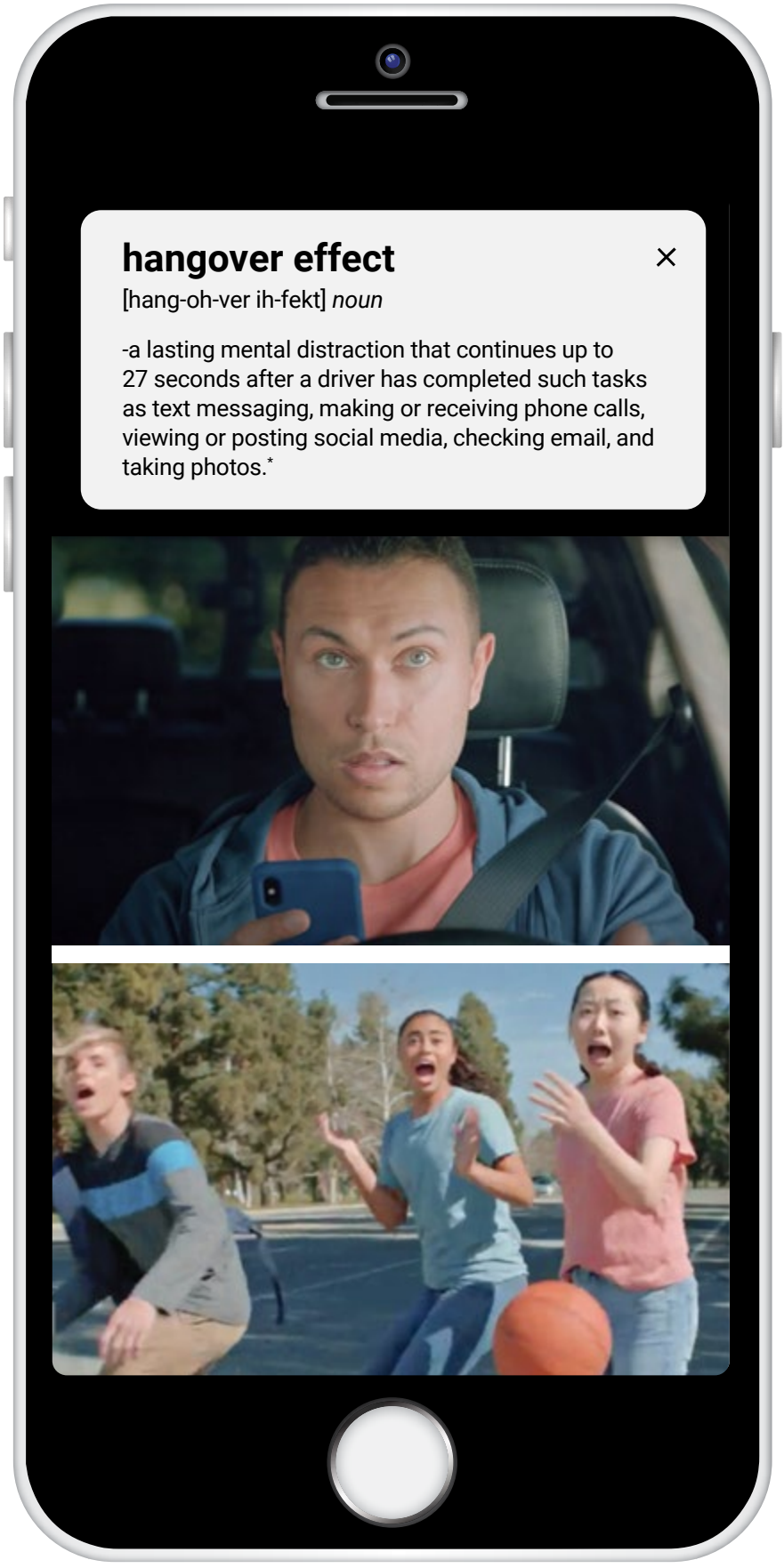
CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Agenda for California Recovery

2022 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE



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CalChamber
CALIFORNIA CHAMBER OF COMMERCE

2021–22 Legislative Session
117th Congress, Second Session

Agenda for California Recovery

2022 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

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CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Dear Reader:

California employers, entrepreneurs and small businesses have been working hard to bring the state back from the pandemic. To keep the positive momentum going, the California Chamber of Commerce offers our **Agenda for California Recover**y.

We strongly encourage policy makers to exercise restraint in tackling the concerns of California residents. The recommendations outlined in this issues guide include:

- Stop the recently revived single-payer health care proposal and the multibillion-dollar, government bureaucracy it would create.
- Forgo expensive new mandates for employer-provided benefits. The state's second consecutive record budget surplus can be used instead to pay for many of the benefits that legislative proposals have attempted to impose on business.
- Maintain exemptions in state privacy law that avert negative unintended consequences for both workers and employers.
- Slow the rush to adopt more greenhouse gas rules and return to the earlier consensus to use market forces to find the most cost-effective way to deal with climate change.
- Reject proposals that would increase the price or reduce the supply of housing.

We encourage you to use the mobile-friendly CalChamber grassroots website to tell your elected representatives how policy proposals will affect your business. The site at *impact-california.com* features easy-to-edit sample letters and tools to help CalChamber members and other interested parties share their concerns with lawmakers. You also can sign up to be notified when your actions will have the most impact on deliberations in Sacramento.

Collaboration remains a powerful force in today's global economy. With your active support, we are optimistic that together we can keep California moving toward recovery.

Kailesh Karavadra
Chair, Board of Directors

Jennifer Barrera
President and Chief Executive Officer

Agenda for California Recovery

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***.

Issue Updates
Updates on issues are available via the *CalChamber Alert* app. More information at ***www.calchamberalert.com/app***.

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CalChamber
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2022 Issues

Agenda for California Recovery

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SPECIAL THANKS TO OUR

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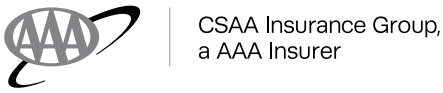
CORNERSTONE MEMBERS



California Recovery

Restraint Key in Handling New, Post-Pandemic Normal

The enduring lesson for policy makers as California recovers from the Pandemic Era should be restraint.

This may prove difficult for some lawmakers, given record tax revenues and the bounty of new political opportunities from the recently concluded redistricting. We welcome California's good fortune, but leaders should not fool themselves that it lasts forever.

Often through no fault of their own, elected leaders and government officials missed or misinterpreted the trends since 2020 that should normally inform wise public policy. Unpredictability became the regular order of business:

• Not only did the COVID-19 pandemic take the world by surprise and mostly unprepared, but subsequent virus variants have also shaken our ability to plan for the future and figure out how to return to even a new normal.

• The California state budget boomeranged from predictions of deep deficits to unforeseen record budget surpluses.

• The pandemic temporarily collapsed the world's supply chains, hampering economic recovery and contributing to a rapid rise in inflation. Experts differ as to whether the inflation bite is transitory or persistent.

• Labor markets have transformed before our eyes. A record 4.5 million workers quit their jobs in November 2021, and employers are scrambling to fill well-paid jobs as unemployment rates continue to fall.

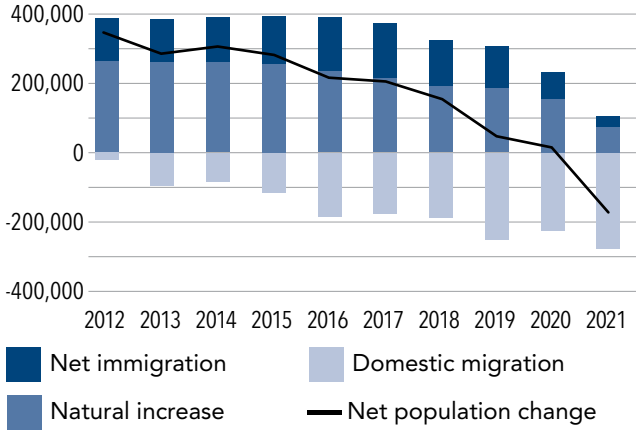
• Nevertheless, more Californians simply weren't interested in working. The labor force participation rate in California was at 61.9% in November 2021, still 1.2 percentage points below the level just before the pandemic started.

• California's population has continued to decline after falling for the first time on record, new demographic data show — underscoring shifting immigration and migration patterns, declining birthrates and the large number of deaths at the hands of the pandemic.

BUDGET NOD TO UNCERTAINTY

Governor Gavin Newsom paid his respects to uncertainty when he released his proposed budget for the 2022–2023 fiscal year. Faced with a second consecutive year of budget surpluses, he allocated 86% of the projected $46 billion surplus not dedicated to schools to one-time investments, such as debt repayment, retirement system liabilities, infrastructure, and tax relief.

CALIFORNIA POPULATION CHANGE



Source: California Foundation for Commerce and Education with California Department of Finance data

These policy choices contrast with the preferences in past decades to spend nonrecurring capital gains windfalls on ongoing programs or entitlements, ratcheting up state budgets using unsustainable revenues. When the inevitable business cycle turned, as it has in recent recessions, elected leaders faced the unhappy scenario of cutting popular programs, raising taxes, or engaging in borrowing or budget tricks.

