brought on by economy-wide electrification. Electric vehicles for example, may be unusable following a natural disaster, when electric service may be unavailable for several days or weeks. In addition, evacuation distances for those escaping wildfires or other natural disasters may exceed the range of an electric vehicle on a single charge, or charging stations may become inaccessible.
• **Picking Winners and Losers Hinders Innovation.** California policy makers have historically preferred and provided financial and market incentives for solar and wind energy over other renewables, hindering innovation by narrowly defining “renewable” as a list of preferred options, making other technology less cost competitive in California. California also cannot rely 100% on solar and wind—it requires storage when the sun stops shining and wind stops blowing, or requires a reliable backup generation.

Battery storage technology is touted often as the response to concerns over reducing the role of natural gas as a clean, fast-ramping resource. However, battery storage is not yet available at a level necessary to maintain power after dark or when the wind is low, constituting less than 1/10th of 1% of defined renewables in use in California. After closure of California’s last nuclear generating facility, the remaining reliable backup generation will be natural gas. California is lagging on energy storage, and if the state also bans or limits natural gas, it will be left with nothing to keep the lights on. Legislators must be sure that the physics of the grid is kept top of mind when enacting energy policy.

Nuclear energy, was once heralded as the clean and green option. France, for instance, is the world’s largest net exporter of clean electricity and provides Switzerland, Italy, and Belgium with loads of cheap energy. Californians have had an ambivalent and inconsistent relationship with energy generation technologies. Their flirtation with nuclear power was brief, and the skepticism over costs, unanswered safety issues, and unresolved concerns over waste disposal overcame the obvious advantages that nuclear generation represents for climate health.

California was a world leader in moving generation from coal and oil to natural gas, creating some of the greatest improvements in air quality in the country while making significant progress in GHG emissions. But that progress was already banked by the time that serious climate policy was debated in the last decade, leaving policy makers the choice of standing still or seeking the next big thing in clean electrical generation. California legislators continue to introduce bills mandating procurement of wind and solar, despite the impracticability of doing so, thereby limiting innovation and technology in other areas of energy production.

• **Renewables Are Just Part of the Mix.** Legislators should consider the negative social and environmental externalities of picking one technology over another. For example, many solar panels installed over the last several decades are reaching the end of their useful lives. As the number of permitted hazardous waste facilities in-state declines, California is forced to ship its hazardous waste to states or nations with fewer environmental regulations, effectively shifting our problems onto others. Batteries too cause unforeseen externalities. Like many of our consumer electronics, batteries use precious metals that are mined in countries without the rights granted to California workers, without environmental regulations, and where massive amounts of GHGs are emitted during the mining and transport process.

• **Some California Industries Rely on Natural Gas.** For the last few years, legislators and agencies have targeted natural gas production and use, imposing regulatory moratoriums on new gas hookups without first studying the effects, and introducing bills to ban or curtail the use of this baseload, reliable backup power source. It is important to remember that certain industries cannot continue to operate in California if natural gas is banned. For instance, clay roof tile manufacturers, asphalt companies, mortuaries, and some food production facilities require massively high heating units. Natural gas is the most efficient, and sometimes only source that will allow kilns, ovens, and stoves to reach the appropriate temperature. Banning gas means these companies must move out of state, or close altogether, requiring more imports and thus more GHG emissions from transport into the state. Given the already-soaring cost of housing, increasing the cost of building materials seems unwise.

• **Banning Natural Gas and Oil Production in the State Means More Imports.** California residential electricity rates are the fifth highest in the nation, and commercial and industrial ratepayers pay as much as 50% to 70% above the national average. California regularly ranks in the top three states for highest retail gasoline prices, just behind Hawaii and often tied with Alaska. Prices average more than 60 cents higher than the rest of the nation due to factors that include state excise taxes, costs passed on from climate change regulations (cap-and-trade and the low carbon fuel standard), a reduction in the number of refineries operating in California, and the absence of interstate pipelines, such that transportation fuel can be imported only via ship or truck.

Proponents of energy policies that ban in-state natural gas and oil production fail to acknowledge unintended consequences such as increased oil and gas imports, higher energy costs for residents, less tax revenue for the state, fewer in-state jobs, and negative environmental and labor impacts.

Despite the most stringent environmental and energy policies in the country, California’s fuel consumption is at the highest level since 2009, according to the California Energy Commission, because of a booming economy and growing population. Home to 40 million residents, 35 million registered vehicles, 145 airports, 32 military bases, and 11 public ports, including three of the nation’s “megaports” (Los Angeles, Long Beach and Oakland), California’s
demand for oil and gas is still very large and remains the leading energy source powering our economy.

Severin Borenstein of the Energy Institute at Haas recently wrote that "emissions from cars, trucks, and airplanes have been rising by about 1.5% per year since 2012” (August 6, 2018 blog post). With both California’s in-state production and imports from Alaska declining due to energy policies and economics, California relies on imports from more than nine foreign countries for the majority of its crude oil, the California Energy Commission reports. In fact, California has increased crude oil imports from foreign countries from 5% of in 1992 to 56% in 2017, importing approximately 354 million barrels of crude oil a year at a cost to California at around $20 billion annually (the Brent spot price for oil was around $52 as this article was written).

California could better spend some of this money on existing in-state oil and gas production facilities, which keep jobs and capital in California, instead of funding foreign oil regimes. Moreover, in-state oil and gas production would also then be subject to California’s much stronger environmental and labor laws.

Simply curtailing oil and gas production in California does not necessarily lead to lower global emissions or even a cleaner environment. Quite the contrary, policies banning in-state production of oil and gas will inevitably shift California supply to less environmentally conscious (and less worker friendly) countries or states for import. The non-partisan California Energy Commission data on the state’s consumption show this.

With that shift to less in-state production and more foreign imports comes even greater negative externalities, including increased GHG emissions from the overseas or cross-country transport of fuels into California; a reduction of in-state jobs either directly or indirectly related to production and distribution of oil and gas; funding foreign regimes known for human rights violations; an increased chance of oil spills correlated with longer transportation routes that are less efficient and more prone to spills; and a significant loss of tax revenue for California that could be used for school funding, infrastructure and many other social services.

Keeping oil and gas production in California while providing incentives for new technology allows California to subject oil and gas companies to California environmental laws and regulations—which are the most stringent in the nation—while allowing the fifth largest economy in the world to thrive.

2019 LEGISLATION

Lawmakers already have introduced bills aimed at banning the sale of nonzero-emission combustion engines by 2040, specifying energy procurement sources, offshore oil production bans, and building and appliance electrification standards. Outright bans, without accounting for the full economic and environmental impacts of what will happen, miss the whole picture, potentially damage the state’s economy, and do not necessarily contribute to a reduction in global GHGs or a cleaner environment. Although we anticipate additional legislation targeting oil and gas production in-state, CalChamber is committed to working with legislators so that they better understand the implication of these policies for California’s economy and environment.

CALCHAMBER POSITION

Energy policy is complex, with known and unknown externalities every time a bill is proposed picking energy winners and losers. The Legislature should be careful to evaluate each policy within the broader system of energy, economy, and the environment. If it does, California can: continue to be a leader in global climate change and have the strongest economy in the nation and world; work with other states and countries to develop new strategies and technologies; allow the bipartisan processes such as the extension of the cap-and-trade program, to work; continue to support the more than 300,000 jobs directly or indirectly related to the oil and gas industry, all while imposing the toughest environmental laws and regulations in the country.

For years California focused inward and is on track to achieving its ambitious energy goals. We can now focus outward and be a model for stability.

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Energy Policy
Smart Choices Balance Climate Change, Renewables, and Energy Stability

California energy policy is a complex interaction of economics, technological challenges and environmental considerations, all of which must work together to create a reliable and cost-effective system for delivering energy to millions of homes and businesses across California. Those responsible for the energy grid must balance these considerations while accounting for a constant stream of electrons across the entire West—all of which is interconnected between and among the western states to form the Western Interconnection as shown at right. Every electron produced in California—whether renewable, nuclear, fossil fuel, or otherwise, must be carefully integrated into a complex series of wires, switches, and transformers before flowing into your home or business. All these maneuvers come together to ensure you can turn on the lights when you hit a switch, but also that your toaster doesn’t burst into flames. Energy rates resulting from these decisions affect every California consumer, whether directly through your home energy bills or through increased prices of goods and services. Smart and planned integration of renewables into this precarious system of interconnected electrons must be evaluated carefully and not reduced to tag lines.

THE BASICS
California Energy Grid Is a Federal and State System. All the electricity in the Western Interconnection is tied together and, by design, must operate at a constant frequency of 60 hertz (Hz). This complex series of interconnection is managed by a series of balancing authorities, the largest of which, the California Independent System Operator (CAISO) is located in California and encompasses part of California and Nevada.

The legal authority to regulate the energy grid across the United States is split between the state and federal government. The federal government, through the Federal Energy Regulatory Commission (FERC) governs transmission of energy, as molecules of energy do not respect state boundaries and travel in interstate commerce. The states control decisions such as siting, procurement, and in-state retail sales—the end use to homes and businesses. FERC retains governance over the CAISO and balancing authorities to the extent they transmit energy across power lines.
Renewable Portfolio Standards and Integrated Resource Planning. While FERC governs transmission of energy, California retains jurisdiction to make decisions regarding wholly in-state production and retail sales of energy. California’s energy portfolio uses a mix of energy sources that allows use of California’s abundant natural resources when the wind is blowing and the sun is shining, but still allows for sufficient power to ensure that you can turn on your lights at night or charge your electric car when these natural resources are scarce.

To that end, natural gas, large hydroelectric plants, nuclear, and minor amounts of coal are still in the portfolio mix. The largest portion of renewables (approximately 70%) consists of solar—an unpredictable and intermittent energy resource. In 2002, in response to growing climate change concerns, California adopted the Renewable Portfolio Standard (RPS) program, requiring first private utilities, and then public utilities, to procure a certain percentage (20% at the time) of “renewable” energy resources. Categories of resources that qualified as “renewable” initially included things like solar, wind, municipal waste combustion, and small, existing geothermal plants.

Over the last 16 years, the Legislature has fussed with the definition of renewable, and increased the goal to its current level of 60% by 2045. California’s utilities are currently on track to meet RPS requirements.

THE POLICY CONCERNS

Peak Energy Usage Has Changed. As each new bill pushes the renewable energy threshold, regulators, utilities, and ratepayers alike have to decide how to meet and pay for demand to maintain the complex grid described above. At peak sunlight, California produces too much energy and must curtail (shutdown) production at solar and wind facilities. At the same time, California must ramp up its production at peak energy usage.

Over the years, as a result of many factors, including electrification of buildings, cars, and increases in population, California’s peak energy usage has shifted slightly later, after sunset. As such, solar cannot provide the power needed to meet peak demand. Fast ramping, responsive resources must be available to meet this demand if Californians are going to continue to keep the not-so-proverbial lights on.


Storage Technology Is Still in Its Infancy. Much interest surrounds development of storage solutions, with studies to evaluate batteries, pumped or kinetic storage (where water or heavy objects are hoisted up a hill using cheap and abundant solar electricity during the day until peak demand, where gravity is harnessed to create energy when the water or objects are allowed to move back downhill), conversion of hydrogen to natural gas, and other technology.

So storage solutions are thrown around as if they are already in place, waiting to be utilized. The problem arises because this technology has not fully developed to the extent that it constitutes a significant portion of California’s energy mix. Batteries currently make up less than 1/10th of 1% of renewables in California. California does not yet have energy storage at anything approaching the scale necessary to meet peak energy demand.

Consider pumped hydro, currently the biggest and best-developed form of long-term energy storage. A comprehensive literature review of 30 studies on decarbonization published by the Energy Innovation Reform Project (EIRP) notes that the top 10 pumped-hydro storage facilities in the United States combined could “supply average U.S. electricity needs for just 43 minutes.” Much is needed before California can rely on storage technology as the answer to increasing renewable procurement.

Rates Are High and Increasing. Every energy policy decision made by the state and federal government has a direct impact on California ratepayers. The U.S. Energy Information Administration, which conducts independent analysis of energy data, notes that California has the nation’s sixth highest retail price of electricity in the residential sector. In 2017, residential and industrial consumers paid an average price of 16 cents per kilowatt hour (kWh) and commercial ratepayers paid more than 18 cents.

In debating sound energy laws, policymakers throw around different statistics on California energy rates. For instance, it is...
often touted that Californians use less in terms of kWh than residents in many states, which is true largely because of the shift toward electrification and end-user conservation efforts.

However, California per kWh rates remain among the highest in the nation—even in states that similarly use little to no coal. Consider Michigan, where rates average 16 cents for residential but only 11 cents and 7 cents for commercial and industrial, respectively, and Oregon, where residential rates average 11 cents and commercial and industrial rates average 9 cents and 6 cents.

**LEGISLATIVE ACTION IN 2019**

With a new Governor and Democratic supermajority in the Legislature, the California Chamber of Commerce expects that lawmakers will continue to introduce bills to further push the renewable energy threshold above its current 60% RPS goal. With those pushes come increased challenges to integrate existing and future renewables, rapidly develop storage technology, and avoid crises during events that prevent wind and solar from working at full capacity.

**CALCHAMBER POSITION**

Legislation that continues to push the renewable threshold without consideration of grid capacity, pricing, or energy stability misses the whole picture. The CalChamber supports legislative and regulatory solutions that bring new businesses to California and help employers and the state reduce greenhouse gas emissions in the most cost-effective, technologically feasible manner while allowing flexibility to ensure a stable energy future. California 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.

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Local Air Quality Monitoring

New Regulatory Program Should Consider Economic Impacts

California is at the leading edge of addressing climate change, both at the global and local levels. Its ambitious climate goals can serve as a model for developing countries and more moderate states, so long as California can create a regulatory environment that focuses on sound, scientific criteria and achieves clean air status in a cost-effective manner thorough the use of market-based incentives and programs.

THE BASICS

In 2017, California passed ambitious climate legislation in two companion bills. AB 398 (E. Garcia; D-Coachella) is aimed at greenhouse gas (GHG) emissions and extended California’s landmark cap-and-trade program. AB 617 (C. Garcia; D-Bell Gardens) is aimed at curbing local criteria air pollutants. GHG emissions tend to be an upper atmosphere, global issue, whereas criteria air pollutants tend to affect local air quality, what for years we commonly called “smog.”

The stated goal of AB 617 is to reduce nonvehicular air pollution by developing statewide reporting, local monitoring, and community-specific reduction plans. AB 617 also required that each “nonattainment” (e.g. out of Federal Clean Air Act compliance) area create and adopt an expedited schedule for retrofitting stationary sources of emissions. The California Air Resources Board (CARB) is designated by the Legislature to develop regulations to implement the mandate of AB 617.

Development of Regulations. On September 27, 2018, CARB approved the Final Draft Community Air Protection Blueprint: For Selecting Communities, Preparing Community Emissions Reduction Programs, Identifying Statewide Strategies, and Conducting Community Air Monitoring (Blueprint). Among other issues, AB 617 requires CARB to select “the highest priority locations around the state to deploy community

<table>
<thead>
<tr>
<th>Community</th>
<th>Air Monitoring</th>
<th>Emissions Reduction Program</th>
<th>Key Pollution Source Types</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richmond</td>
<td>X</td>
<td></td>
<td>Urban, Refineries, Freight</td>
</tr>
<tr>
<td>West Oakland</td>
<td></td>
<td>X</td>
<td>Port, Freight</td>
</tr>
<tr>
<td>Calexico, El Centro, Heber</td>
<td>X</td>
<td>X</td>
<td>Border, Rural</td>
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<tr>
<td>South Sacramento/Florin</td>
<td>X</td>
<td></td>
<td>Urban, Residential, Freeways</td>
</tr>
<tr>
<td>Portside Environmental Justice Neighborhoods (Barrio Logan, West National City, Logan Heights, Sherman Heights)</td>
<td>X</td>
<td></td>
<td>Port, Small Industry</td>
</tr>
<tr>
<td>Shafter</td>
<td>X</td>
<td>X</td>
<td>Rural, Oil and Gas</td>
</tr>
<tr>
<td>South Central Fresno</td>
<td>X</td>
<td>X</td>
<td>Urban, Residential, Industry</td>
</tr>
<tr>
<td>East Los Angeles Neighborhoods, Boyle Heights</td>
<td>X</td>
<td>X</td>
<td>Urban, Rail, Small Industry</td>
</tr>
<tr>
<td>Muscoy, San Bernardino</td>
<td>X</td>
<td>X</td>
<td>Trucks, Warehouses, Rail</td>
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<tr>
<td>Wilmington, West Long Beach, Carson</td>
<td>X</td>
<td>X</td>
<td>Trucks, Ports, Refineries</td>
</tr>
</tbody>
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*Air monitoring in these communities will focus on getting new information to support action, including the development of future clean air plans, or plan elements.

Source: California Air Resources Board (September 27, 2018).

air monitoring systems, which shall be communities with high exposure burdens for toxic air contaminants and criteria air pollutants.” This process is to be repeated yearly for additional locations. The communities selected for 2018 include Richmond, West Oakland, Calexico/El Centro/Heber, South Sacramento-Florin, Portside Environmental Justice Neighborhoods, Shafter, South Central Fresno, East Los Angeles/Boyle Heights, Muscoy/San Bernardino, and Wilmington/West Long Beach/Carson.
POLICY CONCERNS

**Funding Source.** Initial concerns with AB 617 included a lack of funding for implementation. Previous budgets contained little, and the statute itself stated that “no reimbursement is required by this act . . . because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.” The most recent budget did allocate funds to CARB, and CARB intends to continue Community Air Grants to applicants. However, AB 617 continues to be generally unfunded, and requires re-allocation from the Legislature in each budget.

**Community Boundaries.** The Blueprint calls for community boundaries to be set by Community Steering Committees (CSCs), and CARB delegated some of its authority to these CSCs, which AB 617 originally contemplated to have only an advisory (consultation) role. Although community participation is laudable, the state should ensure there is adequate business and community representation, as well as oversight over these local entities, which the Legislature did not contemplate to have decision-making authority.

**Disproportionate Impact on Economically Disadvantaged Communities.** The stated purpose of AB 617 is to ensure that local communities are protected against excessive local air pollution. In 2018, civil rights advocacy groups filed suit against CARB, claiming that CARB’s climate policies, including those implicated by AB 617, have a disproportionate economic effect on poor and minority communities. This is because fees and costs associated with AB 617 and other local air quality programs are passed along to consumers and the already-struggling California working class and have an impact on working class jobs, increasing the already-astronomical cost of housing and cost of living in California, while ignoring all other sources of local air pollution.

In implementing this bill, legislators and regulators must ensure equal treatment and the economic stability of working class jobs that keep California moving while ensuring actual demonstrable impacts on local air quality improvement.

**ANTICIPATED ACTION IN 2019**
California legislators will continue to introduce bills to push the boundaries on local air quality issues. AB 617 mandates that additional communities continually add to the list of local air quality monitoring—all without dedicated funding. In addition, California’s devastating wildfires may create unique circumstances for addressing air emissions.

**CALCHAMBER POSITION**
The California Chamber of Commerce will continue to oppose state and local proposals that limit growth without considering actual economic and environmental impacts. California should ensure that the Legislature sufficiently funds, through appropriate means, AB 617’s mandate and retains sufficient oversight over CARB and local CSCs created by the CARB Blueprint.

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January 2019
California’s Wildfire Problem

State Can Lead Discussion to Find Cost-Effective Response

Although wildfires are not new, California has experienced increasingly deadly and destructive fires over the last few years. According to the California Department of Forestry and Fire Protection (Cal Fire), all but 5 of the 20 largest, and all but 5 of the 20 most destructive wildfires have occurred since the year 2000. The issue cannot be reduced to any single factor; rather, factors such as increased winds, droughts, pests, as well as lawsuits challenging cutting of trees in national forest lands, forest management, and climate change, have contributed to the increasing intensity and danger of California’s wildfires. California stands at a crossroad of creating a sound, long-term strategy for addressing the costs, danger, and emissions associated with this increasing threat. Addressing this “new normal” will not be easy, and will take the cooperation of all groups to come together to derive a cost-effective, results-oriented solution.

As of this writing, the most destructive and deadly fire in California recorded history—the so-called Camp Fire, with a death toll of 86 lives and counting—was finally contained. California’s wildfires have a devastating effect on the natural environment, and greatly contribute to global climate change. California’s wildfires spew out particulate matter, and by some estimates, threaten to reverse the efforts in this state to reduce greenhouse gas (GHG) emissions and curb climate change. The 2013 Rim Fire, No. 5 on the Cal Fire’s Top 20 Largest California Wildfires list, is estimated to have released roughly the same amount of GHGs as were produced in the entirety of 1970. A National Institute of Health study of the Rim Fire estimates that these emissions total 12.06 teragrams (tg, or 1 million metric tons), roughly the equivalent of the output from 2.57 million cars.

THE BASICS

2018 Wildfire Legislation. SB 901 (Dodd; D-Napa), passed by the Legislature in 2018, directs the California Air Resources Board (CARB) to develop “a historic baseline of [GHG] emissions from California’s natural fire regime reflecting conditions before modern fire suppression,” “a system for quantifying the direct carbon emissions and decay from fuel reduction activities,” and report, every five years, on “[GHG] emissions associated with wildfire and forest management activities.” (Section 38535)

The bill also creates the Commission on Catastrophic Wildfire Cost and Recovery (CCWCR) to evaluate issues associated with utility infrastructure, costs, and impact on ratepayers. The Legislature called upon the CCWCR to evaluate and make “recommendations for changes to law that would ensure equitable distribution of costs among affected parties” by July 2019, including evaluating socializing costs or establishing funds for wildfire costs. (Section 4205)

THE POLICY ISSUES

Harvesting Wood from Deep Forests Is Expensive. Experts concur that one of several significant contributors to the recent fires is an overabundance of fuel on the forest floor. In Southern California climates, chaparral is not easily harvested and Santa Ana winds whip fires across relatively well-maintained areas. In the Sierra Nevada range of Northern California, surface and ladder fuels such as brush and small trees, are hard to access, often in areas with no roads or on federal lands. The bottom line is that fuel removal is costly.

SB 901 includes a small amount of biomass procurement—125 megawatts (MW)—as a means of incentivizing private fuel reduction activities. Of this 125 MW, 80% is required to be “byproduct of sustainable forestry management, which includes removal of dead and dying trees from Tier 1 and Tier 2 high hazard zones and is not that from lands that have
been clear cut.” At least 60% of the biomass procurement must come from these Tier 1 and Tier 2 high hazard zones. SB 901 also requires extension of biomass contracts under certain conditions and increases the diameter of trees that may be harvested in order to make harvesting cost-effective. Funds also were allocated to help develop markets for beneficial uses of fuel material, including animal bedding, biochar, cross-laminated timber, mulch, oriented strand board, pulp, post, shredding, and veneer products. It remains to be seen whether even with this legislative approval, lawsuits challenging the activity under the California Environmental Quality Act or California Endangered Species Act will result.

**Liability, Financial Viability of Utilities, and Ratepayer Recovery.** Near the end of the 2017–2018 session, as fires continued to increasingly pummel the Golden State, the Legislature convened a joint Wildfire Preparedness and Response Legislative Conference Committee, which helped shape SB 901. One issue evaluated by the committee was California’s liability scheme for damages associated with wildfires, which numbers in the many billions of dollars. Unlike most states, which limit liability to governmental entities, California has extended its “inverse condemnation” liability to utilities that provide the public with power. Inverse condemnation is an extension of eminent domain law—the power of the federal and state government to take private property for public use. Inverse condemnation provides for compensation where a public project—whether well-intentioned or not—creates private damage.

At a basic level, this means that although the government determines a project, such as a bridge, is for the betterment of the public, if that bridge fails and damages an adjacent home, for example, that person can seek compensation from the government. Over the years, California courts extended this concept to utilities, reasoning that they are quasi-governmental, are granted a monopoly to sell power in California, and thus should be strictly liable for damages when infrastructure from the public provision of power damages private property.

The Legislature and all affected parties fiercely debated this issue, with some arguing a constitutional amendment would be necessary, some arguing the Legislature can correct the courts’ interpretations, and some arguing for no change in the law at all. Ultimately, the Conference Committee recommended additional study before addressing this liability change.

With the significant liability facing utilities for the recent fires, this issue may again be at the forefront of the Legislature’s collective mind and that of the new Governor.

**Rate Recovery of Wildfire Costs.** The Conference Committee also evaluated whether the utilities should be allowed to pass along wildfire liability costs to ratepayers. Because utilities are
a monopoly and profits are limited by the state, the utilities are
granted the right to pass along reasonable costs to ratepayers by
submitting such costs to the California Public Utilities Com-
mission (CPUC) through ratemaking proceedings. Ratepayers
have argued that they should not bear the burden of these costs.
Utilities have argued that they should not be responsible for fire
damage that is exacerbated by things like climate change and that
there will be no one to implement California’s ambitious climate
goals should the utilities go bankrupt from fire liability.

Ultimately, ratepayers, utilities, insurers, and environmen-
tal groups could not agree on a satisfactory solution and the
Legislature did not change the rate recovery scheme. It did not
address fires, damage, or rate recovery for fires occurring during
or before 2018, except that SB 901 allowed the CPUC to evalu-
ate the financial health of utilities when determining the amount
ratepayers should pay for fires occurring in 2017.

For future fires, SB 901 listed certain factors to be considered
when determining whether it is reasonable to rate recover for
wildfire damages occurring after 2018. In seeking cost recovery
for post-2018 fires, if climate change is asserted as a cause, SB
901 requires that “the electrical corporation shall provide the
commission with specific evidence and data demonstrating the
impact of climate conditions on the severity of the wildfire.”
For post-2018 fires, SB 901 clarified that the CPUC also can
consider the financial health of the utility, the design, mainte-
nance, and operation of its assets, and the contribution of climate
change. For 2017 or post-2018 fires, if the CPUC determines
such costs are reasonable, utilities can finance the costs at a lower
rate by issuing bonds, saving ratepayers the burden of paying
higher interest rates. Whether additional changes will be made
due to the massive fires in 2018 remains to be seen.

**Funds for Fuel Management.** SB 901 provided $35 million
from the GHG reduction fund for each year through 2023–2024
to the Department of Forestry for healthy forest and fire preven-
tion programs and projects that improve forest health and reduce
GHG emissions caused by uncontrolled wildfires. The Legis-
lature appropriated another $25 million for prescribed fire and
other fuel reduction projects, including year-round fire crews,
and a research and monitoring program for climate change
adaptation. Additional funding will likely be necessary to achieve
fire reduction goals.

**2019 LEGISLATIVE ISSUES**
The Legislature decided it did not have sufficient information to
take action in the short timeline left in the 2017–2018 session
on the issues of inverse condemnation and rate recovery for
wildfire costs. Additional legislation is expected to be introduced
on these issues, as well as additional funding and bills surround-
ing biomass, fuel reduction, forest management, housing the
displaced, and emergency response measures.

Additional forestry regulations and recommendations from the
newly created CCWCR will require close attention of the busi-
ness community.

**Wildfire Mitigation Plans.** SB 901 also requires each utility
to submit a wildfire mitigation plan for review and approval.
These plans are expected in early 2019, with plan approval
required within three months of submission. Expect significant
input from all affected parties on proposed wildfire plans.

**CALCHAMBER POSITION**
The California Chamber of Commerce recognizes that wildfires
are increasing in severity and intensity. Forest management,
emergency evacuation, wildfire suppression, and issues of who
pays are complex, fact-intensive, and require consideration of the
differing environments and communities across California.
California is in a unique position to lead yet again the global
discussion on responding to increasingly severe weather events.
The state is home to many and varied ecosystems and can serve
as an incubator for cost-effective, efficient ideas to respond to
climate and wildfire issues.

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January 2019
Tax Increment Financing
Revised Funding Template Provides Options for Local Projects

California state government has substantially reduced its commitment to local economic development over the last seven years. While the economy has been strong, traditional tools to support local infrastructure and affordable housing related to economic development have withered.

One of the legacies of Governor Edmund G. Brown Jr. has been to reduce the state’s profile in local economic development. Part of this was driven by budget exigencies, while part was driven by his skepticism of the value of state efforts and the need to push local responsibilities firmly to local governments.

The Governor joined with the Legislature in 2013 to dump the state’s venerable Enterprise Zone program, which provided hundreds of millions of dollars in tax abatements and other incentives to companies that located jobs in several dozen designated zones in distressed urban cores and rural areas.

Even more consequential was the elimination of cities’ redevelopment programs. At the Governor’s insistence, in 2011 the Legislature abolished state support for redevelopment agencies, fatally undermining their financial model, which was based on sharing property tax increment from new development in blighted zones.

The Governor successfully argued, during the worst economic downturn in 70 years and facing a $25 billion state budget deficit, that support for redevelopment agencies was a lower priority than, say, public education and health care for the poor. Legislative allies pointed out instances of abuses in the program, including designating greenfield developments as “blighted.”

The upshot of this decision was to constrict the pipeline of revenues for infrastructure to support local development, subsidies for affordable housing in these zones, and incentives to businesses to locate or expand in the redevelopment areas. Affordable housing has suffered a reduction of more than $1 billion a year from the loss of redevelopment subsidies.

While overall economic and job growth has been strong in California since the end of the last recession, local governments have been constrained in directing infrastructure, affordable housing and economic development to disadvantaged areas. The next economic downturn will further stress any residual efforts to advance local economic development.

REVISED FINANCING TEMPLATES
Since the demise of these programs and subsidies, the Legislature has cobbled together several infrastructure financing agency templates that local governments can utilize at their option. The key element to each is the use of tax increment financing, which designates the increment of property tax revenues attributable to new development in the affected zone back to infrastructure and subsidies in the zone.

The primary difference between the old redevelopment program and today’s lighter versions is that the property tax assigned to schools and community colleges (about half of each property tax dollar) does not transfer to the new agency, thereby reducing by half the financing potential of these agencies.

Because the state makes up the difference in school finances between local property taxes and their constitutionally guaranteed funding (Proposition 98), any allocation of schools’ property taxes to other agencies comes as a cost to the state General Fund.

Nonetheless, economic developers insist that tax increment financing is a useful, if today a less powerful, local development tool.

Advantages include:
• Zones and projects use existing tax revenues, not new taxes.
• Voter approval is necessary only to create bonded debt, not to create a revenue stream.
• Dedicated tax increment can leverage other public and private resources, such as cap-and-trade revenues, local vehicle license fee subventions, development or user fees, state bond revenues, federal grants, and private investments.
• Securitizing the tax increment over many years (through bonded debt) increases private investor confidence for projects.
LEGISLATION SUPPORTING LOCAL DEVELOPMENT

In 2014, the Legislature established Enhanced Infrastructure Financing Districts (EIFDs), which are independent local agencies that can be governed by cities, counties and/or special districts. These districts can use property tax increments created by the constituent entities (but not from schools) as well as development and user fees, and state or federal grants or loans. The districts can issue bonds with a 55% local vote backed by tax increment to finance public capital facilities or projects of communitywide significance.

In 2015, the Legislature established Community Revitalization and Investment Authorities (CRIAs), which were similar to EIFDs, but created more of a focus on affordable housing. As of mid-2018, some 15 to 20 EIFDs or CRIAs are under consideration, with three approved.

CALCHAMBER POSITION

The California Chamber of Commerce supports enhancement of existing local economic development tools, and the addition of new tools to the toolbox. This includes evaluation of richer tax increment revenue stream available to local agencies.

Key considerations for 2019 will include:

- Can the state dedicate a portion of schools’ property tax increment to these economic development and affordable housing districts? After all, this is tax increment, which implies that the project which creates the new property tax revenue would not have existed but for the new economic development investment. This could be true in particular for disadvantaged or economically distressed areas.
- Should greater state investment in these economic development zones imply more local investment for affordable housing?
- Should some of the limited permit and litigation streamlining made available to certain housing projects by 2017 legislation be extended to include other economic development (especially infrastructure) projects?

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Skilled Workforce Is Key to Growth
Filling ‘Skills Gap’ and ‘People Gap’ Essential for Long-Term Prosperity

For the first time in recent memory, California has more job openings than residents looking for work. As the economic recovery extends into record territory, one of the key threats to continued prosperity is the lack of skilled workers for growing businesses.

California has the fifth-largest economy in the world but needs to produce an additional 1 million career-ready college graduates by 2025 to meet employers’ needs.

The reality is that most of our students face a different future. Only 40% of the state’s 2.2 million young adults (ages 25–34) hold an associate’s degree or higher and many lack the skills needed for workforce success. In fact, only 8% of students graduate from high school prepared for college success. The reality is bleaker for underrepresented students: less than 1 in 10 of California’s low-income adults hold a postsecondary degree, and even fewer have jobs that pay a sustaining wage. Similar gaps in attainment exist for students of color. Unless trends are reversed, California’s standing as a vibrant, global economy is at risk.

Some business leaders call this a “two-gap” problem: a skills gap—too many people lack the skills or credentials they need to compete for 21st century jobs; and a people gap—too many businesses can’t find the workers they need, when and where they need them.

These are different but related challenges, requiring different policy prescriptions, but both threatening the state’s competitiveness and long-term prosperity.

SKILLS GAP
Addressing the skills gap is truly the low-hanging fruit of California economic policy. Increasing skills is not only good for employers, it’s the key to economic and social mobility for workers.

The Public Policy Institute of California (PPIC) recently found that college graduates have better labor market success than less-educated adults, including substantially higher wages and lower unemployment rates. The typical full-time worker with a bachelor’s degree earned $80,000 in 2016, compared to $36,000 for those with only a high school diploma.

But not all Californians have the same chance to experience these benefits, according to 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, but outcomes are still disappointing. To improve K-12 education, policymakers should re-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 postsecondary choices other than a four-year college. Work-based learning, such as apprenticeships, as well as credentialing and certificate programs, can lead to fulfilling careers.

BUSINESS INVOLVEMENT
Business also can play a role in helping prepare people for job opportunities.
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.

The California Chamber of Commerce supported a successful legislative effort (AB 1743; O’Donnell; D-Long Beach, eventually AB 1808; Committee on Budget) in 2018 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.

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.

Employers also can take the lead to apply business principles to better align 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.

A company projects its workforce demands, it identifies and clearly defines the necessary skills, and it partners with education or training providers, who then develop curriculum tailored to specific jobs. People can enter these training programs knowing that they will lead to employment and employers can create a steady pipeline of talent, ready to fill open positions.

**PEOPLE GAP**

But even upskilling workers will not solve California’s labor needs—we need more workers.

Demography and politics are the two greatest impediments to increasing the sheer number of workers available in our economy. More than a thousand baby boomers leave the California workforce every day, and this trend will continue for another decade. But workers don’t generally have an expiration date. We should make it easier for our most experienced employees to stay on the job.

At the opposite generational end are disaffected young people who aren’t in school or employed. These youth—more than a half million in California—have a lifetime of opportunity ahead of them that should be inspired, not squandered.

Hundreds of thousands of Californians are sidelined by addiction and incarceration. Many of them can become societal contributors with guidance and the right job opportunities.

California’s cost of living has discouraged many young people from pursuing careers in the state. The lack of affordable housing, especially in the metropolitan coastal areas, is an impediment to recruiting talented professionals and lower-wage service employees, alike.

**IMMIGRATION POLICY**

But the biggest missed opportunity is the nation’s continuing refusal to develop commonsense immigration policies.

The nation needs a comprehensive national program that addresses border security, temporary worker programs, employment verification and enforcement, as well as a path to legal status. Border security shouldn’t be at the expense of trade and commerce, which must continue between Mexico and California. Temporary worker programs should be reformed to meet the needs of employers for high- and low-skilled jobs that cannot be filled by U.S. workers.

**CALCHAMBER POSITION**

Besides the weather, California’s greatest competitive advantage is our skilled workforce. But unlike the weather, inattention to nurturing this workforce will squander that advantage. For the sake of economic growth, social cohesion, and personal fulfillment, California’s leaders must address the skills gap and the people gap as top public policy priorities.

Contact Loren Kaye President California Foundation for Commerce and Education loren.kaye@calchamber.com January 2019
Hazardous Waste Operations
Substantial Uncertainty as More California Facilities Close

Permitted hazardous waste facilities in California are a vital component of the state’s economy and perform essential functions relating to military defense, recycling, the environment and public health. More than 1.8 billion pounds of California hazardous waste is disposed of in these facilities each year. Despite the critical functions these hazardous waste facilities perform, the number of hazardous waste facilities in California is declining at an alarming rate each year. The primary driver for the decline is the complex and extraordinary cost associated with the permitting process.

DTSC, the Brown administration, and the Legislature took several actions over the last few years to try to restore public confidence in DTSC. These efforts have included budget augmentations and numerous statutory changes to help DTSC better achieve its mandates. Some of these actions, however, have imposed additional unnecessary costly and burdensome requirements on permitted hazardous waste facilities operating in good faith and in full compliance. The consequence has been a significant decline in the number of permitted hazardous waste facilities operating in California.