The Governor's prudent approach to budgeting creates a hedge, not just against future recessions, but also against moderating economic growth, which can take a budget bite since revenues are highly sensitive to the behavior of relatively few high-income entrepreneurs and businesses.

POLITICAL RISK TO ECONOMY

The remaining political risk to the California economy and jobs climate lies with a legislative agenda that often sets aside the lessons of uncertainty. Or put another way, many legislators behaving as if it was business-as-usual.

California's economy is massive, diverse and resilient. That's why the state treasury is overflowing with revenues. California

employers, entrepreneurs and small businesses found a way in the teeth of the pandemic, intense international competition and pernicious state regulations and mandates to grow their businesses, profits and tax payments.

POPULATION EXODUS

But signs of weakness continue to manifest, most troublingly the continuing exodus of middle-class workers to other states, without the foreign immigration to cushion that exodus.

According to the Department of Finance, California's population declined by 173,000 between July 1, 2020 and July 1, 2021 to total 39.4 million, following an earlier pattern noticed by the state demographers and the U.S. Census. Most of the decline is attributable to an aging population and declining birthrate, and the sad effects of COVID-19.

Since 2011, California has suffered net domestic outmigration, and since 2015, this domestic outmigration has exceeded international migration, leaving natural increase as the only source of population growth. Last year, with continuing fertility declines and increased deaths from aging and the pandemic, natural increase could not keep up with the decline in net migration.

While net international migration added population since 2015, negative domestic net migration overwhelmed these gains, resulting in an overall net migration loss of nearly 600,000 residents.

The causes of the "CalExodus" (and even whether it exists) are contentious. Some demographers claim growth will recur when the pandemic fades and international immigration resumes. But that ignores the persistent trend in domestic outmigration.

For example, all nine counties in the Bay Area had a drop in population for the first time. The decline could be explained in part by a combination of the pandemic-driven trend of remote work, as well as middle income residents fleeing one of the highest costs of living in the country. Many Bay Area refugees are settling in inland California, but many also are finding greener and less expensive pastures in other states. The top states for California departures are Texas, Arizona, Nevada, Washington, Oregon and Florida.

SUGGESTIONS FOR ELECTED LEADERS

Which brings us back to public policy. With middle class and working Californians already anxious about crime, homelessness and affordability, the Legislature should think twice about their increasingly ambitious plans to remake California's economy and social contract. Instead, elected leaders should:

• Quash the recently revived single-payer health care proposal, which would upend every public and private health care relationship into a massive new state bureaucracy, with a price tag of more than $150 billion annually in new taxes — mostly on businesses.

• Shelve expensive new mandates for employer-provided benefits, that add costs onto employers and expose them unnecessarily to litigation. California for the second consecutive year enjoys a record budget surplus that could pay for many of the benefits that legislative proposals have attempted to impose on businesses, such as subsidized child care, extended paid leaves of absence with little accountability, and onerous and constantly changing workplace mandates that at times conflict with other government guidance.

• Maintain exemptions in state privacy legislation that prevent employees from using consumer privacy rights to remove adverse information in their personnel files (like sexual harassment incidents). The exemptions also permit business-to-business relationships from being constrained by consumer privacy requirements.

• Throttle back the headlong race to adopt more aggressive greenhouse gas regulations and clean energy mandates, and resist the urge to choose technological winners and losers. The price for these good intentions is higher utility bills and prices at the fuel pump. Return to the earlier consensus to use market forces to discover the most cost-effective path through a changing climate.

• With California's nation-leading poverty rate driven by the cost of shelter, and residents bolting to other states to afford homeownership, elected leaders should reject any proposal that would increase the price or reduce the supply of housing.

DEALING WITH POST-PANDEMIC NORMAL

California retains significant competitive advantages as a place to create or grow a business. Employers, alongside many elected and community leaders, toil diligently to make California home for their enterprises. But the uncertainty of the new, post-pandemic normal demands policy makers take even more care to not disrupt recovery with thoughtless and burdensome legislation and regulations.

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January 2022

The People's Voice

California Voters Worried about Their Future

Increasing cost of living and fear of falling further behind add up to California voters apprehensive about their future. The seventh annual CalChamber poll, The People's Voice, 2021, found that voters remain focused on economic security, personal safety, and bread-and-butter issues.

More than 8 of 10 voters report feeling the effects of inflation, with more than a third stating they are buying less because prices are higher. These cost pressures color voter attitudes about general well-being, prospects for the future, and state policies.

Since 2015, more than 8 out of 10 Californians have regularly reported that "earning enough income to enjoy a middle-class lifestyle is becoming almost impossible in my part of California." In 2021, 85% of Californians agreed with that statement.

Voters also report that the American Dream — that if you work hard, you'll get ahead — is fading for them. A majority of voters responded that while the American Dream once held true, it does not anymore, compared with 37% who believe it still holds true. This ratio has flipped in just three years, when a plurality of Californians believed the American Dream still held true.

CALIFORNIA EXODUS

This anxiety feeds on reports of a California Exodus, and in turn stokes that very impulse.

News and social media have reported anecdotes of high-profile companies leaving the state, as well as the historic slowdown in California's population growth, fueled in large part by domestic migration of middle- and working-class Californians to opportunities in other states.

Voters are well acquainted with this trend.

Asked if they are aware of "any major employers or businesses leaving your community in recent years to relocate to another state," nearly half of voters statewide, including 59% of voters in the Bay Area, answered "yes."

Some 44% of voters statewide reported that in the past year they knew someone personally who moved out of California because of job loss or cost of living. In the Inland Empire and Central Valley, 58% of voters said they knew someone personally who moved for these reasons.

Continuing a troubling trend, among voters with kids living at home, 62% agree with the statement that "my children would have a better future if they left California." Since 2015, a growing proportion of parents have agreed with this sentiment.

PERSONAL SECURITY

Along with economic insecurity, Californians are concerned about personal security.

Asked about public safety, more than two-thirds of voters say crime in California has increased "some" or "a lot." Eighty-five percent (53% strongly) of voters agree that "homelessness and criminal behavior have become rampant throughout California," and 59% of voters agree with the statement, "I no longer feel safe because of the danger and disorder in society today."

Homelessness remains top-of-mind for Californians. Nearly three-quarters of voters say homelessness has gotten worse in the state, up six points since last year, and 63% say homelessness has gotten worse in their own communities, up seven points since last year.

This pessimism is maybe related to the visibility of the issue. Nearly half of voters report that they see someone homeless on the streets at least five days a week.

TELECOMMUTING

The California economy – and the livelihoods of millions of

Californians – survived the worst of the pandemic because thousands of employers implemented work from home arrangements, also known as telecommuting. But devising a telecommuting policy can be complicated and risky because of California's treacherous employment laws. In overwhelming numbers, voters want to change that.

For starters, telecommuting got a big vote of confidence from the electorate. By a 9 to 1 margin, voters support changing labor laws or policies to make it easier for employees to work from home.

They also supported the details.

• Nearly 9 of 10 voters support changing overtime requirements to allow an alternative schedule (for example, four 10-hour days or three 12-hour days, instead of a typical five 8-hour days).

• More than 8 out of 10 voters supported allowing employees to take the required 10-minute rest breaks any time of their choosing, rather than one break every four hours.

• Eighty percent of voters supported allowing employees, at their own choosing, to forgo the required half-hour meal break in exchange for ending their workday a half-hour earlier.

• By the same margin, voters supported allowing an employee, at their own choosing, to split their shifts to accommodate personal needs.

HOME OWNERSHIP/PROPERTY TAXES

A majority of Californians believe the housing shortage in California is very significant, up from 35% five years ago. Not surprisingly, younger voters are most emphatic in this belief.

Among voters who are not homeowners, 36% say owning a home is a very high priority, an increase of 10 percentage points since 2016. Another 16% say it is a somewhat high priority, meaning a majority of renters make homeownership a personal priority. Again, younger voters most strongly express this aspiration, as do voters in the Los Angeles region and Central Valley.

When asked if another state offered a greater opportunity for homeownership than California, would you move to improve your ability to purchase a home, a majority of non-homeowners answered "yes." More than two-thirds of renters for whom home ownership is a high priority reported that they would move if another state offered a greater opportunity for homeownership than California.

Integral to the cost of homeownership is the expense of property taxes. Proposition 13 has been a buttress against higher taxes, although special interests, as recently as last year, have attempted to partially remove Proposition 13 protections — so far unsuccessfully.

When voters were asked about their view of the 43-year-old property tax cap, half answered "very favorable," with another third saying "somewhat favorable." The favorability of Proposition 13 has been remarkably consistent over the years, ranging between 80% and 84%, but the 2021 response was the highest ever for the "very favorable" choice.

CLIMATE CHANGE

Californians strongly agree about the importance of addressing climate change, but are not convinced that costly, disruptive policies are the right approach.

Asked whether they agree that "climate change is happening and the state of California must act now," 62% of voters strongly agreed, with another 20% agreeing somewhat. The strong agreement has increased by six percentage points over the past two years. Notably, a majority of California Republicans agree with this sentiment.

When it comes to the two weather phenomena most implicated by climate change, California voters are highly motivated. Addressing the drought and wildfires were top of mind for voters both for legislative attention and budget priority. It's fair to conclude California voters view these issues as existential to their quality of life.

DROUGHT AND WATER

Asked about the drought in California, three-quarters rated it "very significant," with another 21% saying "somewhat significant."

Four policies garnered between 85% and 90% of voter support: expedited permitting of desalination plants (90%, 51% strongly), expedited permitting of off-stream water storage reservoirs (89%, 42% strongly), voluntary water reductions by residential users and mandatory reductions by other users (86%, 42% strongly) and expedited permitting of recycling plants that treat wastewater into drinking water (85%, 50% strongly).

Even mandatory water rationing for all users was supported by two-thirds of voters, a quarter of them strongly.

WILDFIRES

When it comes to policy proposals to address climate change effects, the most popular were either directly or indirectly related to wildfire mitigation.

The four policies garnering the highest "strongly support" responses were:

• Require homeowners living in fire-prone areas to keep their land clear of flammable brush, upgrade to safe building materials, and create personal evacuation plans (64% strong support).

• Modernize the electrical grid and spend more on electrical equipment maintenance (56%).

• Allow controlled burning to eliminate the dry underbrush on federal, state, or privately owned land (52%).

• Limit future housing development in areas prone to wildfires (40%).

LIFESTYLE SACRIFICES LESS POPULAR

On the other hand, the least popular strategies to address climate change involved personal lifestyle sacrifices. A majority of voters opposed policies that:

• Require that any new highway expansion include only carpool or toll lanes (54% opposed).

• Ban the sales of automobile engines that run on gasoline or diesel by 2030 (57% opposed).

• Increase taxes on gasoline or diesel to discourage use of internal combustion engines (61% opposed).

• Discourage people from driving cars by intentionally designing roads to be more congested and not expanding existing highway capacity (78% opposed, 56% strongly).

That each of these very unpopular policies (except the tax increase) is already being implemented in some way speaks to the disconnect between climate change rhetoric and policy implementation by state and local officials.

Aggressive adoption of electric vehicle mandates and inhibition of gasoline- and diesel-fueled cars and trucks will inevitably starve the transportation system off its primary source of revenues, the gasoline and diesel tax.

Voters clearly do not like paying higher gas taxes. But when asked whether California should change the way the state pays for road repair and operation, by replacing the current gasoline tax with a fee based on miles driven, voters supported this approach by a 58% to 42% margin.

POLL METHODOLOGY

The CalChamber poll was conducted by Core Decision Analytics and Pierrepont Consulting and Analytics with online interviews from October 9–12, 2021 with 1,003 online interviews of California 2022 general election voters. The margin of error for this study is +/- 3.09% at the 95% confidence level and larger for subgroups. This is the seventh year CalChamber has published a voter survey.

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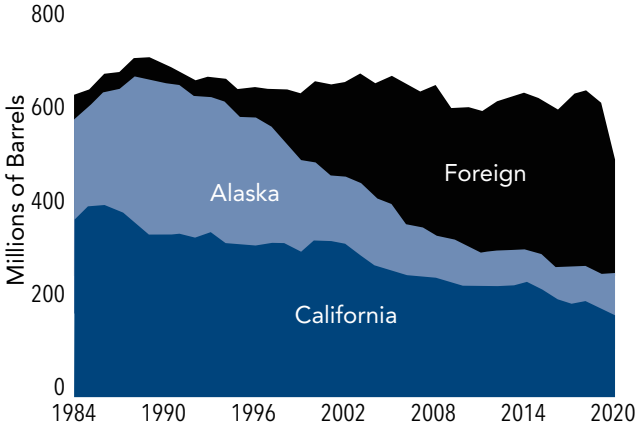
Choosing Winners and Losers

The Consequences 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.

CRUDE OIL SUPPLY SOURCES TO CALIFORNIA REFINERIES



Source: California Energy Commission.

To that end, California enacted 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 not just to reduced pollution, but to California maintaining its leadership in the global economy and energy world, and has served as a model that California should continue to follow.

FORCING MARKET TO ADOPT SPECIFIC TECHNOLOGIES/SERVICES

On the other hand, the California Legislature and recent Governors are 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 through setback requirements or mandates on a certain energy mix.

For example, legislation introduced in 2019, AB 345 (Muratsuchi; D-Torrance), sought to impose a statewide minimum 2,500-foot setback requirement on new oil and gas development, and on redrilling or rework of any existing oil and gas infrastructure. The 2,500-foot setback requirement was, in effect, a domestic ban on oil and gas production, jeopardizing new and existing infrastructure necessary for in-state production to continue. The California Chamber of Commerce tagged the bill as a Job Killer and it ultimately was held in the Assembly Appropriations Committee.

In 2020, Governor Gavin Newsom issued Executive Order N-79-20, bypassing the Legislature and requiring the Air Resources Board to enact regulations to phase out the use of combustion engines in passenger cars and trucks by 2035.

On October 21, 2021, Governor Newsom announced the Department of Conservation California Geologic Energy Management Division's (CalGEM) new proposed regulation curbing all new oil and gas development and requiring extensive retrofitting of existing wells. The proposed rule goes even farther

than AB 345 by seeking to ban new oil wells within 3,200 feet of schools, homes, hospitals, nursing homes and other community locations deemed "sensitive." Further, the proposal would require retrofits to existing wells within the same 3,200-foot setback area, which could lead to thousands of permits not being approved and existing wells being decommissioned instead of retrofitted.

Despite state leadership in reducing GHGs, the California economy still relies on fossil fuels. As the state transitions away from this traditional fuel source to renewable energy, the Legislature and the Governor must account for the effects on consumers, motorists and residents' quality of life that come with bans and mandates. Small businesses, hospitals, tens of thousands of trucks moving goods, and millions of families all depend on reliable and affordable energy. 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 and family incomes. An appropriate balance can be struck to set forth a model for other states and the world to follow.

POLICY ISSUES

• **Ban on Combustion Engines Disproportionately Affects Poor and Working Class Californians**. Transportation accounts for a large portion of California's GHG inventory. Governor Newsom's announcement of a ban on the sale of combustion engine passenger vehicles by 2035, and limits on light- and heavy-duty trucks requires careful consideration of the impacts on Californians. Most working Californians cannot afford to purchase electric vehicles, so solutions need to be developed that are even-handed and take into account all the costs of climate policy.

A one-size-fits-all approach to transportation risks ignoring the significant immediate air quality improvements that a diverse and ever-cleaner energy mix provides. While GHG reductions will decrease over time, local air quality impacts will remain if electric vehicles are not affordable for the most economically disadvantaged areas of the state. Unlike other countries around the globe that promote an electric vehicle market, the Governor's announcement came without the promise of significant funding for infrastructure, subsidies for areas with the poorest air quality, or a fully fleshed-out plan for how to achieve such an ambitious goal.

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 — which require either storage when the sun stops shining and wind stops blowing, or a reliable backup generation.

Battery storage technology often is touted as the response to concerns over reducing the role of natural gas as a clean, fast-ramping resource. However, sufficient battery storage is not yet available nearly at a level that is 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 state's remaining reliable backup generation will be natural gas. California is lagging on energy storage, and if the state also bans or limits natural gas, Californians will be left with nothing to keep the lights on, a real possibility the state is facing at peak energy usage. Legislators must be sure to keep the physics of the grid top of mind when enacting energy policy.

Nuclear energy, for example, is heralded by some as the clean and green energy 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. Back home across the pond, Californians have had an ambivalent and inconsistent relationship with energy generation technologies. The 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 reducing GHG emissions. But that progress was already banked by the time that serious climate policy was debated in the last decade, leaving policy makers with the choice of standing still or seeking the next big thing in generating clean electricity. 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, which can include solar panels, to states or nations with less 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. And like any policy decision picking one technology, the world has a limited supply of precious metals like lithium, which currently is used to fuel these batteries.

Our energy future cannot be a one-size-fits-all approach that chooses a single technology and discourages innovation in other fields.

• **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.

Some 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 all together, requiring more imports and thus more GHG emissions due to transport into the state. Given the already-soaring cost of housing, increasing the cost of building materials seems unwise.

Although the Legislature may recognize this concern, natural gas hookup bans are proliferating at the local government level in an inconsistent and sometimes unthoughtful approach. Even some environmental justice groups are pushing back on these bans, where energy security also is a primary concern and has a dramatic impact on the lives of Californians living in economically disadvantaged areas of the state.

• **Banning Natural Gas and Oil Production in the State Means More Foreign Imports and Higher Energy Costs**. Governor Newsom's Executive Order N-79-20, issued on September 23, 2020, among other things, called upon the Legislature to ban the use of hydraulic fracturing by 2024. However, proponents of energy policies that ban in-state natural gas and oil production do not acknowledge the substantial unintended consequences of such policies. Banning safe and reliable energy sources increases energy costs across California households and businesses of all sizes; increases California's reliance on foreign imports of oil and gas; eliminates hundreds of thousands of high-paying California jobs; reduces tax revenue for local and state governments; and decreases the reliability of the state's energy grid.