ELIMINATION OF FLAT FEE LEADS TO SUBSTANTIAL COST INCREASES TO FACILITIES

Historically, hazardous waste facilities seeking to obtain a hazardous waste permit had two options. They could either pay DTSC a flat statutory fee or enter into a reimbursement agreement where DTSC would be paid by the hour for staff time spent on processing the application. In an effort to recoup the costs associated with processing RCRA permit applications, DTSC proposed budget trailer language in 2016 to eliminate the flat fee option for applicants and to instead require a reimbursement agreement in all circumstances.

That budget trailer language, labeled a job killer by the California Chamber of Commerce, was later inserted into SB 839 (Committee on Budget and Fiscal Review), the Natural Resources budget bill, which the Legislature passed and the Governor subsequently signed. From CalChamber’s perspective, DTSC’s proposal is akin to handing DTSC a “blank check” to process permit applications that will discourage these facilities from further modernizing and improving their infrastructure. In addition, there is uncertainty whether DTSC can charge applicants for the agency costs to handle fee disputes—a serious disincentive to questioning the agency’s oversight fees.

As the regulated community predicted, the DTSC proposal led to intractable disputes, additional delays in the permitting process, and unpredictable costs that have driven many facilities to simply close. Today, there are only 80 permitted hazardous waste facilities left operating in California, including the seven facilities operated by the military, and 28 Post Closure Facilities.
ENVIRONMENTAL REGULATION

(closed and going through final remediation), that provide for the treatment, storage, or disposal of substances regulated as hazardous waste under federal and state law for all of California.

Compare that to 2006 when there were 137 permitted hazardous waste facilities operating in the state. At this closure rate, California is on a trajectory to have an inadequate number of permitted operating hazardous waste facilities to process the 1.7 million tons of hazardous waste produced each year by Californians. When there are inadequate permitted hazardous waste facilities in-state, California ships its hazardous waste to neighboring states or even other countries, like Mexico, where regulations are far less stringent and hazardous waste is treated merely as garbage. Approximately 540,000 tons of California hazardous waste was exported to 31 different states for disposal in 2011.

LEGISLATION AFFECTING CALIFORNIA HAZARDOUS WASTE FACILITIES

CalChamber led a coalition to support AB 2606, a bill by Assembly Member Vince Fong (R-Bakersfield) that would have directly addressed the unsustainable permit fees which are forcing California’s permitted hazardous waste facilities to close. AB 2606 received strong support from the U.S. military, which operates seven hazardous waste facilities in California.

AB 2606 would have required DTSC to process permit renewal applications in an expedited manner so long as three conditions were met:

- operations at the hazardous waste facility have not changed significantly since the previous permit term;
- the hazardous waste facility did not have any significant issues with compliance during the preceding term of the permit; and
- the hazardous waste facility was not the subject of any significant public concerns during the preceding term of the permit.

The rationale behind the bill was that the vast majority of hazardous waste facilities in California operate in full compliance with the law with little or no issues, yet DTSC has historically treated all hazardous waste facilities as essentially the same. This has led to many facilities operating off interim permits as their renewal applications sat, sometimes for years, with DTSC. AB 2606 would have reduced the time and costs associated with permit renewals for “good actor” hazardous waste facilities that met the above conditions. Unfortunately, the bill died in appropriations after DTSC stated it would need to hire 22 full-time employees, which CalChamber disputed.

CalChamber also led a coalition opposing AB 2094, a bill by Assembly Member Ash Kalra (D-San Jose) that would have required DTSC to adopt regulations establishing the inspection frequencies for permitted waste transporters and imposing arbitrary inspection frequencies of two (2) times per calendar year for land disposal facilities and once per calendar year for any other permitted hazardous waste treatment, storage or disposal facility.

CalChamber argued that additional regulatory requirements on DTSC when the agency was already struggling to clear permit backlogs and implement other regulatory reforms was counter-productive. Additionally, the mandatory inspections, regardless of the facility’s history of compliance, would undoubtedly result in additional unrestrained and unreviewable costs being imposed on permittees. As costs on permitted facilities already are unsustainable, AB 2094 inevitably would have resulted in even more closures. Although this bill died in appropriations, a version of this bill is expected in the 2019 legislative session.

In 2019, CalChamber anticipates a number of similar bills affecting permitted hazardous waste facilities in California. Legislation increasing inspections on existing hazardous facilities is highly likely, as well as a bill creating a DTSC board that could have responsibility over how the agency permits or renews permits on these types of facilities.

CALCHAMBER POSITION

The CalChamber supports treating, storing, and disposing of hazardous waste in California. The California protocols dealing with hazardous waste are more rigid than any other state, resulting in the processing of more hazardous waste into nontoxic form and sending less hazardous materials into landfills. To this end, CalChamber endorses California’s policy of managing its own hazardous waste and not exporting it to other states or nations, where protocols are either nonexistent or far less stringent, resulting in less environmental protection.

However, understanding the importance of keeping hazardous waste in California, hazardous waste permits must be issued in a timely and cost-effective manner and subject to clear and predictable procedures.

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Affordable Care Act
Elimination of Individual Mandate Penalty Spawns New Market Issues

- Mandate for individuals to buy health insurance was way to ensure compliance with Affordable Care Act.
- The individual mandate was made moot when federal legislation reduced the penalty to $0.
- Several states, but not California, have established mandates for individuals to buy health insurance.
- California should continue to consider all options to stabilize the market.

BACKGROUND
The individual mandate, enacted as part of the Affordable Care Act (ACA) and in effect since 2014, was intended to reduce the number of uninsured and increase the risk pool for health insurance, thus lowering premiums for everyone. It required all U.S. citizens and legal residents (unless they qualified for an exemption) to purchase health insurance for themselves and their family members if they didn't obtain insurance from another source, such as their employer, through the health insurance marketplace, which in California is Covered California. Those who didn't comply with the individual mandate were required to pay a noncompliance tax penalty. That penalty in 2018 was the greater of 2.5% of household income (up to a maximum of $2,085 per family per year) or $695 per adult and $347.50 per child under 18.

The individual mandate penalty was a way to ensure compliance with the ACA and get as many individuals insured as possible, including healthy individuals who might forgo purchasing insurance until they were sick. Since the ACA prohibits insurers from denying coverage based on current or prior health status, the individual mandate penalty was a way to balance the risk pool and ensure that both healthy and sick individuals purchased insurance.

PENALTY REDUCTION ESSENTIALLY A REPEAL OF THE MANDATE
The last year that the individual mandate penalty was in effect was 2018. The Tax Cuts and Jobs Act, passed by both the U.S. Senate and U.S. House of Representatives and signed by President Donald J. Trump in December 2017, essentially eliminates the individual mandate by reducing the mandate penalty to $0, effective in 2019 and thereafter. This means fewer individuals will buy insurance because the penalty forced many who were not purchasing insurance before the enactment of the ACA to do so after.

The Congressional Budget Office (CBO) has estimated that eliminating the individual mandate penalty will result in 13 million fewer people obtaining health insurance, which will save the federal government approximately $318 billion in government subsidies that would have been paid out if the individual mandate was in effect.

The elimination of the penalty and the resulting smaller risk pool also will cause an increase in premiums. The CBO has estimated a 10% increase in premiums as a result of eliminating the individual mandate penalty. Although lower-income individuals may not be affected because they will continue to receive subsidies, which will cover the cost increase, premiums for those not receiving subsidies will rise.

STATE-LEVEL INDIVIDUAL MANDATE
Elimination of the individual mandate penalty has left many states concerned about the future of health care for their residents. Three states and the District of Columbia already have state-level individual mandates to purchase health insurance.

- Massachusetts’ state mandate predates the ACA. In 2018, Massachusetts’ individual mandate penalty ranged between $264–$1,428 depending on income.
- New Jersey’s state mandate went into effect in 2019 and mirrors the former federal mandate penalty of 2.5% of annual household income (up to a maximum of $2,085 per family per year) or $695 per adult and $347.50 per child under 18 annually, whichever is greater. New Jersey expects to receive $90 to $100 million in penalties each year.
- Vermont’s state mandate goes into effect in 2020. The law
was passed in 2018 and a working group will make recommendations regarding the amount of the penalty at the start of the 2019 legislative session.

**NO MANDATE IN CALIFORNIA**

Covered California and the California legislators are considering different options to avoid destabilizing the health insurance market before it occurs. One of those options is a state individual mandate. The executive director of Covered California has raised the idea of a state-level individual mandate. He has also discussed other options for consideration, such as a continuous coverage requirement, wherein all Californians would be required to remain enrolled in health insurance or pay higher premiums later, as well as automatic enrollment in insurance plans.

A recent study by the UC Berkeley Labor Center and UCLA Center for Health Policy Research projects that up to 450,000 more Californians under 65 will be uninsured by 2020 and up to 790,000 more uninsured by 2023 compared to the numbers if the ACA penalty had been maintained. The ACA and its accompanying individual mandate penalty reduced California’s uninsured rate from 19% down to 7.2%, approximately 3 million Californians. Without the federal individual mandate, the study reveals that uninsured rates would increase to more than 4 million in California by 2023.

Ultimately, with the elimination of the individual mandate penalty in 2019, there is little doubt that, at the very least, there will be some destabilization of the health insurance market. What California will ultimately do to counteract the destabilization is yet to be seen.

**CALCHAMBER POSITION**

Maintaining a viable health insurance market that provides individuals with an opportunity to obtain health insurance is important. The California Legislature should continue to consider all options to stabilize the market so that small employers and individuals still have those options. The California Chamber of Commerce will continue to promote efforts to contain health care costs and improve access to high-quality health care by supporting a health care system that is affordable and improves the overall health of California citizens.

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Single-Payer Health Care
Government Mandate Would Remove Choice, Add Even Higher Costs

If Governor Gavin Newsom’s campaign statements are an indication of his top priorities as Governor, there is no doubt that health care will be among those top issues. The fact that his first two and most senior staff appointments to his administration both have a background in health care policy further confirms that focus. Early in his campaign, as he was fighting for supremacy among Democrats, Candidate Newsom supported a single-payer health care system. More recently, however, his focus has changed to expanding care to those who are currently uninsured. Yet, some of his early supporters will likely continue to push for single-payer health care this session, forcing the debate.

SO WHAT EXACTLY IS SINGLE-PAYER HEALTH CARE?
A true single-payer health care system prohibits all private or employer-provided health insurance. Health care could be delivered through either public and/or private hospitals and health care providers, but the payment for the health care must be made by a single entity, usually the government. Often the health care in such a system is free at the point of use, but in reality is paid via heavy taxation. Because cost-sharing by the consumer usually is eliminated, there is a false belief by consumers that health care is free.

CHALLENGES WITH SINGLE-PAYER HEALTH CARE
A single-payer health care system inherently has multiple problems. First, since there is no cost to the consumer, the “free” health care services often are overutilized. This leads to long wait times for patients and can lead to government rationing of health care services.

A single-payer model also abrogates personal freedom and choice, forcing every resident to use an assigned system or physician rather than a health plan or physician of their choosing. A single-payer health care system also can result in decreased quality of care since competition is eliminated. Under such a system, each type of health care provider is designated a set payment amount; thus there is no incentive to provide higher quality of care or be innovative in the care provided.

CALIFORNIA LEGISLATION—SB 562
In 2017, advocates of a single-payer health care model introduced legislation in California. SB 562 proposed the creation of a massive new government bureaucracy to take over health care in California. It would have eliminated private and employer-sponsored insurance. This government-run health care system would have covered every California resident, including undocumented immigrants, and would have provided every conceivable health care service and benefit with no premiums and no cost sharing by the consumers. The bill required the government to provide 34 different categories of service, including acupuncture, chiropractic care, dental, vision, and alternative medical care.

In theory, the idea of free health care of any and every kind sounds wonderful if all these services were truly free, if we had an abundance of medical providers who were willing to accept deep cuts in pay, if care wouldn’t and couldn’t be rationed, if choice wasn’t reduced and if overutilization wouldn’t increase health care costs. But, none of that is true. Health care has a huge cost and single-payer government-run health care is even more costly because it eliminates consumer awareness of the true cost of health care. Yet SB 562 never officially acknowledged costs or the source of revenues to fund such a system, likely because surfacing the cost would have sunk the bill. SB 562 passed out of the Senate without any explanation of how it would be funded. While senators were promised an opportunity to hear and debate the financing mechanism, that promise was never fulfilled.

An estimate by the Senate Appropriations Committee found that the cost of a single-payer system under SB 562 would be about $400 billion. To put this in perspective, at the time SB 562 was pending, that amount was more than double California’s state budget and almost triple its General Fund revenues. Of the $400 billion, approximately $200 billion accounts for money that is currently devoted to...
HEALTH CARE

health care by state and federal programs. The additional $200 billion of funding that is needed could be met with a new 15% payroll tax. Almost a year after SB 562 was first proposed, proponents of the measure released a funding study that recommended significant increases in taxes. The study recommended a sales tax that would increase California’s already-highest state sales tax in the country by another 2.3% and would be the biggest sales tax increase in the entire history of California. In addition to this massive sales tax, which would not alone be sufficient to fund this program, they proposed a 2.3% gross receipts tax or a 6.6% payroll tax. A gross receipt tax is not a tax on profit, but rather a tax on total sales revenue without consideration of operating costs, expenses or profit. Gross receipt taxes result in a disproportionately high tax on low profit margin industries, in some cases completely eliminating businesses because the tax is greater than the profit margin. Low profit margin industries such as restaurants, airlines, grocery stores and pharmaceutical distributors are unfairly impacted by this tax.

SB 562 was never heard in the Assembly because Speaker Anthony Rendon shelved the bill, calling it “woefully incomplete.” Then-Lieutenant Governor Newsom stated that he did not support SB 562 in its introduced form in 2017 without amendments. Both leaders presumably were aware of financial and legal hurdles the state would have to overcome both in terms of cost to the state and obtaining constitutional amendments and federal waivers.

In an interview with the San Francisco Chronicle early in 2018, Candidate Newsom stated that it would take years to transition from the multi-payer system we have now. “First of all, you will deal with litigation. You’ll deal with setbacks. You’ll have constitutional questions that have to be addressed by the voters. You’ll have propositions on the ballot—maybe multiple.” He went so far as to say that it’s a “myth” to believe that the next governor’s actions would bring about a single-payer health care system in California. “It is not an act that would occur by the signature of the next governor.”

CONSTITUTIONAL AND FEDERAL CHALLENGES:
The 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 requiring that a portion of any new general revenues be dedicated to schools. The tax increases necessary to pay for the single-payer proposal envisioned by SB 562 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 those federal dollars, California simply would not have the money to fund a single-payer system. Yet, getting approval from the current administration in the federal government would be highly unlikely.

In 2018, the administrator of the Centers for Medicare and Medicaid Services flatly rejected California’s efforts to pursue a single-payer system. “I think a lot of analysis has shown it’s unaffordable,” she stated. “It doesn’t make sense for us to waste time on something that’s not going to work.” There also are other federal waivers that California would need to obtain, but without the federal funding, California could never proceed with a single-payer system.

CALCHAMBER POSITION

Ensuring all Californians have access to quality, affordable health care is an admirable goal, but a single-payer model will not move California any closer to that goal. A single-payer health care system strips individuals of the freedom to pursue their health care as a matter of choice. It denies them the option to pay for health care outside of public sources. It interferes with their freedom to choose their health care provider and denies them the ability to access care without having to suffer lengthy waits for their care. The high taxes required to fund a system that has no cost-containment measures and will likely result in future increased taxes, will likely crowd out other state social services.

Rather than upending the health care system with which Californians have repeatedly expressed their satisfaction (except for costs), any reform to the system should focus on those who cannot access affordable health care.

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CalChamber
Universal Health Care
Central to Debate: Defining Who, What System Covers

In the great debate on health care, the two terms most confused or misunderstood are “universal” and “single-payer.” They often are used interchangeably, or even standing alone, are incorrectly defined. This confusion has skewed the dialogue on what is an ideal model for California health care. Efforts to improve health care in California must first define universal health care, clarify what it entails and quantify how close California already is to actually achieving it.

**Universal Health Care Defined**
Universal health care, as widely defined, is the ability of all citizens and legal residents of a state or country, to access quality, affordable health care. There are many ways of achieving universal health care. One of those ways is through a multi-payer model, which is used in California and the United States, wherein health care is paid for through multiple sources, such as employers, government and individuals. Another way is through a “single-payer” model wherein the government is the sole payer for health care. Both models can be a means to achieving a goal of universal health care.

**Universal Health Care Does Not Mean All Health Care Is Provided**
The word “universal” in the term “universal health care” references the individuals who are covered—meaning all of the legal residents of a country or state have access to health care. “Universal” does not define the type of care covered.

For example, Taiwan has a single-payer system and is close to achieving universal health care. Ninety-nine percent of its legal residents are registered for coverage by the country’s National Health Insurance system. In Taiwan, there is an insurance mandate to buy and a penalty for not buying. There is only one insurance option and that’s the public insurance option.

The fact that Taiwan is so close to achieving universal health care may seem impressive, but as mentioned above, the term “universal” covers only the who and not the what. Preventive medicine, screenings and physicals are not covered and have to be paid for “out of pocket” by Taiwanese citizens. Taiwan has a fee-for-service health care model, which means physicians are paid for each visit rather than on health outcomes. As such, medical appointments generally are limited to 5 minutes each and subsequent visits have to be made if all treatment cannot be completed in the first 5 minutes. If a patient is seen too many times by a physician, the government sends an official from the Bureau of National Health Insurance to inquire and discuss the overuse of the system in an effort to reduce costs on the system. It would be hard to imagine tolerance of such government interference in an individual’s health in the United States or California.

**Only Two Countries Have Universal Health Care Through a Single-Payer Model**
Due to the frustration with the rising cost of health care, the recent narrative that has arisen and taken hold in California and the United States is that a single-payer health care system is the key to achieving universal health care. Attacks on the Patient Protection and Affordable Care Act (ACA) at the federal level, including the elimination of the individual mandate penalty and cost sharing reduction subsidies, have only further fueled the argument that the single-payer, government-run health care model is the only road to universal health care.

This idea, however, is undermined by the experience of other countries. Most countries that have been able to achieve universal health care have not done so using a single-payer model, but rather a multi-payer model. The very few countries, arguably two in the entire world (Canada and Cuba), that have achieved universal health care through a single-payer model are realizing that a single-payer model is unsustainable.

Canada has tried to remain true to its single-payer model and has prohibited private health insurance in most provinces. Yet, Canada’s Supreme Court held in a 2005 case that “the evidence in this case shows that delays in the public health care system are widespread and that in some serious cases, patients die as a result of...
waiting lists for public health care.” The court concluded that “the prohibition on obtaining private health insurance is not constitutional where the public system fails to deliver reasonable services.”

Even Taiwan, which has a single-payer system but has not fully achieved universal health care, is facing significant health care system challenges. The cost of Taiwan’s health care system is greater than the premiums currently being collected, so the government has been borrowing money from banks to pay for health care. Premiums are regulated by politicians who are afraid to raise the premiums for fear of not being elected again, even though premiums need to rise to meet costs. There is only so much borrowing the country can do until it has to face the reality of increasing premiums to match the true rising cost of health care.

**CALIFORNIA CLOSE TO ACHIEVING UNIVERSAL HEALTH CARE**

California currently has an uninsured rate of 7%—2.7 million people of its total population of 39.78 million people. Of the 2.7 million Californians without health care coverage, approximately 900,000 are legal residents. The remaining uninsured are undocumented residents. Countries touted to have universal health care often do not provide health care to undocumented immigrants.

Thus, in a fair comparison of health care around the world and using the widely accepted definition of universal health care, California is very close to achieving universal health care at 97.6% coverage of its legal residents. California’s success of universal health care will, in part, be determined by how it defines “universal.”

**CONCLUSION**

A closer look at health care systems around the world that are touted to be universal health care systems reveals that they do not cover undocumented immigrants and often are multi-payer rather than single-payer health care systems. Additionally, such countries that say they have achieved universal health care for all citizens and legal residents exempt many types of coverage and services that Californians believe to be essential health care and for which they expect health plan coverage, such as preventive care, prescription medication, ambulance transport, and physical, occupational and speech therapy, as well as others.

In an era of too much information and a lot of misinformation, before idealizing and replicating health care systems, we need to ensure that a health care system we are considering replicating in California is truly what we believe it to be and ultimately what we want.

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California Housing Crisis
Self-Inflicted Disaster Jeopardizes State’s Economy

California is no longer in the midst of a housing “crisis.” A crisis is an event likely to lead to an unstable or dangerous situation affecting an individual or community. For millions of Californians, lack of affordable housing is already threatening their families and communities. California’s “housing crisis” is instead a self-inflicted disaster.

California’s housing disaster is apparent from the state’s record high rental prices, home prices, homelessness, and emigration of people and businesses to other states. Well before the most recent wildfires, decades of well-intentioned policies stifled housing construction. Owing to the pleasant climate, gorgeous views and opportunity, housing in California has long been more expensive than most areas around the country. But beginning in 1970, the gap between California’s home prices and those in the rest of the country began widening. Between 1970 and 1980, California home prices went from 30% above the national average to more than 80% higher, and with that increase came higher rents. The trend has continued unchecked to today: California home prices are higher than any other state in the union and well above the U.S. average. California now ranks 49th in the ratio of housing units per resident.

Various reports estimate California’s housing deficit to be between 3 million and 4 million housing units. As the state reaches full employment, it needs an estimated 180,000 new units a year just to meet annual demands. Yet with only about 80,000 units built annually, the existing 3 million-4 million home deficit will grow by another 100,000 units per year. Home construction in the state is going in the wrong direction. As a result, rental and home prices are at all-time highs.

California’s housing shortage is a self-inflicted disaster already jeopardizing California’s economy. Three recent reports commissioned by Next 10, a nonpartisan nonprofit research organization, find that substantial economic challenges lie ahead for the Golden State due to its severe housing shortage. All across California, the shortage of affordable and accessible housing is restricting economic growth, inflicting economic and environmental damage, and driving low-income and middle-class residents, as well as businesses, to seek opportunities outside of the state. From 2006 to 2016, more than a million more people moved out of California than moved in. By one estimate, California’s housing dearth is already costing the state $140 billion a year.

A PROBLEM ONLY THE LEGISLATURE CAN SOLVE
In 2018, housing advocates presented California voters with ballot measures that purported to address housing issues in which the Legislature did not engage. At the November election,
voters rejected a measure to repeal existing restrictions on cities’ ability to impose rent control (Proposition 10), and rejected a measure to incentivize seniors to move by preserving some of their Proposition 13 tax benefits (Proposition 5). In addition, voters approved two bond measures placed on the same ballot by the Legislature that aim to spur new housing development over the next decade: Proposition 1, which will provide $4 billion in general obligation bonds for housing subsidies for low-income Californians and veterans, and Proposition 2, which will redirect $400 million from an existing income tax on millionaires to housing for homeless mentally ill individuals.

None of these measures, successful or failed, would have more than a minor effect on meeting California’s housing supply or affordability needs. To ignite a housing development boom on a scale necessary to close the supply/demand gap, significant changes will need to come from the Legislature. The primary challenge has always been that meaningful action to spur sustainable housing development requires the Legislature to overcome one or more powerful interests devoted to preserving the status quo.

POLICIES TO INCREASE HOUSING SUPPLY, AFFORDABILITY

A collection of factors discourages developers from constructing affordable housing necessary to meet demand. Here are the primary policy arguments for reforming how California generally handles land use in order to spur more affordable residential construction.

- Eliminate Vexatious Litigation over Already-Approved Projects.

Although not the sole cause of California’s housing...
shortage, California's litigation-friendly land use laws often are a major impediment to housing development. The California Environmental Quality Act (CEQA), passed in 1970, is an extraordinarily complex and all-encompassing environmental law that has exacerbated California's housing shortage. CEQA and its multitude of substantive and procedural requirements are implicated for nearly every type of land use project in the State of California, including, but not limited to, housing and mixed-use developments. CEQA requires local governments to conduct a detailed review of the potentially significant environmental effects of new housing construction prior to approval. This information influences a city or county decision to approve, mitigate or deny the housing, but has become a useful tool to surface and exhaust concerns.

Unlike most environmental laws and regulations, however, CEQA is enforced through litigation—and the barrier is very low as to who may litigate and what causes may be raised. CEQA's complicated procedural requirements make housing development projects more susceptible to special interest abuses. Opponents to projects have significant opportunities to continue challenging housing projects after local governments have approved them.

Using CEQA to slow or block projects adds significant costs and time to the housing development process. Housing developers initially bear the costs of environmental assessments and indemnify local agencies for litigation costs when plaintiffs sue, but ultimately these costs are passed on to home buyers and increase housing prices. It may be no coincidence that California's cost of housing began to increase sharply the same decade in which the California Legislature passed CEQA.

- Local Government Fiscal Incentives Favor Commercial Development.

Different types of developments (e.g. commercial, residential, industrial) yield different amounts of tax revenues and service demands. California's local government finance structure provides cities and counties with a greater 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, because increased sales and hotel tax revenues that a city receives more than offset the local government's costs to provide public services.

In contrast, housing developments produce little direct sales taxes and no hotel tax revenues, and the costs for providing public services often is higher than the related property tax revenues. Moreover, lower-density luxury housing often is more appealing to both developers and local governments because the luxury housing generates higher per-unit profits and property taxes per new resident.

As a result, cities and counties often incentivize these types of commercial developments to locate within their jurisdictions by zoning land for these purposes and by offering subsidies or other benefits to the prospective business owners. With so many cities and counties already struggling for revenue, structuring their land use planning and approval processes disproportionately in favor of nonresidential housing is fiscally prudent but has exacerbated the state's housing crisis.

Community resistance to new housing construction also adds to the housing shortage. Local communities often fear that increasing housing density will change the neighborhood character, increase traffic congestion, lower home values, and increase crime. Local residents often pressure 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 metropolitan areas have adopted growth control ordinances that limit housing development.

These ordinances are effective at limiting growth and increasing housing costs. One study found that each additional growth control policy correlated to a 3% to 5% increase in home prices. And even where local officials do not bend to community pressure, California provides active residents with the ability to circumvent their local officials and intervene in local land use decisions via the initiative and referendum process.

Legislation in 2019

Reforming CEQA is a perennial issue in the Legislature. The California Chamber of Commerce anticipates that 2019 will be no exception and foresees the introduction of a significant number of housing bills, some of which will attempt to overhaul CEQA. Inevitably, most housing bills that involve CEQA reform will succeed or fail along party lines.

Given the political power that labor unions wield in the Legislature, only the most narrowly tailored CEQA reform bills—in other words, those bills that are likely to make the smallest impact on solving the state's housing crisis—will have a chance to see a vote by the entire Senate or Assembly. That is because any attempts to reform or streamline CEQA will fail to proceed past early committee hearings unless the labor unions support such measures, which they rarely do.

Labor unions frequently employ CEQA to leverage favorable project labor agreements. Finally, housing bills that aim to reduce
local city and county control over land use decisions will likely face resistance from both sides of the aisle.

**CALCHAMBER POSITION**

California’s housing crisis is driving businesses out of state and discouraging new investment and expansion. The cost of housing also is a key reason California’s poverty rate is among the nation’s highest. Working families become poor families when faced with the cost of shelter. The lack of affordable housing also forces many working Californians into extra-long commutes, adding more air pollution, more traffic congestion, and reduced worker productivity.

Comprehensive reform of environmental and zoning laws, restoring redevelopment programs that provide for economic development and low-income housing, and reducing excessive development fees and ill-conceived construction mandates are necessary to remove obstacles that hamper housing construction and raise new home prices. A comprehensive reevaluation and reform of CEQA is one critical step to spurring housing development in California. Maintaining CEQA’s legacy of protecting human health and the environment is not incongruent with more streamlined housing development.

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January 2019
Export-Import Bank of the U.S.
Small Business Exports, Jobs Benefit by Restoring Full-Working Capacity

• From 2012 to 2016 helped 756 California exporters with a value of $15 billion.

• 75% of exporters helped in California in 2016 were small businesses.

• In the last decade, Ex-Im has supported more than 1.7 million American jobs in all 50 states.

BACKGROUND
The Export-Import Bank of the United States (Ex-Im Bank) is the official credit export agency of the United States. The Ex-Im Bank’s mission is to assist in financing the export of U.S. goods and services to international markets. The bank enables U.S. companies—large and small—to turn export opportunities into real sales that help to maintain and create U.S. jobs and contribute to a stronger national economy.

Ex-Im Bank does not compete with private sector lenders but provides export financing products that fill gaps in trade financing. The bank assumes credit and country risks that the private sector is unable or unwilling to accept. The bank also helps to level the playing field for U.S. exporters by matching the financing that other governments provide to their exporters.

Ex-Im Bank provides working capital guarantees (pre-export financing); export credit insurance; and loan guarantees and direct loans (buyer financing). No transaction is too large or too small.

IMPACT
With more than 80 years of experience, Ex-Im Bank has supported almost $600 billion of U.S. exports, primarily to developing markets worldwide.

In addition to supporting U.S. jobs, the Ex-Im Bank is a self-sustaining agency that operates at no net cost to the taxpayers. Ex-Im Bank pays for itself by charging fees or interest to its customers for loans, credit insurance and loan guarantees that they receive. In fiscal year 2017, the Ex-Im Bank has generated more than $118 million in excess revenue for U.S. taxpayers.

The Ex-Im Bank has a proven record of success, and the myths questioning its need and effectiveness have no basis in fact. Far from being a burden on the taxpayer, the Ex-Im Bank turns a profit for the U.S. taxpayer.

Nor does Ex-Im Bank help only big business. In fact, small businesses account for the majority of the Ex-Im Bank’s transactions; further, these small business transaction figures are in addition to the tens of thousands of small and medium-sized businesses that supply goods and services to large exporters.

2018 LEGISLATIVE ACTIVITY
President Donald J. Trump has made nominations to the Ex-Im Bank Board in order to restore the bank’s quorum, including nominating Kimberly Reed to serve as president/chair of the board. In 2017, the bank authorized more than $3.4 billion of short-term export credit and working capital guarantees, $2.2 billion of which was for small businesses, to support an estimated $7.4 billion of U.S. exports and an estimated 40,000 jobs.
INTERNATIONAL TRADE

ANTICIPATED ACTION

The California Chamber of Commerce is hopeful that the U.S. Senate will confirm President Trump’s nominations to the Ex-Im Bank Board, including the President/Chair of the Bank, to restore the Ex-Im Bank to a full quorum as quickly as possible in 2019.

The charter for the Ex-Im Bank will once again run out in September 2019. It is hoped that Congress and President Trump will support legislation extending the charter.

Failure to reauthorize the Ex-Im Bank will amount to unilateral disarmament in the face of other nations’ aggressive trade finance programs, putting billions of dollars in U.S. exports and thousands of U.S. jobs at risk.

The Ex-Im Bank Board has lacked a quorum since 2016; without a quorum, the bank cannot approve transactions of more than $10 million. This represents numerous lost opportunities for U.S. businesses and their workers. The bank’s inability to approve transactions exceeding $10 million extends the profound impact of the lapse to larger exporters, the thousands of smaller companies that supply them, and the hundreds of thousands of workers whose jobs depend on exports.

Effects on U.S. businesses and workers from a lack of domestic political support for Ex-Im are exacerbated by the extraordinary steps other countries are taking to support their own exporters and national interests. Export credit agencies (ECAs) abroad are expanding product offerings allowing exporters to compete more aggressively, and more countries are opening new ECAs of their own.

Moreover, the hundreds of workers at large businesses are not the only ones affected by lost U.S. export transactions; there are strong ripple effects on the many small and medium-sized enterprises throughout their supply chains. The United States is home to some of the largest supply chains in the world. Sales and employees in these supply chains depend on exports of larger clients, financed by Ex-Im. Uncertainty for large clients means diminished purchasing, which means fewer sales and has a direct impact on jobs in cities and towns across the country.

CALCHAMBER POSITION

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

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January 2019
Indo-Pacific Initiative
Enhance Economic/Commercial Engagement in World’s Fastest-Growing Region

• The U.S. announced $113.5 million to seed new strategic initiatives in the region.

• Region has seen an average annual economic growth rate of around 6% over the last 5 years.

• The U.S. has made investments of $1.4 trillion into the region.

BACKGROUND
The Indo-Pacific region stretches from the United States’ west coast 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 of 14 countries: Australia, Bangladesh, Burma, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Taiwan, Thailand, and Vietnam. The Indo-Pacific region is one of the greatest current and future engines of the global economy.

The Indo-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 Indo-Pacific. Developing nations in the region will need about $1.5 trillion in investment every year for the next decade in order to develop the infrastructure necessary to sustain their growth.

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

IMPACT
Two-way investment and trade in the Indo-Pacific region supports millions of American jobs. 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 Indo-Pacific facilitate 50% of world trade.

The U.S. has made foreign direct investments of $1.4 trillion into the Indo-Pacific region. The U.S. doubled the amount of security assistance it provided to the Indo-Pacific nations, totaling more than $500 million. The BUILD Act, which President Donald J. Trump signed in October 2018, provides for development finance capacity up to $60 billion. The Indo-Pacific Transparency Initiative also has more than $400 million available to support allies, partners, and regional institutions in advancing shared principles of combating corruption and promoting good governance.

PAST ACTIVITY
President Trump in 2017 outlined his vision for a free and open Indo-Pacific at the Asia Pacific Economic Cooperation (APEC) CEO Summit in Vietnam. President Trump has aimed to reinvigorate private business interest in the region.

The Indo-Pacific Initiative launched by President Trump in July 2018 aims to accelerate U.S. private sector involvement in the region and support more U.S. export opportunities. The initiative will begin with $113.5 million to support digital
connectivity and cybersecurity, promote sustainable infrastructure development, and strengthen energy security and access.

In November 2018, the Trilateral Partnership for Infrastructure Investment in the Indo-Pacific, formed by the United States, Australia and Japan in July 2018, signed a trilateral Memorandum of Understanding (MOU) to operationalize the partnership. The MOU signified the three countries’ intent to work together to mobilize and support the deployment of private sector investment capital to deliver major new infrastructure projects, enhance digital connectivity and energy infrastructure, and achieve mutual development goals in the Indo-Pacific.

**ANTICIPATED ACTION**
The California Chamber of Commerce is hopeful that the Trump administration will continue to develop the Indo-Pacific Initiative in 2019 and strengthen partnerships within the region.

In 2019, the U.S. Department of Commerce, through its Access Asia Program, plans to dedicate many events to the region, including its 2019 flagship trade mission to connect U.S. firms with the Indo-Pacific market.

Also in the lead up to the 2019 G-20 Summit in Osaka, the Trilateral Partnership for Infrastructure Investment in the Indo-Pacific intends to work with the other members of the G-20 to promote quality infrastructure development in the region.

**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 Indo-Pacific region represents nearly half of the earth’s population, one-third of global gross domestic product (GDP) and roughly 50% of international trade. The large and growing markets of the Indo-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 Indo-Pacific Vision is welcomed, as this is a key area in geopolitical, strategic, and commercial terms.

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January 2019
U.S.-China Relations
Must Find Joint Solutions to Address China’s Unfair Trade Practices

- 455,000 American jobs are at risk by U.S. tariffs on $150 billion of imports from China.
- U.S. currently has tariffs on $250 billion of Chinese goods versus China’s tariffs on $110 billion of U.S. goods.
- Trade dispute must come to a conclusion before there are more damaging effects on American consumers and businesses.

BACKGROUND
According to the U.S. State Department, China has been one of the world’s fastest-growing economies over the last several years, and its efforts to reform and modernize have helped transform China into a large trading economy.

U.S.-China trade has risen rapidly over the last several decades. Total trade between the two nations increased from $4.8 billion in 1980 to $635.96 billion in 2017. U.S. exports to China in 2017 were approximately $130.37 billion, more than twice as much as a decade earlier.

China was the third fastest-growing source of total Foreign Direct Investment (FDI) stock in the U.S. in 2016, after a record $46 billion of Chinese FDI in the U.S. In 2017, however, Chinese FDI dropped sharply to just $29 billion due to greater security in Beijing over outbound investment flows and tougher U.S. regulatory reviews of inbound acquisitions through the Committee on Foreign Investment in the U.S. (CIFUS). The main industries receiving Chinese FDI are: real estate, transportation and infrastructure, and information and technology. The United States invested $14 billion into China in 2017.

Hong Kong GDP per capita is comparable to other developed countries. The United States has substantial economic ties with Hong Kong. A report done by the U.S. State Department in 2018 indicates that there are more than 1,300 U.S. firms and approximately 85,000 U.S. residents in Hong Kong. Another 1 million people visited Hong Kong in 2017 from the United States. The latest available figures on U.S. direct investment in Hong Kong show investment at about $81 billion, making the United States one of Hong Kong’s largest investors.

Trade between the United States and Hong Kong has increased over the last decade, with a growth in U.S. exports from $26.6 billion in 2010 to $40 billion in 2017. Total trade between the United States and Hong Kong totaled $47.5 billion in 2017, according to the U.S. Department of Commerce.

California exports to Mainland China were $16.4 billion in 2017, making it the state’s third largest export destination. California exports to Hong Kong were $12.1 billion. FDI from China into California decreased in 2017 to $4.6 billion from $16.6 billion the year prior, while FDI from California into China totaled $4.4 billion.