For example, California regularly ranks as having the most expensive gasoline in the United States with prices averaging at least 60 cents higher than the national average. This cost discrepancy is due to factors including California's 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. Not everyone can afford an electric vehicle or lives and works in an area with sufficient infrastructure to accommodate electric-only vehicles.

Oil and gas remains the leading energy source powering California's transportation economy. Although California is anticipated to rely more on renewable energy sources to serve the state's energy needs, responsible in-state oil and gas production will still be vital to power the homes of its more than 40 million residents, 35 million registered vehicles, 78,000 farms, 145 airports, 32 military bases, and 11 public ports, including three of the nation's "megaports" (Los Angeles, Long Beach and Oakland). Arbitrarily banning in-state oil and gas production inevitably means more state reliance on foreign crude oil imports. This is evidenced by the year after year increases in foreign imports of crude oil into California (see California Energy Commission, Foreign Sources of Crude Oil Imports to California 2020).

In 1992, California imported just 5% of the state's total volume of crude oil. In 2019, the last year before COVID-19 disruptions, California imported almost 60% — the highest share since at least 1982 (*see* California Energy Commission, Crude Oil Supply Sources to California Refineries). By importing approximately 360 million barrels of crude oil last year, California spent more than $22 billion in a single year to buy crude oil from foreign oil producers with poor human rights and environmental records (as of November 4, 2019, the Brent spot price for oil was around $62.52/barrel).

Curtailing oil and gas production in California while continuing to import more oil does not lead to lower global emissions or

a cleaner environment — it merely shifts California's oil and gas supply and GHG emissions abroad. Banning in-state production eliminates high-wage California jobs, funds foreign regimes with poor human rights records, increases the chance of oil spills correlated with longer transportation routes by rail or boat, and reduces much-needed tax revenue for California. It also jeopardizes the state's energy resource adequacy, as highlighted by a recent California Public Utilities Commission proposed order directing load serving entities to procure 4 gigawatts of capacity beyond baseline resources to meet a potential resource adequacy shortage beginning in 2021 and rolling blackouts that occurred for the first time in two decades (*see* Public Utilities Commission memo to parties of record in rulemaking 16-02-007).

2022 LEGISLATION

The Governor announced in 2020 bans on the sale of internal combustion engine vehicles by 2035, bans on fracking in California, bills specifying energy procurement sources, offshore oil production bans, and building and appliance electrification standards. In 2021, a state agency proposed the most aggressive oil and gas well setbacks to date in California.

During the 2022 legislative session, more legislation targeting the oil and gas sector is expected. A bill codifying the Governor's ban on sales of internal combustion engines is likely to be introduced, but whether the ban is by 2035 or 2030 remains to be seen.

Outright bans, without accounting for the full economic and environmental impacts, miss the whole picture, potentially damage our economy, and do not necessarily contribute to a reduction in global GHGs or a cleaner environment. Although anticipating additional legislation targeting in-state oil and gas production, the California Chamber of Commerce 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. It can work with other states and countries to develop new strategies and technologies. It can allow the bipartisan processes, such as the extension of cap-and-trade, to work. It can 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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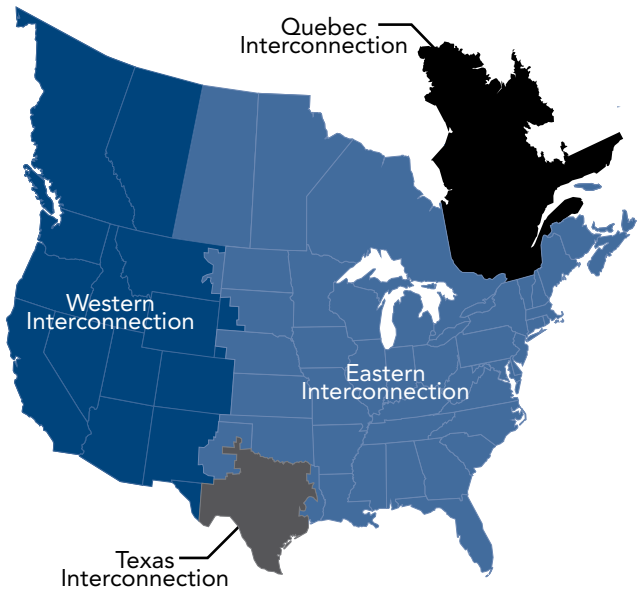
Energy Policy

Smart Choices Balance Climate Change, Renewables, and Energy Reliability

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 shown at right. Every electron produced in California — whether renewable, nuclear, natural gas, 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.

These issues came to the forefront in the summer of 2020, when record heat and changes in California's energy mix resulted in rolling blackouts not seen in California since the energy crisis in 2000–2001. Energy rates resulting from these decisions affect every California consumer, whether directly through 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.

MAJOR ELECTRIC SYSTEM NETWORKS



Source: Western Electric Coordinating Council, State of the Interconnection, 2017

THE BASICS

• **Energy Grid Is Hybrid 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 units of energy do not respect state boundaries and travel in interstate commerce, which the U.S. Constitution deems a federal issue. The states control decisions such as powerplant 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. While solar is a vast resource during the daytime, it also can be an unpredictable and intermittent energy resource. In response to growing climate change concerns, in 2002 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 two decades, the Legislature has fussed with the definition of renewable. In 2018, the Legislature passed SB 100 (De León; D-Los Angeles), which increased the goal from 60% to 100% 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 (shut down) 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. Therefore, 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.

The CAISO maintains a real-time look at the sources of energy supply and current renewables at *www.caiso.com/TodaysOutlook/Pages/supply.aspx*.

CAISO had correctly predicted a significant shortfall in reliability capacity at peak usage (when solar cannot help) starting in the summer of 2021. Historically, natural gas has been used to handle the shortfall and keep the lights on, but these facilities have been closing in increasing numbers due to legislative and regulatory targets on fossil fuels.

• **Rolling Blackouts in 2020**. For the first time in 20 years, California experienced rolling blackouts at more than 400,000 homes and businesses as energy demand outpaced the state's ability to generate power. The blackouts resulted from a combination of record-breaking heat waves, the change in peak usage noted above, a lack of ability to purchase power from outside the state due to increasing renewable mandates, and the lack of availability of fast-ramping power sources like natural gas.

According to filings, the CAISO had been predicting energy shortfalls like this for several years, resulting in an extension of some natural gas plants in summer 2020 to meet predicted shortfalls starting in the summer of 2021. Summer 2021 made clear that these shortfalls are real. These short-term emergency issues should create urgency for the Legislature to engage in a longer-term policy discussion over renewable integration, the role of natural gas and other fast-ramping power, as well as renew the discussion around regionalization of California's energy grid to more cost-effectively purchase and sell power between states.

• **Storage Technology Must Grow to Keep Pace**. Environmental groups have targeted natural gas plants in California, either by sponsoring legislation to ban all fossil fuel energy production, or banning new natural gas hookups in construction. Bills introduced each year attempt to ban natural gas power production outright, or limit new natural gas connections, increasing reliance on intermittent resources.

Still, natural gas remains the state's go-to for reliability and peak usage because natural gas is cleaner burning than coal and is "fast-ramping," meaning that electricity monitors can easily turn up or turn down the volume as needed when renewables are not available to meet demand. Reliability depends upon flexible resources that can be summoned on demand.

Much interest surrounds development of storage solutions, with studies to evaluate batteries, pumped hydro 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 holstered to create energy when the water or objects are allowed to move back downhill), conversion of natural gas to hydrogen, and other technology.

Battery technology is becoming more cost-effective, but

still makes up less than 1% of renewables in California. What happens if we rely primarily on solar and batteries as backup, but the sun doesn't shine for several days in a row, or wildfire smoke covers solar panels?

California does not yet have energy storage at anything approaching the scale necessary to meet peak energy demand and still needs natural gas to keep the lights on. Even if planned energy storage projects are pursued, they take years to obtain proper permits, build and become operational. Relying too heavily on one technology over another caused this reliability shortfall. California must take actions that encourage, not discourage, public and private investment in new and varied solutions. We must make thoughtful choices to avoid blackouts to continue to address reliability shortfalls predicted through the next few years.

• **Rates Are High and Increasing**. Every energy policy decision made by the state and federal governments has a direct impact on California ratepayers. Utility companies must comply with these mandates, and these costs are passed along to California ratepayers by the California Public Utilities Commission. 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, with an average retail price of 18 cents per kilowatt hour (kWh), compared with 11.1 cents per kWh nationally.

In debating sound energy laws, policymakers throw around different statistics on California energy rates. For instance, it often is touted that Californians use less in terms of kWh than residents in many states, which is true largely because of our mild climate, longtime energy efficiency standards, 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.

LEGISLATIVE ACTION IN 2022

Utilities are now required to meet a 100% renewable goal by 2045. A 100% goal increases the 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. This issue was made all the more relevant by a changing workforce working from home, shifts in peak energy usage, and California ordering a Stage 2 power grid emergency in July 2021 — one step away from rolling blackouts — as heat waves drove temperatures into triple digits and sent electricity demand soaring.