REGIONAL PARTNERSHIP NEGOTIATIONS
China is currently involved in negotiations for the Regional Comprehensive Economic Partnership (RCEP), a proposed free trade agreement (FTA) with 10 Association of Southeast Asian Nations (ASEAN) member states—Brunei, Burma (Myanmar),

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**U.S. TRADE IN GOODS WITH CHINA**
(on nominal basis, not seasonally adjusted)

<table>
<thead>
<tr>
<th>Year</th>
<th>Exports</th>
<th>Imports</th>
<th>Trade Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>130.4</td>
<td>505.6</td>
<td>-375.2</td>
</tr>
<tr>
<td>2010</td>
<td>130.37</td>
<td>505.3</td>
<td>-375.0</td>
</tr>
<tr>
<td>2005</td>
<td>130.36</td>
<td>505.3</td>
<td>-375.0</td>
</tr>
<tr>
<td>2000</td>
<td>130.35</td>
<td>505.3</td>
<td>-375.0</td>
</tr>
<tr>
<td>1995</td>
<td>130.34</td>
<td>505.3</td>
<td>-375.0</td>
</tr>
<tr>
<td>1990</td>
<td>130.33</td>
<td>505.3</td>
<td>-375.0</td>
</tr>
<tr>
<td>1985</td>
<td>130.32</td>
<td>505.3</td>
<td>-375.0</td>
</tr>
</tbody>
</table>

Source: U.S. Census Bureau/Reuters
INTERNATIONAL TRADE

Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Vietnam—and the six states with which ASEAN has existing FTAs—Australia, China, India, Japan, South Korea and New Zealand. RCEP negotiations were launched in November 2012 and concluded in 2018; however, the deadline for signing the RCEP agreement has been pushed back to 2019 and may even be 2020.

The RCEP includes more than 3.4 billion people, about 45% of the world’s population with a combined GDP of about $49.5 trillion, accounting for almost 40% of world trade.

The RCEP would be expected to grow to more than $100 trillion by 2050, double the projected size of Trans Pacific Partnership-11 (TPP-11) economies. It would be the biggest free trade agreement in the world, but without the United States or any membership from the Americas.

PAST ACTIVITY

At the beginning of 2018, President Donald J. Trump began imposing tariffs, starting with those on solar panels and washing machines, followed by steel and aluminum tariffs as a result of investigations by the Office of the U.S. Trade Representative (USTR) into China’s laws, policies and practices related to technology transfer, intellectual property and innovation.

By March, President Trump had instructed USTR Ambassador Robert Lighthizer to apply $50 billion of tariffs onto Chinese goods, explaining the tariffs were the consequence for years of Chinese theft of U.S. intellectual property.

At the beginning of July 2018, the first round of $34 billion in tariffs on Chinese products went into effect. China immediately retaliated with tariffs on U.S. exports of the same amount. The second round of tariffs came in August on an additional $16 billion of Chinese goods, with China once again retaliating on U.S. exports in the same amount. The third and, so far, final round of tariffs came in September with the U.S. imposing tariffs on $200 billion worth of Chinese goods. China retaliated with tariffs on an additional $60 billion of U.S. goods. Chinese tariffs centered around U.S. agricultural products and ultimately came to a total of $110 billion tariffs on American products, while U.S. tariffs on Chinese goods now total approximately $250 billion.

President Trump met with Chinese President Xi Jinping at the G-20 Summit in November 2018 to discuss the tariffs. They agreed to a 90-day pause in tariffs in order for China to conduct structural reforms. China also agreed to buy an unspecified amount of U.S. products.

IMPACT

Although the business community recognizes there are serious issues with China’s trade policies and practices, the California Chamber of Commerce has deep concerns over the impact that increased tariffs could have on international trade and the state’s economy. The tariffs may have adverse consequences and fail to consider the impact on U.S. allies and trading partners.

Raising tariffs can result in higher prices to the consumer for the specific product protected and in limited choices of products for consumers. Further, it can cause a net loss of jobs in related industries, retaliation by U.S. and California trading partners, and violates the spirit of our trade agreements. The end result is that raising tariffs can cause a trade war.

ANTICIPATED ACTION

The CalChamber is hopeful that the 90-day pause in tariffs agreed upon by President Trump and President Xi on the sidelines of the G-20 Summit in Argentina will allow for China to make structural changes that will lay the groundwork for further negotiations. President Xi at the end of 2018 vowed to lower tariffs, broaden market access and increase imports. The CalChamber expects that in 2019 the Trump administration and its Chinese counterparts will be able to arrive at a conclusion and not continue to escalate the trade dispute between the two countries.

CALCHAMBER POSITION

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business. International trade ensures that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

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January 2019
U.S.–EU Free Trade Agreement

Huge Market Represents Many Opportunities

- Trade with the European Union supports an estimate 2.6 million jobs in the United States.
- The U.S. had a services trade surplus of $55 billion with EU in 2016.
- EU countries purchase about 18% of California exports.

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.

The EU market represents more than 511 million people, and has a total gross domestic product (GDP) of $17.28 trillion, as of 2017. The United States has 325.7 million people and a GDP of $19.39 trillion as of 2017 (World Bank).

With the United Kingdom expected to exit the European Union in March 2019, the EU will consist 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 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.

IMPACT

Total bilateral trade between the European Union and United States was more than $1 trillion in 2017, with goods trade accounting for $718 billion. The United States exported $283 billion worth of goods to EU member nations. California exports to the EU were $31.29 billion in 2017. California is the top exporting state to the EU, with computers, electronic products, chemical manufactures, and transportation equipment as the state’s leading export sectors to the region. EU countries purchase roughly 18% of all California exports. For California companies, the single market presents a stable market with huge opportunity.

Forty-four of 50 U.S. states export more to the EU than to China. The U.S. and EU transatlantic economy supports 15 million jobs, accounts for 50% of world GDP, and 30% of world trade. In 2015, 14.8 million EU tourists traveled to the U.S. The top five service exports from the U.S. to the EU are: business services, including telecom; travel, including passenger fares, royalties and licensing fees; financial services, including insurance; and transport. The top five U.S. agricultural exports to the EU are: tree nuts, soy beans, wine and beer, prepared food, and oils. The U.S. and EU are each other’s primary source and destination for foreign direct investment (FDI). In 2017, the U.S. invested $3.2 trillion in the EU and the EU invested $2.3 trillion in the U.S.
PREVIOUS ACTIVITY

Europe and the United States had been negotiating trade talks for a potential Transatlantic Trade and Investment Partnership (TTIP) to further the largest regional trading and investment relationship in the world before President Donald J. Trump took office. Upon his inauguration, however, President Trump put the TTIP negotiations into a “deep freeze.”

In October 2018, President Trump announced his intent to enter into trade negotiations with three new markets, one of which is the EU. President Trump’s goal by doing so is to open new markets for U.S. farmers and companies where they currently face significant barriers. The Trump administration hopes that a new high-standard trade agreement with each of these markets will expand the United States’ ability to sell “made in America” products around the globe and deepen partnerships with vital allies.

ANTICIPATED ACTION

The California Chamber of Commerce is hopeful that the U.S. and EU will begin free trade agreement negotiations in 2019 to deepen the world’s largest trading and investment relationship, with a focus on trade and investment initiatives. The CalChamber supports the following issues being discussed during negotiations:

- eliminating tariffs on trans-Atlantic trade in goods;
- establishing compatible regulatory regimes in key sectors to address regulatory divergences that unnecessarily restrict trade;
- a bilateral investment agreement;
- liberalizing cross-border trade in services; and
- bilateral expansion of government procurement commitments.

Progress has been slow as to whether to include agriculture and tariffs in the negotiations.

CALCHAMBER POSITION

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

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.

Agreements like this have the capability of ensuring that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.

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January 2019
U.S.-Japan Free Trade Agreement
Will Create Freer Markets, More Opportunities with Important Partner

• Japan’s e-commerce market is one of the largest and fastest growing in the world.

• Japan has one of the highest per capita income levels in Asia and middle class consumption that ranks second only to the United States.

• Japan is the third largest source of foreign direct investment (FDI) into the U.S. and supports more than 856,000 jobs.

BACKGROUND
In October 2018, the United States and Japan announced negotiations toward a potential U.S.-Japan free trade agreement (FTA). Japan is the third largest economy in the world, the fourth largest importer of U.S. goods, and the fourth largest source of imports into the U.S.

At the beginning of his administration, President Donald J. Trump withdrew the United States from the Trans-Pacific Partnership (TPP) in which the U.S. and Japan were leaders. Japan took the lead in passing TPP in the remaining 11 countries, rebranding it the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11). The agreement is in effect this year, and may eventually include other nations.

The TPP-11 will reduce tariffs in countries that together amount to more than 13% of the global economy, a total of $10 trillion in gross domestic product (GDP). With the United States, the agreement would have represented 40% of the global 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.

IMPACT
The United States is a large supplier of chemicals, transportation equipment, and computer and electronic products to Japan.

Japan is also one of the largest U.S. foreign markets for agricultural products. U.S. exports to Japan were $67.69 billion in 2017, making it the fourth largest export destination for the U.S. Imports from Japan to the United States were $136.5 billion, with transportation equipment accounting for 44%.

According to the most recent figures, U.S. direct investment to Japan totaled $129 billion in 2017, largely in financial, software and internet services. Foreign direct investment (FDI) from Japan into the United States was $469 billion in 2017, making it the third largest source of FDI in the U.S. In 2016, Japanese FDI in the U.S. supported 856,100 jobs and contributed $8 billion to research and development, as well as another $75.7 billion to expanding U.S. exports. The top industry sectors for Japanese FDI are: auto components, industrial machinery, automotive original equipment manufacturer (OEM), metals, plastics, and textiles. (Select USA)

In 2017, by country of ultimate beneficial owner, the third largest investing country into the U.S. was Japan, investing more than $34 billion. (Bureau of Economic Analysis)

California continues to be the top exporting state to Japan,
accounting for 18.9% of total U.S. exports. Japan has remained California's fourth largest export market since 2010, after Mexico, Canada and China. California exports to Japan, the world's third largest economy, totaled $12.85 billion in 2017. Computers and electronic products accounted for 20.3% of total exports. Imports into California from Japan were $40.5 billion, with transportation equipment accounting for more than half of total imports. California is currently the top importing state in the United States for products from Japan. In addition, California buys more products from Japan than any other country besides China and Mexico.

**PREVIOUS ACTIVITY**
The United States has been in meetings with Japan regarding economic partnership for several years. In 2018, the U.S. Trade Representative met with the Japan Minister of Economy and the EU Commissioner for Trade three times. The ministers agreed to deepen cooperation and exchange of information, to find effective means to address trade-distorting policies of third countries and to pursue dispute settlement proceedings at the World Trade Organization.

After the trilateral meetings, the U.S. announced its intent in October 2018 to enter into free trade agreement (FTA) negotiations with Japan.

**ANTICIPATED ACTION**
On October 16, 2018, the U.S. Trade Representative (USTR) officially notified Congress that the Trump administration intended to start negotiations following the completion of necessary domestic procedures. This began a congressionally mandated 90-day consultation period under Trade Promotion Authority before the launch of negotiations.

In December 2018, the USTR released a Summary of Specific Negotiating Objectives. The aim in negotiations with Japan is to address both tariff and non-tariff barriers and to achieve fairer, more balanced trade in the following areas: trade in goods; sanitary and phytosanitary measures; customs, trade facilitation, and rules of origin; technical barriers to trade; good regulatory practices; transparency; trade in services; digital trade; investment; intellectual property, pharmaceuticals and medical devices; state-owned and controlled enterprises; competition policy; labor; environment; anti-corruption; trade remedies; government procurement; small and medium-sized enterprises; dispute settlement; and currency.

The U.S. and Japan will begin FTA negotiations in 2019 with the goal of expanding bilateral trade in a mutually beneficial way to achieve freer and more balanced trade, as well as encourage economic development. It is hoped that the U.S. and Japan will expand areas of cooperation and deepen their understanding of each other's respective views and positions.

**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.

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.

Agreements like this have the capability of ensuring that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.
U.S.-Mexico-Canada Agreement
New Pact Replaces NAFTA to Create ‘Freer,’ ‘Fairer’ Economic Growth

• Trade with Mexico and Canada supports nearly 14 million U.S. jobs.

• Since NAFTA entered into force, trade with Canada and Mexico has nearly quadrupled to $1.3 trillion.

• NAFTA helped U.S. agriculture exports to Canada and Mexico to increase by 350%.

• Canada and Mexico buy more than one-third of U.S. merchandise exports.

BACKGROUND
The California Chamber of Commerce actively supported the creation of the North American Free Trade Agreement (NAFTA) among the United States, Canada and Mexico, comprising 489.5 million people with combined annual trade with the United States being around $1.1 trillion in 2017. In 2017, goods exports topped $525.46 billion while goods imports totaled nearly $614.02 billion.

President Donald J. Trump announced his intent to renegotiate NAFTA in May 2017. The negotiations started shortly thereafter, going through many rounds. In August 2018, the U.S. and Mexico reached a preliminary agreement, while the U.S. continued separate negotiations with Canada. In October, Canada and the U.S. came to an agreement right before a self-imposed deadline, reassuring the deal would remain trilateral. The pact was rebranded the United States-Mexico-Canada Agreement (USMCA).

2018 UPDATES TO THE AGREEMENT
The USMCA deal improves access to Canada’s dairy market for U.S. farmers, giving U.S. exporters an estimated additional 3.59% market share. It also provides for stronger intellectual property provisions, and tighter rules of origin for auto production according to the Trump administration.

The Chapter 19 dispute-settlement mechanism remains untouched, as Canada fought for, although the investor-state dispute settlement will be phased out for Canada and restricted to four areas for Mexico.

Canada also agreed to raise the threshold for applying duties to cross-border purchases, which was a key demand from the United States. The new de minimis level will be C$150 ($117 USD) for customs duties, up from C$20 ($15 USD).

Steel and aluminum tariffs imposed earlier in 2018 will remain in effect and are being dealt with separately. However, an agreement in the new pact increases by 800,000 the number of passenger vehicles that come across the border from Canada without being subject to a likely 25% duty.

BENEFITS AND GOALS
CalChamber support for the USMCA is based on an assessment that it serves the employment, trading and environmental interests of California, the United States, Mexico and Canada, and is beneficial to the business community and society as a whole.

The objectives of the USMCA 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 and applying the agreements and resolving disputes, and to further trilateral, regional and multilateral cooperation.

TOTAL MERCHANDISE EXPORTS FROM CALIFORNIA TO NAFTA

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computers and Electronics</td>
<td>26.4%</td>
</tr>
<tr>
<td>Transportation Equipment</td>
<td>11.4%</td>
</tr>
<tr>
<td>Agricultural Products</td>
<td>7.2%</td>
</tr>
<tr>
<td>Machinery, Except Electrical</td>
<td>6.5%</td>
</tr>
<tr>
<td>All Others</td>
<td>48.5%</td>
</tr>
</tbody>
</table>

Grand Total: $43,613,823,268

Source: U.S. Department of Commerce, International Trade Administration
**ANTICIPATED ACTION**

The CalChamber is hopeful that Congress will approve the new USMCA agreement, following the objectives and procedures of the Trade Promotion Authority.

The recently agreed upon U.S.-Mexico deal was written to last for 16 years, but would allow the countries involved to revise or modernize aspects of the deal every six years. The trilateral deal under the new USMCA would be the same.

Originally, the CalChamber has opposed the proposed five-year sunset clause, as a forced re-examination of the pact on such a short time frame would cause uncertainty for all parties.

The USMCA was signed in Buenos Aires at the G-20 Summit on November 30, 2018. The treaty must now be ratified/approved by all three nations. It is hoped the U.S. Congress will approve the USMCA in early 2019. However, President Trump cautioned that he may pull the United States out of NAFTA within six months after the new pact was signed order to push the new USMCA legislation toward action in Congress.

**CALCHAMBER POSITION**

The CalChamber understands that the original NAFTA was negotiated more than 25 years ago, and, while our economy and businesses have changed considerably over that period, NAFTA has not. We agree with the premise that the United States should seek to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under the new USMCA.

The provisions of NAFTA with Mexico and Canada have been beneficial for U.S. industries, agricultural enterprises, farmers, ranchers, energy companies and automakers.

The CalChamber originally actively supported the creation of NAFTA among the United States, Canada and Mexico.

The CalChamber’s longstanding support for NAFTA is based upon an assessment that it serves the employment, trading and environmental interests of California and the United States, as well as Canada and Mexico, and is beneficial to the business community and society as a whole. Since 1993, trade among the three NAFTA countries has nearly quadrupled.

Mexico and Canada are California’s largest and second largest export markets. A final approval of the new USCMA will benefit the California economy and jobs.

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January 2019
U.S.-U.K. Free Trade Agreement
Great Potential to Deepen Trade/Investment Relationship with Important Ally

• The United Kingdom is the single largest investor into the United States with more than $480 billion invested.

• The U.S. is the single largest investor into the U.K. with almost $600 billion invested.

• More than 1.1 million Americans work for British companies in the U.S.

• California is one of the top five states for number of jobs connected to investment by a U.K. company.

BACKGROUND
The United Kingdom is the fifth largest economy in the world, with the U.S. being the first. The U.S. maintains a deep trade and investment relationship with the U.K. Once the U.K. leaves the European Union, which it is expected to do in March 2019, the two countries will be able to negotiate a formal free trade agreement (FTA).

IMPACT
Two-way trade between the United States and the United Kingdom was $109.4 billion in 2017 and the U.K. was the fifth largest importer of U.S. goods with a total value of $56.3 billion.

The United Kingdom is California’s 10th largest export destination, with more than $5 billion in exports. Computer and electronic products accounted for approximately 25.7% of exports—more than $1.29 billion. Transportation equipment brought in $704 million, or 14%; while both second-hand merchandise and chemicals accounted for 10.8% and 9.2%, respectively.

In 2017, imports into California from the United Kingdom were approximately $5.5 billion, with the top categories being transportation equipment and chemicals.

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 trillion in 2016 and creating over 2 million jobs, about 1 million in each country.

More than 42,000 U.S. firms export to the U.K. Annual U.S. exports to the U.K. are valued at more than $100 billion.

British investment is key in the United States. More than a million Americans go to work every day for British companies. Similarly, 1 million Britons go to work for U.S. companies every day. British investment is especially vast in California, where it supports approximately 105,000 jobs and the number of U.K. subsidiaries exceeds 1,000. (British Consulate General, San Francisco, 2012). The U.K. contributes 19% of foreign direct investment (FDI) into California, more than double that of any other country.

U.K. FDI in the United States contributed $7.9 billion to research and development and an additional $43.1 billion to expanding U.S. exports. The top industry sectors for British FDI in the United States are: business services, software and information technology services, financial services, communications, industrial machinery, and textiles. (Select USA)
INTERNATIONAL TRADE

PREVIOUS ACTIVITY
In July 2017, U.S. Trade Representative Robert Lighthizer and U.K. Secretary of State for International Trade Dr. Liam Fox formed the U.S.-U.K. Trade and Investment Working Group, which is focused on providing commercial continuity for U.S. and U.K. businesses, workers, and consumers as the U.K. leaves the European Union. The working group has laid the groundwork for future FTA negotiations as it has explored ways the two countries can collaborate to promote open markets and freer and fairer trade around the world.

The working group will have met five times by the end of 2018 and a more recently created U.S.-U.K. Small and Medium-sized Enterprises (SME) Dialogue will have taken place three times.

ANTICIPATED ACTION
The California Chamber of Commerce is hopeful that the U.S. and U.K. will begin FTA negotiations as soon as the U.K. formally exits the European Union, which is expected to occur in March 2019. The CalChamber supports the goal of strengthening the trading and investment relationship between the two countries, with a focus on securing open market access. The CalChamber supports the following issues being discussed during negotiations:

- market access for goods;
- data protection and data transfers;
- financial services;
- intellectual property rights;
- movement of labor; and
- regulatory cooperation.

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

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.

Agreements like this have the capability of ensuring that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.

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January 2019
World Trade Organization
Gives Businesses Improved Access to Foreign Markets

• Support the removal of trade-distorting practices to foster a level playing field.

• The World Trade Organization’s Trade Facilitation Agreement is expected to add $400 billion to $1 trillion to trade.

• Reduced cost of trading across borders will lead to increased U.S. and foreign exports and jobs.

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).

VOLUME OF WORLD MERCHANDISE TRADE
Seasonally adjusted volume index, 2005=100

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. Currently, there are more than 20 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, while the WTO estimates that 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 could 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. Trade liberalization can create new jobs, higher incomes and economic growth for countries around the world.

California is one of the 10 largest economies in the world with a gross state product of more than $2.7 trillion. Although trade is a nationally determined policy issue, it has an immense impact on California; California exports goods to more than 226 foreign markets around the world. Trade offers the opportunity to expand the role of the state’s exports.

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.

PAST ACTIVITY
In February 2017, the global trading system reached a major milestone when the first multilateral deal concluded in the WTO’s 21-year history entered into force. The Trade Facilitation Agreement (TFA) has already begun to reduce the costs of trading across borders and led to increased U.S. and foreign exports and jobs. It provided enforceable government commitments, which reduced red tape at the borders and sped movement of goods internationally.

The Eleventh Ministerial Conference took place in Buenos Aires in December 2017. Unfortunately, not as much progress was made during this conference as was hoped; however, members made a commitment to continue negotiations in all areas.

The WTO came under scrutiny by President Donald J. Trump in the second half of 2018, as he threatened to leave the global body. The European Union responded by calling for a revamp of the WTO, saying it is important to uphold the global commercial order under growing tensions. Other countries, such as Argentina and Japan, have joined the EU to come behind the U.S. to support a drive for greater transparency and discipline within the WTO.

At the G-20 Summit in Buenos Aires, Argentina at the end of 2018, leaders agreed to a joint communiqué that stated the need to change the WTO, recognizing that the WTO is need of reform as it has recently fallen short of meeting its objectives.

ANTICIPATED ACTION
The California Chamber of Commerce is hopeful the major trading economies can come to a consensus on a reform of the WTO in 2019. The revamp should address the functioning of the appellate body, encourage greater transparency and enhance discipline for members who fall behind on their reporting obligations.

At the G-20 Summit in Argentina, leaders agreed to review WTO reform progress at the next G-20 Summit in Japan in June 2019.

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

The WTO is having a tremendous 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.

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January 2019
California’s Equal Pay Laws
New Proposals Should Consider Impact on Existing Progress, Balance

Wage equality for substantially similar work is an easy policy argument that endures overwhelming political favor. In a unique coalition of support, the business community worked with trial attorneys, employee groups, and others to strengthen California’s equal pay law in 2016 to address any flaws in the existing law that allowed gender wage discrimination, yet still maintain an employer’s discretion to adjust wages for bona fide reasons. Since the enactment of California’s Fair Pay Act, there have been several attempts by the Legislature to enact legislation under the guise of “wage equality” that actually could jeopardize the progress made in this area. Accordingly, before supporting any expansion of law in this area that is labeled as “wage equality,” the Legislature should consider the progress made and whether any introduced legislation enhances the goal of equal pay.

**CALIFORNIA’S STRONG EQUAL PAY LAWS**

California’s new Fair Pay Act only went into effect on January 1, 2016, as a result of Governor Edmund G. Brown Jr. signing SB 358 (Jackson; D-Santa Barbara). SB 358 sought to achieve a balance between eliminating wage disparity for substantially similar jobs, while still maintaining an employer’s ability to determine wages using objective, nondiscriminatory criteria. The intent and purpose of SB 358 was to reform California’s equal pay law to ensure equal pay for substantially similar work.

SB 358 acknowledged that a pay differential could be legally justified for numerous reasons, including an employee’s education, training, work experience, performance, shift differentials, geographical location, etc. (See Senator Hannah-Beth Jackson’s letter to the Senate Daily Journal on SB 358, dated May 26, 2015.)

This was not the only legislative effort in recent years to remedy the gender wage gap. In 2017, California passed AB 168 (Eggman; D-Stockton). AB 168 prohibits all employers, including state and local governments, from seeking salary history information about an applicant for employment. The stated purpose of the bill was to stop the perpetuation of wage inequality.

Shortly following these bills, businesses made significant efforts to re-evaluate their pay practices to ensure all employees were paid the same for substantially similar work, even when there was no sign or presumption of unlawful pay practices. Although this process was extremely time consuming and even expensive because every employee’s rate of pay had to be analyzed meticulously and compared with all other employees holding “substantially similar” positions, the response by employers was certainly what the Legislature had hoped.

**CALIFORNIA’S PAY EQUITY TASK FORCE**

The California Commission on the Status of Women and Girls launched the California Pay Equity Task Force in 2016. The task force was formed in an effort to engage diverse interests, facilitate thoughtful discussion, and provide helpful guidance on SB 358, which revised the Equal Pay Act.

The task force consists of 19 individuals from various sectors, including policymakers, legislators, enforcement agency representatives, human resources professionals, legal experts, labor representatives, business advocates, and academics. The California Chamber of Commerce is a member of the task force, which is in place to provide guidance to employees and employers, as well as workplace compensation policies that can lead to successful compliance with the Fair Pay Act. The task force is supposed to release its final report in early 2019.

**CALIFORNIA’S GENDER WAGE GAP IS IMPROVING**

California’s Fair Pay Act remains one of the most protective equal pay laws in the nation and, according to new statistics from the
U.S. Census Bureau, California is tied with New York and the District of Columbia for the narrowest wage gap in the country. California’s wage gap has improved nearly 5 cents since the enactment of the Fair Pay Act. Although that might not seem like a large jump, it is a significant improvement in just a few years.

**STUDY SUGGESTS CHOICES, NOT SEXISM, EXPLAIN GENDER PAY GAP**

Although California has taken significant steps to improve the gender pay gap based on the assumption that the gap persists because of sexism, a recent study conducted by Harvard University economists suggests that choices, not sexism explain the gender pay gap. See The Editorial Board, “Parsing the Gender Pay Gap,” *Wall Street Journal*, November 22, 2018.

The study evaluated the earnings of union employees of the Massachusetts Bay Transportation Authority. The reason union employees were analyzed was that male and female workers with the same seniority have the same options for scheduling, routes, vacation, and overtime. “Under such rigid work rules even a sexist boss or manager would have little ability to give men preferential treatment.” See “Parsing the Gender Pay Gap.”

Yet, even under these circumstances, female train and bus operators earned less than men. According to the study, “male train and bus operators worked about 83% more overtime hours than their female colleagues and were twice as likely to accept an overtime shift on short notice.” See “Parsing the Gender Pay Gap.”

Both bills would have created a false impression of wage discrimination or unequal pay where none exists and, therefore, subjected employers to unfair public criticism, enforcement measures, and significant litigation costs to defend against potentially meritless claims. For example, both bills required employers to publish wage data based on job titles, even though SB 358 sought to evaluate positions on the actual duties performed. The bills also created privacy concerns for employees and the potential disclosure of their wages without consent.

In vetoing AB 1209, Governor Brown addressed these concerns by stating, “While transparency is often the first step to addressing an identified problem, it is unclear that the bill as written, given its ambiguous wording, will provide data that will meaningfully contribute to efforts to close the gender wage gap. Indeed, I am worried that this ambiguity could be exploited to encourage more litigation than pay equity.”

Thus, while these bills were presented as an effort to expand the protections of the act, these legislative proposals actually would have chipped away at its foundation by publicly shaming employers for acts that are not unlawful and requiring the disclosure of confidential personal information.

Regardless of California’s overall progress, there is no doubt that additional bills will be proposed under the guise of wage equality this session, given the change in gubernatorial leadership and the super majority of the Democratic Party in both legislative houses.

**RECENT LEGISLATIVE ATTEMPTS TO EXPAND FAIR PAY ACT UNDERMINE PROGRESS MADE REGARDING EQUAL PAY**

Despite California’s progress, there have been multiple attempts by the Legislature to expand California law regarding “wage equality,” even though such proposals could actually undermine progress made.

In 2017, just a year after SB 358 went into effect, Assembly Member Lorena Gonzalez Fletcher (D-San Diego) introduced AB 1209, which was vetoed by Governor Brown. Thereafter, in 2018, Senator Hannah-Beth Jackson (D-Santa Barbara) proposed SB 1284, which was held in the Assembly Appropriations Committee.

In vetoing AB 1209, Governor Brown addressed these concerns by stating, “While transparency is often the first step to addressing an identified problem, it is unclear that the bill as written, given its ambiguous wording, will provide data that will meaningfully contribute to efforts to close the gender wage gap. Indeed, I am worried that this ambiguity could be exploited to encourage more litigation than pay equity.”

Thus, while these bills were presented as an effort to expand the protections of the act, these legislative proposals actually would have chipped away at its foundation by publicly shaming employers for acts that are not unlawful and requiring the disclosure of confidential personal information.

Regardless of California’s overall progress, there is no doubt that additional bills will be proposed under the guise of wage equality this session, given the change in gubernatorial leadership and the super majority of the Democratic Party in both legislative houses.

**CALCHAMBER POSITION**

The California Chamber of Commerce supported SB 358 in its final form and worked diligently with the author’s office, as well as with the task force, to ensure the intent and balance of employee and employer protections in SB 358 was fulfilled. Additional legislative attempts seeking to expand the Fair Pay Act so soon or address wage equality should be analyzed seriously to determine whether such efforts will maintain the balance achieved in SB 358 and reduce any unlawful wage disparity, or whether those efforts are just using the politically favorable tag of “wage equality” to advance other policy that could undermine the progress made in this area.

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January 2019
Paid Sick Leave  
Differences Between State, Local Mandates Create Compliance Challenges

- California’s paid sick leave law applies to all employers (except those with certain collective bargaining agreements).
- The state law’s silence on allowing employers to require documentation to verify sick leave use causes compliance and liability concerns for employers.
- Overlaps and differing requirements of local ordinances pose additional compliance concerns.
- California should refrain from added new mandates and allow employees and employers to manage leave policies to accommodate needs of both parties.

BACKGROUND
The Healthy Workplaces, Healthy Families Act (Act) went into effect on July 1, 2015. This law has become known as California’s Paid Sick Leave law. The law requires all employers (regardless of size), except those with certain collective bargaining agreements, to provide any employee who has worked in California for 30 or more days with paid sick leave, at an accrual rate of 1 hour for every 30 hours worked. After the 90th day of employment, employees are allowed to utilize their paid sick leave to care for themselves or a family member. Any unused sick leave accrued in the preceding year is carried over to the next year, but may be capped by an employer policy. Finally, all employees are entitled to paid sick leave, including temporary, seasonal, and part-time employees.

SICK LEAVE USED AS VACATION
Since the implementation of the Act, suspected abuses of the law by employees are common and the Act’s ambiguities have become more prevalent, leaving employers uncertain about proper compliance and at times, understaffed. The Act does not require an employee to provide any specific amount of advance warning for an “unplanned” illness. The Act also is silent as to whether employers may request documentation for an illness. There are concerns, however, that requesting a note could expose employers to liability for interfering with an employee’s right to sick leave.

Due to the ambiguity on this issue, employees can and likely have used paid sick leave as vacation. Anecdotal examples of this abuse have been provided, such as in the airlines industry where last-minute “no shows” during the holiday season have occurred, and can leave stuck on the ground passengers who are trying to fly home to see their own families. The intended purpose of the Act was to provide employees time off from work when they were sick or a family member was ill, not for vacation.

CHALLENGES WITH LOCAL ORDINANCE OVERLAP
In addition to employee abuse of the Act, employers in California struggle with proper compliance. The biggest compliance hurdle for California’s employer community is that the Act allows local cities and counties to adopt different sick leave mandates. Currently, seven cities/counties have their own paid sick leave laws (Berkeley, Emeryville, City of Los Angeles, Oakland, City of San Diego, San Francisco, and Santa Monica) in addition to California’s own nuanced law. Notably, this does not include two ordinances applicable to hotel workers only.

Continuing to authorize these local ordinances creates inconsistency and confusion for California employers who operate in multiple jurisdictions because each city or county may have vastly different requirements and the employer must ensure that any employee who works in those cities is provided the protections afforded by the specific local ordinance as well as California law.

COMPARING STATE WITH LOCAL SICK LEAVE ORDINANCES
Below is a brief summary of how the Act differs from the specific local ordinances and creates compliance burdens for employers:
- **Permitted Use of Verification or Documentation**
  As indicated above, although the California Department of
Industrial Relations has suggested that requiring documentation (i.e., a doctor’s note) could be considered interference with an employee’s right to take leave under the Act, the Act itself is silent on the issue. However, verification or documentation is permitted under some local ordinances.

For example, Los Angeles, Oakland, San Diego, and San Francisco all allow documentation to be requested for absences exceeding three consecutive work days. Because these local ordinances explicitly allow for documentation, but California’s sick leave law is silent on the issue, employers are left confused with what is permissible regarding documentation and verification of sick leave.

- **Accrual Method**

Even just the basic methods of accruing sick leave differ. The local ordinances and the Act each require an accrual of 1 hour for every 30 hours worked in the state or the prescribed city. However, the Act offers other accrual method options that differ from the local ordinances.

For example, under the Act, you can alternatively use a front load method rather than an hourly accrual method. This requires the employer provide 24 hours or three (3) days of paid sick leave upfront. The local ordinances, however, have more complex options for accrual methods.

For example, San Francisco’s paid sick leave law states that the employer may front load any sum of paid sick leave at the start of each employment year, calendar year, or 12-month period, so long as the employee can accrue additional paid sick leave after working enough hours to have accrued the amount allocated upfront. If that is not confusing enough, Berkeley, Emeryville, Los Angeles, Oakland, San Diego, and Santa Monica all differ from San Francisco—some saying that, if the employer utilizes a front loading option, the employer must provide 40 hours at the start of the year, while others require 48 hours and others specify an amount of paid sick leave equal to the applicable accrual cap (i.e., 40, 48, or 72 hours) depending on each local city ordinance’s accrual cap requirement.

- **Accrual Use Cap**

The accrual caps themselves are not much clearer. The Act states employers may cap the amount of paid sick leave an employee can accrue in a year to no less than 48 hours or 6 days, whichever is greater. However, Berkeley, Emeryville, Oakland, San Francisco, and Santa Monica all base the accrual cap on the number of employees the employer has and each city has a different employee threshold.

For example, in Berkeley, if you have 24 or fewer employees, the annual accrual cap is 48 hours; however, if you have 25 or more employees, then the annual accrual cap is 72 hours. On the other hand, in the neighboring city of Oakland, the annual accrual cap is 40 hours for 9 or fewer employees and 72 hours for 10 or more employees.

Thus, if you have locations throughout California, you may be trying to comply and keep track of eight different methods just for the annual accrual cap.

- **Use Increments**

The Act and most local ordinances state that an employer cannot require that paid sick leave be used in increments longer than 2 hours. However, Berkeley differs in that the employer cannot require use in increments longer than an hour for the initial hour, or longer than 15 minutes thereafter. Oakland and San Francisco do not allow employers to require that paid sick leave be used in increments longer than 1 hour and Santa Monica does not address use increments at all.

- **Covered Employees**

This is where the local ordinance issue becomes even more burdensome on employers who have employees who may work in different cities.

For instance, in order for the paid sick leave laws of Berkeley, Emeryville, Los Angeles, Oakland, San Diego, and Santa Monica to apply to the employee, the employee needs to work in the city only for 2 hours in one calendar week and be entitled to minimum wage. That means, for some employees who travel for work, the employer must keep track of how long the employees are in each city. If the employee is there for at least 2 hours, then that employee is entitled to the protections provided by the specific local ordinance.

In some instances, the employee will be entitled to the protections of all seven different local ordinances and California’s own paid sick leave. Thus, the employer must navigate the nuances of each ordinance and ensure the employee is provided the most lenient protections of each separate ordinance.

Additionally, to complicate things more, San Francisco’s paid sick leave law has no durational requirement at all. That means that any employee in California who spends any time in San Francisco working may be subject to San Francisco’s paid sick leave law.

- **Permitted Paid Sick Leave Use**

Even the permitted use of paid sick leave may differ from city to city. While the Act states permissible uses for paid sick leave are the medical need of the employee or employee’s family member or for purposes related to domestic violence, sexual assault or stalking suffered by the employee, Emeryville adds that the need to provide care of a guide dog, signal dog or service
dog of the employee or family member also is a permissible use of paid sick leave. The City of San Diego also differs by requiring that public health emergencies resulting in the closure of the employee's worksite, child care, or a child's school count as valid reasons to utilize paid sick leave.

- **First Day of When Paid Sick Leave Can Be Used**

  Most local ordinances align with the Act about the first day paid sick leave can be used, but San Diego differs in that paid sick leave cannot be used until the 91st day after employment begins. However, employers must remember to follow the Act because California is more lenient to employees, allowing sick leave to be taken on the 90th calendar day after the employee begins work.

  In addition to this long, complex list of nuanced differences, the local ordinances also differ in the application and requirements for how much paid sick leave can carry over from year to year, the amount of paid sick leave that can be used per year, the rate of pay for paid sick leave, if the employer can require advance notice of paid sick leave usage, posting notice obligations, effect at rehiring, retaliation, and even enforcement procedures. Because of the difficulty in keeping up with all of the different requirements, such ambiguity also creates litigation traps for employers who are actively trying to comply with all of these conflicting laws.

**CALCHAMBER POSITION**

Since its passage, there have been proposals to expand the Healthy Workplaces, Healthy Families Act (See 2018 AB 2841 by Assembly Member Lorena Gonzalez Fletcher; D-San Diego). Additionally, there are discussions of a potential bill in 2019.

Although the CalChamber appreciates and understands the need for employees to stay home from work while they are sick, expanding another leave mandate that primarily harms small employers is concerning. Such an expansion also is challenging without clarification and changes to the existing Act, as well as unifying the Act with local ordinances.

The Act already is a huge financial and compliance burden on employers. Unscheduled absenteeism costs roughly $3,600 per year for each hourly employee. (See “The Causes and Costs of Absenteeism in The Workplace,” a publication of workforce solution company Circadian.) Given the cumulative costs and existing protected leaves of absence with which California employers are already struggling, California should refrain from mandating additional sick days and instead allow employers and employees to manage the leave of absence policies as needed to accommodate both the employee and employer’s needs.

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Private Attorneys General Act

Unique State Law in Need of Reform

California labor and employment laws are known for being 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), which allows an aggrieved employee to file a representative action on behalf of himself/herself and all other aggrieved employees for a Labor Code violation. The California Chamber of Commerce is not aware of any other state that has such a law or is considering a similar proposal. However, any state should pause before seeking to mirror this unique law.

PAGA has had a significant litigation impact in California, with many questions left regarding how effective it has been in encouraging compliance with California labor and employment protections or compensating employees for alleged harm. The past decade of legal decisions, as well as numerous examples of abuse, indicates that the current state of PAGA is in need of significant reform.

WHY IS PAGA SO UNFAIR?

Proponents of PAGA still maintain that it is an important enforcement tool which encourages compliance and protects employees. However, opponents claim that PAGA is not working as intended. Rather, they claim it is being utilized against employers as financial leverage to force employers into costly settlements for minor, innocent mistakes. A 2016 Santa Clara Law Review article by Matthew Goodman, “The Private Attorney General Act: How to Manage the Unmanageable,” described PAGA in the following way:

“The coercive settlement concept is well-developed in the class action. In what has been termed the ‘blackmail’ settlement by commentators, the plaintiffs recover more than they should, ‘because the class counsel is able to threaten the defendant with costly and risky trial... it forces defendants to stake their companies on the outcome of a single jury trial, or be forced by fear of the risk of bankruptcy to settle even if they have no legal liability.’ The possibility of a ‘blackmail settlement’ looms even larger in PAGA actions... [t]he threat of expensive litigation, combined with the unavailability of insurance, will compel settlement for many employers and can work as a type of ‘legalized blackmail.’” (pages 447-448.)

Some of the most notable issues with PAGA are as follows:

• There is no requirement under PAGA that an employee actually suffer harm, such as unpaid wages, as a result of the violation. For example, the Labor Code requires that a paystub state the legal entity which is the employer. So, if an employee’s paycheck says “XYZ, Inc.,” but the employer’s name is really “XYZ, LLC,” the employee can recover PAGA penalties even though the employee suffered no harm because of this simple mistake.

• PAGA penalties are imposed regardless of intent. Thus, employers are held liable even if they make a good faith error. For example, the simple, unintentional error of including the employee’s entire Social Security number instead of just the last four digits of the Social Security number on a paystub can cause a PAGA suit for hundreds of thousands of dollars, or even millions in some cases, depending on how many employees are included in the PAGA suit.

• PAGA applies to all employers regardless of size.

• Legal precedent has established that PAGA provides a “civil penalty.” This means that employees are allowed to recover both the statutory penalty associated with the Labor Code provision at issue as well as civil penalties under PAGA, creating a stacking of penalties against the employer.

As an example: Employer provides its 100 employees with a quarterly bonus of $500, but fails to include that bonus as part of its regular rate of pay calculation for purposes of overtime. This one mistake by the employer would create potential liability for: 1) unpaid overtime for the prior four years; 2) statutory penalties for incorrect paystubs; 3) interest; and 4) attorney fees. Under PAGA, the employee could also face the following statutory penalties (per alleged Labor Code violation):

$100 for the first violation x 100 employees = $10,000
$200 x 25 for each subsequent violation/pay period x 100 employees = $500,000
Total: $510,000 penalties

Due to one mistake by the employer of calculating a quarterly
bonus into the hourly rate for overtime purposes, the employer could face a devastating lawsuit in which the penalties alone exceed a half million dollars for just one, alleged Labor Code violation. If this one mistake results in the violation of multiple Labor Code sections (incorrect pay stubs, miscalculation of meal or rest period premiums, payment of wages upon termination, etc.), this half million dollars in penalties can be doubled, tripled, etc.

• PAGA actions are a “representative action” rather than a class action and, therefore, the aggrieved employee does not have to satisfy class action requirements, such as proving: 1) common questions of law or fact amongst the employees/class members; 2) class representative claims or defenses are typical of the class; and 3) class counsel are adequate representatives. Thus, PAGA actions are much easier to file and easier to include much larger groups of employees than a class action. Additionally, the employee often files a PAGA action and a class action simultaneously so the employee can recover the PAGA penalties, but not allocate the correct amount owed to the Labor and Workforce Development Agency (LWDA).

• As a result, critics allege the LWDA is not receiving its fair share of PAGA settlements, as the employees’ attorneys often allocate a small monetary amount for PAGA in the settlement agreement to minimize the amount of the settlement they have to deposit as penalties with the LWDA. The penalties collected under PAGA are supposed to be divided as follows: 75% to the LWDA and 25% to the aggrieved employees. The penalties portion to the state is intended to help fund LWDA to ensure the state has adequate funding to investigate and prosecute violations of the state’s labor laws. However, “A typical PAGA class action lawsuit settles most of its proceeds towards the class action claim, while directing a nominal amount towards the PAGA claim, assuming it is not dropped altogether prior to settlement. There is a large [financial] incentive to accomplish this because the plaintiffs no longer have to allocate 75% towards the state... [p]ermitting large settlements in PAGA actions with little money action going towards PAGA is not appropriate when PAGA’s enforcement purpose is substantially undermined.” (Goodman at 449.)

A potential example of this occurrence is in Johnson v. Good-year Tire & Rubber Co. (N.D. Cal. 2013), in which a class action involving a claim under PAGA settled for $305,000. From the total settlement, the plaintiff’s attorney took $105,000 for attorney fees. The class representatives each received $1,000. The settlement agreement allocated only $666.67 for PAGA penalties, thereby providing the LWDA with only $500.

As part of California’s 2016–2017 state budget accord, Governor Edmund G. Brown Jr. sought to address these issues in budget “trailer bill” SB 836. SB 836 requires that a copy of a proposed settlement be submitted to the LWDA at the same time that it is submitted for the court’s required approval, requires parties to provide the LWDA with a copy of the court’s judgment (i.e., any order that approves or denies a PAGA settlement), and requires court review and approval of any penalties sought as a part of a proposed settlement of a claim. It is still too soon to determine the success of SB 836 in ensuring the proper allocation of PAGA penalties to the LWDA.

One issue not addressed by SB 836 is the abuse of “draft” PAGA complaints. Plaintiff’s attorneys create draft PAGA complaints and send them to the employer without actually filing these claims with the LWDA. These litigation threats compel settlement before a PAGA complaint is filed. Since a PAGA complaint is not formally filed in these situations, and probably never is intended to be filed, the LWDA is not made aware of the dispute and never receives a dime from 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 plaintiff’s attorneys to file the case.

• PAGA claims cannot be waived by an arbitration agreement; thus, the employer is forced to settle the case or litigate the case in civil court.

An April 2014 Los Angeles Daily Journal article found that, over the last eight years, PAGA lawsuits have increased by more than 400%. As noted in the Governor’s 2016–2017 budget, the LWDA receives more than 6,000 PAGA notices each year. The popularity of these lawsuits is likely due to the significant monetary awards that can be leveraged against an employer for minor violations.

CALCHAMBER POSITION

PAGA is a primary concern of the employer community due to the financial leverage it provides to plaintiff’s attorneys to pursue claims for minor violations of the California Labor Code. Frivolous litigation that results in significant monetary settlements wherein the plaintiff’s attorneys retain a majority of the money for fees and employee’s are provided a minimal amount is not fulfilling the stated intent of PAGA.

The CalChamber is supportive of any efforts to reform PAGA to ensure the goals of labor law enforcement are satisfied, but that it is not used as a vehicle to enrich trial attorneys.

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Workplace Flexibility
Legislature Has Opportunity to Update Labor Laws to Reflect Modern Economy

A limited review of some of California’s strict wage-and-hour laws that continue to grow each year, illustrates the challenges employers have in providing employees with flexibility. From the inability to waive daily overtime and meal periods so that a working parent can leave early to attend a school performance, to essentially eliminating the ability to freelance, California workers and employers are being forced into stringent, traditional work schedules that do not reflect today’s society. The Legislature has an opportunity to intervene and update California’s outdated labor laws to reflect the modern economy.

DYNAMEX—THE ELIMINATION OF INDEPENDENT CONTRACTORS?
In April 2018, the California Supreme Court issued a significant decision in Dynamex Operations West v. Superior Court (4 Cal.5th 903) that completely changed the way in which an individual is classified as an independent contractor versus an employee in this state. Individuals who value the freedom and flexibility that working as an independent contractor provides urged the Legislature to take action so that they could maintain their independent status. However, labor unions and trial attorneys opposed any change to the Dynamex decision, claiming the flexibility that such individuals wanted could easily be provided to these individuals in an employment relationship.

Dynamex has far-reaching, negative implications for nearly all sectors of the California economy that utilize independent contractors. In Dynamex, the California Supreme Court abandoned a long-established balancing-of-factors test previously adopted by the court in a 1989 decision, S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations (48 Cal.3d 341). This previous approach weighed multiple factors in their totality to account for the variety of California industries and professions, as well as diversity of California’s workers. Under Dynamex, the court presumes that a worker is an employee unless the hiring entity establishes all three factors of this one-size-fits-all test. This test, referred to as the “ABC Test,” has never existed before in California. It is extremely restrictive and the Dynamex decision marks the first time in U.S. history that any form of the ABC Test has been imposed by a court without any legislative approval.

Under the Dynamex decision, an individual must satisfy all three factors of the ABC Test:

A. That the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

B. That the worker performs work that is outside the usual course of the hiring entity’s business; and

C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

The “B” prong of the test is the most problematic because many independent contractors work in the same line of business as the hiring entity. As such, most independent contractor relationships cannot survive under the court’s narrow view of the “B” prong.

The court decision in Dynamex places the question of employment classification at the intersection of important competing interests—on the one hand, the state’s interest in protecting workers, and on the other hand, every individual’s personal liberty to contract and be in business for him/herself. As indicated by the U.S. Bureau of Labor Statistics (BLS) Economic Release (June 7, 2018), individuals overwhelmingly prefer their arrangement as independent contractors, and the ABC Test adopted by the court jeopardizes that flexible work arrangement for Californians.

California is estimated to have nearly 2 million residents who work as independent contractors. These numbers are conservative as the 2018 BLS Economic Release did not include the number of individuals who supplement their income with online platforms. Many Californians are choosing to work full-time as independent contractors and others are using the opportunity to
supplement their income. In fact, 79% of independent contractors prefer it over traditional employment, according to the BLS Economic Release.

The top reasons that motivate individuals to pursue independent work include: 1) to be their own boss, 2) to choose when they work, 3) to choose their own projects, 4) to choose where they work, and 5) to earn extra money. According to a survey commissioned by Upwork and the Freelancers’ Union, a majority of freelancers who left full-time, traditional employment made more money within a year, are able to work less than 40 hours per week (on average 36 hours), and the majority believe they have the right amount of work.

_Dynamex_ jeopardizes this freedom of choice for individuals and pushes them into a traditional employment model that lacks flexibility. Proponents of _Dynamex_ argue that employers who want to provide flexibility to employees can do so under the current state of the law. However, California’s strict labor laws do not allow for such workplace flexibility.

The following is an outline of just a few of California’s strict labor laws that significantly limit workplace flexibility.

**COMPLEXITY OF ALTERNATIVE WORKWEEK**

California is one of only three states that require employers to pay daily overtime after 8 hours of work and weekly overtime after 40 hours of work. Even the other two states that impose daily overtime requirements allow the employer and employee to waive this requirement through a written agreement. California, however, provides no such common-sense alternative. Rather, California requires employers to navigate through a multi-step process to have employees elect an “alternative workweek schedule” that, once adopted, must be “regularly” scheduled. This process is filled with potential traps that could easily lead to costly litigation, as one misstep may render the entire alternative workweek schedule invalid, leaving the employer legally responsible for claims of unpaid overtime wages.

To simply attempt to provide more employee flexibility by adopting an alternative workweek, the employer first must provide advance notice of the vote for an alternative workweek, then hold a meeting 14 days prior to the vote to discuss the proposed alternative schedule. Once that is complete, two-thirds of an entire work unit must agree by secret ballot to adopt and work the selected alternative workweek schedule. A work unit might be the entire company, or a single division or department within the company. Thus, alternative workweek schedules do not provide flexibility on an individualized basis and are not even meant for a handful of employees within a department who want flexibility; instead, these schedules are based on the wants and needs of the entire work unit.

The process becomes more onerous for employers because even if two-thirds of a work unit votes to adopt an alternative workweek, the employer then must report the results to the state Division of Labor Standards Enforcement (DLSE) within 30 days. Once the DLSE reports that the employer has adopted the alternative workweek schedule, however, there is no presumption that the employer did so properly, and the employer is not immune from liability.

Currently, there are only 35,913 reported alternative workweek schedules with the DLSE. According to the Employment Development Department’s calculations for the fourth quarter of 2017, there are approximately 1,538,815 employers in California. At best, approximately 2.3% of California employers are utilizing the alternative workweek schedule option. More realistically, however, given that the information in the database is according to work unit instead of employer, it is likely that less than 1% of employers in California are utilizing this process. And, again, it does not apply on an individual employee basis.

**LIMITATIONS OF MAKEUP TIME**

Labor Code Section 513 and corresponding IWC Wage Orders provide a makeup time exception to general overtime laws. Makeup time allows employees to request time off for personal obligations and make up the missed time without triggering overtime. This exception, however, has its own set of rigid requirements that employers and employees must adhere to in order to remain legally compliant.

If the employer chooses to allow makeup time, the following conditions must be met:

- The employee cannot work more than 11 hours on another workday, and not more than 40 hours in the workweek to make up for the time off;
- The employee must provide the employer with a signed, written request for each occasion that he/she desires makeup time;
- The employer cannot solicit or encourage the employee to utilize makeup time; and
- The missed time must be made up within the same workweek.

This last hurdle is the most difficult for employees because it means that the employee must come in early or stay late during the same workweek to meet this strict makeup time requirement. But what if a last-minute personal obligation arises on a Friday and the employee’s normal workweek is Monday through Friday? The employee has no ability to make up the time during that workweek or provide prior written notice for approval. Or, what
if the employee has prior obligations and simply cannot come in early or stay late that week?

Also, as discussed in more detail below, it is important to note that an employee cannot simply waive his or her meal breaks during that week in order to make up that time either. In theory, the idea of makeup time sounds like a good option, but in practice the makeup time exception does not allow employees the flexibility necessary to meet their ever-changing personal obligations and exposes employers to costly litigation if the rules are not followed meticulously.

**Lack of Meal Period Waivers**

The inflexibility of California’s labor laws is highlighted even more through its meal break requirement. Employers must provide nonexempt employees with an unpaid meal period of not less than 30 minutes for every 5 hours worked. See Labor Code Section 512. The meal period must be uninterrupted, the employee must be relieved of all duties, and the employer must not impede or discourage the employee from taking the break. See Labor Code Section 512.

There is a small exception, however, for employees who work between 5 and 6 hours. These employees can choose to waive their meal periods by mutual consent of the employer and employee. Yet, there is not a similar alternative for employees who work a traditional 8-hour day. Even if the employee and the employer mutually agree that the employee can take an on-duty meal period, the law does not allow an employer to legally make this exception.

Many employees do not want to be forced to take an unpaid, 30-minute meal period if they can eat on-duty and leave work 30 minutes earlier. However, an on-duty meal period is allowed only under very limited circumstances whereby three express conditions must be met. The most difficult element to satisfy is the “nature of the work” element because the employer is expected to find other capable employees who can perform the job duties during an individual’s 30-minute meal period. Thus, the on-duty meal period exception very rarely applies.

California voters clearly value flexibility and do not think that employees and employers alike should have to be governed by stringent standards that have no exceptions. This was made evident by the recent passage of Proposition 11. Proposition 11 created an exception to a recent California Supreme Court ruling (*Augustus v. ABM Security Services*) that likely would have required emergency medical technicians (EMTs) and paramedics to be completely unreachable while on break.

**CalChamber Position**

The current workforce values flexibility, which is why the *Dynamex* decision is so detrimental to millions of California workers. In addition, despite proponents’ arguments otherwise, California labor laws simply do not allow employers to accommodate employee requests for flexible work arrangements.

Employers should be able to provide their employees more flexibility and negotiate, through a written agreement, revocable by either party, the daily and/or weekly schedules that satisfy the needs of both employee and employer. Moreover, if a nonexempt employee wants to skip a 30-minute meal period and eat lunch on-duty in order to leave early, why should an employer be put in the awful position of telling the employee “no”?

California lawmakers should focus on policies that allow individuals the option to work as independent contractors and improve workplace flexibility for employees, while alleviating the threat of costly litigation for employers for accommodating workers’ schedules.

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Forest Management
Legislation Helps, But Regulatory Easing Needed to Speed Good Forest Health

Periodic wildfires are a part of the natural cycle of forests. The wildfires serve to clear out dead or dying trees, diseased trees or plants, and forest debris, allowing younger, healthier trees and shrubs to grow. Good forestry management practices mimic nature, mechanically clearing out underbrush and other forest debris, setting prescribed burns, and cutting and removing dead, infested or dying trees. Environmental regulations protecting species and their habitats severely restrict the ability of forest landowners and forestry companies to manage their lands in a way that reduce fuel loads leading to wildfires.

BACKGROUND

Millions of acres of forested lands are vulnerable to wildfires due to increased fuel loading and prolonged drought and climate change. The fire season has lengthened almost into a year-round phenomenon.

Over time, an increasing number of homes and commercial enterprises have been built on the urban fringe interfacing with forestlands and scrublands. Small rural communities exist within forested areas of the state supported by tourism, recreation or the timber industry. Rapid growth in vineyards and wineries in Napa, Sonoma and Mendocino counties spurred corresponding growth in commercial and residential developments, again on the urban fringe bordering forested lands, which already had many vacation and retirement homes. Structures on the fringe are vulnerable to wildfires and the cost of fighting them increases exponentially. Newer structures built under current building codes require use of noncombustible materials that are fire resistant. However, there are many older structures still in use.

Structures unencumbered with loans do not have to carry fire insurance. Also, not everyone observes keeping defensible space around their structures clear of debris to aid in firefighting.

California’s 2017 catastrophic wildfire season caused numerous legislative proposals to be introduced. Unfortunately, major forestry management improvements in SB 901 (Dodd; D-Napa), signed September 21, 2018 (Chapter 926) by Governor Edmund G. Brown Jr., wasn’t in time to reduce fuel loads that added to the devastation caused by 2018 wildfires.

KEY POINTS OF SB 901 WILDFIRES BILL

- $200 million annually for the next five years:
  - $165 million from Greenhouse Gas Reduction Fund (Cap and Trade) to California Department of Forestry and Fire Protection (Cal Fire) for healthy forest and fire prevention programs and projects that improve forest health and reduce greenhouse gas emissions from wildfire; and
  - $35 million from Cap and Trade to Cal Fire to complete prescribed fire and other fuel reduction projects consistent with the recommendations in California’s Forest Carbon Plan and the operation of year-round prescribed fire crews, research and monitoring for climate change adaptation.
- Five-year extension for several of the state’s biomass facilities
and allowance for monthly reporting for some contracts in exchange for additional fuel flexibility.

- Regulatory streamlining for prescribed fire, thinning and fuel reduction projects on federal lands if the state or local agency is conducting projects under federal Good Neighbor Authority.
- Conservation easements purchased with state funds now must be maintained and improved for forest health.
- Creation of a new Small Timberland Owner Program for landowners with fewer than 100 acres—a new timber harvest plan exemption.
- Expansion of the existing Forest Fire Prevention Pilot Program by allowing the construction of up to 600 feet of temporary roads for the purpose of treating and thinning forests.
- Improves the existing Non-Industrial Timber Management Plan and Working Forest Management Plan by clarifying that multiple landowners can work together to manage their lands and submit one plan as long as the total acres in the plan does not exceed a maximum number of acres.

IMPACT ON BUSINESS

Uncontrolled wildfires are costly. Business structures, residences of employees and business owners are at risk. Wildfires cause disruptions in normal commerce through extended periods due to road closures, water damage, poor air quality, erosion (causing landslides), employee displacement and lack of basic amenities. Also, extended business interruptions with ensuing financial losses make it difficult for companies to rebuild their businesses.

Forest landowners suffer loss of long-term investments when their trees burn. It takes many years to grow a replacement crop, especially if owners are unable to clear the burned acres in a timely fashion due to strict forestry rules regarding salvage.

To date, the 2018 Camp Fire in Butte County is the most destructive fire in the state's history. It burned 153,336 acres and destroyed 13,972 homes, 528 commercial structures, and 4,293 other structures. The Woolsey Fire in Los Angeles and Ventura counties burned 96,949 acres and destroyed 1,500 structures and damaged another 341.

Risk Management Solutions, a firm that predicts the economic impact of disasters, estimates the economic impact of the Camp Fire losses in property damage, automobile damage, interruption to business, and additional living expenses will cost the region between $7.5 billion to $10 billion and the Woolsey Fire losses range from $1.5 billion to $3 billion.

The ultimate costs will not be known for months.

ANTICIPATED ACTIVITIES IN 2019

SB 901 included many improvements to forest management practices. It is reasonable to expect additional legislation further easing forestry regulations to allow more salvage operations to clear the burn areas. There probably will be attempts to expedite permitting requirements for thinning operations, clearing undergrowth and removing diseased trees on private lands to help stop rapid spreading of fires. Although SB 901 allows temporary roads, it did not relieve onerous permit or mapping requirements needed prior to approval of roads. Expect legislation to remedy that issue. Increasing the amount of defensible space around a structure will likely be introduced as another preventive measure.

CALCHAMBER POSITION

The California Chamber of Commerce supports adequate fire prevention availability for all areas of the state, including the ability for forestland owners and timber companies to clear underbrush and other debris, as well as remove dead or dying trees. The CalChamber supports more inspections and stricter enforcement of defensible space regulations and use of ignition-resistant landscaping where applicable. SB 901 is an improvement in forestry management, but more regulatory easing is necessary to expedite good forest health.
Arbitration is an alternative forum to resolve disputes outside of civil court. There is no question that arbitration is more efficient and less costly for both parties, because the rules of evidence and procedure are less formal than in civil litigation, meaning the setting is less intimidating for individuals who may not be represented by legal counsel.

Both the Federal Arbitration Act (FAA) and California law favor the use of arbitration, and the FAA broadly protects against any state judicial or legislative effort to invalidate arbitration agreements.

BACKGROUND
Each year, special interests attack arbitration with legislation to prohibit the enforcement of arbitrated agreements. Trial attorneys and organized labor sponsor or support these measures for separate reasons.

The trial lawyers oppose the quicker and more efficient resolution of cases, which reduces the opportunity to generate attorney’s fees. Since arbitration agreements also contain class action waivers (meaning the claim must proceed individually rather than as a class of plaintiffs), the consumer attorneys generate fewer fees.

Even though organized labor widely utilizes mandatory arbitration clauses in collective bargaining agreements, it opposes extending this tool to private employers in a non-union setting.

FEDERAL PREEMPTION
The FAA was enacted in 1925, re-enacted in 1947, and precludes any limitation on arbitration. Since 1984, the U.S. Supreme Court has time and again explicitly declared that any state statute which seeks to ban, limit, preclude, discriminate against, or interfere with the use of arbitration agreements is preempted under the FAA.

As clarified by Justice Elena Kagan in a 2017 Supreme Court decision, *Kindred Nursing Centers Ltd. Partnership v. Clark*, the FAA not only enshrines the enforcement of existing arbitration agreements, but also protects against rules that interfere with how those agreements are made.

**POLICY ARGUMENTS REGARDING ARBITRATION**
Given the decade-long legislative debate over arbitration, the policy arguments have been fully aired. Here are the main charges against arbitration and the well-documented responses:

- **Arbitration Denies Employees and Consumers Substantive Rights.**
  False. Opponents make this argument ad nauseum, substituting repetition for accuracy. Courts have repeatedly and consistently stated that an arbitration agreement which seeks to waive any substantive right (such as a right to equal pay, protection from discrimination or harassment, or exemption from a statute of limitations) is invalid and unenforceable.

- **Arbitration Is Biased against Consumers and Employees.**
  False. Opponents of arbitration argue that the deck is stacked against plaintiffs, and employers are more likely to win. Studies on this issue are mixed, some suggesting employees/consumers do the same if not better in arbitration than they do in civil litigation, while others disagree. Often overlooked, however, is that individuals can have better access to arbitration than to civil litigation. Studies have consistently found that low-wage workers and minorities face a significant challenge in finding legal representation for civil litigation. Without arbitration, many individuals in disadvantaged groups would not have access to justice at all.

- **Arbitrators are Paid by the Company and Are Therefore Biased.**
  False. California law requires any employer that requires arbitration as a condition of employment to pay for the arbitration. You can’t have it both ways—requiring employers to pay for the forum...
and then criticizing them for following the law. Also, each party in arbitration is given the same opportunity to pick the arbitrator after the arbitrator makes extensive disclosures regarding his or her background, unlike civil litigation, where a judge is assigned.

- **Arbitration Does Not Have the Same Rules as Court.**
  True—but that’s a good thing. Arbitration is less formal than civil litigation, but this does not necessarily benefit or disfavor either party. An unrepresented party in arbitration may be able to more easily navigate those rules than complex statutory rules of evidence and civil procedure.

- **Arbitration Cannot Be Appealed.**
  Sometimes true. Arbitration awards cannot be appealed on the same grounds as a court decision, but may be appealed for the following reasons:
  - the award was procured by corruption, fraud, or other undue means;
  - corruption by the arbitrator;
  - if misconduct by the arbitrator substantially prejudiced the rights of the party;
  - the arbitrator exceeded his/her powers and it affected the merits of the decision;
  - the rights of the party were substantially prejudiced due to the arbitrator’s refusal to postpone a hearing or consider evidence; or
  - the arbitrator failed to make a timely disclosure. The limited grounds for appeal ensure that arbitration is an efficient forum that provides a quicker and definitive resolution so that both parties are not stuck in civil litigation for years.

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**LEGAL REFORM AND PROTECTION**

**LEGAL REFORM AND PROTECTION**

**LEGISLATIVE ATTACKS IN 2019**

Despite the strong federal preemption in this policy area, the 2019 Legislature will inevitably propose banning, limiting, or interfering with arbitration agreements. Given the political power of the arbitration opponents, these bills may pass the Legislature. If signed, such proposals will be challenged immediately and likely meet the same fate as previous attempts to limit arbitration.

For example, AB 2617 (Weber; D-San Diego) was signed into law in 2014 and prohibited mandatory arbitration agreements for certain civil rights violations. It was deemed unconstitutional and preempted in 2018 by *Saheli v. White Memorial Medical Center*.

**CALCHAMBER POSITION**

Legislation seeking to limit, interfere with, or prohibit arbitration agreements violates federal law and is counterproductive to protecting the rights of consumers and employees. Rather than offering any useful protections or reforms, such legislation on the contrary creates uncertainty and ultimately costly litigation. Stakeholders should instead consider legislation that improves the arbitration process for all parties without running afoul of federal law.

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California Consumer Privacy Act

Legislative Changes Needed to Fix Law in 2019

The California Consumer Privacy Act (CCPA) is a sweeping privacy law that applies to businesses of all sizes across almost every industry. It was rushed through the legislative process in the summer of 2018 without the benefit of input from numerous crucial stakeholders. As a result, the law is deeply flawed. Many of the CCPA’s provisions are simply unworkable in practice or will result in numerous unintended consequences. At the end of the 2018 session, the Governor signed SB 1121, a bill fixing a handful of the CCPA’s problems. However, many more fixes are needed before this law goes into effect on January 1, 2020.

RUSHED PASSAGE OF THE CCPA

In early 2018, a real estate developer named Alastair MacTaggart spent about $3 million of his own money to gather enough signatures to qualify a significantly flawed privacy initiative for the ballot. His initiative was more than 33 pages long, and—had voters approved it—the Legislature would have been virtually unable to amend it in the future. This would have been incredibly problematic because stakeholders from nearly every industry recognized that the initiative had significant deficiencies. The near-impossibility of amendment was particularly troublesome as technology is constantly evolving.

AB 375 (Chau; D-Monterey Park/Hertzberg; D-Van Nuys), titled the California Consumer Privacy Act (CCPA), was introduced as compromise legislation to avert a significant ballot fight in November 2018. Unfortunately, there was only one week from the time the language of the CCPA was introduced to the deadline for MacTaggart to pull the initiative from the ballot. Thus, there was not an opportunity for meaningful stakeholder input. Moreover, MacTaggart would agree to pull the initiative from the ballot only in exchange for the Governor signing a law substantially similar to his ballot initiative, despite its flaws.

The business community opposed AB 375, and yet found itself in an untenable situation because the privacy initiative was even worse. Given the high stakes of fighting the complex and confusing initiative at the ballot box, the business community urged legislators to vote for AB 375 as the lesser of two evils—hoping the Legislature would be able to fix the most egregious problems with the law in the future.

The authors of AB 375 agreed that the CCPA would need fixes. Shortly after it passed, they designated SB 1121 (Dodd; D-Napa) as the vehicle for immediate cleanup of AB 375 and committed to work on bigger problems with the bill during the 2019 session.

The business community assembled a large and diverse coalition of businesses ranging from wineries and movie studios to retail stores and hospitals to propose amendments to fix the numerous flaws with the workability of the CCPA and spent the July 2018 recess poring over AB 375 with privacy experts from around the country. The business community then drafted a detailed letter proposing language for SB 1121 to fix unworkable
aspects of the CCPA and those that would result in unintended consequences. Some of these requested changes were made with the passage of SB 1121. SB 1121 also extended the enforcement date of the CCPA, in part due to a recognition that more needs to be done in 2019.

**CCPA APPLIES TO SMALL/MID-SIZED BUSINESSES IN EVERY INDUSTRY**

Many people mistakenly believe that the CCPA applies only to “Big Tech.” Although the CCPA does apply to large companies in any industry (those making more than $25 million in revenue per year), as well as to data brokers, there is a third, incredibly broad category of businesses—many of them small businesses—often left out of the discussions: any business that “alone or in combination, annually buys, receives for the business’s commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices.”

Personal information for 50,000 consumers may sound like a high number at first blush, but it is not. The CCPA has an incredibly broad definition of “personal information,” which includes, for example, IP addresses (a numeric designation that identifies a computer’s location on the internet), and the burdensome requirements of the CCPA apply to any business that merely “receives” “personal information” as defined by the CCPA.

Thus, the CCPA applies to businesses with 50,000 yearly website visitors, and this includes ad-supported blogs. It’s not a high number. If a business has an average of 137 unique online visitors per day over the course of one year, it will hit the threshold. Businesses that receive 50,000 sales leads in a year must comply with the CCPA, and the same goes for businesses that receive 50,000 consumers’ credit card numbers while conducting sales transactions, as well as any businesses that have some combination of consumer personal information. For example, if 25,000 consumers visit a business’s website in a year and that business conducts sales transactions with 25,000 different consumers—that company must comply with the CCPA.

The International Association of Privacy Professionals estimates that more than 500,000 businesses are regulated by the CCPA, “the vast majority of which are small-to-medium-sized businesses.” Think of all the small businesses that easily conduct an average of 137 transactions per day—or approximately 12 transactions per hour in a 12-hour day—convenience stores, coffee shops, restaurants, tourist kiosks, etc. The CCPA treats these small businesses the same as large tech companies.

**WHAT DATA CONSTITUTES ‘PERSONAL INFORMATION’ UNDER THE CCPA?**

Under the CCPA, essentially every piece of data about a person could be classified as “personal information.” When most people think of personal information, they think name, birthday, Social Security number, etc.—data that could identify someone.

The CCPA defines “personal information” far more broadly as “information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.”

Basically any piece of data is “capable of being associated with” a particular consumer, and this includes IP addresses as well as “unique identifiers,” such as device and cookie IDs, internet browsing history, and characteristics concerning an individual, such as race or sex. This one-size-fits-all approach to personal information is a drastic shift from long-standing policy in California and around the country.

**WHO HAS RIGHTS UNDER CCPA?**

The CCPA defines a “consumer” as “a natural person who is a California resident.” Thus, a “consumer” need not have a customer relationship with a business in order to exercise rights under the CCPA.

**WHAT RIGHTS DID CCPA CREATE?**

The CCPA provides consumers with the following privacy rights to be enforced by the Attorney General:

- The right to know the categories of personal information a business has collected about them and how.
- The right to access and obtain a copy of their personal information.
- The right to opt out of a business’ sale of their personal information.
- The right to request that a business delete their personal information.
- The right to not be treated differently by a business for exercising their rights under the CCPA.

The CCPA also creates a private right of action that massively expands the liability of a business that has been the victim of a data breach. With this private right of action, a consumer does not need to prove any injury and can recover minimum statutory damages of $100 per person, per incident, and a maximum of $750. This unchecked liability will lead to a barrage of shake-down lawsuits, as companies facing such substantial liability will be leveraged into immediate settlement, regardless of the strength of their legal defense.
PROBLEMS WITH CCPA

Following are some of the problems with the CCPA that will lead to unintended consequences:

• Definition of Consumer

As previously discussed, the CCPA defines “consumer” as any California resident. Without clarification, this could be interpreted to include employees, which is problematic for many reasons.

First, the CCPA gives “consumers” the right to request that a business delete their data. If the definition is not changed to exclude employees, an employee accused of sexual harassment could request that complaints about him/her be deleted.

Second, the CCPA gives “consumers” the right to opt out of the selling of their data. This could be problematic when a consumer is both an employee and a customer of a business that sells some data and must, therefore, provide a link to “opt out” on its business website. If that employee/customer opts out, there is nothing in the CCPA that allows the business to distinguish between the data it has on the consumer based on the customer relationship and the data it has on the consumer based on the employment relationship.

In addition, the operational costs of including employees (past and current), job applicants, and other related individuals who do not have a true “consumer” relationship with the business will be exorbitant, and will require many businesses to create separate processes for these individuals.

• Definition of Personal Information

As previously discussed, the current definition of “personal information” is so sweeping as to be meaningless. In theory, every piece of data could be randomly “capable of being associated with” an individual, household, or device. This overly broad definition will undermine existing privacy-protective business practices and impose significant operational costs and burdens on thousands of California businesses.

The definition of personal information should be limited to information that is “linked or reasonably linkable” to a particular consumer. This is consistent with the guidance of the Obama administration’s Federal Trade Commission guidance on privacy, and it would make the definition of personal information consistent with the notion of an identifiable individual, as is the case in California’s Shine the Light Law, California Online Privacy Protection Act (CalOPPA) laws, and every other privacy law and framework, including the European General Data Protection Regulation (GDPR).

In addition, references to households, families, and devices should be removed from the definition of personal information. As drafted, one member of a household or “family,” whether an abusive spouse, a roommate, or a troubled youth, can access any personal information—including credit card information or geolocation information—about another member of the individual’s household or family. This runs counter to the privacy goals of the CCPA. Also, the term “device” should be removed because devices often are shared by several people and are not personally identifying. Further, the term “devices” is defined to cover all devices (including even industrial devices) so that the definition far overshoots anything that might identify an individual.

• Specific Pieces of Information

The CCPA requires businesses to provide consumers with “specific pieces of information” the business has collected upon the consumers’ request, but does not explain what “specific pieces of personal information” means. It could mean that in response to consumer requests, businesses must transmit incredibly sensitive information, like credit card numbers or birth dates, back to the consumer. This would create unnecessary risks to both the security of the consumer’s information and the business’s ability to protect such information.

There also is the risk of inadvertent disclosure to a fraudster posing as the consumer because the CCPA forbids a business from requiring any consumer to create an account so the business can verify the consumer requesting his/her data is who they claim to be. Remember, a consumer, as defined by the CCPA, need not have any customer relationship with a business. All of this runs counter to common-sense principles of privacy.

Additionally, despite an exemption in the act that a business is not required to relink or reidentify data, a business cannot provide “specific pieces of information” back to a consumer without relinking or reidentifying data in order to match it to the person making the request.