The California Public Utilities Commission ordered additional procurement and extended the life of some natural gas plants to meet short-term reliability needs and keep the lights on. These last-minute procurement decisions, however, all come at a steep cost to California ratepayers. Better planning is necessary to avoid issues like this in the future.

The California Chamber of Commerce expects legislation may include:

• Issues surrounding reliability procurement, including ensuring the availability of fast-ramping resources like natural gas and storage;

• A discussion about how to deal with renewable goals as traditional utilities continue to change in California.

Legislators also may continue to push the boundary on 24/7 emissions reductions — an issue that cannot be resolved separately and apart from ensuring continued reliability of the grid.

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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Greenhouse Gas Regulation

Market-Based Approach and Support for Technological Advancement Will Have Broadest Impact

California is regarded both nationally and internationally as a leader in climate policy. Because California makes up a mere 1% of global greenhouse gas (GHG) emissions, it can make the greatest impact on further reducing GHG emissions by serving as a model for a robust, cost-effective cap-and-trade system that encourages linkage with other jurisdictions. It also can serve as the model for technological solutions to the climate crisis, leveraging its world class research institutions, robust technology sector, and passion for innovation to solve some of the world's largest climate challenges.

THE BASICS

In 2017, California enacted AB 398 (E. Garcia; D-Coachella), reauthorizing and expanding the California Global Warming Solutions Act of 2006, which first authorized the creation of a market-based cap-and-trade system. A bipartisan bill supported by the California Chamber of Commerce, AB 398 solidified California's future as a leader in the market-based approach to climate solutions.

Under California's cap-and-trade, launched in 2013, GHGs are "capped" at a total overall limit, which declines over time. Entities subject to cap-and-trade, which account for approximately 80% of California's emissions, are subject to individual emission limits (called "allowances"). They then either sell allowances (in the case of fewer emissions) or buy (in the case of higher emissions) to meet regulatory requirements. In this manner, emissions are capped and any excess emissions are priced. Proceeds from the sale of these excess allowances are funneled into the Greenhouse Gas Reduction Fund, which is intended to fund GHG reductions in other sectors of the California economy.

Cap-and-trade is in effect through 2030, which provides market certainty and encourages investment. In 2017, the Legislature also made improvements to the 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 parlance for the unfortunate fact that environmental regulations sometimes push businesses to relocate out of state, moving those emissions to a less-regulated state.

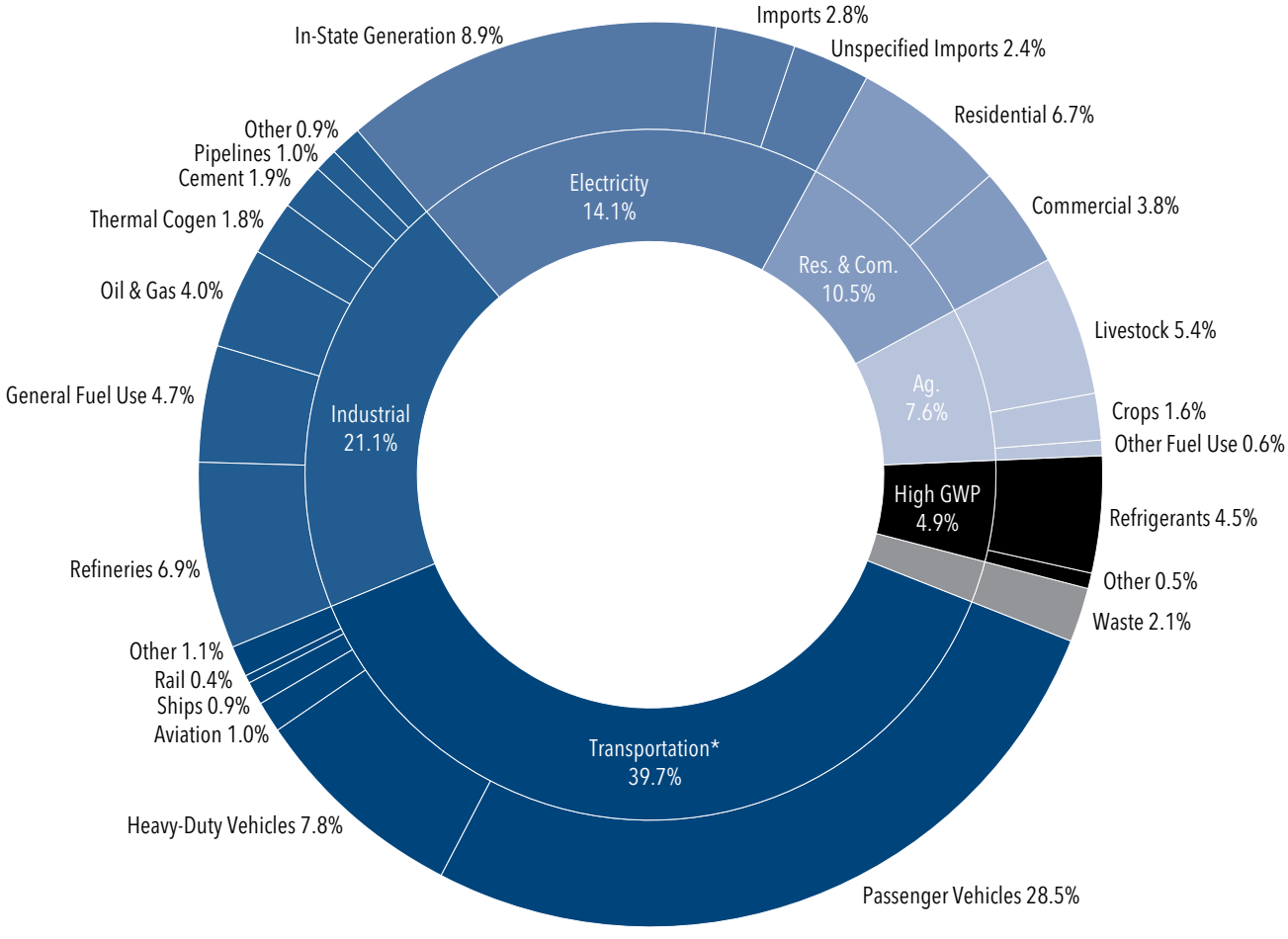
AB 398 also sought to set a hard price ceiling on carbon credits, such that businesses could be assured that additional credits would not be astronomically high in future years. In doing so, AB 398 sought to strike a balance between ensuring continued economic growth in California while achieving measurable,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

Cap-and-trade is one of the most cost effective and reliable programs that forms the bedrock of California's carbon emissions reduction solutions. In 2021, regulatory changes went into effect that doubled the stringency of the program and imposed steeper reductions. Despite these changes, California's companies achieved 100% compliance with the program, reducing carbon emissions to meet the state's 2030 reduction target of 40% below 1990 levels.

THE POLICY CONCERNS

• **Avoiding New Duplicative Legislation**. AB 398 and its companion bill, AB 617 (E. Garcia; D-Coachella), sought to address a large swath of air quality concerns. AB 398 seeks to place a cap on emissions from entities constituting approximately 80% of specified emission sources in California and put a price on carbon. Where AB 398 addresses emissions that are more global in nature (GHGs), AB 617 created a community-based process to address air quality concerns that tend to be more local in nature.

2019 GHG EMISSIONS BY SCOPING PLAN SECTOR AND SUB-SECTOR



The inner ring shows the broad Scoping Plan sectors. The outer ring breaks out the broad sectors into sub-sectors or emission categories under each sector.

*Transportation sector represents tailpipe emissions from on-road vehicles and direct emissions from other off-road mobile sources. It does not include emissions from petroleum refiners and oil extraction and production, which are included in the industrial sector.

Source: California Air Resources Board, *California Greenhouse Gas Emissions for 2000 to 2019* (July 28, 2021)

Despite these far-reaching laws, California continues to enact piecemeal bans and procurement requirements for utilities, agriculture, and energy producers. For example, a bill introduced in 2018 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 (which is in short supply) 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 creates a disincentive for businesses to support wide-ranging market-based approaches in the future.

• **Efficient Use of Greenhouse Gas Reduction Funds.** Proceeds from the credits produced in the cap-and-trade auction have generated more than $9 billion in funding to state agencies for emission reduction programs and projects. The Legislature left flexibility for state agencies 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 directed toward projects that create measurable and substantial reductions in GHG emissions, which is the goal of the cap-and-trade program.

Although proceeds are used to fund other GHG reduction and environmental programs, California's cap-and-trade program is primarily designed as an emissions reduction tool. As emissions decrease, so too will proceeds from the cap-and-trade auction. Reactionary policy to reduce proceeds will serve only to further drive down auction prices. California should avoid repeated changes to price floors, price ceilings, and allowances in order to allow the market to work properly to reduce emissions in the covered sectors.

- **Pairing Emission Reductions with Technological Innovation.** California must continue to develop and rely on technology improvements in order to cost effectively reach our climate goals. The state has the opportunity of a lifetime to be a leader in climate tech. According to a recent report by President Biden's Council on Environmental Quality:

"To reach the President's ambitious domestic climate goal of net-zero emissions economy-wide by 2050, the United States will likely have to capture, transport, and permanently sequester significant quantities of carbon dioxide (CO2). In addition, there is growing scientific consensus that carbon capture, utilization, and sequestration (CCUS) and carbon dioxide removal (CDR) will likely play an important role in decarbonization efforts globally; action in the United States can drive down technology costs, accelerating CCUS deployment around the world."

The Biden administration also is supporting policies that attempt to drive down the costs of direct air capture, with the U.S. Department of Energy introducing the "Carbon Negative Shot" as part of its Earthshots Initiative.

Tech companies also are getting on board, making data analysis available to companies to track, audit and reduce their carbon emissions. As part of developing its post-2030 carbon goals and its carbon neutrality goals, California must ensure robust investment and support of technology to complement emissions reduction strategies.

LEGISLATIVE ACTIVITY IN 2022

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.

The California Chamber of Commerce expects continued debate over the use of cap-and-trade funds, which should be directed to programs that demonstrate cost-effective and significant GHG reductions. Changes to the cap-and-trade program to try to increase auction proceeds at the expense of stability of the market must be avoided.

The Legislature will likely continue to introduce post-2030 climate goal bills, including bills to codify a date for climate neutrality. Whatever the state chooses as its post-2030 climate goals, market-based mechanisms should continue as a primary strategy, and the Legislature should ensure continued support for technological advancement in addition to emissions reductions.

CALCHAMBER POSITION

The CalChamber 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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Education Quality

High-Quality Education Will Depend on Better Accountability, Intervention for Failing Schools

After more than a year of lockdown, remote teaching, and learning loss, nearly all California public schools reopened their campuses last fall. After what many parents consider a lost year, everyone should welcome a return to normalcy.

Or should we?

For millions of California students, a return to normalcy may mean merely going from worse to bad. Before the pandemic, the quality of much of California's public school education fell far short of the minimum required to guarantee students a fair shot at economic opportunity and social equity.

PANDEMIC AND EDUCATION PROFICIENCY GAPS

Recent research confirms what many parents perceive — that their children did not receive the same quality education during the pandemic. According to scholars from an academic think tank, students in grades 3–8 have fallen about 2.5 months behind in their curriculum in both English and math. Students who are economically disadvantaged, English learners, and those with disabilities, have fallen even further behind.

Even before the onset of the pandemic, according to the National Center for Education Statistics, proficiency rates for California Black and Hispanic students (who together account for more than 60% of public school enrollments in the state) are far less than half that of white and Asian American students. These racial gaps in education proficiency have grown wider over time.

The view is no better through the lens of income level. Nearly 60% of California public school students qualify for free or reduced-price meals, which is a proxy for family income. Of those students, only about one-fifth meet or exceed proficiency for fourth or eighth grade math or reading. The effects of the pandemic are certain to widen this gap.

The overwhelming majority of these students eventually will work in small and large California businesses, so employers have a keen, even existential, interest in the educational success of these high school graduates. Employers also have an abiding commitment to social cohesion, of which economic opportunity and educational attainment are foundational.

EFFORTS TO IMPROVE EDUCATION OUTCOMES

California's attempts to improve educational outcomes have been episodic and, in some cases, transitory. Beginning in the 1990s, the state led the nation in the movement for accountability and providing a fertile environment for charter schools, which provide a competitive alternative to low-performing public schools, especially for low-income students and students of color.

The pendulum has since swung in the opposite direction, eroding the previous emphasis on high expectations, standards, and mandates for improvements, along with the expansion of charter schools. Decades of institutional reform efforts — not to mention increased education outlays — have failed to make consistently high-quality schools available to all students.

To remedy this injustice, a movement has formed in many states to shift the balance of power away from the education establishment and toward families. The aim is to provide these students and their parents with a mechanism to force state leaders to focus on improving student outcomes rather than placating special interests.

This is not a new idea.

QUALITY EDUCATION ADVOCATES TURN TO COURTS

In the face of legislative indifference to educational performance improvement, a group of students, parents, and their advocates initiated a lawsuit in 2015 to require that all students receive a quality education. The idea was to extend the jurisprudence, begun under *Serrano v. Priest* in 1971, that education is "a fundamental interest" and the state must ensure "basic educational equality" under the California Constitution.

In *Vergara v. State of California*, the students and parents

alleged that several California statutes related to teacher tenure, layoffs and dismissal violated the constitution and denied equal protection to students because the statutes required the state to retain "grossly ineffective" teachers. The plaintiffs argued that these statutes had a disparate impact on poor and minority students who were more likely to be assigned to these grossly ineffective teachers.

A Los Angeles County Superior Court judge ruled for the students, finding that evidence of "the effect of grossly ineffective teachers on students is compelling. Indeed, it shocks the conscience." But a California appeals court (eventually backed by the state Supreme Court) rejected these allegations and found that the statutes were constitutional.

In effect, the higher courts ruled that while students have a constitutional right to equal *inputs* to their education, they had no right to any particular *outcome*. Their fundamental right extended no further than adequate and roughly equal amounts of money and distribution of resources, but not what the schools did with those resources. In a separate case, the appeals court stated that while it "agreed wholeheartedly with appellants that the provision of a quality education for all public school students is an important goal for society as it ensures full participation in our constitutional democracy . . . (there is) no constitutional mandate to an education of a particular standard of achievement."

FUNDAMENTAL RIGHT TO HIGH-QUALITY EDUCATION

Advocates believe that the solution to this constitutional mismatch is to explicitly provide a fundamental right to a high-quality education. Notably, this approach is being pioneered in Minnesota, under the leadership of Federal Reserve Board of Minneapolis President Neel Kashkari (in 2014, a California gubernatorial candidate) and retired Minnesota Supreme Court Justice Alan Page (and, in a past life, an NFL Hall of Fame defensive lineman).

Their proposal is now being debated in the Minnesota State Legislature. Advocates in five other states, including California, are considering similar proposals through either the legislative or initiative processes.

FORECAST FOR CALIFORNIA

The California Legislature has shown little inclination to return to the days of accountability for education providers and more choices, like charter schools, for parents. Advocates may propose measures in 2022 to provide a right to a high-quality education for California public school students, but the focus of lawmakers — in response to the education establishment — usually is distributional: how much in new revenues can be raised and where will it be spent.

School spending rose sharply last year, a happy consequence of higher tax revenues and federal grants, and higher school spending is anticipated again for 2022–23. Although adequate funding is necessary for a high-quality education, funding is not nearly sufficient by itself to achieve high quality.

CALCHAMBER POSITION

The California Chamber of Commerce supports efforts to improve the K–12 school accountability system that measures each school's quality in key areas, highlights outcomes for key student subgroups and indicates changes in student outcomes over time and supports development of a system for prompt intervention and meaningful corrective measures for persistently failing schools or schools that consistently fail to improve. The CalChamber supports the right to a high-quality education, for all students and their families.

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Election Processes

Legislators Eye Changes to State's Direct Democracy Traditions

California enjoys a strong tradition of democracy in practice. California citizens have the power to recall elected officials, seek referendums on laws that have been passed, and enact laws via the ballot initiative process.

BACKGROUND

Article II of the California Constitution gives the people of California the power to propose laws, and even constitutional amendments, without the support of the Legislature or the Governor. In essence, citizens can write and submit their own proposed laws (initiatives), circulate initiative petitions for signatures, and if enough signatures are collected, qualify their initiatives for the ballot to be voted upon by Californians.

Under the same article of the Constitution, citizens of California have the authority to conduct recall elections. Recall is the power of voters to remove elected officials before their terms expire. It has been a fundamental part of California's governmental system since 1911 and has been used from time to time by voters to remedy dissatisfaction with their elected representatives.

The process for recalling an elected official is similar to that of an initiative. Once a notice of intention to recall has been submitted, the proponents must prepare a recall petition for circulation and signatures. The number of signatures needed generally must be equal to at least 20% of the last vote for the office. Importantly, California allows the recall of a statewide elected official to be placed on the ballot if it collects signatures equaling at least 12% of the votes cast in the previous election for that office. Those signatures also must come from at least five different counties.

In addition to the recall process, the California Constitution provides for a referendum process through which voters have the power to approve or reject statutes, or parts of statutes, with certain exceptions.

LEGISLATIVE COMMITTEES EXAMINE LOCAL AND STATE RECALL PROCESS

Last year's statewide gubernatorial recall election sparked a debate about California's 110-year-old recall processes, and whether there are sufficient checks and balances to ensure fair democratic elections in today's age. The California Assembly Elections and Senate Elections and Constitutional Amendments committees have since held two joint informational hearings to discuss California's statewide recall process and whether reforms should be made.

As noted by the committees, California's recall process allows an elected official to be recalled and replaced by someone who receives fewer votes than the elected official. To be clear, the recall election is a two-part process: first is the question of whether the incumbent should be retained or recalled; and second is the question of who should replace the recalled official. The replacement is the person who receives the highest number of votes on the second question.