Requiring a business to maintain records in a form that directly identifies individuals in order to be able to respond to a request for “specific pieces of information” would undermine privacy and these other provisions of the CCPA. In order to facilitate internet commerce while safeguarding consumer privacy and security, businesses typically maintain consumer information in pseudonymized form. This means that information is not directly linked to an identifiable consumer.

Directly linking data contravenes best practices for data security and results in a lower standard of protection for consumer personal information. The CCPA already expands transparency enormously, and this provision is unnecessary from the perspective of increasing transparency and protecting consumers.

• Exemption for Privacy Protective Treatment of Information

The collection, use, retention, sale, and disclosure of
PRIVACY AND CYBERSECURITY

information in deidentified or aggregate or pseudonymized form, where it can be used in place of personally identifiable information, is privacy enhancing and beneficial to consumers because it means that the processing of personally identifiable information about them is reduced. Similarly, businesses that can accomplish their legitimate business purposes through the use of deidentified, pseudonymized, and aggregate information can reduce the amount of personally identifiable information that is subject to potential compromise.

The authors of the CCPA intended a true exemption for aggregated consumer information and deidentified information in order to incentivize businesses to pursue these privacy protective practices. Yet, under the CCPA, for information to qualify as “deidentified,” it must not “relate to” or “be capable of being associated with . . . a particular consumer.” Unfortunately, those two things are always true of deidentified data, and the term loses all meaning unless it is amended.

In addition to fixing the definition of deidentified so that the exemption for deidentified information can be meaningful, the CCPA should be amended to exempt pseudonymized information as well. Pseudonymization is also a privacy-protective practice that replaces personal identifiers in a set of information with artificial identifiers, or pseudonyms, so that the link to a real identity cannot be established without additional information that is separated from the pseudonymized data.

• Many Other Problems

There are numerous other problems—big and small—with the CCPA that would create unintended consequences for businesses and consumers. Here are just two of the smaller examples:

The CCPA Does Not Allow for Consumer Choice in Opting Out. As drafted, the CCPA mandates only one “all or nothing” opt out. For example, if a consumer opts out of a company selling his/her data to minimize third party marketing, unless the law is clarified, that consumer might also inadvertently be deprived of special discounts and promotions for existing or new services that could save the consumer money. Consumers should have the option to choose the types of sales from which they wish to opt out.

The CCPA Mandates an “Opt-Out” Button on Every Single Webpage of a Website. A drafting error in the definition of “Home Page” defines it as both the home page of a website as well as every web page at which a business collects personal information. The result is to require an “opt-out” button on every single web page where a business collects any personal information, including an IP address. Read literally, this would require special California right-to-know notices on virtually every single business web page.

CALCHAMBER POSITION

While the CalChamber appreciates and understands the need and desire for consumer privacy, the CCPA unfortunately has multiple flaws that undermine consumer privacy as well as employee protections. The benefit of the CCPA, as opposed to the withdrawn 2018 initiative, is that the Legislature has time to address these flaws before the entire law goes into effect.

California has the opportunity to lead the country on this issue and produce model legislation on consumer privacy that works for both consumers and businesses. CalChamber will continue to push for crucial legislative changes to fix the CCPA in 2019, and also will be involved in the Attorney General’s rulemaking process to ensure that business efforts to implement and comply with the CCPA can be as efficient and safe as possible.

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Privacy and Cybersecurity

Data Breach Lawsuits on Rise
Focus on True Bad Actors Can Prevent Unneeded Litigation

Anyone scanning the headlines these days can see that data breaches have become more prevalent. Cyber criminals are more sophisticated and more aggressive than ever before—even nation states are utilizing this crime as a weapon. This is a complicated and alarming problem in our society that demands thoughtful attention. However, the drastic expansion of civil liability created by the California Consumer Privacy Act (CCPA) in 2018 does not actually address the underlying cyberattacks and will serve primarily to line the pockets of trial lawyers. This expansion of liability also will further harm the very businesses that, despite best efforts, are victims of criminal cyber activity themselves. As a part of the overall policy discussion on amendments to the CCPA, lawmakers also should consider changes to the section regarding civil liability to ensure that it will not turn into another litigation tool that merely extorts costly settlements from California employers.

CALIFORNIA’S ALREADY-EXISTING DATA BREACH LAWS
Civil Code Section 1798.81.5 already requires businesses to “implement and maintain reasonable security procedures and practices appropriate to the nature of the information from unauthorized access, destruction, use, modification, or disclosure.” In addition, California already has the strongest data breach notification laws in the country.

Under current law, Civil Code Section 1798.82, businesses are required to report a data breach to California consumers “in the most expedient time possible and without unreasonable delay” even if no harm has been detected whatsoever. (Many states require a showing of harm to trigger their data breach reporting requirement.) Any customer who has been injured by a data breach (due to a violation of Civil Code Section 1798.81.5 or 1798.82) already has a remedy under California’s Unfair Competition Law.

CCPA CREATED MASSIVE EXPANSION OF LIABILITY FOR DATA BREACHES
The CCPA created a new, private right of action for “consumers” that does not require a showing of any injury. The CCPA defines a “consumer” as any California resident—so the consumer does not need to have any relationship with a company in order to bring a lawsuit under the CCPA. Moreover, a consumer does not even have to show that his/her data has been stolen in order to file a lawsuit. Under the CCPA, a consumer could bring a lawsuit if his/her personal information was inadvertently disclosed to a vendor. This may seem like the type of lawsuit that wouldn’t pass muster, but in the new world under the CCPA where no proof of injury is required, it could succeed—especially given that the definition of personal information is so broad it includes IP addresses, inferences, probabilistic identifiers, and a whole host of other information not traditionally deemed confidential, personal information.

The CCPA imposes a minimum of $100—and a maximum of $750—in statutory damages per person, per incident if a company is found to have failed to maintain reasonable security measures appropriate to the nature of the affected information. Awards of damages under the CCPA will be staggering—enough to put companies out of business. For example, a small business with just 1,000 customers that suffers a data breach could be required to pay up to $750,000 in statutory damages alone. This amount would not even include attorneys’ fees or actual damages.

Faced with the risk of such massive damages, companies will be leveraged into immediate settlement—regardless of the
strength of their defense. Thus, the idea that this new law will have an impact only on “bad actors” is simply not true.

The CCPA data breach private right of action is not a stick—it’s a sledgehammer. With criminals using bots to relentlessly attack a security system 24/7, they inevitably will succeed in some cases—even where a company utilizes reasonable security measures. Good actor companies that become victims of cybercrime will be pummeled by this new private right of action.

OTHER RECENT LEGISLATION/ACTION PLANNED FOR 2019
- SB 1121 (Dodd; D-Napa)
  At the end of the 2018 legislative session, SB 1121 was amended to become the short-term, technical cleanup bill for the CCPA. As introduced, however, SB 1121 proposed a private right of action substantially similar to that created by the CCPA. Only the following proposal from the original SB 1121 did not make it into the CCPA: a private right of action wherein a consumer could bring a lawsuit alleging a business or nonprofit did not notify consumers of a breach in a timely fashion and could recover the significant minimum/maximum statutory damages without any proof of injury. Senator Dodd has indicated he may be reintroducing this proposal in 2019.
- AB 2182 (Levine; D-San Rafael)
  After being amended multiple times, the third version of AB 2182 would have dramatically expanded the data breach notification requirements for businesses, mandating that businesses provide rolling notices of data breaches even while the businesses are still determining the full scope of the breaches or working to restore the integrity of the company’s data systems. Such a requirement actually would harm consumers by confusing them and it would subject businesses to frivolous lawsuits due to the massive liability businesses now face in the wake of a data breach as a result of the CCPA. The third version of AB 2182 was held in the Senate Rules Committee and did not receive a vote. However, Assembly Member Marc Levine has indicated he may be interested in reintroducing this bill idea in 2019.

POLICY CONCERNS WITH FURTHER EXPANSION OF DATA BREACH LIABILITY
The purpose of data breach notification laws is to provide individuals with clear, accurate and useful information. Mandatory rolling breach notifications would contravene this principle. Specifically, businesses would have to rush to provide notices of a data breach without an understanding of the full picture of what occurred and to whom.

Moreover, it is unclear how often a business would need to notify consumers. Must a business provide an additional notice every day it learns of a new account breached? This lack of clarity coupled with the new requirement would lead to numerous, additional notifications that would not be helpful to consumers. An individual who receives a first notice is likely to disregard subsequent notices. Further, the additional notices could confuse consumers, possibly causing them to take certain actions (some of which cost time and potentially money) that, upon a business’s resolution of the breach may turn out to be unnecessary or may not be the best risk mitigation method for that particular situation.

As discussed, the recently adopted CCPA creates massive liability for businesses in the wake of a data breach. Thus, a rolling data breach notification requirement would be a class action magnet, leading to frivolous lawsuits. Trial attorneys would compete to be the first to the courthouse to sue before a company can even assess what has happened. This would take the focus off of bolstering security, reviewing and stopping the extent of the breach, and mitigating risks to the consumer.

CALCHAMBER POSITION
The California Chamber of Commerce will oppose legislation seeking to expand legal liability related to data breach notification. Additionally, CalChamber will support any legislation seeking a safe harbor from data breach liability that would limit frivolous lawsuits for data breaches and encourage companies to utilize elevated security standards.

If the goal of the CCPA’s significant liability is for businesses to have solid cybersecurity practices and systems in place, then the Legislature should incentivize such conduct. The Legislature opted for a sledgehammer but should slightly counterbalance that sledgehammer with a small carrot: an affirmative defense for companies with systems and practices that can be certified as in accordance with existing and endorsed security criteria if sued. This will appropriately focus the CCPA’s private right of action on the true bad actors and actually address the underlying issue of data security.

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Packaging serves a number of functions in society, including ensuring safe transport of products, extending the lifespan of products before use, preventing food waste, containing labeling requirements, and other health protection functions. The businesses that sell and ship packaged products need packaging to meet consumer demand and move goods that drive California’s economy. Inevitably, packaging also generates solid waste when it is not properly recycled.

The California Department of Resources Recycling and Recovery (CalRecycle), the agency responsible for administering and providing oversight for all California’s state-managed nonhazardous waste handling and recycling programs, estimates packaging comprises approximately a quarter of the waste stream disposed of each year in California. CalRecycle’s own data also indicates packaging waste has decreased in the overall disposal stream from 9.5 million tons in 2008 to 8 million tons in 2014.

In 2011, the California Legislature passed and the Governor signed AB 341 (Chesbro; D-North Coast; Chapter 476, Statutes of 2011), establishing a policy goal that not less than 75% of solid waste generated in California be source reduced, recycled, or composted by 2020. AB 341 directed CalRecycle to develop a statewide strategy to reach the 75% goal and to submit a report to the Legislature by January 1, 2014, outlining proposed strategies for achieving the goal. AB 341 further mandated recycling by all businesses and public entities that generate four or more cubic yards of solid waste per week and multifamily residential dwellings that have five or more units. Each jurisdiction is required to implement a mandatory commercial recycling program with education, outreach, and monitoring components. CalRecycle estimates California will need to reduce waste disposal by 24 million tons to meet the 75% reduction goal.

CalRecycle acknowledges there is no one-size-fits-all policy tool that can be applied to packaging due to the differences in, among other things, materials, recyclability, end-market profitability, and reuse capabilities. This is especially true due to recent changes to international policies restricting foreign imports of recyclable materials, restricting contamination levels in recycling streams, and a declining global market value for some recyclables. If CalRecycle focuses only on certain types of packaging for mandatory programs, thereby picking “winners and losers” in the marketplace, manufacturers are likely to switch to alternative materials of packaging types simply to avoid regulatory requirements.

**CHINA’S ‘NATIONAL SWORD’ POLICY BANS MOST FOREIGN IMPORTS OF RECYCLABLES**

Significantly complicating California’s 75% reduction goal is China’s recent ban on certain imported recyclables. Every year, California exported approximately a third of the recyclable materials it collects primarily to China. China purchased recyclables to fuel its own massive manufacturing sector—importing recyclable waste from across the world and exporting it back in the form of new manufactured products such as clothing or toys.

But in March 2018, China officially stopped accepting the import of 24 kinds of materials, including low-grade plastics and unsorted mixed paper. China’s shift in policy began at least as early as 2013, when China warned that it would restrict the amount of recyclables it would buy unless contamination was reduced significantly.

After contamination levels did not improve significantly, China limited its acceptance of imported recyclables to contamination levels at 0.5% or less—a difficult level by any measure. As the average percentage of contamination in the United States is about 22%, the new contamination level set by China effectively banned from the Chinese market a large swath of the world’s export of recyclables.

Before implementing its National Sword policy, China was the largest importer of post-consumer recyclables in the world,
accounting for approximately 60% of all exported recyclables purchased globally. When China significantly reduced its imports, global demand for post-consumer recyclables declined precipitously. Today, there is a massive oversupply of low-quality recyclables in the market and a strong demand for high-quality recyclables, but at a much lower price point than in previous years. The recyclables market has been so disrupted by China’s policy change that many U.S. jurisdictions now are either stock-piling unsold recyclables on site, or sending them directly to the landfill.

Legislation mandating more recycling of packaging and other consumer products must account for complex market realities of the current and future global recycling market. For example, without a market to sell to like China, substantially lower demand for post-consumer recyclables means that more otherwise-recyclable goods will be worth no more than garbage.

In addition, the dramatic growth of online sales is creating new freeriding opportunities for out-of-state businesses. Data from the U.S. Department of Commerce indicates that e-commerce sales in the United States amounted to $115.3 billion in the third quarter of 2017, growing around nine times faster than traditional in-store sales in the last decade. As consumers are able to buy more easily from sellers in other countries that have no physical legal entity in California or even the United States, these foreign companies avoid having to register with national or local recycling schemes, thereby avoiding producer and retailer/distributor obligations and costs imposed by California legislation. In-state businesses are placed at a significant competitive disadvantage by having to comply.

**EXPECTED LEGISLATION IN 2019**
The 2017–2018 legislative session saw a number of bills attempting to either ban certain types of packaging or mandate a percentage of post-consumer recycled plastic in products. SB 1335 by Senator Ben Allen (D-Santa Monica) began as a ban on styrene for any food packaging sold in state facilities. The bill was amended later to be a material-neutral bill directing CalRecycle to study which food packaging products are reusable, recyclable or compostable. SB 1335 was signed into law. SB 168 by Senator Bob Wieckowski (D-Fremont) required CalRecycle to establish minimum post-consumer recycled content standards for plastic beverage containers. The bill died in the Assembly.

In 2019, the California Chamber of Commerce anticipates a significant increase in the number of bills pursuing Extended Producer Responsibility (EPR) programs, which are policies that require manufacturers to look at the full life cycle of a product and finance the costs of collecting and recycling or safely disposing of products consumers no longer want. CalRecycle’s perspective is that EPR is best applied to a broad set of packaging rather than individual packaging materials due to the lack of economies of scale associated with separately collecting and managing different types of packaging.

The anticipated legislation in 2019 could implement EPR in four ways, in order of most likely to least:

1. **Physical responsibility** mandating that the producer engage in the collection, processing, and treatment or disposal of its products or packaging at the end of the life cycle.

2. **Financial responsibility** mandating the producer pay part or all of the costs associated with the physical management of the waste generated by its products or packaging.

3. **Informational responsibility** mandating the producer provide information to consumers regarding the environmental impact of its products or packaging. Producers may supply data concerning the environmental impact of the product throughout its life cycle, toxic components, appropriate handling and use, or proper disposal techniques.

4. **Legal responsibility** extending to the producer’s traditional liability for its products or packaging to the end of life cycle stage.

EPR programs will be a significant challenge for California businesses that would be responsible for bearing the costs of disposal/recycling of their products under EPR. Ultimately, these costs will be passed on to consumers through higher-priced products.

**CALCHAMBER POSITION**
The CalChamber supports economically practical recycling programs that yield environmental benefits. We believe that governments can set reasonable objectives which take into account market realities, but should avoid mandating the exact processes to achieve those objectives. By letting businesses that best understand the technical and practical realities of the challenges before them, markets clear themselves of the problem in the most efficient and cost-effective manner while still achieving the environmental benefits sought by the legislation.

CalChamber encourages CalRecycle to more thoroughly evaluate the effectiveness of EPR compared to an increase in the recycling and recovery of packaging in the context of the California market. Comparisons with EPR programs in other countries do not necessarily reflect the market here in California.

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Proposition 65 Landscape
Reforms Can Address Unintended Consequences without Undermining Law

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. Unfortunately, the positive aspects of Prop. 65 have been overshadowed by a limited group of attorneys who use the law solely for personal financial gain.

Prop. 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.

In order to comply with Prop. 65’s warning requirements, a business must follow three basic steps:

• assess whether it releases, or its products contain, Prop. 65-listed chemicals (i.e., “whether” to warn);

• determine whether individuals—consumers or bystanders—may be exposed to a listed chemical at levels that necessitate a warning (i.e., “when” to warn); and

• if a warning is required, determine what the warning must say (i.e., “how” to warn).

Prop. 65 contains a private right of action provision, which allows private persons or organizations to bring actions against alleged violators of Prop. 65 “in the public interest.” This has led to the growth of a multimillion-dollar cottage industry of “citizen enforcers” who often enrich themselves by using the statute’s warning label requirements as an excuse to file 60-day notices and lawsuits to exact settlements.

The business community’s concern regarding Prop. 65 litigation abuse is well-founded and supported by statistical data provided by the California Attorney General’s Office in its Annual Summary of Prop. 65 Settlements. The summary shows that the volume of settlements and settlement amounts is consistently rising each year. In 2016, there were a total of 760 in-court settlements amounting to $30,150,111, compared to the 352 settlements amounting to $17,409,756 in 2013.

### New Wave of Prop. 65 Litigation May Be Coming

The Office of Environmental Health Hazard Assessment (OEHHA) adopted its update to the “clear and reasonable” warning regulations on September 2, 2016 (New Regulations). The New Regulations took effect on August 30, 2018 and substantially alter companies’ warning obligations under Prop. 65 by changing what warnings must say, how they must be provided, and who has the ultimate responsibility to ensure the consumer receives the warning. Importantly, the warning regulations do not change companies’ legal obligation regarding when to provide a warning.

• What Content Must Be Included

In explaining the basis for its regulatory modifications, OEHHA asserted that the previous warning requirements “lack specificity necessary to ensure that the public receives useful information about potential exposures.” OEHHA also argued throughout the regulatory process that the New Regulations would reduce “overwarning,” whereby businesses elect to voluntarily provide a warning out of an abundance of caution.

### Proposition 65 Settlements

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Source: California Attorney General
rather than risk being embroiled in litigation involving a battle of the experts at trial. OEHHA maintains that the new regulations address the overwarning issue in part because the new regulations require warnings to specify at least one chemical for which the warning is being provided; as such, OEHHA states that companies will have to conduct additional due diligence in making their warning decisions, which may result in fewer warnings being provided.

Despite OEHHA’s statements, the New Regulations will not address the overwarning issue because the New Regulations do not provide any guidance regarding when a warning must be provided. Companies will continue to overwarn due to the litigious nature of Prop. 65, even it means specifying a chemical in their warnings that may or may not be present at a level which requires a warning under the law. Accordingly, the New Regulations will continue to result in prophylactic warnings that will convey false or inaccurate information to consumers. Worse, the New Regulations are likely to add at least three additional areas of Prop. 65 liability for the business community.

- **Foreign Language Requirement**

  California is home to a diverse population of approximately 40 million people. OEHHA was concerned that businesses providing Prop. 65 warnings only in English would disadvantage and ultimately fail to warn Californians who did not speak English. Therefore, under the New Regulations, businesses that already provide consumer information on a consumer product sign, label or shelf tag in a foreign language, are now required to include a Prop. 65 warning in that same foreign language (in addition to English).

  This creates an additional challenge for businesses to not only provide clear and reasonable warnings, but also provide the proper translation of a warning that is “clear and reasonable.” OEHHA has provided various translations of safe harbor warnings, including Spanish, Chinese, French and Korean, on its Prop. 65 website: https://www.p65warnings.ca.gov/warning-translations-businesses, but those translations are guidance only and not part of the regulation, and there are many other languages for which no Prop. 65 guidance or translations have been provided. Additionally, when including a Prop. 65 warning in English and in a foreign language, businesses may also have to include the pictogram twice if the English and the foreign language warnings are not co-located on the product, further complicating the warning process and adding an additional point of liability for the business. A summary (published August 2, 2018) of the new warning regulations can be found on the California Chamber of Commerce website at www.calchamber.com/productregulation.

- **Supplemental Information**

  If a business wants a “safe harbor” from litigation, the New Regulations generally require warnings to include only warning information. To the extent a business wants to contextualize the warning with supplemental information, which is of course well within its First Amendment rights, the New Regulations include some concerning limitations. Specifically, such information may include only the source of exposure or information on how to avoid or reduce exposure. If businesses want to provide any other information, such information cannot be part of the warning, meaning it presumably must be provided in some undefined distinguishable location. Therefore, under the New Regulations, businesses may be targeted for not providing a “clear and reasonable” warning if the supplemental information they provide is alleged to be part of the Prop. 65 warning.

- **Liability Associated with Where and When to Warn**

  The statute requires warnings to be provided prior to exposure, not at the time of or before purchase. For internet sales, however, the New Regulations require businesses to provide consumers with warnings at the time of purchase if the businesses want “safe harbor” protection from litigation. Although this amendment sounds straightforward, it will have substantial ramifications for all businesses subject to Prop. 65 that sell via the internet or print catalog.

  The amendment, likely aimed at the growing e-commerce marketplace, means businesses no longer qualify for the safe harbor by simply providing an on-product warning for sales transactions that occur over the internet or through print catalogs. Instead, even if a manufacturer provides a warning on the product, the internet retailer now must provide an additional Prop. 65 warning on the website or in its catalog, displayed by the actual product being sold. This often is referred to as the “double warning” requirement.

  The requirement to provide the warning by the product being sold is also more complicated than it might appear initially. This is especially problematic for catalog sales where limited space on a page comes at a premium. Before the New Regulation, a company could place a Prop. 65 warning at the front of the catalog to warn customers. Now, every single product requiring a Prop. 65 warning must have its own warning that is clearly associated with the product, and it is entirely unclear whether a footnote with a warning will be in compliance. Accordingly, this change will be very costly to businesses selling via catalog because the requirement will either significantly expand the size of a catalog as more pages will be necessary to fit the product and warnings, or expose these businesses to new lawsuits if footnotes are determined not to be “clearly associate[d] . . . with the item being purchased.”
LEAD SAFE HARBOR: ONE BRIGHT SPOT IN THE PROP. 65 WORLD

California allows a business to use a chemical without providing a warning as long as exposure does not exceed a specified threshold level. The mere presence of a Prop. 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, 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.

One very important safe harbor level under Prop. 65 is the longstanding 0.5 microgram per day (mcg/day) safe harbor for lead. Prop. 65 litigation involving lead remains one of the most active areas under the law. For more than 25 years, businesses have relied upon the lead safe harbor level of 0.5 mcg/day in order to avoid having to unnecessarily warn consumers under Prop. 65 so long as the exposure level for the particular product was below the safe harbor.

But on January 13, 2015, a Prop. 65 private enforcer, the Mateel Environmental Justice Foundation (Mateel), sued OEHHA, contending that the existing lead safe harbor level of 0.5 mcg/day was derived impermissibly by OEHHA’s predecessor agency back in 1989. Because Mateel asserted that there is no demonstrated threshold for lead as a reproductive toxin, it argued for an entire repeal of the lead maximum allowable dose level (MADL). CalChamber and the California Farm Bureau Federation intervened as defendants alongside OEHHA in the case.

After more than three years of litigation, the First District Court of Appeal upheld the trial court’s judgment against Mateel. The appeal court ruled that OEHHA’s adoption of the lead MADL in 1989 complied with Prop. 65 and the agency adequately considered all relevant factors and demonstrated rational connection between those factors and MADL. Had Mateel prevailed, OEHHA would likely have been compelled to repeal and amend the 0.5 mcg/day lead safe harbor level. Because OEHHA had already demonstrated a willingness to reduce the lead safe harbor by 60% (i.e., from 0.5 mcg/day to 0.2 mcg/day) for exposures that occur on a daily basis, a loss in this case would have resulted in a much lower and almost impossible-to-meet lead safe harbor level—which would mean companies would have to begin warning on hundreds if not thousands of more products to avoid Prop. 65 lawsuits. Following the appeal court decision, OEHHA has appropriately not attempted to repeal and replace the lead safe harbor by way of regulation.

In addition, the Court of Appeal recognized that the regulations on how to set a MADL are just defaults—businesses still may elect to use better science if they are willing to defend it. Second, for the first time in a binding opinion, an appellate court held that postnatal exposures are not covered by Prop. 65. Finally, the court highlighted a key quote from a prior California Supreme Court decision that can be used by businesses in future Prop. 65 litigation. With respect to overwarnings in the context of products liability, the court noted that “[r]equiring manufacturers to warn their products’ users in all instances would invite mass consumer disregard and ultimate contempt for the warning process.” The court’s decision is at least one bright spot for the business community in the Prop. 65 world.

CALCHAMBER POSITION

The CalChamber supports the underlying intent of Prop. 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 Prop. 65 has been undermined by ever-increasing attempts to use the law solely for personal profit. For this reason, 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.

Although achieving these goals legislatively has proven to be difficult, CalChamber remains committed to initiate or otherwise support legislative efforts that seek to restore the original intent of the law. Indeed, legislative reforms aimed solely at addressing the law’s unintended consequences can be achieved without undermining the underlying intent of law.

Whether proposed in the legislative or regulatory forum, CalChamber will continue to engage policymakers and OEHHA to ensure that any proposed changes to Prop. 65 are in line with the original intent of the statute.

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Tax on Business Services
Fails to Solve State Budget Volatility; Hurts Small Firms the Most

A service tax sounds simple and straightforward—just applying the existing state sales tax on goods to taxes on services. Depending on the scope of the services taxed, it could include services provided by attorneys, accountants, architects, advertisers, and art teachers—and that’s only the A’s! But, as with any new tax policy, the issues are never that simple.

California’s tax system generates enormous revenue growth for state programs during good times. Since the end of the Great Recession, the state General Fund has increased by 60%, with per pupil school funding up by 66%.

Yet, because this powerful revenue machine is driven largely by taxes on upper-income taxpayers, it is vulnerable to a breakdown when the economy slows. Known as budget volatility, this same engine created a budget shortfall of $26 billion during the height of the recession in 2011.

Many legislators, and even Governor Arnold Schwarzenegger, have attempted to address budget volatility by suggesting changes to the tax system. Most recently, in 2018, Senator Bob Hertzberg (D-Van Nuys) introduced SB 993 to levy a tax on services purchased by businesses.

ADDRESSING STATE BUDGET VOLATILITY
The most important factor in considering volatility is whether and how much to reduce the most volatile tax—the personal income tax on wealthy individuals. The nature of the replacement tax is of secondary importance. Reducing the upper brackets of the personal income tax faces two obstacles: legal and political.

The top income tax brackets were placed in the California Constitution by Proposition 30 in 2012, and re-upped by Proposition 55 in 2016. They will not expire until 2031. Because these brackets are in the Constitution, they cannot be reduced or repealed without another statewide vote of the people, no matter the desires of the Legislature—which leads to the second obstacle: The most popular taxes are taxes somebody else pays—which explains the success of voter initiatives levying taxes on high-wealth individuals (not to mention other statewide taxes on smokers and on a targeted subset of out-of-state corporations). No examples exist of voters approving a measure to replace a targeted tax on a few individuals with a general tax on themselves.

RECENT LEGISLATION
Over the last five years, Senator Hertzberg has introduced four bills to impose a sales tax on services in the state of California. The first three bills merely contained language describing the author’s intent to tax all services (with a few exceptions) in order to modernize California’s tax structure so that the state could curtail its infamous budget volatility. Not surprisingly, Californians were not excited about the prospect of paying taxes on their haircuts or their trips to the movies, and so much more. This proposal has been pejoratively dubbed the “Yoga Tax,” and these first three bills did not advance far enough to receive a committee hearing, nor did they receive any substantive amendments to progress beyond intent language.

In 2018, Senator Hertzberg tried a different approach with the introduction of SB 993. Rather than continuing to attempt to tax all services, which is widely unpopular with voters in this expensive state, Senator Hertzberg focused SB 993 on taxing only services paid for by businesses.

Although some may view this targeted tax to be more politically expedient, it turns out that California voters are not too keen on this idea either. A statewide voter survey by the California Chamber of Commerce after the November 2018 election found that voters by a 3 to 1 margin oppose new taxes on services like lawyers, lawn care, or automotive repair—even if applied only to businesses.

SB 993, labeled a job killer by CalChamber, received a hearing in the Senate Governance and Finance Committee, but was not voted on by committee members.

Had SB 993 passed, it would have done the following:
• Created a 3% sales tax on services purchased by businesses (with some exemptions);
• Provided a 2% decrease on the sales tax of goods; and
TAXATION

• Required sellers of business services to collect the tax at the time of sale if the benefit of the service was received in California.

Senator Hertzberg’s proposal to offset the increased services tax with a decrease in the sales tax on goods was an odd choice, at best. The sales tax on goods rises and falls generally with the health of the economy. People buy more cars when times are good, and vice versa. But many items, such as clothes, alcoholic beverages, and household goods, are less affected by the business cycle.

On the other hand, many business services are vulnerable to economic ups-and-downs, such as legal and other professional services, architecture and design, and other services related to business sectors sensitive to the business cycle. By replacing a tax on goods with a tax on services, Senator Hertzberg’s proposal could, in fact, increase budget volatility.

ANTICIPATED LEGISLATION IN 2019
Senator Hertzberg has already stated his intent to reintroduce the language of SB 993—or something similar to it—in 2019. Moreover, incoming Governor Gavin Newsom has repeatedly expressed support for tax reform to modernize California’s economy and to address budget volatility. When asked whether this means he intends to support a sales tax on services, he stated, “I want to put everything on the table.”

POLICY CONCERNS WITH TAX ON BUSINESS SERVICES
• A targeted tax on business services will not solve California’s budget volatility, which stems from our state’s reliance on the personal income taxes of the highest income earners.

• Taxing most of the services used by businesses, including those necessary for day-to-day operations, like accounting, janitorial services, or landscaping, would increase the cost of doing business in an already-costly state. This could lead to companies cutting employee wages and hours or downsizing operations in California.

• A tax on business services will increase the cost of producing and selling goods here in California. Many services are needed to bring a product to market, including research and development, quality control testing, advertising, and transportation. These costs ultimately would be passed on to consumers—with the higher prices having a disproportionate impact on working families.

• It would make an already-complex tax system even more costly and challenging for California businesses to navigate.

• Small business would be hit the hardest. Although SB 993 had a limited exemption from this tax increase for certain small businesses, it certainly did not protect all of them. Small businesses depend on business services to conduct their operations. While larger businesses will be able to avoid paying taxes on certain services by bringing them in-house, most small businesses will not be able to do so.

• The burden of complying with this new tax will also be more challenging for the small businesses that provide business services—as they likely have limited resources to set up a new tax system within their companies. Additionally, such small businesses could suffer a loss of customers and revenue due to higher prices for their services.

• A tax on business services will unquestionably put California businesses at a competitive disadvantage. For businesses that must purchase services, a 3% tax on business services has no counterpart among the vast majority of other states. California companies would need to increase prices, reduce expenses, or perhaps relocate, to accommodate this new burden. If adopted, any other state in the country would have a more business-friendly tax environment than California and lower prices for the services covered.

• Finally, there is no need to raise taxes on businesses. According to a November 2018 report by the Legislative Analyst’s Office, revenue is at an all-time high and surplus reserves in the state’s rainy day fund are expected to hit full funding.

CALCHAMBER POSITION
CalChamber, along with a large and diverse coalition of business interests, would strongly oppose legislation seeking to impose a tax on business services performed in California. This unnecessary tax increase would not solve California’s budget volatility problem. Instead, it would result in higher prices for consumers and would increase the cost of doing business in this expensive state, hitting small businesses the hardest.

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Split Roll Property Tax
Initiative Targets Business, But Ultimately Harms Economy

Perennial demands by government labor unions and advocacy organizations for greater public spending for their priorities inevitably leads to calls for general tax increases, despite California’s record budget surplus. At the forefront of these efforts is a proposal known as the “split roll” property tax, which would repeal many of the protections of Proposition 13 as they apply to business property.

Recently, the split roll proposal qualified as a ballot initiative to be voted on in November 2020. Although split roll is described by its proponents as “tax reform,” it really is just a targeted tax increase on business—potentially to the tune of more than $10 billion per year. Since the goal of government unions and progressive advocacy groups is a large tax increase, their strategy is to target increased taxes on businesses as more politically viable than general tax hikes on California residents. Of course, increased business taxes ultimately are passed on either to consumers as higher prices, to employees as less compensation, or to the general community as less business activity, and so are—under any circumstance—harmful to California’s economy.

BACKGROUND ON PROPOSITION 13
Proposition 13 was passed by 65% of California voters in 1978. At that time, property values were soaring and so were the corresponding property taxes. There was no limit to how high an assessor could increase a property’s value in any year. Many taxpayers could not afford their ever-increasing property taxes and feared losing their homes. Californians were angered by government’s inability or unwillingness to solve this problem and channeled their frustration into overwhelming support for Prop. 13 at the ballot box.

Prop. 13 Amendments to State Constitution Keep Property Taxes Manageable and Predictable
- It capped local property tax rates at 1% of the property’s assessed value—based on the market value as of the date of the most recent change in ownership or new construction.
- It capped property tax increases at 2% per year. This means that property taxes are pegged to the property’s original purchase price, plus improvements, not what the property is currently worth.
- When a property is sold, it is reassessed at its new purchase price. It is then taxed at a rate of 1% of that new value, and from then on, Prop 13’s tax limits apply until it is sold again.
- These protections provide stability and predictability to both property owners and government coffers—protecting both from very high or very low reassessed property values each year.

Prop. 13 Also Created Additional Protections for Taxpayers
- Required any state tax to be approved with two-thirds of both houses of the Legislature.
- Required approval by two-thirds of voters for any tax levied by local governments that was designated for a special purpose, like parks or roads.

WHAT IS ‘SPLIT ROLL’?
A tax roll is the official list of all the properties to be taxed. “Split roll” means applying a different tax formula, either tax rate, reassessment frequency, or vote requirement, to commercial and industrial properties than that applied to residential properties. Proponents of split roll would remove some of the protections of Prop. 13 from nonresidential properties in order to raise taxes on them.

The idea of split roll has been rejected consistently since the passage of Prop. 13. Over the last few decades there have been numerous proposals for split roll, but none became law. One such proposal made it onto the ballot in 1992, but was defeated soundly.

2020 Split Roll Ballot Initiative
The California Schools and Local Community Funding Act of 2018—a proposal for a split roll property tax—is a constitutional amendment that now has qualified for the November 2020 ballot. If approved by the voters, this initiative would amend Prop. 13 and increase taxes by reassessing business property every three years to the market price. The initiative purports to alleviate the burden this tax increase would place on small businesses by exempting business owners with property holdings of less than $2 million in California.
The Legislative Analyst’s Office (LAO) estimates that the measure will raise between $6.5 billion to $10.5 billion per year. These funds would go first to the county assessors to cover their administrative costs—with no limits placed on such costs—and to the state General Fund to backfill income tax losses coming from higher property tax deductions. Of the amount left over, 60% of the new revenue would go to cities, counties and special districts, and 40% would go to schools and community colleges with little or no requirements on how the money would be spent.

POLICY CONCERNS WITH SPLIT ROLL

• Split Roll Will Increase Costs for Consumers

Faced with higher property taxes, commercial property owners are likely (given typical lease terms) to pass the increased costs to their tenants. Imagine a mall with a boutique and a nail salon. When faced with higher rent, those business owners will have no choice but to increase the cost of a shirt or a manicure. Higher taxes resulting from split roll ultimately will be passed on to consumers in the form of increased prices on just about everything people use and buy.

The timing couldn’t be worse. Residents are already struggling with the high cost of living in California: some of the steepest taxes in this country, including the highest or second highest gas, income, and sales taxes. The Legislature just passed policies that have resulted in Californians paying 48% more for electricity than the rest of the nation.

• Split Roll Will Hurt California’s Economy

High taxes, mandates, and regulations already make it difficult for California businesses to compete. An almost $11 billion split roll tax increase will prevent businesses from hiring new employees or even from keeping existing ones. The stability and predictability brought by Prop. 13 has allowed California businesses to compete nationally despite the high cost of doing business here. A split roll tax will force many to close or relocate to a state that actually welcomes business investment.

The LAO warned that if the split roll ballot initiative passes, it likely would increase the costs of many businesses operating in California and thus influence their decisions as to whether to invest further in the state or move elsewhere.

• Small Businesses and Their Employees Hardest Hit

Smaller businesses will be even less able to absorb a sudden rent increase due to reassessment. Those small businesses that can’t raise prices will need to cut costs, including by reducing employee compensation, benefits, or by reducing the number of employees. Some small businesses will have to relocate or close, creating an oversupply of commercial space and higher vacancy rates, which would cause commercial property rents and values to decline. The closing of storefronts will lead to less economic activity, and thus less job opportunity.

• Initiative Includes No Accountability Measures for New Revenue

The ballot initiative does not include taxpayer protections, cost controls, accountability measures, or transparency requirements. The proponents even removed a cap on administrative expenses—so government can waste this new tax money on administration and overhead with no limits or checks.

In addition, it is challenging for assessors to competently value properties. The initiative will change the assessor's review of property from an objective standard (price of sale) to a subjective standard (assessor’s opinion of value). This will lead to arbitrary assessments, more appeals, and a great deal more bureaucratic overhead.

• Problem of Budget Volatility Will Be Exacerbated

Even if properly administered, tax assessments will follow the highs and lows of California’s real estate market—leading to more volatility. During recessions, this could lead to a significant reduction in revenue. For example, in 2008–2009, commercial property values declined by about 35% due to the economic recession. These wild value swings are what led to the passage of Prop. 13 in the first place. Prop. 13 stabilized the flow of property tax revenue by locking in acquisition values and allowing these values to increase slowly from year to year; these stabilizing protections should not be taken away.

• Massive Additional Revenue Not Necessary

California has record-high revenues and more than $17 billion in reserves. Local government revenue is at an all-time high as well. When Prop. 13 was passed in 1978, the local property tax assessments were $6 billion. Local property tax levies are now projected to have grown $19 billion over the last decade alone—from $50 billion in 2008–2009 to $69 billion in 2018–2019. A massive tax increase via the unraveling of Prop. 13’s sound protections is not warranted.

CALCHAMBER POSITION

Given the numerous concerns with passage of a split roll proposal, the California Chamber of Commerce is co-chairing a broad-based coalition to actively oppose the ballot initiative or any similar legislation. Such a significant tax increase layered on top of California’s other high taxes would certainly harm consumers, employers, and ultimately the economy.

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Push for Targeted Taxes
Ignores Harm to Consumers, Business, Jobs

Every year the Legislature considers proposals that would increase taxes on one category of taxpayer, based on who they are or what they make or sell. Raising taxes is a very unpopular thing to do in this expensive state, where many working families are struggling just to get by. Because a targeted tax incurs the opposition of only a single group or industry, proponents often favor this approach when seeking increased tax revenue for the state.

Yet targeted taxes are not good public policy. They unfairly burden selected California consumers and employers to support state programs that benefit all Californians. Targeted sales or excise taxes on products are regressive because they are based on the price of the product, not the income level of the consumer. Taxes on targeted businesses raise their cost of doing business, which can lead to price increases for consumers and potentially job losses if they flee the state. Thus, targeted taxes do not result in a stable source of revenue and often result in far less tax revenue than expected. However, with a supermajority of Democrats in both houses, the threat of the Legislature passing a targeted tax is higher than in recent years.

Proponents often justify targeting taxes against various products or behaviors to reduce purchases of these products or change consumer behavior. This is an inappropriate, not to mention inefficient, use of tax law. Taxes are blunt policy instruments. Increasing a tax on a product assumes the consumer will reduce spending on that product, rather than on other products. A targeted tax cannot change a consumer’s hierarchy of preferences; it only changes the cost calculations.

RECENT LEGISLATION
• Soda Tax

In 2014, the City of Berkeley passed the nation’s first tax aimed at sugar-sweetened beverages. Since then, three other California cities—San Francisco, Oakland, and Albany—have passed similar taxes.

There also have been multiple efforts to impose a statewide sugar-sweetened beverage tax in California. In 2017, Assembly Member Richard Bloom (D-Santa Monica) introduced AB 1003, a statewide tax on sugar-sweetened beverages, to fund health programs. AB 1003 failed to pass the Legislature.

Proponents of a sweetened beverage tax argue that it is the soda industry’s responsibility to pay for health-related illnesses and conditions that derive from too much sugar consumption. However, as opponents highlight, soda is certainly not the only source of sugar in Californians’ diet, and factors other than soda consumption also contribute to these illnesses and conditions.

In 2018, in response to a court ruling that potentially eased local governments’ ability to increase targeted taxes, several industry and taxpayer groups collected signatures for a statewide ballot measure to reverse this decision and secure local vote requirements to raise taxes. Subsequent negotiations with local government resulted in the passage of AB 1838 (Committee on Budget), which removed the measure from the ballot and created a 13-year moratorium on the imposition of new local taxes on soda. The ban does not apply to statewide taxes.

The California Medical Association and the California Dental Association already have begun to pursue a statewide sweetened beverage tax via ballot initiative. The Office of the California Secretary of State gave these proponents permission to begin collecting signatures to qualify the initiative for the 2020 ballot. They have until March 2019 to submit the 585,407 required registered voter signatures. If passed, this initiative would create a new 2-cents-per-ounce excise tax on sugar-sweetened beverages. Most of the new revenue would go to health-related programs. This initiative also would unwind the Legislature’s June compromise with the beverage industry by amending the State Constitution to allow for new local taxes on sugar-sweetened drinks.

• Tax on Opioid Medications

In an effort to combat the opioid epidemic, Assembly Member Kevin McCarty (D-Sacramento) in 2018 introduced AB 2486, which would have imposed an annual excise tax of $100 million
on manufacturers and wholesalers that distribute or sell opioid medications in California. The money raised would have been allocated to opioid prevention and rehabilitation programs. The bill remained in the Senate policy committee and never was brought to a vote.

Although the goal to combat the opioid epidemic is righteous, the effect of AB 2486 likely could have been a general price increase for opioid medication, thereby harming some of the most vulnerable Californians, including those in need of medically assisted treatment for substance abuse, residents of assisted living and hospice programs, and other patients suffering from painful diseases and illnesses.

• **Unprecedented 17% Tax Increase on Income of Venture Capitalists, Hedge Funds, and Private Equity Firms, which Invest in Innovation and New Businesses in California.**

AB 2731 (Gipson; D-Carson) sought to impose a 17% surtax on carried interest earned by venture capitalists and other investment partnerships. Carried interest earned by investors is the profit share they receive—if, and only if—their overall investment fund is successful.

This massive and arbitrary tax increase was sponsored by teachers’ unions to increase revenues for education. Had it passed, it would have been one of the most significant tax increases ever passed by the Legislature on a single industry—and could have led to a total effective tax rate of almost 70% for carried interest personal income earned by venture capitalists and other investors in California businesses.

Such a tax increase would have been damaging to California’s economy and catastrophic to the areas of the state that depend on the ecosystem created by high-risk investment. Venture capitalists and other investors not only would have relocated before realizing their carried capital interest gains and exposing themselves to such a massive tax rate, but likely would have shifted their investment strategies out of state to avoid the risk of realizing gains in California. The overall drop in investment would have meant fewer startups developing into successful California companies in areas crucial to the state’s innovation economy, including biotech, clean energy, and more. This enormous tax increase would have been a barrier to entry for newcomers to the investment world and therefore would have led to declining investment participation by underrepresented groups.

**LEGISLATIVE ACTION IN 2019**

Despite Californians’ vehement opposition to increasing general taxes in most circumstances, the 2019 Legislature will inevitably propose additional targeted tax increases. The authors of the bills proposing a tax on opioid medications and a tax increase on the income of venture capitalists and other investors have indicated their intentions to revive these bills in 2019. Given the new makeup of the Legislature, such bills are more likely to pass this year than in previous years. There also are rumors of a bill to tax meat in order to reduce meat consumption by Californians. If this trend continues, there certainly are many more food and beverage contenders for tax increases—candy, syrup, waffles, ice cream, cupcakes, potato chips, pizza—where will it stop?

**CALCHAMBER POSITION**

Targeted sales taxes are regressive and harmful to consumers. Taxes on targeted businesses increase the costs of doing business in California, which can be harmful to consumers by leading to increased prices and job loss. Any tax increase should be broad-based and shared by all so that the financial impact is mitigated, and so that voters generally are better able to hold elected leaders accountable for the programs funded by these tax increases.

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Tax from Out-of-State Sellers
Legislature Must Decide What Wayfair Ruling Means for California

As e-commerce continues to grow, there is more opportunity for Californians to buy their goods from retailers located out of state. When Californians buy goods from a California retailer, they must pay a sales tax, which is collected by the seller. When Californians buy goods from out-of-state (or remote) sellers, typically via online purchases, they generally are supposed to pay the state a use tax on those items—at the same rate as the sales tax. Some large out-of-state sellers collect the sales tax on behalf of the consumers, but not all out-of-state sellers do. For decades, the courts have interpreted the U.S. Constitution’s commerce clause in a way that limits states’ ability to collect the use tax from remote sellers due to a lack of nexus between the state and the retailer. The U.S. Supreme Court’s recent decision in Wayfair may have changed this limitation for all remote sellers.

SUPREME COURT PRECEDENT PERTAINING TO STATE COLLECTION OF SALES TAX FROM REMOTE SELLERS
In determining whether a state tax unduly burdens interstate commerce in violation of the U.S. Commerce Clause, a key part of the test as set forth by the Supreme Court in Complete Auto Transit v. Brady (1977) is whether the taxed activity has a substantial nexus with the taxing state. In Quill Corp. v. North Dakota (1992), the Supreme Court held that for remote sellers to have a substantial nexus with a state, they must have some sort of physical presence in the state. After Quill, a remote seller had to have some sort of physical presence in a state in order for the state to require remote sellers to remit a use tax.

CALIFORNIA USE TAX COLLECTION REQUIREMENTS BEFORE WAYFAIR
Before 2011, remote sellers required to collect a use tax from California purchasers were those with an obvious physical presence in California, including those who:
• Maintain, occupy, or use an office, a place of distribution, a warehouse, a sales room, or some other place of business in California;
• Have any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in California under the authority of the retailer; or
• Derive rental income from the lease of tangible personal property in California.
In 2011, AB 155 (C. Calderon; D-Montebello/Skinner; D-Berkeley) expanded California’s use tax collection requirements within the physical presence test established by Quill, requiring that the following, additional types of remote sellers collect a use tax from California customers:
• Remote sellers in the same “commonly controlled group” or corporate family as in-state businesses; and
• Remote sellers who work with in-state affiliates—people who refer potential customers to those retailers via a link on the California seller’s website (a click-through arrangement), provided that both of the following conditions are met:
  - the out-of-state retailer’s total cumulative sales to purchasers in California referred pursuant to the click-through agreements exceed $10,000 during the preceding 12 months, and
  - the out-of-state retailer also has total cumulative sales to purchasers in California exceeding $1 million within the preceding 12 months.
This change in the law brought in significant revenue to the state. According to the Legislative Analyst’s Office, businesses registered under AB 155 paid almost $700 million in use tax in 2016–2017.
AB 155 also expressly tied California’s definition of a remote seller to federal law in anticipation of a potential future Supreme
THE WAYFAIR DECISION
In 2016, South Dakota passed a law requiring out-of-state sellers to pay sales tax if they met one of the following conditions during a calendar year:

- The remote seller's gross revenue from sales to South Dakota exceeds $100,000; or
- The remote seller made 200 or more separate sales transactions in South Dakota.

In South Dakota v. Wayfair, et al. (2018), South Dakota sued out-of-state sellers—including the online retail giant, Wayfair—who were not complying with its new tax requirements. The lower courts found in favor of the remote sellers based on the precedent of Quill, holding that they did not have a physical presence in the state. Then the U.S. Supreme Court—with a five-justice majority—explicitly overturned Quill's physical presence test.

The 5-4 split did not follow traditional, ideological lines. Justice Anthony Kennedy authored the majority opinion and was joined by Justices Samuel Alito and Ruth Bader Ginsburg, while Justices Clarence Thomas and Neil Gorsuch wrote concurring opinions.

The majority opinion found Quill's physical presence test to be “unsound and incorrect” because it does the following:

- Overlooks the “substantial virtual connections” of most major retailers to states due to “the ‘dramatic technological and social changes’ of our ‘increasingly interconnected economy’” and the vast expansion of e-commerce.
- “Limit[s] states’ ability to seek long-term prosperity.”
- “Prevent[s] market participants from competing on an even playing field.”

The U.S. high court further held the South Dakota law met the substantial nexus requirement established in Complete Auto “based on both the economic and virtual contacts” the remote sellers have with South Dakota. Specifically, the court found that making 200 or more sales transactions in South Dakota or selling more than $100,000 worth of goods or services into South Dakota “could not have occurred unless the seller availed itself of the substantial privilege of carrying on business in South Dakota.

And respondents are large, national companies that undoubtedly maintain an extensive virtual presence.”

The court further considered the fact that South Dakota's law was not applied retroactively as well as features in South Dakota’s law that reduce administrative and compliance costs. Specifically, South Dakota follows the Streamlined Sales and Use Tax Agreement (SSUTA), which requires state-level tax administration. The SSUTA also requires the state to provide remote sellers with software to aid in their compliance with the tax law and with a safe harbor from audits for those businesses that use the state-provided software.

Chief Justice John Roberts wrote the dissenting opinion and was joined by Justices Stephen Breyer, Sonia Sotomayor, and Elena Kagan. These justices acknowledged that past decisions in this area were “wrongly decided” due to the expansive growth of e-commerce, but said that stare decisis (previous judicial opinions) weighed heavily against overruling Quill.

LEGISLATIVE ACTION IN 2019
During a joint hearing of the California Senate Governance and Finance and Assembly Revenue and Taxation committees in fall 2018, legislators stated their intent to work on legislation to define “substantial nexus” for California in the wake of Wayfair and cautioned the California Department of Tax and Fee Administration (CDTFA) from moving forward ahead of that process.

A draft legislative proposal to modernize California law in the wake of Wayfair that appeared to come from the Brown administration was inadvertently placed online in August. This proposal would have included a $500,000 economic nexus threshold in addition to requiring marketplace facilitators to collect and remit taxes on behalf of their smaller marketplace sellers. This proposed language never materialized into actual legislation.

ADMINISTRATIVE ACTION IN 2018–2019
During its October 2018 Wayfair stakeholder meeting, CDTFA officials stated their intent to implement and enforce the South Dakota tax statute upheld by the Wayfair Supreme Court here in California.

Despite warnings from the Legislature, in early December 2018, CDTFA officials issued notice that they will soon begin to enforce the South Dakota remote seller collection threshold of greater than $100,000 in sales or more than 200 transactions here in California without any legislative action. CDTFA has cited the “long-arm” provision of the California Revenue and Taxation Code, specifically the previously discussed Section 6203 (c), as the basis of its authority.
Now that the CDTFA has issued a notice without legislative or regulatory action, the nexus standard is potentially subject to challenge on various bases, including: 1) the burden on interstate commerce to comply with the sales and transaction thresholds for numerous local tax districts; 2) a tax increase without a supermajority approval by the California Legislature; and 3) failure to comply with the California Administrative Procedures Act.

**CALCHAMBER POSITION**
The *Wayfair* court did not rule that South Dakota’s tax statute is now the baseline for the entire country. To the contrary, the court carefully evaluated South Dakota’s law adopted by South Dakota’s legislature and described certain features of that law “designed to prevent discrimination against or undue burdens upon interstate commerce.”

California’s tax system does not have some of these features. Moreover, California has the largest economy in this country—and the fifth largest in the world—while South Dakota, with its small population, has the 47th largest economy in the United States.

Post-*Wayfair*, it is the job of the Legislature to determine how to expand “substantial nexus” beyond a physical nexus test and to create an economic nexus test suitable to the State of California. CDTFA should refrain from implementing a new tax requirement until the Legislature finalizes its post-*Wayfair* legislation because doing so will cause uncertainty and unnecessary litigation and costs on business.

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January 2019
California Tourism/Travel Industry

Economic Success Story Can Continue with Careful Crafting of Policies

California’s multibillion-dollar travel industry is a vital part of the economy at the state and local levels. Travelers in California spent more than $132 billion in 2017, reinforcing the tourism industry as one of the state’s economic success stories, contributing to both the national and state economies.

Tourism supports more than 1 million jobs in California, primarily in retail and service firms, including lodging establishments, restaurants, retail stores, gas stations, and other types of businesses that sell products and services to travelers. The money that visitors spend on various goods and services while in California produces business receipts at these firms, which in turn employ California residents and pay their wages and salaries.

State and local government units benefit from travel as well to the tune of almost $11 billion in state and local tax revenue in 2017. The state government collects taxes on the gross receipts of businesses operating in the state, as well as sales-and-use taxes levied on the sale of goods and services to travelers. Local governments also collect sales-and-use taxes generated from traveler purchases and property taxes paid by travel-related businesses.

TOURISM INDUSTRY BENEFITS STATE ECONOMY

California has the nation’s largest tourism industry with more than 100 tourism business districts. The following statistics reported by the California Travel and Tourism Commission (Visit California) demonstrate the significant impact of tourism on the state’s economy. This data represents activity in 2017 (most recent data available):

- Travel spending in California increased 4.8% during 2017 to $132 billion. That spending directly supported about 1.14 million jobs, an increase of 3.1% from 2016.
- Travel-generated tax revenue topped $10.9 billion, an increase of 2.8% over 2016.
- Hotel room occupancy rates reached a record average of 80.8% in August 2018, which translates to 76.8% year to date.
- $6 of every $10 spent at local visitor destinations was attributable to residents of other states and countries.
- The gross domestic product (GDP) of the California travel industry represents about 2.5% of the total GDP of the state.

2018 AND BEYOND

The travel and tourism industry is vital to the California economy by creating jobs, and generating revenue for the state and local jurisdictions. The state should continue to support the industry through prudent policies and legislation. In 2018, threats to California tourism arose in the form of the following two bills:

- AB 2571 (Gonzalez Fletcher; D-San Diego) was an attempt to address perceived wage inequities in the hospitality industry, but instead would have exposed those companies to costly and unwarranted lawsuits. The bill sought to publicly shame certain hospitality companies, including hotels in which public employee retirement systems invest, by forcing them to submit an annual report subject to public review disclosing employee wage information according to gender, ethnicity and race; sexual harassment lawsuits filed by employees; and settlements of sexual harassment cases. The bill did not pass out of the Assembly Public Employees, Retirement and Social Security Committee.

- AB 1761 (Muratsuchi; D-Torrance) sought to require all lodging establishments, hotels and motels to provide panic buttons to all employees working alone with a goal of protecting those employees from sexual harassment and assault. The bill also created additional unworkable requirements for paid leave, workplace accommodation, and allowed for a patchwork of state and local rules. In its early form, the bill created a blacklist of hotel guests accused, but not found guilty of, sexual harassment or assault of hotel employees. The bill failed to pass the Senate Appropriations Committee.

Both 2018 bills were sponsored by the labor union UNITE HERE, Local 11, which represents workers in the hospitality industry. Local 11 is an affiliate representing 29,000 workers in
hotels, restaurants, sports arenas and convention centers throughout Southern California and Arizona.

In public hearings, the union estimated that the majority of its members who are hotel housekeepers have faced sexual harassment on the job; however, this estimate is unsubstantiated. The union also argued that panic buttons will protect employees working alone from such incidents.

Seen in the broader context beyond just the policy, unions often advance local ordinances as an organizing tool to increase union membership. Although many hotels across the nation are adopting panic buttons for workers in an effort to protect worker safety, local ordinances continue to be considered around the state, including Long Beach, Anaheim and Sacramento. Some local ordinances also include other unrelated provisions, such as limits to the number of rooms cleaned by hotel housekeepers.

Similarly, while gender pay inequality continues to drive legislation to expose and address any unlawful gender gap, little evidence exists of a rampant problem in the hospitality sector. Legislation aimed at shaming employers in this industry also is used often as leverage against employers in collective bargaining agreements and union membership organizing.

While wage equity and sexual harassment are serious concerns, any proposed policies need to be drafted properly to address the underlying issue without unnecessarily harming the industry and California’s economy. Pursuing policies for ulterior motives, such as organizing efforts, could ultimately hamper California’s booming tourism industry.

**CALCHAMBER POSITION**

The California Chamber of Commerce promotes policies that increase and protect travel and tourism within and to the state to continue to stimulate the economy and provide jobs to Californians. The CalChamber:

- Supports rational, data-based policies that establish statewide standards, rather than create a patchwork of differing rules around the state.
- Advocates legislation that supports California’s position as a tourism leader and opposes legislation that harms the state’s ability to compete on a level playing field with other travel destinations.
- Supports continued funding for Visit California through voluntary self-assessment (established by AB 2592 of 2006) and continues to work with Visit California to ensure the enhanced promotion of California’s travel and tourism industry in order to remain competitive in the tourism market.
- Opposes new entertainment tax proposals and travel-related services taxes that threaten tourism in the state.
- Supports tax policy that encourages travel to the state for business and pleasure.

*Article written by Marti Fisher, CalChamber policy advocate, before her retirement at the beginning of 2019.*

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January 2019
Autonomous Vehicles
The Future is Now: Laws/Regulations Must Keep Pace with Technology

As of this year, 29 states and Washington D.C. have enacted legislation relating to autonomous vehicles (AV). Since promulgation of California’s regulations in 2012 and 2014, more than 50 entities have applied to the California Department of Motor Vehicles (DMV) to test AV technology on California roadways. In the meantime, cars have grown increasingly reliant on AV technology to become “smarter” with each model, incorporating additional sensors, brake assist, and other semi-autonomous features to help people drive more safely and efficiently.

AV technology already is everywhere. Our floors are cleaned by robot vacuums that sense and maneuver around furniture and drive our pets crazy (and make for cute internet cat videos). Autonomous technology in jet planes controls the flights we take around the world. And we send autonomously controlled rockets to explore space. AV technology is being developed, not just for commuters, but for commercial transit as well. Encouraging the development will be essential to continue California’s place as a technological leader.

THE BASICS

• Autonomous Means Many Things to Many People. California defines an AV as a vehicle that is equipped with autonomous technology which has the capability to operate the vehicle without the active physical control of or monitoring by a human operator. There are six levels of AV technology, which derive from the Society of Automotive Engineers (SAE) International and are set forth in the figure on the next page. Different regulations apply to each level of automation.

Many states are using SAE International’s Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, standard J3016 (SEP2016) as the basis for their regulations. Use of a standard set of regulations is imperative to avoid conflicting regulations that would impede travel between states. The National Conference of State Legislatures maintains a searchable database of AV bills at http://www.ncsl.org/research/transportation/autonomous-vehicles-legislative-database.aspx in an attempt to keep states on a consistent path and pave the way for streamlined deployment across the United States. Division 16.6, Section 38750 of the California Vehicle Code requires the DMV to develop regulations for testing and public use of autonomous vehicles.

• DMV Finalizes AV Testing and Deployment Regulations. The California DMV AV testing regulations were first developed in September 2014. Since then, at least 50 manufacturers have applied to the DMV for approval. Updated regulations were finalized on February 26, 2018. These regulations incorporate by reference the SAE International J3016 standard, and contain training, notice, and annual reporting requirements for testing, including the requirement that a human be behind the wheel for testing even in fully autonomous vehicles.

Recognizing the rapid advancement in technology, the DMV also promulgated regulations for the post-testing deployment of AVs in California, including completion and certification of completion of safety testing, significant insurance coverage requirements, a law enforcement interaction plan, and, for Level 5 AVs, communication link between the vehicle and a remote operator, as well as the ability to transmit collision data. Although this regulation does not allow for testing of commercial or freight AV technology, the DMV indicates that it is evaluating the unique safety and economic impacts of commercial AV through further study.

THE POLICY ISSUES

• Funding for AV Infrastructure. The 2017 transportation funding bill SB 1 (Beall; D-San Jose), in addition to providing much-needed repairs for California roadways, also allows for transportation dollars to be used for infrastructure improvements
to support AV deployment. SB 1 states that “[t]o the extent possible and cost effective, and where feasible, the department and cities and counties receiving funds under the program shall use advanced technologies and communications systems in transportation infrastructure that recognize and accommodate advanced automotive technologies that may include, but are not necessarily limited to, charging or fueling opportunities for zero-emission vehicles, and provision of infrastructure-to-vehicle communications for transitional or full autonomous vehicle systems.”

- Safety. We humans have an outsized notion of our ability to navigate the roadways safely. Test it by trying to merge onto any highway onramp at rush hour. The perception of the safety of AVs has been hampered by some high-profile accidents, with a recent study conducted by research firm J.D. Power and Associates and the National Association of Mutual Insurance Companies (NAMIC) finding that 4 out of 10 Americans “would never ride” in a fully automated vehicle.

Despite these fears, experts predict that AVs will end up much safer than human-controlled ones. According to the California Office of Transportation Safety, traffic fatalities increased 7% from 3,387 in 2015 to 3,623 in 2016, and the 2015 Mileage Death Rate (MDR)—fatalities per 100 million miles traveled—was 1.01. According to National Highway Transportation Safety Administration (NHTSA) data, which was collected from all 50 states and the District of Columbia, 37,461 lives were lost on U.S. roads in 2016, an increase of 5.6% from calendar year 2015. NHTSA found that distracted driving and drowsy driving fatalities declined, while deaths related to other reckless behaviors—including speeding, alcohol impairment and not wearing seat belts—continued to increase.

AVs use a variety of technology, most of which is not dependent upon attention spans, number of cocktail decisions, or whether your newborn kept you up all night. Computers do not listen to music, and they ignore (or can simultaneously respond to) texts while navigating roadways. Various technology is being tested by some or all of the manufacturers.

### Table: SAE Levels of Automation

<table>
<thead>
<tr>
<th>SAE Level</th>
<th>Name</th>
<th>Narrative Definition</th>
<th>Execution of Steering and Acceleration/Deceleration</th>
<th>Monitoring of Driving Environment</th>
<th>Fallback Performance of Dynamic Driving Task</th>
<th>System Capability (Driving Modes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>No Automation</td>
<td>The full-time performance by the human driver of all aspects of the dynamic driving task, even when enhanced by warning or intervention systems</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>n/a</td>
</tr>
<tr>
<td>1</td>
<td>Driver Assistance</td>
<td>The driving mode-specific execution by a driver assistance system of either steering or acceleration/deceleration using information about the driving environment and with the expectation that the human driver perform all remaining aspects of the dynamic driving task</td>
<td>Human Driver and System</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>Some driving modes</td>
</tr>
<tr>
<td>2</td>
<td>Partial Automation</td>
<td>The driving mode-specific execution by one or more driver assistance systems of both steering and acceleration/ deceleration using information about the driving environment and with the expectation that the human driver perform all remaining aspects of the dynamic driving task</td>
<td>System</td>
<td>Human Driver</td>
<td>Human Driver</td>
<td>Some Driving Modes</td>
</tr>
<tr>
<td>3</td>
<td>Conditional Automation</td>
<td>The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task with the expectation that the human driver will respond appropriately to a request to intervene</td>
<td>System</td>
<td>System</td>
<td>Human Driver</td>
<td>Some Driving Modes</td>
</tr>
<tr>
<td>4</td>
<td>High Automation</td>
<td>The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task, even if a human driver does not respond appropriately to a request to intervene</td>
<td>System</td>
<td>System</td>
<td>System</td>
<td>Some Driving Modes</td>
</tr>
<tr>
<td>5</td>
<td>Full Automation</td>
<td>The full-time performance by an automated driving system of all aspects of the dynamic driving task under all roadway and environmental conditions that can be managed by a human driver</td>
<td>System</td>
<td>System</td>
<td>System</td>
<td>All driving modes</td>
</tr>
</tbody>
</table>

Source: Society of Automotive Engineers (SAE) International
Many automakers have advocated skipping straight to Level 5 automation for added safety. They argue, perhaps rightly, that humans are not capable of resuming control quickly enough to make human backups useful, and that skipping to Level 5 would allow regulators to adapt to technology more quickly. Experts project, depending upon which level of AV is used, a reduction in collisions by as much as 90%, with the ensuing preservation of life.

Currently, the final regulations from the California DMV require that a human backup be used during all testing. In enacting future legislation on AVs, policymakers must balance safety, avoid conflicting regulations with other states and the federal government, and avoid overly prescriptive and burdensome regulations that impede the continued safe testing and deployment of AV technology.

**LEGISLATIVE AND REGULATORY ACTION IN 2019**

- **AVs and Ride Sharing.** A study by the Boston Consulting Group estimated that by the end of the next decade, fully 20% to 25% of U.S. rides will be logged by Level 5 AVs operated by ride-sharing services such as Waymo, Uber, Lyft and GM’s Maven. In May 2018, the California Public Utilities Commission (PUC) authorized two pilot programs—one with a driver and one driverless—with quarterly data reporting requirements and a plan to conduct workshops on carrier and passenger experiences within the pilot. The expectation is that a deployment pilot will follow.

- **Commercial Testing and Deployment.** The DMV anticipates continued exploration of testing and deployment of trucks and commercial vehicles in the coming years. Several California companies are developing vehicles for commercial use.

**CALCHAMBER POSITION**

California should encourage the development of AV technology for transit and commercial operations. It should ensure that laws and regulations keep pace with advancing technology, are not duplicative, do not conflict with federal or other state laws, and that regulation is not overly burdensome, all while maintaining consumer safety. With such a balance, California can remain at the technological forefront of AV development.

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January 2019
Transportation and Infrastructure Funding

Long-Term Stability, Spending Oversight Important to Keep State Moving

Each year, Californians drive an average of 13,000 miles, increasing the wear and tear on the state’s aging roads, highways, and freight routes. Californians use roadways to travel to work and school, vacation at the state’s abundant parks and entertainment destinations, and move trillions of dollars of goods through and around the state. California’s roads, bridges, freight, and public transit systems require annual maintenance, much of which has been deferred for the better part of a decade. State transportation leaders must tackle a significant backlog of repairs, modernization, and expansion to keep pace with advancements in technology, such as autonomous vehicles and rapid transit, as well as expand roadways to accommodate additional drivers.

**THE BASICS**

The most recent Needs Assessment by the California Transportation Commission, last updated in 2012, found that 58% of the state’s roadways require rehabilitation or pavement maintenance and 26% of its bridges require major or preventive maintenance or complete replacement. The Federal Highway Administration estimates that California will need approximately $70 billion to modernize and fix its highway systems, and another $118 billion to widen its highways to keep up with growth.

California receives approximately $3.5 billion annually from the Federal Highway Administration, mostly from fuel taxes on gasoline and diesel. When surveyed, Californians regularly rank transportation and infrastructure concerns, including traffic congestion and commuting time as issues of high importance, and most support more spending and efficiencies to improve roads, highways, and bridges.

**SB 1 SURVIVES ATTEMPTS AT REPEAL**

In 2017, the Legislature passed and the California Chamber of Commerce supported SB 1 (Beall; D-San Jose), which increased gasoline and diesel fuel taxes, raising an average of $4.2 billion annually over the next 10 years for much-needed repair and upgrade of California’s transportation infrastructure. Opponents qualified a November 2018 ballot measure, Proposition 6, to repeal this tax increase and force statewide votes for any future transportation tax increases.

Voters, heeding the advice of CalChamber, Governor
Edmund G. Brown Jr., and other state business and political leaders, rejected the measure, maintaining the pace of new spending to repair and improve state roads and highways.

2018–2019 BUDGET
Governor Brown’s final budget proposed a total of $22.5 billion from all funding sources for fiscal years 2018–2019, with $13.6 billion for the California Department of Transportation (CalTrans), $2.7 billion for local streets and roads, $2.6 billion for the California Highway Patrol, $1.2 billion for the Department of Motor Vehicles, $1.1 billion for the High-Speed Rail Authority, and $1.3 billion for other transportation programs.

Consistent with Governor Brown’s proposal from 2017–2018, the Legislative Analyst’s Office estimated that SB 1, along with a $65 increase in vehicle registration, cap-and-trade auction revenues, and early repayment of transportation loans, is expected to initially provide increases in funding of $2.8 billion, increasing to $4.6 billion in 2018–2019 and as much as $6.8 billion annually within 10 years, presuming continued economic trends.

POLICY CONCERNS
Long-term modernization of California’s system of roadways and transportation infrastructure requires a long-term plan, given the high costs estimated for repair, modernization, and expansion to accommodate continued economic and population growth. Transportation bills are highly interrelated. For example, the California Legislature in 2018 considered a bill to ban combustion engines in the state by 2040, despite the transportation system being reliant on gasoline excise taxes to fund infrastructure maintenance and expansion.

To that end, as Californians drive ever-increasingly fuel-efficient vehicles, rely more on public transportation, and drive more zero-emission cars, relying on these excise taxes will divorce funding from the actual vehicular use of the roads. The Legislature recognized this phenomenon in 2016, creating an advisory committee (including a member from CalChamber) to develop a new transportation finance system based on miles driven, rather than gallons of fuel consumed. Any new mileage fee would replace the current fuel tax, not add to it. The advantage of such a system would be to assess drivers for exactly how much they use the roads, without regard to how efficient their engines may be or if they use petroleum fuels at all. The committee and state officials are evaluating this new finance regime for possible roll-out after 2020.

California must be cognizant of the interrelationship between funding and vehicle miles traveled (VMT), increase efficiencies in the use of funds, and ensure that sufficient oversight and accountability in the use of funds is maintained while allowing flexibility for technological development and advancement of California’s transit system.

LEGISLATIVE ACTIVITY IN 2019
Governor Gavin Newsom and the Legislature should continue funding investments in transportation infrastructure at a similar pace. California should reject fees unrelated to infrastructure improvement or which otherwise make it more difficult for Californians to commute or businesses to move their goods in order to ensure a robust economy.

CALCHAMBER POSITION
The CalChamber supports reasonable and necessary funding to ensure long-term stability of California’s roads, bridges, and infrastructure, all of which are necessary to move California-made goods and support the state’s vibrant economy. The Legislature should encourage policy that maintains adequate oversight over use of transportation dollars and implements measurable benchmarks and performance-based outcomes for the use of funds.

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January 2019
Access to Water
Storage Projects Important Piece of Comprehensive Solution

Water storage is one of the fundamental keys to increasing the state’s water supply. Environmental and ecological demands, climatic changes, and a growing population place stresses on available water supplies. The State Water Project, built in the 1960s, is aging and struggling to supply enough water for current needs. Ever-more-stringent environmental regulations and lack of funding make it difficult to construct new storage facilities. Headlines during the last drought were filled with towns running out of water and pictures of large water tanks being dropped off along with cases of bottled water. There is no question that more water storage is needed to increase supplies, but also to help manage existing sources.

Despite the challenges, the State Water Resources Control Board (Water Board) is considering a plan that shifts more water to support fish that will result in less water at higher costs for water ratepayers. At the same time, the Water Board is considering regulations that will impose a fee on the same ratepayers to subsidize low-income households that can’t afford to pay their water bills. Looming on the horizon is the reintroduction of legislation imposing a water fee on ratepayers to provide access for those who do not have a source of clean, affordable drinking water.

**KEY POINTS**

- California needs more water storage. Population is increasing, but available water supplies are diminishing. Not everyone has access to or can afford clean drinking water.
- Increasing environmental and fish species demands limit the amount of water available for human use.

**WATER STORAGE INVESTMENT PROGRAM PROJECTS**

<table>
<thead>
<tr>
<th>Estimated Timelines: Final Award Hearing</th>
<th>Construction Begins</th>
<th>Facility Operational</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chino Basin</td>
<td></td>
<td></td>
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<tr>
<td>Kern Fan</td>
<td></td>
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<tr>
<td>Los Vaqueros</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pacheco Reservoir</td>
<td></td>
<td></td>
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<tr>
<td>Sites Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South County Ag</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temperance Flat</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Willow Springs Water Bank</td>
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<td></td>
</tr>
</tbody>
</table>

Source: California Water Commission

- No new major water storage has been built since 1999 and most were built in the last century.
- $2.7 billion bond funding is available for the “public benefits” of new water storage projects.
- Environmentalists continually put up roadblocks to new storage proposals, contending that all possible conservation measures should be implemented first.
- The Water Board is contemplating a proposal to cut water supplies to water rights holders like water districts, municipalities, landowners and farmers. Replacement water will cost more if it is available and can be conveyed.
- The controversy pits environmental and fish needs against human needs.

**WATER STORAGE**

Although voters approved a water bond in 2014, they voted against an $8.87 billion water bond in 2018. The 2014 water bond contained, amongst other provisions, $2.7 billion for storage projects. Those funds can be used only for the “public benefits” of the storage projects, such as improved water quality,
flood control, habitat restoration or outdoor recreation. The California Water Commission (Commission) developed regulations, guidelines and started accepting project applications in 2017. The Commission approved eight 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. Should any of the projects not go forward, the funds can be redistributed to the remaining projects.

The proposed projects were a mix of above ground and underground storage (see timeline on previous page).

- Two reservoir expansions: Los Vaqueros and Pacheco.
- Two new reservoirs: Sites in Northern California and Temperance Flat near Fresno.
- Two underground storage facilities: Kern Fan Groundwater Storage and Willow Springs Water Bank.
- Two recycling projects: Chino Basin Conjunctive Use and South Sacramento County Ag Program.