To put this in perspective, if the 2021 gubernatorial recall had succeeded, Governor Gavin Newsom, who received more than 7.7 million votes in the 2018 gubernatorial election, would have been replaced by someone who received less than half that number of votes in the 2021 recall. It should be noted that such a result, while possible, is not inevitable.

During the informational hearings, the committees acknowledged the value that California's recall process holds for the public and the positive potential of a recall process. However, the committees intended to evaluate the need for updates to the manner in which the recall processes and procedures are carried out in the state. In particular, one of the key concerns raised during the hearings is the ability for parties that lose elections to use recalls as a backdoor to relitigate results. Recall elections are disruptive to governance and costly to the state. The unusual polarization of our era raises concerns that these processes, once reserved for exceptional circumstances, can be abused. Even so, in California's history, there have been exactly six successful recalls of officials, one of which was for a statewide official. That one statewide recall was for Governor Gray Davis in 2003.

Although the committees have not made any decisions or

taken any actions related to election recalls, the informational hearings do demonstrate a renewed motivation to update and revise California's recall process, indicating that there is a potential for legislation or other state action on the issue.

CALIFORNIA'S REFERENDUM PROCESS

The California referendum process is an important tool that provides the voters a limited opportunity to review and approve certain legislative statutes. It is a "do-over," placing the voters in the shoes of the Legislature. Under current constitutional law, once a referendum petition has qualified, the law is suspended before it can take effect. Next, the voters consider the same question as the Legislature: "Should this measure become law?" If a majority of voters vote "no," the law does not take effect.

Procedurally, from the date a bill passes, a proponent has 90 days to request and receive a circulating title and summary from the Attorney General; print petitions; gather signatures equaling at least 5% of the votes cast for all candidates for Governor at the previous gubernatorial election; and file the petitions with county officials. Once a petition is filed, county elections officials have 8 working days to determine a raw count of signatures and report their results to the Secretary of State. Once the statewide total reaches the required number of signatures, the referendum qualifies for the ballot.

Counties determine referendum supporters have gathered enough valid signatures by a random sampling of 3% or 500 signatures, whichever is greater, and subsequently report those results to the Secretary of State. If the statewide random sample projects more than 110% of the necessary number of signatures will be valid, the referendum qualifies for the ballot. If the statewide total is less than 95% of the necessary number of signatures, the referendum fails to qualify for the ballot. If the statewide total falls between that 95%–110% margin, counties are required to perform a full check of signatures and report those results to the Secretary of State within 30 days. The results of the full count then determine whether the referendum qualifies for the ballot.

Once the referendum is on the ballot, the law is suspended before it can take effect. The voters then consider the question: "Should this measure become law?" The law is repealed if voters cast more "no" votes than "yes" votes on the referendum in question. A "no" vote means the voters say "no" to the statute in question, and a "yes" vote means voters say "yes" to the statute in question.

In an attempt to change a "no" vote to a "yes" vote, Senator Bob Hertzberg (D-Van Nuys) introduced legislation in 2021 proposing to swap the meaning of a "yes" and a "no" vote on referendums. Currently, a referendum that qualifies for the ballot repeals a law at issue if more "no" votes are cast than "yes" votes. SCA 1 (Hertzberg; D-Van Nuys) and SB 443 (Hertzberg; D-Van Nuys) attempted to upend this process by changing the meaning of a "yes" vote and a "no" vote, providing that a referendum is successful only if it receives more "yes" votes than "no" votes. The measures would have presumed that the proposed statute in question is poised to take effect and voters are deciding whether to exercise a veto. But in a referendum, voters are not acting as a check on an already-approved legislative measure, like a Governor; they are in fact acting as the Legislature. This is the appropriate role for voters. Making the change in SCA 1 and SB 443 means that voters would debate the appropriateness of the legislative action, rather than the merits of the proposed law. This philosophical argument is distracting from the key question: should the proposed statute become law?

Proponents claimed that voters fail to understand that rejecting a statute required a "no" vote on the referendum. But no evidence was presented to support the notion that voters had this misunderstanding. Further, no evidence was presented that the current process leaves voters confused. Instead, it would make sense that changing a referendum process that has been in place for more than 100 years would create more confusion than leaving that process in place. Qualifying a referendum for the ballot is already a time-sensitive and costly endeavor. Changing the process in this way further limits the ability for groups targeted by the Legislature to seek relief.

SCA 1 was double joined with SB 443, meaning its passage was contingent upon the passage of SB 443. Together, these bills would have changed the vote on a referendum so that a "no" vote would mean "yes," and a "yes" vote would mean "no," thus reversing established California voter practice. SCA 1 was ordered to the Senate inactive file at Senator Hertzberg's request in the final days of the 2021 legislative session. SB 443 is eligible to be considered in the Assembly in January 2022.

CALIFORNIA'S INITIATIVE PROCESS

California's initiative process gives Californians the power to propose statutes and to propose amendments to the California Constitution. Generally, any subject that is proper for the Legislature can become an initiative measure; however, each initiative measure must focus on one subject area.

An initiative measure may be placed on the ballot after it has been drafted and submitted to the Attorney General with a written request that a circulating title and summary of the chief purpose and points of the proposed initiative measure

be prepared. It is important to note that because the Attorney General is an elected position and the Attorney General historically takes strong political positions, there is a growing debate about whether the Attorney General is the appropriate authority to draft an unbiased circulating title and summary for all petitions.

Initiative proponents are allowed a maximum of 180 days from the date the official summary is released to circulate petitions, collect signatures, and file the signed petitions with county elections officials. The number of valid signatures required depends on whether the initiative is proposing a new law or a change in the California Constitution. An *initiative statute* must receive signatures equaling at least 5% of the total votes cast in the previous gubernatorial election. An *initiative constitutional amendment* must receive signatures equaling at least 8% of the total votes cast in the previous gubernatorial election.

Interestingly, legislation introduced in 2021 would have drastically increased the cost of bringing an initiative to voters by requiring any citizen-backed initiative to pay employees an hourly rate to collect signatures for ballot initiatives, referendums and recall petitions, as opposed to piece-rate signature gathering. If the change had gone into effect, the cost of signature gathering in California would have increased dramatically, thus excluding low-funded citizen initiatives from the ballot process. SB 660 (Newman; D-Fullerton) would have denied access to the initiative process to citizens who cannot afford to pay for employees to gather signatures by making it significantly more expensive and difficult to run a recall, referendum or initiative. This bill was vetoed by the Governor.

CALCHAMBER POSITION

California's direct democracy process includes initiatives, referendums and recalls in order to allow voters the opportunity to engage and address their government without the intermediation of the Legislature. Any changes to this process should be done in a balanced manner to ensure that it does not disenfranchise, confuse or eliminate that process for any voter.

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Hazardous Waste Operations

Legislature Must Bring More Certainty to Hazardous Waste Operations

The extraordinary time and costs associated with the permitting process in California make in-state processing of hazardous waste economically uncompetitive with out-of-state hazardous waste processing facilities. Yet, permitted hazardous waste facilities in California are a vital component of the state's economy and perform essential functions relating to military defense, recycling of hazardous waste, remediating contaminated sites and protecting public health. More than 1.8 billion pounds of California hazardous waste is disposed of in California facilities each year. This article provides background regarding the current state of hazardous waste management in California and summarizes recent legislative and regulatory developments that will affect California's hazardous waste management for years to come.

HAZARDOUS WASTE MANAGEMENT IN CALIFORNIA

The federal Resource Conservation and Recovery Act (RCRA) of 1976 is the primary law governing the disposal and treatment of hazardous waste. RCRA is a comprehensive "cradle to grave" regulation that imposes stringent record keeping and reporting requirements on generators, transporters and operators of treatment, storage and disposal facilities handling hazardous waste. The California Department of Toxic Substances Control (DTSC) regulates the handling, management and remediation of hazardous substances, materials and waste, and administers the federal RCRA program in California.

Over the last several years, DTSC has struggled with significant management, public safety and public relations issues, including decreased stakeholder confidence and public trust arising out of the mishandling of hazardous waste facility permitting and enforcement, resulting in contamination and neglected cost-recovery efforts for cleanups across the state. These problems have led to an accumulation of 1,661 projects totaling almost $194 million in uncollected cleanup costs dating back almost three decades.

DTSC, the former Brown administration and the Legislature took several actions over the last few years to try to restore public confidence in DTSC. These efforts included budget augmentations and numerous statutory changes aimed at helping DTSC fulfill its mission to protect California's people and environment from the harmful effects of toxic substances by restoring contaminated properties, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

Some of these reforms have imposed additional unnecessary costs and burdensome requirements on permitted hazardous waste facilities operating in good faith and in full compliance with California law. The number of hazardous waste facilities in California is declining steadily each year, with just 80 permitted facilities operating today to manage the waste of 40 million Californians.

ELIMINATION OF FLAT FEE LEADS TO SUBSTANTIAL COST INCREASES TO PERMITTED 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 Governor Edmund G. Brown Jr. subsequently signed. From the 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.

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 about 80 permitted hazardous waste facilities left operating in California, including the seven facilities operated by the military, and 28 Post Closure Facilities (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 almost 2 billion pounds of hazardous waste produced each year. When there are inadequate permitted hazardous waste facilities in-state, California entities ship their hazardous waste to neighboring states or even other countries, like Mexico, where regulations are far less stringent and much hazardous waste is treated as garbage.