Environmental opposition to new water projects is constant. Environmental groups are opposing desalination, recycling, and storage projects. Their opinion is that conservation will provide enough water for all purposes. During the recent five-year drought, mandatory conservation measures did result in 25% less water usage. However, some rural communities still ran out of water and required state assistance to obtain baseline amounts. Communities running out of water were mostly on private domestic wells or were served by very small water districts with no ability to upgrade or expand existing facilities. Nearby water storage could have alleviated the problem by storing excess water in wet years for use in drier times.

**REDUCTION OF WATER SUPPLIES THROUGH REGULATIONS**

The Water Board is in the process of updating the Water Quality Control Plan for the Bay-Delta to establish flow and water quality objectives needed to reasonably protect beneficial uses, including fish and wildlife. There are two proposals—one for the San Joaquin River and its tributaries, and a second one for the Sacramento River and its tributaries.

The San Joaquin River proposal, first released in September 2016, immediately drew criticism from agriculture, business, municipalities and water districts, and praise from the environmental community. The proposal recommended between 30% and 50% of the river’s unimpaired flow be dedicated to fish. Average unimpeded flow is about 20% under current conditions.

The Water Board staff suggested a starting point of 40%, which was solidified in later amendments.

The proposal has been the subject of workshops, hundreds of letters, extensive public comment and a significant number of one-on-one meetings with various stakeholders and experts regarding the effects of altering stream flows in the San Joaquin River. There is considerable scientific disagreement about whether more water in the river alone will bring a resurgence of fish populations. Reducing the flows, as proposed, increases the cost of water, assuming there is wider availability and the means to convey exist.

In August 2018, the Water Board delayed a vote on the proposal in response to a request from state agencies, legislators, businesses, water agencies, cities, counties and agriculture to allow more time for voluntary agreements with water rights holders to be worked out. Following the delay, water districts, municipalities, farmers and other affected groups worked diligently to craft agreements that would satisfy the requirements of the water quality control plan amendments. A second request for postponement came the night before the Water Board was set to adopt the proposal in November. A letter from the Governor and Governor-elect stated that a “a short extension will allow these negotiations to progress and could result in a faster, less contentious and more durable outcome. Voluntary agreements are preferable to a lengthy administrative process and the inevitable ensuing lawsuits.” The Water Board again delayed a vote until its December meeting, ultimately voting on December 12, 2018, to adopt the proposal.

The issue, according to the Water Board, is that the San Joaquin River Watershed does not produce enough water to both meet existing human demands and support a healthy ecosystem. Requiring more water to remain in the river for the protection of fish and wildlife will reduce the quantity of surface water available for other uses. Implementing the flow proposal is expected to result in a 7% to 23% reduction in water available for human use. According to the Water Board, implementing the 40% flow proposal could result in an average increase in groundwater pumping of 105,000 acre-feet per year. The current deficit in groundwater supplies is about 45,000 acre-feet per year. Agricultural water supply deficits have the potential to increase over time as panners must come into compliance with the Sustainable Groundwater Management Act. (See the Business Issues article on Groundwater).

**LOW INCOME RATE ASSISTANCE AND ACCESS TO CLEAN DRINKING WATER**

State law ensures universal access to water by declaring that “every human being has the right to safe, clean, affordable, and
accessible water adequate for human consumption, cooking and sanitary purposes.” However, water is becoming more expensive. California’s growing economy and population create continued demand for water. Meanwhile, drought and water leaks tighten available supplies. In addition, pipes and aging infrastructure result in expensive repairs or replacements. These conditions contribute to higher costs. The result is more low-income households with unaffordable drinking water.

The Water Board circulated a draft proposal for a statewide low-income rate assistance program developed, under contract, by researchers from the University of California, Los Angeles to analyze the funding required. Cost estimates ranged from $279 million to $580 million. The funding mechanism would include a tax on water utility bills for approximately 34% of the water hookups in California. Households with income less than 200% of the federal poverty level would be exempt. The proposal is still pending.

Most California residents have drinking water that meets state and federal drinking water standards. However, there are water systems that do not meet the standards. Many of those systems are in the Central Valley and other rural areas. Disadvantaged communities are disproportionately affected with a lack of safe drinking water. Communities served by small water systems do not have the rate base to modernize drinking water plants or deepen or drill new wells. Additionally, many rural residents have private domestic wells, which ran dry during the drought or were contaminated.

Legislation was introduced in 2018 that would have provided access to safe and affordable drinking water for disadvantaged communities, but failed to progress because it included a fee that was perceived as a tax. The bill had two parts—access to clean drinking water and a funding source. Under the legislation, access could include annexation to the nearest water district for those with dry wells, help with contaminated wells, consolidation of smaller water districts with nearby larger and better-funded districts, or building or upgrading existing drinking water facilities.

The funding mechanism was a tax on fertilizers and a tax on dairy/livestock that declined over time and a permanent fee on water utility bills except for households with incomes of less than 200% of the federal poverty level.

**IMPACT ON BUSINESS**
The additional 4.3 million acre-feet of water these water storage projects will yield is important to the overall water supply of the state. The diverse locations of the projects help distribute the new supply throughout the state. The promise of more supply alleviates the stress that developers are under to provide written documentation from water suppliers that they can provide water to new building sites. Farmers will be able to grow and harvest crops without fear that their water supply will be cut. General business will be more comfortable estimating how much the cost of water will rise in future years. New water projects provide good-paying jobs in areas that have few employment opportunities.

The potential loss of water supplies from the San Joaquin River affects how water districts will meet consumer demands, water conservation measures and groundwater sustainability goals. Business will be further adversely affected by the reduction in water supplies through higher costs to secure water and limitations on growth potential. Development of housing and commercial properties will be delayed. Before developers can break ground, they must secure written confirmation from water purveyors that a 20-year water supply is available for the project.

The Water Board staff estimated a $64 million a year loss to agriculture. Farm groups believe the loss to be closer to $150 million, idling possibly 240,000 acres of Central Valley farmland and significant job losses. Land values in affected parts of the valley will drop steeply with the loss of surface water, depressing property tax and sales tax revenues, thereby limiting county and city services to some of the neediest residents of the state. Businesses operating in the valley, especially small businesses, will be hard-pressed to survive under these conditions.

Adopting a low-income rate assistance program and passage of legislation imposing a fee/tax on water bills to provide access to safe and affordable drinking water for disadvantaged communities will increase the cost of doing business. In addition, if the programs don’t raise enough funds, the fees/taxes could be increased to cover the shortfall.

**ANTICIPATED ACTIONS IN 2019**
The California Water Commission will continue to monitor the progress of the eight proposed water projects. If any of the applicants withdraw, the funds will be spread amongst the remaining applicants. The Commission decides how to apportion the funds. The projects need to finish required feasibility studies and environmental reviews before receiving bond funding. It is likely more funding will be needed, as well as permits from the federal government. Businesses should stay engaged with the Commission to ensure funding is not delayed and be prepared to support projects before federal agencies.

In December 2018, the Water Board voted to adopt the San Joaquin River proposal. Opponents will appeal the adoption, setting the stage for administrative procedures to be exhausted.
Some water districts and water rights holders have stated publicly they will sue because the Water Board adopted the current proposal. Businesses should be alert for opportunities to weigh in during the administrative process and later with amicus briefs.

**CALCHAMBER POSITION**

The CalChamber supports a comprehensive solution to the state’s chronic water shortage to ensure all Californians have access to clean and affordable water. Water storage combined with conveyance is an important part of achieving a water supply adequate to meet the needs of Californians.

Any reduction in water supplies for environmental purposes must be carefully balanced against the harm it will have on the business community. A robust economy depends on a thriving business climate. It’s business that provides jobs, housing, food and a good quality of life for residents of the state.

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Groundwater: The New Frontier
Planning, Investment in New Technologies Must Start Now

Changing demands on water supplies, such as new environmental restrictions, the effects of cyclical droughts, and increased urban and agricultural usage, have resulted in more groundwater pumping and subsequently chronic over-drafting of groundwater basins. This has created a noticeable increase in soil subsidence (permanent loss of below-ground storage capacity).

Water is stored in the cracks of soil, sand and rocks underground called aquifers. Prolonged pumping depletes water in soil, causing the soil to sink, collapsing underground water aquifers. Once that happens, it is not possible to recharge the aquifer. Unlike most Western states, California never has had a state comprehensive system for regulating groundwater until now.

**KEY POINTS**
- California adopted legislation for stabilizing over-drafted groundwater water basins in 2014.
  - The new law allows for groundwater pumping restrictions and the imposition of fees, but does not mandate either one.
  - Local public agencies with water supply, management, and land use obligations will develop a Groundwater Sustainability Plan (GSP) with stakeholder input for approval by the state.
- There will be less groundwater available in the future.
- Business and agricultural representatives should be engaged in the planning process expressing the impacts a reduced water supply will have on business vitality.
- New technologies should be explored to use water more efficiently.
- The California Chamber of Commerce continues to reach out and inform businesses of the importance to engage in the process.

**BACKGROUND**
Unlike other states, California did not have a system for regulating groundwater pumping until 2014 when the Sustainable Groundwater Management Act (SGMA) was signed into law. Before 2014, management generally had been in the form of plans developed by local agencies that focused primarily on information gathering. Overlying landowners, including agricultural users, domestic well owners, and other groundwater users, pumped without having to obtain government approvals.

SGMA lays out how the state will achieve sustainable groundwater basins. “Sustainable” generally means eliminating over-draft in the basins. Water seeps back into basins through winter floods, water from recharge basins, and rain. Some funding has been provided by the state General Fund, but the majority of funding is from a large water bond passed a few years ago. Looking at the amount of work needed to design a GSP to achieve basin sustainability and begin implementation, however, fees are going to be necessary.
Designing a GSP entails a tremendous amount of work, including research, surveying, monitoring, reporting, public meetings, development of best practices, finding and purchasing replacement water, evaluating new technologies, and working out groundwater rights. Each basin is unique. Plans need to be tailored to conditions in each over-drafted basin. A further complication is that there can be many local agencies overlying the basins that must agree on a GSP (see example on previous page).

SGMA does not mandate groundwater pumping restrictions or require the imposition of groundwater fees, but allows both. It’s hard to imagine the basins or sub-basins achieving sustainability without imposing some sort of pumping restrictions or limitations. Those subject to paying the fees would be farmers, private well owners, cities, counties, public water systems, local land use planning agencies, environmental groups, the federal government, or tribes, just to name a few.

In 2015, AB 1390 (Alejo; D-Salinas) and SB 226 (Pavley; D-Agoura Hills) went into effect, streamlining the adjudication process to reduce the burden of groundwater adjudications on both the courts and claimants without altering the law of groundwater rights and without disrupting the SGMA process.

Baseline adjudications occur when a party initiates a lawsuit against all other users in a groundwater basin so that the court can determine the groundwater rights of all parties overlying the basin and whether others may export water from the basin. Prior to the legislation, adjudications often took decades to resolve, which prompted the legislation because the basins must reach sustainability 20 years after the GSP is adopted. If the planning process becomes too burdensome or the local planning agencies cannot agree, it is likely that there will be a movement to adjudicate the basin.

**IMPACT ON BUSINESS**

Although SGMA does not establish, determine or confirm water rights, it does regulate the exercise of those rights. Reaching and maintaining groundwater sustainability will take many years and require less groundwater pumping, especially in drought or dry years. Business and agriculture will be adversely affected by reductions in water supplies. Planning ahead for new supplies or investments in new technologies should begin now.

**ANTICIPATED ACTIONS IN 2019**

Groundwater Sustainability Plans must be finalized and ready for submission to the Department of Water Resources in 2020 and 2024, depending on the severity of overdraft. Business and agricultural representatives need to be engaged with their local planning agencies to keep abreast of the plans, offer information on impacts to their companies, and share future strategies to help offset reductions.

**CALCHAMBER POSITION**

The CalChamber supports legislation to improve the Groundwater Sustainability Management Act to alleviate the impacts on farmers, businesses, and landowners. The CalChamber also supports research and development of new technologies and water management practices that promote water use efficiency, recycling and reuse.

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Long-Term Water Strategy
Bay Delta Conservation Plan aka California WaterFix Key to Reliability

The Bay Delta Conservation Plan (BDCP), often called the “WaterFix,” is a key part of the 2009 comprehensive water package that addresses California’s long-term water strategy. It is designed to achieve the co-equal goals of providing a reliable source of water and protecting, restoring and enhancing the Delta ecosystem while minimizing impacts to Delta communities and farms. It focuses on the Sacramento-San Joaquin Delta, where water is diverted to serve 27 million Californians and 3 million acres of farmland. The twin tunnels revamping how water will move through the Delta are very controversial.

SUMMARY
- Upgrade the state’s aging water delivery system by constructing new infrastructure to improve reliability and sustainability.
- One big earthquake near the Delta or a major levee break will leave 27 million Californians without an adequate source of water.
- Business relies on a consistent and available water supply at a reasonable cost for planning purposes.
- The proposed BDCP is protective of the Delta ecosystem and fish habitat.

BACKGROUND
The most controversial element of the WaterFix plan is the proposed construction of two tunnels that have the capacity to move 9,000 cubic feet per second of water, which is much less than an earlier suggested plan of 15,000 cubic feet per second. The tunnels will divert a portion of the Sacramento River’s flow to three intakes near Courtland, routing the water to existing diversion pumps close to Tracy. The goal is to avoid reverse flow in the estuary caused by current diversion pumps, which in the past have caused ecological troubles in the Delta. The new intakes will have modern fish screens better able to detour juvenile fish from the pumps. The proposed tunnels are routed to the east side of the valley to reduce impact to the Delta.

The BDCP/WaterFix plan is moving through the regulatory process, running a little behind schedule. Many changes have been introduced in response to thousands of letters and comments. During the summer of 2018, the State Water Resources Control Board (SWRCB) continued to hold hearings on critical elements of WaterFix. More hearings will undoubtedly be scheduled in 2019. The Department of Water Resources filed the required determination of consistency with the Delta Stewardship Council, which caused another flurry of appeals from environmental groups and Delta advocates.

Critics caution that the new intakes simply move the harm to endangered fish species to a different part of the estuary, damage the Delta as a community, and potentially jeopardize the agricultural economy. Proponents say the new intakes will protect endangered fish, including salmon and Delta smelt, by reducing the unnatural flows that pull young fish into the pumps, and will also improve water supply reliability in the face of climate change, earthquakes and potential levee failures that could leave 27 million people with very limited water supplies.

IMPACT ON BUSINESS
Many businesses plan for the long term. Part of the calculation to locate or expand in California depends on the cost of doing business. The cost, quality and availability of water is critical, especially for water-intensive industries. It’s well-known that California has a turbulent water history. The state’s chronic water shortage and numerous legal water rights challenges are often in the news.

The WaterFix is the state’s plan to upgrade outdated Sacramento-San Joaquin Delta infrastructure with secure water supplies while improving the Delta’s ecosystem. The plan is designed to make the most of big winter storms that produce...
more outflow than can be captured and used under current conditions. The excess flows could be routed through the new conveyance and stored for use in drier times, providing a reliable water source for businesses and residents.

**ANTICIPATED ACTIONS IN 2019**
The SWRCB will continue hearings on the current set of petitions and appeals. Since any progress requires many more state, local, and federal permits to be secured, business should be vigilant watching the SWRCB’s hearing and workshop announcements for opportunities to offer written comments and public testimony for the plan.

**CALCHAMBER POSITION**
The California Chamber of Commerce supports a comprehensive solution to the state’s chronic water shortage. WaterFix in conjunction with increased storage, new technologies, and water use efficiency techniques will help provide a reliable and consistent water supply.

The CalChamber supports the twin tunnels as a viable means of conveying water through the Delta. To assure a future robust economy, every avenue needs to be explored to further increase business’s access to affordable water.

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New Water Future
Do More with Less, Explore Alternative Sources Plus More Conservation

California is chronically short of water even in normal water years. Cyclical droughts and changing demands on water supplies led to government-imposed mandatory conservation measures on water districts’ urban water and agricultural water management plans. Combined with increased regulations that reduce the amount of water supplies available for human consumption, agriculture and business, it is imperative that alternative sources of water supplies be investigated and additional conservation efforts be made. The new water future is defined as doing more with less.

KEY POINTS
• During the drought from 2012 to 2016, the Governor imposed emergency mandatory conservation measures, now codified, that water districts had to meet.
• Subsequent legislation was passed requiring water districts to develop long-term mandatory conservation and drought plans.
• Environmental and conservation regulations diminish available water supplies for business, farming and human consumption.
• Alternative sources of water are a small but important part of the overall water portfolio for the state. Although more expensive, alternative sources are more reliable.
• Business must engage with state entities in the regulatory process to ensure proposed performance measures stay within the bounds of the Commercial Institutional and Industrial (CII) Task Force Report, developed by business, water and environmental representatives, to provide those sectors with information on water-saving technologies and applicable best management practices.

WATER REDUCTION
The persistent drought of 2012 through 2016 has changed the water landscape in California. The Governor imposed emergency mandatory conservation measures in 2015 to reduce potable urban water usage and imposed curtailments of farmers’ water rights. The goal was to reach a 25% reduction in use from 2013 levels for the duration of the emergency proclamation.

Business, agriculture, water districts, and residents stepped up and turned off the water spigot. Lawns turned brown, cars stayed dusty, new drought-resistant landscaping cropped up, businesses looked for innovative ways to reduce water usage, and farmers found ways to grow using less water.

The emergency order was lifted, although many of the conservation measures were later adopted into regulation. In
2018, the Legislature passed and the Governor signed two bills, SB 606 (Hertzberg; D-Van Nuys; Chapter 14) and AB 1668 (Friedman; D-Glendale; Chapter 15), to establish long-term improvements in water conservation and drought planning to adapt to a drier climate.

The new laws impose water use efficiency standards, data collection, monitoring requirements, enforcement guidelines, and penalties for urban and agricultural conservation plans developed by water districts. There was initial confusion regarding a 55 gallons per person, per day standard for indoor water use. That number was taken out of context by the media, and was meant only as guidance for water districts’ planning purposes. The recently enacted laws do not establish restrictions for individual water customers, but rather, will determine the overall water budgets that water agencies develop to meet conservation targets.

**ALTERNATIVE SOURCES OF WATER**

California’s history of cyclical droughts and long-term water shortages also has led to innovative strategies to save and reuse water as much as possible. Water flushed down drains or toilets once considered waste is now being cleaned and recycled for reuse. After studying projects undertaken by water-scarce countries, local water agencies are beginning to look at advanced treatment of wastewater as a possible source of drinking water.

Water recycling is usual for 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 use. The system takes highly treated wastewater that normally would have been 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.

San Diego approved an environmental impact report for the first phase of a recycling program in early 2018. It is a multi-year program that will provide one-third of San Diego’s water supply locally by 2035. The first phase is scheduled to come online in 2021 and will expand San Diego’s potable water production capacity by 30 million gallons per day, replacing the use of imported water. Eventually, the program will recycle up to 83 million gallons of wastewater per day into high-quality drinking water.

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, California in December 2015. The plant supplies 50 million gallons of drinking water to San Diego daily. Another large desalination plant designed by Poseidon should be coming online in Huntington Beach. It will produce 50 million gallons of drinking water to augment Orange County’s drinking water supplies.

These plants have taken close to 20 years to make it through the permitting process, including environmental impact reports. During the last drought, coastal areas began to seriously investigate the possibilities of siting desalination plants to augment diminishing water supplies.

Capturing stormwater runoff from impervious surfaces in urban and suburban areas like streets, sidewalks, rooftops, and parking lots 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, alternative water supplies are more expensive. Developing those supplies may be less expensive than building new surface or groundwater storage, but more expensive per unit of water produced. Along with the initial cost of construction, recycling and desalination processes can have significant ongoing energy costs. The benefit of alternative sources of water, however, is reliability.

**IMPACT ON BUSINESS**

A coalition of businesses was able to get language amended into AB 1668, a water management bill signed in 2018, to require the state to conduct necessary studies and investigations to develop recommendations on performance measures for commercial, institutional and industrial (CII) sectors. The bill requires public participation from stakeholders and other interested parties before adoption related to the following provisions:
• CII water use classification system.
• Minimum size thresholds for converting mixed CII meters to dedicated irrigation meters.
• Technologies that could be used in lieu of requiring dedicated irrigation meters.
• Best management practices, including water audits and water management plans for CII customers above a certain size, volume of use, or other threshold.

The recommendations must be consistent with the October 21, 2013 Department of Water Resources document developed by the CII Task Force, “Water Use Best Management Practices,” including the technical and financial feasibility recommendations, and shall support the economic productivity of CII sectors. The task force was convened to identify specific best management practices and water-saving actions to support the commercial, industrial and institutional sector’s efforts to improve water use efficiency and support California’s water supply sustainability.

Alternative water sources like recycled wastewater, urban stormwater, and desalination plants now provide 2% to 3% of the state’s urban and farm water supply. Recycled water use has more than doubled to 700,000 acre-feet a year. Desalination plants now generate 200,000 acre-feet of water a year.

Business and agriculture benefit from increased water supply reliability. Desalination and recycling plants provide a secure water supply during dry years and droughts. Although more expensive, reliability is an important component of business management decisions made for current practices and for long-term planning.

**ANTICIPATED ACTIONS IN 2019**

Regulations are being drafted and will continue into 2019. There will be several opportunities to participate and work with regulators to ensure that CII performance measures stay within the parameters of the CII Task Force report. The state is also developing regulations for storing recycled water in surface reservoirs, integrating recycled water directly into drinking water systems, and on-site wastewater or stormwater reuse programs. Business should comment on draft regulatory proposals and attend workshops to ensure reasonable and practical rules. New technology is developed, not by government, but by innovative research, often funded by business entrepreneurs.

**CALCHAMBER POSITION**

The California Chamber of Commerce supports a balanced approach to securing a safe and reliable supply of water for all Californians. Conservation, desalination, recycling, reuse, water use efficiency, conveyance and storage should be vigorously pursued to help increase water supply. Permit streamlining amongst the various agencies should be undertaken to expedite the approval process.

Companies must participate at every opportunity in the regulatory process to educate regulators about business practices—especially compliance requirements imposed by other state, local and federal entities. Business productivity and cost containment should be foremost considerations in business comments.

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Heat Illness Prevention in Indoor Workplaces

CalChamber-Led Coalition Urges Rational Policies

The California Division of Occupational Safety and Health (Cal/OSHA) is in the process of developing regulations to prevent heat illness in indoor workplaces. A California Chamber of Commerce-led coalition has submitted written comments and oral testimony at each step in the process encouraging Cal/OSHA to establish rational policies that are not unnecessarily burdensome on employers while minimizing the risk of heat illness to workers in indoor workplaces.

• In 2016 the Legislature passed SB 1167 (Mendoza; D-Artesia) directing Cal/OSHA to develop a regulation to prevent heat illness amongst indoor workers and submit it the Cal/OSHA Standards Board by January 1, 2019. Formal rulemaking was to follow.
  • In 2017 and 2018, Cal/OSHA held three stakeholder work group meetings, known as Advisory Committees, to review draft rules. Subsequently, three additional drafts were released to which stakeholders submitted written comments.
  • The most recent draft rule was circulated by Cal/OSHA to stakeholders October 24, 2018 with written comments submitted by the CalChamber-led coalition on November 20, 2018.
  • All drafts of the rule and public written comments are available at www.dir.ca.gov/dosh/doshreg/Heat-illness-prevention-indoors/.

BACKGROUND

In 2005, California became the first state—and still the only state in the nation—to adopt a heat illness prevention standard to protect outdoor workers (California Code of Regulations, Title 8, Section 3395). The outdoor heat illness prevention standard requires employers to provide outdoor workers with water, shade, rest breaks, and training. Known as the high heat provisions, additional requirements apply when the outdoor temperature exceeds 95 degrees.

In 2016, CalChamber and a large coalition of businesses opposed SB 1167, which sought to establish a regulation to prevent heat illness for indoor workers. The coalition maintained that a specific regulation is unnecessary because current regulations (Title 8, Section 3203 Illness and Injury Prevention Program) require employers to identify and address workplace hazards, including the risk of heat illness in indoor workplaces.

IMPACT ON BUSINESS

Cal/OSHA intends to classify all workplaces as either indoor or outdoor. The new regulation will apply to all indoor workplaces across all industries. However, some indoor workplaces will not be subject to the requirements if the temperatures are below the threshold, which as of the October 24, 2018 draft is in most cases 82 degrees. The rule generally follows the framework adopted for outdoor heat illness prevention Section 3395 (water, rest, shade, training, written plan), to minimize the burden of compliance on employers, particularly those with both indoor and outdoor workplaces.

CALCHAMBER’S PRIMARY CONCERNS WITH THE PROPOSED RULE ARE AS FOLLOWS

• Many employers have both outdoor and indoor workplaces, with some or all employees transitioning between both. Therefore, indoor and outdoor rules must be harmonized so that employers with both indoor and outdoor workplaces can comply by integrating the plans into one heat illness prevention plan.
  • The most recent proposal defines “indoor” essentially as a space under a ceiling and enclosed along its perimeter. This definition does not contemplate structures with chain link fences, guardrails or partial walls along perimeters. A clear and specific definition is required so that employers can identify a workplace as indoor or outdoor.
WORKPLACE SAFETY

- The manner in which vehicles and equipment will be handled (for example, forklifts operated inside a warehouse, or outside, and tractors with fully or partially enclosed cabs) could present significant challenges for employers. Pick-up and delivery operations where employees are in and out of vehicles that may not be air conditioned and may or may not be fully enclosed also require clear definition and direction for employers to properly apply the rules. Today, employers subject to the outdoor heat rule include their equipment operators and vehicle drivers in their outdoor program. Cal/OSHA has not yet proposed a workable policy.

- Engineering controls for heat exposure in indoor workplaces must not only be feasible, but reasonable for employers to implement while protecting employees.

- Record retention should conform to general record retention requirements of the Injury and Illness Prevention Program (IIPP)—one year. In Cal/OSHA’s most recent proposal, records of indoor temperature assessments would have to be retained for more than 30 years.

ANTICIPATED ACTION IN 2019

The statutory deadline for Cal/OSHA to submit a proposal to the Cal/OSHA Standards Board was January 1, 2019. Subsequent to the board’s receiving the proposal, many steps will be taken before formal rulemaking, which is anticipated to begin sometime in 2019. As it has throughout the pre-rulemaking process, the CalChamber-led coalition will continue to provide thoughtful, rational comments and regulatory language to Cal/OSHA to ensure clarity that will lead to effective compliance by employers while improving employee safety.

CALCHAMBER POSITION

California employers take the safety and health of their employees very seriously. CalChamber supports workplace safety policies that ensure new rules are feasible, based on sound science and assist the regulated community in its compliance efforts while protecting employees. CalChamber will continue to advocate for sound policy regarding heat illness prevention for indoor workplaces, and continue to oppose policies that are unnecessarily complex and burdensome for employers.

To participate in CalChamber’s stakeholder working group, please send an email of interest with your contact information to heatillness@calchamber.com.

Article written by Marti Fisher, CalChamber policy advocate, before her retirement at the beginning of 2019.

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Medical Marijuana in the Workplace
Zero-Tolerance Drug Use Policies Help Maintain Safety

In California and in many states across the country, marijuana is now legal for medical purposes and several states have legalized marijuana for adult recreational use. This changing legal landscape has left employers wondering about their rights and responsibilities regarding drug testing for marijuana. Although employers in California maintain the right to drug test employees for marijuana and other drugs in certain circumstances—including pre-employment—medical marijuana patient advocates are working hard to change that. Efforts have been afoot to prohibit employers from declining to hire or terminate medical marijuana users, as well as to mandate workplace polices that allow the use of medical marijuana on an employee’s own time.

RIGHT TO A DRUG-FREE WORKPLACE
- Under current law, generally an employer has the right to maintain a drug-free workplace through polices and by drug testing for pre-employment, suspicion of impairment and post-accident.
- California’s new laws regulating medical use and recreational use explicitly maintain those employer rights.
- Requiring employers to hire medical marijuana users undermines the employer’s ability to provide a safe and drug-free workplace. An impaired employee puts everyone at risk of injury.
- The California Chamber of Commerce did not oppose legislation or regulation establishing the legal framework for medical marijuana. CalChamber also did not oppose the initiative in 2016 (Proposition 64) legalizing adult recreational use specifically because of the inclusion of language to protect these employer’s rights.
  - Marijuana remains illegal under federal law.

DRUG TESTING
Impaired workers undermine workplace safety, quality and productivity. Employers are concerned that medical marijuana users could be impaired workers, which puts the safety of the impaired employee, other employees, and members of the public at risk. An uptick in on-the-job injuries and vehicle accidents will result in increased workers’ compensation and vehicle insurance premiums.

Employers and employees across diverse industries express concerns regarding the ability of coworkers to fulfill their duties if they are impaired. In many instances, employees are concerned for their own safety when working alongside impaired employees. Employers that decline to employ applicants who test positive for drugs lower the odds of workers being impaired at work.
  - There currently is no objective and legally recognized test an employer can administer or have administered by a testing company to confirm impairment.
  - Marijuana can remain in the system and show up in a drug test for up to 45 days following use in regular users.
  - There is no method to determine if an individual is impaired at the time the drug is found in that individual’s system or if it was consumed at an earlier time and the individual is no longer impaired.
  - Therefore, zero tolerance is the only policy that ensures workers are not impaired on the job.

PAST ACTION
- **2018**: AB 2069 (Bonta; D-Oakland) would have prohibited employers from terminating, disciplining or refusing to hire persons who use marijuana and possess a valid state identification card as a medical marijuana patient. Although AB 2069 would have allowed an employer to discipline or terminate an employee...
impaired on the job, this provision could not be implemented because impairment cannot be determined by a clinical test. CalChamber led a large business coalition in opposition to the bill, which did not move forward from the Assembly Appropriations Committee.

- 2016: California voters approved adult recreational use of marijuana
- 2011: SB 129 (Leno; D-San Francisco) would have created a protected classification for employees who use medical marijuana, thereby undermining an employer’s ability to maintain a safe and drug-free workplace. It would have prohibited employers from terminating, disciplining, or refusing to hire qualified medical marijuana patients. The bill failed to advance from the Senate floor.
- 2010: Voters overwhelmingly rejected Proposition 19, which would have legalized recreational marijuana use and provided medical marijuana users with similar protections as SB 129.
- 2008: AB 2279 (Leno; D-San Francisco) would have prohibited an employer from discriminating against a person in hiring, termination, or any term or condition of employment or otherwise penalizing a person, if the discrimination is based upon the person’s status as a qualified patient or a positive drug test for marijuana. The bill also would have authorized a person who has suffered discrimination in violation of the bill to bring a civil cause of action. AB 2279 was vetoed by Governor Arnold Schwarzenegger.

Also in 2008, the California Supreme Court held that the Compassionate Use Act of 1996, which allowed Californians to use marijuana for medical purposes, did not create safeguards for such individuals in the workplace. Similar court cases have been decided in favor of employers maintaining the right to a drug-free workplace despite legal marijuana use for medical purposes.

CALCHAMBER POSITION

The CalChamber continues to support the right of an employer to maintain a safe workplace by enforcing zero-tolerance drug use policies through drug testing, including pre-employment testing.

The CalChamber opposes legislation that incentivizes or creates new employment litigation, or adds new protected classes or activities (such as marijuana use) to the Labor Code, Fair Employment and Housing Act, or Civil Code.

As such, the CalChamber opposes legislation that creates an opportunity for litigation or undermines employers’ ability to maintain a safe and drug-free work environment.

Article written by Marti Fisher, CalChamber policy advocate, before her retirement at the beginning of 2019.

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January 2019
Reacting to #MeToo Movement

Time Needed to Assess Extensive New Laws of 2018

Spurred by the #MeToo and #WeSaidEnough movements, 2018 was a historic year for sexual harassment and discrimination prevention legislation. The phrase “Me Too” was coined originally by civil rights activist Tarana Burke in 2006 to help victims of sexual harassment. In 2017, The New York Times and The New Yorker published articles accusing Hollywood film producer Harvey Weinstein of sexual harassment, which spawned the #MeToo movement. The phrase went viral as victims used the hashtag “#MeToo” to share online their personal accounts of sexual harassment, discrimination and sexual assault. The movement essentially created a cultural reckoning and was the catalyst for Bill Cosby's jail sentence at his sexual assault retrial and Al Franken's resignation, just to name a few. However, men in Hollywood were not the only ones ousted from positions of power.

In Sacramento, three legislators resigned from their positions after being credibly accused of sexual harassment. This occurred not only because of the #MeToo movement, but also because of Sacramento’s own movement—#WeSaidEnough. The #WeSaidEnough movement began in October 2017 when 147 women, including a bipartisan group of elected officials, legislative staffers and lobbyists, signed an open letter stating that they had been sexually harassed while working in the State Capitol.

The California Legislature responded by holding 12 legislative hearings about the current state of sexual harassment prevention in California and proposing a slew of sexual harassment-related bills. In September 2018, Governor Edmund G. Brown Jr. signed a number of these bills, most of which are targeted at the private sector.

• Defamation Protection for Employers and Victims: Employers and victims of sexual harassment will now be better protected from liability for defamation because of the California Chamber of Commerce-sponsored AB 2770 (Irwin; D-Thousand Oaks), which codifies case law to ensure victims of sexual harassment and their employers are not sued for defamation by the alleged harasser when a complaint of sexual harassment is made.

• Settlement Agreement Confidentiality Clauses Limited: SB 820 (Leyva; D-Chino) expands the types of cases in which so-called “secret settlements” are restricted. The law prohibits any settlement agreement in a case where sexual harassment, assault or discrimination has been alleged from including a confidentiality provision that prohibits disclosure of factual information regarding the claim, except with regard to the claimant’s identity.

• Sexual Harassment Claims and Litigation Expanded: SB 1300 (Jackson; D-Santa Barbara) was the most expansive of the sexual harassment-related bills, making a number of changes to California’s Fair Employment and Housing Act (FEHA) involving workplace harassment claims. The law prohibits employers from requiring employees to sign (as a condition of employment, raise, or bonus) a release of FEHA claims or rights or sign a document prohibiting disclosure of information about unlawful acts in the workplace, including nondisparagement agreements.

Additionally, SB 1300 expands employer liability for unlawful harassment by nonemployees and provides that a prevailing defendant is prohibited from an award of attorney fees and costs unless specific factors are proven. Under the new law, employers are permitted, but not required, to provide bystander intervention training.

Finally, the Legislature used SB 1300 as a vehicle to make a number of declarations, approvals and disapprovals of current legal standards and decisions related to sexual harassment claims. Keep in mind, the Legislature’s declarations and expressions of intent, while codified, do not reflect a change in the related provisions of statutory law.
• Sexual Harassment Training Expanded: SB 1343 (Mitchell; D-Los Angeles) extends California's sexual harassment training requirement by requiring all employers with five or more employees to provide two hours of sexual harassment training to supervisors and one hour of training to all other employees within six months of hire or promotion, and every two years after that. Temporary and seasonal employees must be trained within 30 days of hire or 100 hours worked, whichever is earlier.

• Right to Testify Waiver Precluded: Under this new law, AB 3109 (M. Stone; D-Scotts Valley), any provision in a contract or settlement agreement will be unenforceable if it prohibits a party to the contract from testifying about criminal conduct or sexual harassment in an administrative, legislative or judicial proceeding.

• Sexual Harassment Educational Materials: Talent Agencies: Required: Per AB 2338 (Aguiar-Curry; D-Winters), talent agencies will need to provide their adult artists with educational materials on sexual harassment prevention, retaliation and reporting resources, as well as on nutrition and eating disorders. Artists who are between the ages of 14 and 17 years, along with their parent or legal guardian, must complete sexual harassment prevention, retaliation and reporting training before they are issued a work permit.

• Sexual Harassment Professional Relationship: Expanded: Under current law, an individual may be liable for sexual harassment that occurs in the course of a business, service or professional relationship where the client or customer cannot easily end the relationship. See Civil Code Section 51.9. Examples of these professionals currently include doctors, attorneys, bankers and accountants, among others.

SB 224 (Jackson; D-Santa Barbara) extends this list of examples to elected officials, lobbyists, investors, directors, and producers. In addition, it expands liability to anyone who holds himself/herself out as being able to help establish a business, service or professional relationship, whether with that individual or a third party. Lastly, SB 224 eliminates the requirement to show that the relationship could not be terminated easily.

All these bills were signed into law in 2018. With all of these new laws going into effect January 1, 2019, sexual harassment is sure to remain a serious concern for employers, not only for employee morale, but also because of the newly expanded liability associated with these laws.

CALCHAMBER POSITION
Because 2018 was such an expansive year for the enactment of sexual harassment and discrimination prevention-related laws, any additional attempts to create new legislation regarding sexual harassment and discrimination prevention would be premature. Employers and employees need time to understand and implement these additional, extensive requirements to determine if additional requirements are needed.

Moreover, the Fair Employment and Housing Council needs time to update and implement regulations in order to provide further guidance to the employer community because the ambiguities in some of these newly enacted laws have employers uncertain about compliance.
Workplace Violence Prevention
Low-Risk Industries Should Not Be Over-Regulated

The California Division of Occupational Safety and Health (Cal/OSHA) is in the process of developing regulations to prevent workplace violence. A California Chamber of Commerce-led coalition submitted written comments on draft rules proposed by Cal/OSHA and provided oral testimony and comments at public stakeholder meetings.

• In 2014, two health care worker unions asked the Cal/OSHA Standards Board to adopt a regulation to provide health care workers with specific protections against workplace violence. Later that same year, the Governor signed SB 1299, to require the board to adopt regulations to protect health care workers from workplace violence.
• The first-in-the-nation rule to protect health care workers against workplace violence was adopted by the Cal/OSHA Standards Board and went into effect in April 2017.
• In response to multiple requests from other industries, Cal/OSHA began work in 2017 on a rule to prevent workplace violence in industries other than health care.
• All drafts of the rule and public written comments are available at www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/.

ACTION TO DATE AND ANTICIPATED ACTION
In January 2017, Cal/OSHA began work on the workplace violence prevention rule for all industries by holding listening sessions with stakeholders. With no proposed rule to discuss, stakeholders expressed their thoughts and concerns on what a new regulation could look like and how workplace violence might be addressed in the workplace. Not until January 2018 did Cal/OSHA convene a stakeholder work group to present and discuss a draft proposed rule. A subsequent draft was released to stakeholders in October 2018, with written comments from stakeholders submitted to Cal/OSHA in December 2018.

It is anticipated that further action will occur in mid- to late 2019. The next step is likely to be another draft for stakeholder comment prior to initiating formal rulemaking proceedings.

IMPACT ON BUSINESS
Employers are now subject to many regulations, in addition to occupational safety and health rules. This proposed new rule must be considered in the context of the complete scope of many Cal/OSHA regulatory requirements that employers currently face.

Of primary concern is the complexity and difficulty presented by attempting to draft one regulation to fit all industries, covering all employers of all sizes with varying exposure to the risk of workplace violence across the state. The reality of the ability of all employers to evaluate and control for all potential scenarios is daunting. Each place of employment presents a unique set of circumstances that may or may not include a realistic risk of workplace violence.

The development of these regulations is in its infancy, so the specific impact cannot be assessed. However, the issues that CalChamber is advocating for and against are fairly clear:
• Provide clear guidelines that employers can easily understand so that they are able to comply.
• Do not over-regulate employers with no or low risk.
• The program should follow the format that employers are familiar with in the Illness and Injury Prevention Program (IIPP), California Code of Regulations Title 8, Section 3203. All employers are required to have an IIPP.
• Privacy and confidentiality of victims and the accused must be maintained to the extent possible.
• Record keeping and record retention should be rational and not unnecessarily burdensome to employers.
• Online training should be expressly allowed.
• Cal/OSHA must develop industry-specific model programs for employers upon adoption of the new regulation.
CALCHAMBER POSITION

California employers take the safety and health of their employees very seriously. CalChamber supports workplace safety policies that ensure new rules are feasible, based on sound science and assist the regulated community in its compliance efforts while protecting employees.

New requirements to prevent workplace violence should be meaningful and not unnecessarily burdensome, complex or costly. Any new requirements should enhance worker safety and be drafted so that employers can comply. Low-risk industries should not be subject to the same requirements as high-risk industries.

The CalChamber will continue to advocate for sound policy regarding workplace violence prevention, and continue to oppose policies that are unnecessarily complex and burdensome for employers.

Article written by Marti Fisher, CalChamber policy advocate, before her retirement at the beginning of 2019.

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January 2019
Workers’ Compensation
Fair Apportionment of Permanent Disability Helps Keep Costs Down

One of the ongoing debates is “apportionment” and how this affects the benefits awarded for a workers’ compensation injury. Multiple bills on this issue in the past have failed, primarily due to Governor Edmund G. Brown Jr.’s veto. With the new administration, it is likely similar bills will be introduced and pushed this legislative session.

BACKGROUND
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 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.

The system is not without controversy, however, as employers and employees often disagree about numerous issues related to workers’ compensation, including course and scope of employment, future medical, and what constitutes a reasonable accommodation.

WHAT IS APPORTIONMENT?
Some workers may suffer multiple workplace injuries over the course of a career. The California workers’ compensation system was designed to cure and relieve injuries that occur at work. But workers’ compensation law holds employers liable only for the portion of the employee’s disability that was caused directly by the current work-related injury. A physician must determine the approximate percentage of the disability caused by the current work-related injury and that percentage determines the amount for which the current employer is liable. This is known as apportionment.

Notably, apportionment applies only to liability for permanent disability. Temporary disability benefits, medical costs and medical care cannot be apportioned to prior injuries or conditions to lessen the employer’s liability for these benefits. Thus, regardless of the apportionment for the permanent disability award, the employee still will receive medical care so long as the injury arises out of or occurs during the course and scope of employment.

Apportionment of permanent disability claims has been part of the system since the Workmen’s Compensation Insurance and Safety Act was adopted in 1917. Courts have long applied the principle. From 1932 until 1968, apportionment was essentially the same as it currently is. However, from 1968 until 2004, apportionment of a permanent disability was essentially nonexistent. See Brodie v. Workers’ Compensation Appeals Board (2007) 40 Cal. 4th 1313.

During this time, the courts rejected apportionment of a single disability with multiple causes, holding that there was no valid basis for apportionment to pre-existing conditions or contributing causes if that contributing factor was not labor disabling in and of itself. See Raymond F. Correio, Apportionment: Case Law Update Focusing on Themes, Trends, and Problem Areas (January 2017 Edition), as published by the Department of Industrial Relations.

This all changed in 2004 when Governor Arnold Schwarzenegger signed into law SB 899 (Poochigian; R-Fresno), supported by the California Chamber of Commerce. SB 899 reformed numerous Labor Code provisions, including Labor Code Section 4663 regulating apportionment. The changes made to Labor Code Section 4663 once again permitted apportionment of permanent disability, re-establishing the precedent set during the prior 36-year period from 1932 through 1968.

Per SB 899, Labor Code Section 4663 requires doctors who
prepare a report addressing the issue of permanent disability to include an apportionment determination. The underlying intent of the legislation was that the employer would be charged only for liability of permanent disability that was caused directly by the industrial injury. Benefits such as medical care and temporary disability still are payable without apportionment.

The California Supreme Court issued a decision in Brodie, which described the impact of SB 899. See Brodie v. Workers’ Compensation Appeals Board (2007) 40 Cal.4th 1313. The court summarized the implication of SB 899 and Labor Code Section 4663 by stating, “…the new approach to apportionment is to look at the current disability and parcel out its causative sources, nonindustrial, prior industrial, current industrial, and decide the amount directly caused by the current industrial source. This approach requires thorough consideration of past injuries, not disregard of them.” Brodie 1328.

WHY IS APPORTIONMENT LITIGATED?
The Labor Code requires physicians to utilize the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition). See Labor Code Section 4660.1. The courts also have provided guidelines requiring that a medical opinion must: 1) be framed in terms of reasonable medical probability; 2) not be speculative; 3) be based on pertinent facts and on an adequate examination and history; 4) set forth reasoning in support of its conclusions; and 5) explain how and why the apportionable factor is responsible for the disability. See Escobedo v. Marshalls (2005) 70 Cal. Comp. Cases 604.

What these guidelines mean is that, if a doctor opines that approximately 60% of an employee’s lumbar spine disability is caused directly by the industrial injury, the doctor must thoroughly explain how and why the disability is causally related to the industrial injury and how and why it is responsible for approximately 60% of the disability. And, if a doctor opines that the other 40% of an employee’s lumbar spine disability is caused by a non-work-related issue, such as pre-existing degenerative changes, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for 40% of the disability.

Thus, determining what percentage of an injury is or is not work related is highly dependent on the judgment of an evaluating physician, which can result in disputes. Although disagreement over a medical opinion is not a new concept, in workers’ compensation, it creates vast amounts of litigation because workers, employers and Workers’ Compensation Appeals Board judges do not always think that physicians properly apportion the permanent disability based on the AMA Guides and legal precedent.

Despite the controversy that arises from the opinions of the evaluating physician, apportionment remains an essential part of the workers’ compensation system because it ensures that employers are not held liable for a permanent disability caused by an injury that is unrelated to the work or which occurred at another place of employment.

In summary, apportionment “comports with logic, common sense, and medicine in that with respect to any disability or impairment there may be multiple contributing causes and not one cause.” See Raymond F. Correio, Apportionment: Case Law Update Focusing on Themes, Trends, and Problem Areas (January 2017 Edition), as published by the Department of Industrial Relations.

APPORTIONMENT AND THE LEGISLATURE
Despite the essential role of apportionment, over the last several years, there have been multiple attempts by the Legislature to challenge the principles of apportionment. Most of these pieces of proposed legislation undermine the employer’s use of apportionment when determining liability. In addition, they would increase litigation and raise costs for employers while not providing additional protections to employees that are not already afforded under the law. This is not an exhaustive list, but a compilation of some of the more significant pieces of legislation attempted over the last several years, which include the following:

• SB 1115 (Migden; D-San Francisco) in 2008 and AB 1155 (Alejo; D-Salinas) in 2011 both sought to prohibit discrimination in the workers’ compensation system based on protected classes. Governor Brown vetoed both bills. In his veto message to AB 1155, Governor Brown stated: “The courts already recognize that apportioning a disability award to any of these classifications is antithetical to our state’s non-discrimination policies... This bill would not change existing law as interpreted by the courts to date. This bill would, however, generate new litigation over questions of whether it is intended to change existing interpretations.”

• AB 305 (Gonzalez; D-San Diego) in 2015, AB 1643 (Gonzalez; D-San Diego) in 2016 and AB 570 (Gonzalez Fletcher; D-San Diego) in 2017 attempted to prohibit apportionment for certain conditions, thereby expanding workers’ compensation beyond industrial injuries and requiring employers to compensate some injuries that occurred outside the workplace by eliminating apportionment for the aforementioned conditions. This directly undermines the purpose of
apportionment—preventing employers from paying for injuries that did not occur during the course and scope of employment. All three bills were vetoed by Governor Brown.

- In 2018, **AB 479 (Gonzalez Fletcher; D-San Diego)** would have required that, if an employee sustains an injury arising out of and in the course of employment resulting in breast cancer, specified impairments had to be considered, including the presence or absence of the organ, skin disfigurement, and pain, among other things. The bill also would have prohibited child-bearing age from being a determining factor when determining impairment for breast cancer. This is a concern for the workers’ compensation community because it creates systemic instability, which Governor Brown addressed in his veto message.
  
  In vetoing AB 479, Governor Brown noted, “This bill and its predecessors have repeatedly singled out specific conditions and proposed a special set of rules that apply to them. This would result in an even more complex workers’ compensation system that would essentially be ‘disease by statute,’ which would ultimately burden injured workers seeking quick resolution to their claims.”

  The Governor did, however, direct the Division of Workers’ Compensation Administrative Director to contract with an outside, independent research organization to undertake an evidenced-based evaluation of the issue.

- Finally, **SB 899 (Pan; D-Sacramento)** in 2018 would have excluded race, gender, and national origin as factors that can be used in an apportionment determination. The purpose of SB 899 was to essentially codify Governor Brown’s prior veto messages addressing apportionment based on protected classes where he stated, “The courts already recognize that apportioning a disability award to any of these classifications is antithetical to our state’s non-discrimination policies.”

  There is concern that the sentiments expressed by Governor Brown have been challenged by the recent court decision in *City of Jackson v. Workers’ Compensation Appeals Board* (2017) 11 Cal. App.5th 109. However, the Governor still vetoed SB 899.

  Given the change in gubernatorial leadership and the current partisan makeup of both legislative houses, there is no doubt that apportionment will be the subject of many future pieces of legislation.

**CALCHAMBER POSITION**

Apportionment is essential to ensure that employers are not held liable for a permanent disability award that is not related to the work or which occurred at another place of employment. Apportionment is simply a fairness standard that helps keep some of the workers’ compensation costs down. The ultimate goal is a balanced workers’ compensation system that efficiently provides timely and fair benefits to injured workers and minimizes administrative and frictional costs to employers.

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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 92% 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 them 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 31 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 implementation of 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.

Removing unnecessary 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.
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**PRESIDENT AND CHIEF EXECUTIVE OFFICER**

Allan Zaremberg is president and chief executive officer of the California Chamber of Commerce. He took over the top staff position in 1998 after six years as executive vice president and head of the CalChamber’s legislative advocacy program.

Enhancing the state’s economic growth has been the goal of Zaremberg’s activities. He has headed statewide ballot campaigns to close the legal loophole that permitted shakedown lawsuits, to assure adequate funding for transportation infrastructure, and to oppose anti-business proposals that would have raised the cost of health care, electricity and public works. He led negotiations culminating in comprehensive reforms of workers’ compensation, endangered species laws and other key issues.

He oversees the CalChamber Business Services Division, which provides employment law expertise through print and digital handbooks, seminars/webinars and other products, including HRCalifonia, a continually updated website.

Before joining the CalChamber, Zaremberg served as chief legislative advisor to and advocate for Governors George Deukmejian and Pete Wilson.

Zaremberg served as a captain and flight navigator on a KC-135 jet air refueling tanker while in the U.S. Air Force from 1970 to 1975.

He holds a B.S. in economics from Penn State University and a J.D. from the McGeorge School of Law, University of the Pacific, where he was a member of the Law Journal.

**EXECUTIVE VICE PRESIDENT**

Jennifer Barrera oversees the development and implementation of policy and strategy as senior vice president and represents the California Chamber of Commerce on legal reform issues.

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 as of January 1, 2019.

In addition, she advises the business compliance activities of the CalChamber on interpreting changes in employment law.

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.

**Staff to:** Legal Reform and Protection Committee
POLICY ADVOCATE

Sarah R. Boot joined the California Chamber of Commerce staff in March 2018 as a policy advocate specializing in privacy/technology, telecommunications, economic development, and taxation issues.

From August 2015 until joining CalChamber, Boot was a top adviser to now-Senate President Pro Tem Toni G. Atkins. Boot served as the senator’s legislative director and also acted as lead staffer on legal, privacy, telecommunications, business, and technology issues, among many others.

Boot was principal consultant to Atkins during her time as Assembly Speaker and Speaker Emeritus, spearheading a working group to draft multiple human trafficking bills and acting as lead staffer on all women-focused legislation, as well as liaison to the Legislative Women’s Caucus.

Before working for Atkins, Boot practiced law in San Diego for seven years. Boot served for three years as an assistant U.S. attorney for the General Crimes Unit of the U.S. Attorney’s Office, Southern District of California. She prosecuted a broad array of federal crimes, including bank robbery, sex trafficking of minors, and narcotics trafficking.

In private practice, Boot spent three years litigating cases for Cooley LLP, an AmLaw Top 50 international law firm. There, she focused on complex civil and intellectual property litigation, primarily representing internet and technology companies. She also worked for Blood Hurst & O’Reardon LLP, litigating consumer class action lawsuits in state and federal courts nationwide.

Boot has significant political campaign experience. She has been a party-endorsed candidate for the San Diego City Council. Before law school, Boot managed fundraising for the campaign of a Washington D.C. councilman at large and served as a regional field director for a New Hampshire presidential primary campaign.

Boot earned her J.D. from the University of Michigan Law School, where she was articles editor for the Michigan Telecommunications and Technology Law Review. She graduated from the University of Michigan with an honors degree in political science and a minor in Spanish. As an undergraduate, Boot was elected student body president, representing more than 38,000 students.

Staff to: Privacy and Cybersecurity Committee, Taxation Committee, Energy and Telecommunications Committee

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 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 California Environmental Quality Act (CEQA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) related matters in litigation.

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: Chemical Policy Committee, Environmental Policy Committee
ABOUT CALCHAMBER

POLICY ADVOCATE

Laura E. Curtis joined the California Chamber of Commerce in December 2017 as a policy advocate. She specializes in labor and employment, workers’ compensation, and elections/fair political practices issues.

Before joining the CalChamber policy team, she was a labor and employment attorney for The Mitzel Group, LLP in San Francisco, counseling clients on subjects including wage and hour disputes, harassment, discrimination, retaliation, Private Attorneys General Act (PAGA) claims, and administrative agency compliance.

She previously served as a labor and employment attorney at Littler Mendelson, PC, in Walnut Creek, representing employers in state and federal court on a wide range of employment law matters. She also represented applicants in all aspects of workers’ compensation litigation as a workers’ compensation attorney at Mastagni Holstedt, APC in Sacramento.

Before starting her legal career, Curtis was an outside sales representative for SimplexGrinnell-TYCO, provider of fire and life safety services, directing sales and service teams and leading product training in the company’s San Francisco region. She also was an account coordinator at Binger Communications, Inc. of San Diego, and a congressional intern in the Washington, D.C. office of Congressman Robert T. Matsui.

Curtis holds a B.A. in communications with a minor in political science from the University of California, San Diego. She earned a J.D. from Santa Clara University School of Law, where she worked on the International Law Journal.

Staff to: Labor and Employment Committee, Workers’ Compensation Committee

POLICY ADVOCATE

Karen Sarkissian joined the California Chamber of Commerce in July 2016 as a policy advocate on health care and education issues.

She was an associate and then partner at a nationally recognized firm of successful trial attorneys in Sacramento for more than 12 years. She litigated and resolved cases ranging from medical, dental and legal malpractice, to premises liability, employment law, automobile accidents, elder abuse, sexual abuse and civil rights. Sarkissian and a colleague tried and won the first expedited jury trial in Sacramento County in March 2011.

Fluent in Armenian, Sarkissian was commissioned by the Sacramento Superior Court to translate thousands of legal words, phrases, terms and statutes for the English/Armenian Legal Glossary published by the court in 2005. In addition to being used in California, the glossary is in use in Washington, Minnesota, Wisconsin, Hawaii and Colorado.

Sarkissian holds dual B.A.s in political science and rhetoric and communication from the University of California, Davis. She earned her J.D. from the McGeorge School of Law, University of the Pacific, where she was an author and editor of the McGeorge Law Review. While at McGeorge, she received the Witkin Award of Academic Excellence in Government Lawyering.

Staff to: Education Committee, Health Care Policy Committee
POLICY ADVOCATE

Leah B. Silverthorn joined the CalChamber policy team in May 2018 as a policy advocate. She specializes in climate change, air quality, energy, environmental justice, marijuana/cannabis, and transportation and infrastructure issues.

She brought to the CalChamber more than decade of legal experience in environmental, energy, and land use matters. Immediately before coming to CalChamber, she was the principal owner of Silverthorn Legal, based in Seattle, Washington. She focused on environmental litigation, contaminated property redevelopment, and environmental cost recovery and defense.

Silverthorn has represented Fortune 500 companies and property owners against claims by U.S., Washington, Oregon, and California regional environmental entities.

She also handled cases dealing with environmental recovery claims, environmental insurance, and toxic tort laws at Wooden McLaughlin in Indianapolis, Indiana; and at Hunsucker Goodstein, with offices in California, Washington D.C., Colorado, and Seattle. Her clients at Wooden McLaughlin included large commercial and multi-family real estate developers, oil and gas companies, and insurance carriers, as well as small farms and restaurants.

Before entering private practice, Silverthorn was a staff attorney at the Indiana Department of Environmental Management Office of Legal Counsel.

She is an honors graduate of Indiana University-Bloomington, with a B.S. in public affairs and environmental management. She earned her J.D., with honors, at the Indiana University McKinney School of Law, where she was articles editor for the Indiana International and Comparative Law Review and a member of the Moot Court Board.

Staff to: Environmental Policy Committee, Transportation and Infrastructure Committee, Energy and Telecommunications Committee

POLICY ADVOCATE

Valerie Nera specializes in advocacy on agriculture, water, water storage, resources, crime, and banking and finance issues for the California Chamber of Commerce.

Priority issues include water supply and conveyance, agricultural land use, balanced resource development policies for timber, protection of private property rights, federal and state endangered species laws, banking rules, graffiti, and organized retail theft.

Nera joined the CalChamber staff in 1978 as a legislative assistant on agricultural issues. She also has lobbied air, environmental, telecommunications and privacy issues for the CalChamber.

She earned a B.A. with honors from the University of California, Berkeley, and a J.D. from the McGeorge School of Law, University of the Pacific.

Staff to: Water Resources Committee

EXECUTIVE VICE PRESIDENT, CORPORATE AFFAIRS

Dave Kilby, executive vice president, corporate affairs, joined the California Chamber of Commerce staff in December 1988 after more than 11 years in local chamber of commerce management.

In addition to working with CalChamber major members, he serves as CalChamber corporate secretary and coordinates Board relations. Kilby also serves as president/chief executive officer of the Western Association of Chamber Executives.

During his first 11 years at CalChamber, Kilby served as the CalChamber’s lobbyist on economic development, land use and small business issues.

Over the years, he has coordinated local chamber relations, grassroots legislative action efforts, the CalChamber’s weekly legislative conference call and the annual business legislative summit.

Kilby is a member of the U.S. Chamber’s Committee of 100 and in 2011 the American Chamber of Commerce Executives named him to its “People Who Shape People” influential leaders list.

He has a B.A. in political science from California State University, Fresno.

Staff to: Economic Advisory Council
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 the CalChamber’s 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 also serves as 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 spent seven years as 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 University of California, Los Angeles 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

EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL

Erika Frank, executive vice president of legal affairs, joined the CalChamber in April 2004 as a policy advocate and began serving as general counsel shortly thereafter, leveraging her 10 years of combined legal, governmental and legislative experience. She was named vice president of legal affairs in 2009 and executive vice president at the start of 2017.

Before assuming full-time general counsel responsibilities in late 2005, Frank also lobbied the legislative and executive branches on taxation, civil litigation and lawsuit abuse issues.

Frank leads CalChamber’s Legal Affairs Department, which participates in court cases having a broad impact on California’s economy and business climate—including workers’ compensation reform, labor and employment, taxation, litigation reform and commercial free speech.

As CalChamber’s subject matter expert on California and federal employment law, she oversees and contributes to CalChamber’s labor law and human resources compliance products, including HRCalifornia; co-produces and presents webinars and seminars; and heads the Labor Law Helpline.

Through their active involvement on the front lines of California’s legal and labor law compliance scene, Frank and her team are first to know when and how changes in law affect employers. She uses her employment law expertise to develop and facilitate training courses for HR professionals, and is a sought-after speaker at industry events.

Frank holds a B.A. in political science from the University of California, Santa Barbara, and received her J.D. from the McGeorge School of Law, University of the Pacific.
VICE PRESIDENT, COMMUNICATIONS

Ann Amioka has been a communications specialist at the California Chamber of Commerce since 1980. Since 1982, she has been executive 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, MEDIA RELATIONS AND EXTERNAL AFFAIRS

Denise Davis is the chief liaison with the news media for the California Chamber of Commerce. As vice president for media relations and external affairs, she oversees communications strategy and outreach, 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.

VICE PRESIDENT, LOCAL CHAMBER RELATIONS

Russell Lahodny joined the California Chamber of Commerce as vice president of local chamber relations in 2014. He serves as an information resource for and CalChamber liaison with local chambers of commerce.

From 2010 until joining the CalChamber staff, Lahodny was senior vice president, communications for the Anaheim Chamber of Commerce. His role was to maintain the quality and consistency of the chamber’s messaging to its members and the business community. He created and oversaw all Anaheim Chamber communication tools, including a member newspaper, weekly e-newsletters, press releases, marketing materials, and website design. He also oversaw the Anaheim Chamber’s legislative actions and coordinated monthly meetings featuring local elected officials.

Before relocating to Anaheim, Lahodny was vice president of communications at the Irvine Chamber of Commerce. During his seven years in Irvine, he helped the chamber earn 15 communications awards from the Western Association of Chamber Executives.

In his CalChamber position, Lahodny also serves as vice president of the association.

Lahodny received his B.A. in communications with an emphasis in photojournalism from California State University, Fullerton, where he served as photo editor for the college newspaper, The Daily Titan.

VICE PRESIDENT, CORPORATE RELATIONS

Drew Savage was named vice president of corporate relations at the beginning of 2001, a position 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 California Chamber of Commerce international activities for nearly four decades.

She serves on the Export Council (appointed by the U.S. Secretary of Commerce), the National Export Council Steering Committee, the U.S. Chamber of Commerce International Policy Committee, the California International Relations Foundation, and the Chile-California Council.

The CalChamber 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 sponsors and participates in trade, investment and other international events. It also assists members with general export and import activities, maintains www.calchamber.com.

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.

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 now serves as a member of the Board of Regents. 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.
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California Chamber Committees
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) at locations throughout California 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. To get involved, submit the form at www.calchamber.com/getinvolved.

POLICY COMMITTEES

CHEMICAL POLICY
Goal: Simplify compliance obligations; minimize compliance cost for businesses; support use of best available scientific evidence; reduce frivolous litigation; and prevent “overwarning.”
Staff Contact: Adam Regele
adam.regele@calchamber.com

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: Karen Sarkissian
karen.sarkissian@calchamber.com

ENERGY AND TELECOMMUNICATIONS
Goal: Recommend policies on issues concerning utilities and commerce, including electricity, telecommunications, commercial transactions, corporate governance, economic stimulus and development.
Staff Contacts: Leah Silverthorn, leah.silverthorn@calchamber.com
Sarah Boot, sarah.boot@calchamber.com

ENVIRONMENTAL POLICY
Goal: Oversee issues related to the environment, such as air quality, climate change and AB 32 implementation, the California Environmental Quality Act (CEQA), Proposition 65 and green chemistry, hazardous and solid waste, surface mining and land use issues. 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 in order to help California businesses grow and promote their technologies/services.
Staff Contacts: Adam Regele, adam.regele@calchamber.com
Leah Silverthorn, leah.silverthorn@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: Karen Sarkissian
karen.sarkissian@calchamber.com

IMMIGRATION
Goal: Recommend policies on issues concerning immigration.
Staff Contact: Jennifer Barrera
jennifer.barrera@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: Laura E. Curtis
laura.curtis@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: Jennifer Barrera
jennifer.barrera@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: Sarah Boot
sarab.boot@calchamber.com
ABOUT CALCHAMBER

**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**: Sarah Boot  
sarah.boot@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**: Jennifer Barrera  
jennifer.barrera@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**: Leah Silverthorn  
leah.silverthorn@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**: Valerie Nera  
valerie.nera@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**: Laura E. Curtis  
laura.curtis@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**: Jennifer Barrera  
jennifer.barrera@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
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

ECONOMIC ADVISORY COUNCIL

Goal: Provide quarterly forecasts of the California economy and coordinate special economic studies. Council members include business economists from a variety of industries and from government.

Staff Contact: Dave Kilby  
dave.kilby@calchamber.com
MEMBERSHIP PROFILE

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. Nearly 300 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 2019:
- 23% have been in existence for 50 years or more; 37% for 25 years or more; 6% for 100 years or more.
- 12% have been in existence for less than 10 years.
- 17% are owned/co-owned by women.
- 29% are owned/co-owned by ethnic minorities or persons of mixed ethnicity.
- 33% do business internationally.
- 45% plan to add employees in 2018, while 52% plan to maintain the size of their workforce.
- 90% offer health insurance coverage and 81% offer a retirement savings plan.

MORE THAN TWO-THIRDS OF CALCHAMBER MEMBERS HAVE 100 OR FEWER EMPLOYEES

By Employer Size

By Industry Classification

- Business/Personal Services 48%
- Manufacturing 13%
- Transportation/Communications/Utilities 4%
- Wholesalers 7%
- Retailers 8%
- Finance/Insurance/Real Estate 8%
- Public Administration 1%
- Local Chambers 2%
- Agriculture/Mining 3%
- Construction 6%
California Promise: Opportunity for All

2019 CalChamber Business Issues and Legislative Guide

Candidate Recruitment/Development
Blue Waves and Political Saves

The blue wave that swept much of the United States in the 2018 midterm elections was more like a tsunami in California. As before, all of California’s eight statewide offices are occupied by Democrats with the majority party picking up three Senate seats and five in the Assembly.

Similarly, Republicans shed seven California seats in the U.S. House of Representatives, contributing substantially to San Francisco Democrat Nancy Pelosi’s victory margin and returning to her the coveted Speaker’s gavel.

Through our bipartisan ChamberPAC, the California Chamber of Commerce supported several “business-friendly” Democrats who were elected in both legislative houses.

Dealing with these dramatic shifts in the state’s political landscape is where CalChamber excels. In partnership with our political networks and local chamber relationships, we are constantly monitoring developments in the races for all major offices in California. Importantly and reflective of the California electorate, we employ a full range of political techniques, including data and analytics, to propel us to success in electing both Democrats and Republicans to legislative office.

The CalChamber’s bipartisan political approach is being noticed. As widely read political columnist Dan Walters commented in a November 2016 opinion piece in The Sacramento Bee: “...the (moderate) coalition’s ranks were bolstered by several victories in Democrat vs. Democrat clashes.” Walters continued by noting that the Senate “may be developing a mod squad of its own with wins by business-backed Democrats such as Bill Dodd of Napa and Steven Bradford of Gardena.”

ELECTION LANDSCAPE 2019–20

California voters will soon discover they have achieved a new milestone: the distinction of being an early Presidential Primary state due to the Legislature moving the date up three months from June to March 2020. This will have a major impact on down ballot contests as well, accelerating all the traditional deadlines, such as candidate filing, contribution disclosure, as well as the imperative of building out the necessary infrastructure to wage a successful and expensive race for legislative office.

But before we get to 2020, there will be two special elections in the open California Senate Districts 1 and 33, where both incumbents were elected to constitutional offices in 2018. In the era of 12-year terms, Senate seats are highly prized by the business community and CalChamber is already interviewing candidates and becoming familiar with both districts. As both incumbents were to term out in 2020 anyway, these races are critically important to the business community and CalChamber anticipates being heavily involved.

In 2020 there will be an additional six open California Senate seats and, due to the early primary, candidate recruitment is already underway, spurring CalChamber and our business allies into high gear much earlier than usual.
• Among the open Democratic Senate seats, expect a lot of attention paid to Senate District 5, a Central Valley district currently occupied by business-friendly Democrat Cathleen Galgiani.

• Senate District 13, split between San Mateo and Santa Clara counties, will open due to Democrat Jerry Hill terming out. The Santa Clara County seat, Senate District 15, will open up due to Jim Beall terming out. CalChamber is looking at replacements for both of these seats who will be more open to the views of the high concentration of employers in these two counties.

• Senate District 17 stretches along California’s central coast and will open with the retirement of Democrat Bill Monning; and Senate District 19, which contains the counties of Santa Barbara and Ventura, opens due to Hannah-Beth Jackson stepping aside due to term limits. Suitable replacements for both of these districts are being actively recruited.

CalChamber has the dual imperative of protecting our Senate allies. To that end, we will work to ensure that Democrat Steve Glazer returns to the East Bay Senate District 7 and Democrat Anthony Portantino to the Los Angeles County Senate District 25.

It is expected that labor and its allies will work to unseat several sitting GOP senators and CalChamber will engage to defend those seats as well. Among the Republican seats thought to be most competitive are the San Bernardino County seat occupied by Mike Morrell, the Santa Clarita Valley seat of Scott Wilk and the Orange County seat occupied by John Moorlach.

At present, there are no open Assembly seats, but we expect that to change as municipal elections in major cities like San Diego and Los Angeles will likely draw candidates from the Legislature.

**TRACK RECORD**

CalChamber will continue to recruit and elect business-friendly candidates to maintain our superb track record of beating job-killing legislative proposals by staying on the task of engaging our political action network. Our focus will remain dedicated to finding and electing candidates from both political parties who possess the courage to stand up to the liberal special interests and reject their philosophy of tax, spend and regulate.

If we are successful with our election strategy, then our opportunities will far outdistance our challenges.

**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. 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 $7,300 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 CalChamber and the California Manufacturers and Technology Association, JobsPAC may accept contributions in unlimited amounts.

- **CalBusPAC** is a CalChamber committee that is formed primarily to 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 2019
California Promise: Opportunity for All

2019 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

Legislative Guide
Contacting Your Legislators: Protocol

California state senators 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.**

• **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.

• **Refer to bill numbers whenever possible.**

• **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, constituent 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 senator or Assembly member 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.
  - 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.

**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.
- 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.

**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.**

**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 be clear about what action you want the legislator to take.**

**Use your business letterhead when communicating your position on a bill.**

**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.**

**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.**

**Later…If the legislator does what you ask, be sure to send a thank you 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.**

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**SUPPORT**

**SUBJECT: SB 832 (PORTANTINO) INCOME TAXES: CREDITS: MOTION PICTURES**

Dear Senator Portantino:

We are pleased to SUPPORT your SB 832, as amended April 12, 2018 as a JOB CREATOR, which would extend California’s tax incentive for motion pictures and television productions for an additional five years. This tax incentive has proven effective at maintaining jobs in California and growing jobs in this industry. In 2014, the State Legislature enacted an expanded motion picture and television production tax credit program, which has proven to be a success in keeping more film and television productions – and the jobs these productions generate – here in California. According to the California Film Commission, 137 television and feature film projects located their productions in California because of this program. In the first three years of the current program, those projects are estimated to have spent an aggregate of $5.1 billion here in California – on wages to the skilled professionals who create these movies and TV programs, and on payments to the California businesses that supply productions with goods and services. Thirteen television series that previously filmed outside of California have relocated to California, and seven large-budget films, a genre that had been all but lost to California, are being filmed here.

The current program has a sunset date of July 1, 2020. However, planning for both motion picture and television productions typically occurs several years in advance, and productions rely on the certainty that the incentive will be available, as location decisions are made. SB 832 seeks an extension this year, in the third year of the current program. For these reasons and others, we are pleased to SUPPORT your SB 832 as a JOB CREATOR.

Sincerely,

Sarah Boot
Policy Advocate
cc: Ronda Paschal, Office of the Governor
District Office, The Honorable Anthony Portantino

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**Checklist: How to Write a Good lobbying Letter**

- **Address the letter to the legislator.**
- **State your position clearly.**
- **Be specific about the bill and its impact on your business.**
- **Provide concrete, credible information about the bill.**
- **Act promptly.**
- **Keep your letter short.**
- **Include a thank you letter if your request is granted.**

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CalChamberVotes.com
Easy-to-edit sample letters and links to more information about bills and legislators are available on the CalChamber grassroots website, www.calchambervotes.com.
Guide to Reading a Bill

SENATE BILL No. 832

Introduced by Senators Portantino, Allen, De León, and Stern

January 4, 2018

An act to amend Sections 17053.95 and 23695 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

An act to add Sections 17053.98 and 23698 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

SB 832, as amended, Portantino. Income taxes: credits: motion pictures.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including motion picture credits for taxable years beginning on or after January 1, 2016, to be allocated by the California Film Commission on or after July 1, 2015, and before July 1, 2020, subject to a computation and ranking of applicants based on a jobs ratio. Existing law allows the credit for the taxable year in which the commission issues a credit certificate for the qualified motion picture for the applicable percentage of all qualified expenditures, as defined, paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

Existing law limits the aggregate amount of these credits allocated in each fiscal year to $330,000,000, through and including the 2019–20 fiscal year.

This bill would establish similar credits under the Personal Income Tax Law and the Corporation Tax Law for taxable years beginning on or after January 1, 2020, to be allocated by the California Film Commission on or after July 1, 2019, and before July 1, 2022, subject to a computation and ranking of applicants based on a jobs ratio.

The actual language that will be a part of the state code when the bill is enacted into law appears following the line: “The people of the State of California do enact as follows.”
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.

• 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 60 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: State senator or Assembly member 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 another 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 senator or Assembly member, 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 out of its 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**

In recent years there has been a renewal of interest in the techniques of direct democracy, whereby citizens are able 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.*

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**California State Government — The Executive Branch**

The organizational structure of the executive branch underwent a comprehensive overhaul under Governor Edmund G. Brown Jr.’s Reorganization Plan. The plan took effect on July 1, 2013, and cut the number of state agencies from 12 to 10, eliminating or consolidating dozens of departments and entities.

Many unrelated departments were housed together, while many related programs were scattered throughout different agencies. In many cases, departments and programs were duplicative. The Reorganization Plan changed the reporting relationships of dozens of entities to improve coordination and efficiency.

Upon implementation of the reorganization, five state agencies were replaced by the following three:

- The Government Operations Agency: responsible for administering state operations, such as procurement, information technology and human resources;
- The Business, Consumer Services and Housing Agency: responsible for licensing and oversight of industries, businesses and other professionals; and
- The Transportation Agency: aligns all the state’s transportation entities.

Governor Brown’s plan was unanimously approved by the Little Hoover Commission, the state’s top independent government oversight body. In a May 2012 report, the commission stated the plan’s restructuring was “long overdue,” and should provide “greater transparency and accountability as well as the opportunity for improved program performance.”

To find a state agency, department, board or office, visit [www.ca.gov/agencies](http://www.ca.gov/agencies).

The organization chart is available at [http://cold.govops.ca.gov/File/OrganizationalChart](http://cold.govops.ca.gov/File/OrganizationalChart).

Referral number for state agencies: (800) 807-6755.
The Auto Club proudly supports the
California Chamber of Commerce

We’re always with you.

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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, 300 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.