DTSC REGULATIONS PURSUANT TO SB 673 WILL FURTHER COMPLICATE AND INCREASE COSTS FOR PERMITTED HAZARDOUS WASTE FACILITIES

In October 2015, Governor Brown signed into law SB 673 (Lara; D-Bell Gardens; Chapter 611, Statutes of 2015). SB 673 was enacted in response to public and legislative concerns regarding DTSC's shortcomings in implementing the hazardous waste facility permitting program in California and to prevent the recurrence of administrative failures. The Legislature required DTSC to adopt regulations establishing or updating criteria used in determining whether to issue a new or modified hazardous waste facilities permit, or to renew a permit, which may include criteria for denying or suspending a permit.

DTSC chose to implement SB 673 by dividing the regulations into two tracks. Track 1 regulations were approved by the Office of Administrative Law on October 24, 2018 and went into effect January 1, 2019, while regulations for Track 2 are still in draft concept. The regulations adopted and developed under both tracks are controversial for the regulated community.

• **Under the Track 1 regulations**, DTSC created new permit criteria that assessed a facility's compliance history, data for a community profile, financial responsibility, training for facility personnel, and a health risk assessment for facility operations before granting a new permit or permit renewal.

Although the Violations Scoring Procedure (VSP) regulations were supposed to establish a systematic process for evaluating and characterizing a hazardous waste facility's compliance by assigning numerical scores, the VSP is unlikely to provide clear and objective criteria for making permit denial and revocation decisions. The VSP scores are inherently subjective despite DTSC's attempts to give the appearance of empiricism. Although the result of the VSP process would be a numerical value output, the process itself is flawed because it is based on a cascading series of subjective DTSC decisions. The process of evaluating the nature of past violations — especially when viewing how such violations should affect a facility's ability to continue operating — is an extraordinarily complicated, technical and data-driven inquiry that will have the unintended consequence of dissuading permittees from ever settling with the agency.

• **Under Track 2**, DTSC is developing regulations that create additional permit criteria to address cumulative impacts on vulnerable communities. Under these proposed regulations, DTSC proposes to establish minimum setback distances from locations, such as schools, daycare centers and hospitals, as well as a process to place additional restrictions on facility operations based on cumulative impacts.

Although the CalChamber supports reducing cumulative public health and environmental impacts from multiple sources of pollution on vulnerable communities in California, the regulations attempt to mitigate impacts driven by unrelated sources or socio-economic stressors that are independent of facility operations but otherwise contribute to overall community vulnerability. Permitted hazardous waste facilities should be responsible for mitigating environmental and human health impacts related to their facility operations and within their control to mitigate.

The regulations already adopted under Track 1 and currently being pursued under Track 2 could discourage renewal of hazardous waste facility permits or lead to additional hazardous waste facility closures in California. As more California hazardous

waste facilities close, a larger volume of California's non-RCRA hazardous waste will be exported to other states where it will be managed as ordinary solid waste, or worse, illegally dumped.

OVERHAULING DTSC THROUGH CREATION OF A BOARD

Over the years there have been numerous unsuccessful legislative attempts to overhaul DTSC into an organization that is more transparent and accountable in its decision-making.

• In 2020, Governor Gavin Newsom announced revamping DTSC in his proposed 2020 budget by installing an oversight board to set fees and hear appeals of agency decisions. The five-member board was proposed to be funded with $3 million from the General Fund and have the authority to set fees that companies pay for managing hazardous waste and toxic substances.

• The Legislature had similar overhaul ideas, but with a more balanced approach. Assembly Member Cristina Garcia (D-Bell Gardens) and a dozen other lawmakers proposed a legislative overhaul to DTSC (AB 995) that would have created a five-person board to serve as the policy setting body for DTSC and have the power to decide permit appeals and be the public interface for the DTSC.

• AB 995 was not enacted in 2020, but Assembly Member Garcia tried again with AB 1 in 2021. AB 1 made a number of statutory changes to permitting deadlines and improved the department's financial assurances requirements. The bill created a fee task force led by the Secretary of the California Environmental Protection Agency and including representatives from environmental, environmental justice, and industry groups that would be charged with conducting a comprehensive evaluation of DTSC's fee structure to identify a funding structure that would provide sufficient resources for DTSC to carry out its statutory mandates. Industry and environmental groups ultimately compromised to eliminate the inefficiencies at DTSC that result in delayed permitting decision and contaminated sites. The major provisions of AB 1 ultimately wound up being incorporated into the budget bills signed by Governor Newsom in 2021. DTSC rulemaking will likely move forward to implement these sections in the coming year.

CALCHAMBER POSITION

The CalChamber supports treating, storing, and disposing of hazardous waste within California. The California protocols dealing with hazardous waste are more rigid than those of any other state, resulting in the processing of more hazardous waste into nontoxic form and sending less hazardous materials into landfills. To this end, the 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.

The CalChamber supports polices that ensure DTSC issues hazardous waste permits in a timely and cost-effective manner subject to clear and predictable procedures. Conversely, the CalChamber opposes policies that exacerbate the closure of California hazardous waste facilities by creating unpredictable permitting criteria which unnecessarily increase costs. Fee increases must be reasonable and tied to streamlined and effective activities at DTSC, and must include input from industry.

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Per-and Polyfluoroalkyl Substances (PFAS)

Expect More California/Federal Laws, Regulations

The per-and polyfluoroalkyl substances (PFAS) are a class of manmade chemicals used to make fluoropolymer coatings and products that resist heat, fire, oil, stains, grease, and water since about the 1940s. Due to the strength of the chemical bonds, PFAS molecules are very stable and highly resistant to biological degradation. PFAS have been used extensively in the making of clothing, furniture, adhesives, food packaging, heat-resistant nonstick cooking surfaces, firefighting foam, and the insulation of electrical wire, to name a few.

Many PFAS, including perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), are under increased scrutiny at both the state and federal levels because of concerns regarding their potential health and environmental impacts. An increase in proposed PFAS laws and regulation is expected, with California already standing out due to its aggressive activity in this space and more recent proposed drinking water standards.

FEDERAL ACTION ON PFAS

In 2016, the U.S. Environmental Protection Agency (EPA) published a drinking water health advisory of 70 parts per trillion (ppt) for PFOS and PFOA. Although the advisory was not an enforceable regulatory limit, 70 ppt became a widely used benchmark for PFAS for many jurisdictions. In 2019, the EPA published the agency's PFAS Action Plan outlining a multimedia, multiprogram national plan to address PFAS.

On October 18, 2021, the EPA announced extensive new plans for regulation of PFAS covering eight federal agencies: the Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), Department of Transportation (DOT), Department of Defense (DOD), Department of Homeland Security (DHS), Department of Health and Human Services (DHHS), White House Council on Environmental Quality (CEQ), and EPA. The primary focus appears to be PFAS in drinking water and PFAS in the country's food supply and consumer products. The announcements follow increased scrutiny of PFAS over the past five years, especially from states like California that have jumped ahead of the federal government with increased laws and regulations of PFAS.

Before this announcement, the majority of PFAS regulations at the federal level focused on "long-chain PFAS," including PFOA and PFOS. While the EPA's focus will continue to include PFOA and PFOS, federal efforts are evolving to include dozens of other PFAS chemicals that include some "short-chain PFAS." Some of the proposed federal plans regulating PFAS include fast-tracking the designations of PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed rule implementing this designation is expected in early 2022, with the final rule anticipated in mid-2023. To read more about the EPA's PFAS Strategic Roadmap, visit *https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf*.

CALIFORNIA ACTIVITY PERTAINING TO PFAS

In 2017, the California Office of Environmental Health Hazard Assessment (OEHHA) added PFOA and PFOS to the Proposition 65 List, requiring a warning about significant exposure to listed chemicals that are present in products sold to California consumers. Less than two years later, Governor Gavin Newsom signed AB 756 (C. Garcia; D-Bell Gardens) into law, codifying Section 116378 of the Health and Safety Code as part of the California Safe Drinking Water Act. In doing so, the law authorized the State Water Resources Control Board (SWRCB) to order certain public water systems to monitor for PFAS and require additional actions if PFAS is detected.

Shortly after Governor Newsom signed AB 756 into law, the SWRCB reduced the notification levels for PFOA and PFOS to 5.1 parts per trillion (ppt) and 6.5 ppt, respectively — well below the federal 70 ppt. The SWRCB also requested that OEHHA develop Public Health Goals (PHGs) for PFOA and PFOS for drinking water. A PHG is the level of a chemical contaminant in drinking water that OEHHA determines does not pose a significant risk to public health from a lifetime of exposure. Although PHGs are not regulatory standards, California law requires drinking water standards for chemical contaminants to be set as close to the corresponding PHG as is economically and technologically feasible.

In July 2021, OEHHA made good on the directive and proposed a PHG for PFOA at 0.007 ppt (equivalent to 7 parts per quadrillion) and PFOS at 1 ppt in drinking water. These proposed levels were not only far lower than SWRCB's current Maximum Contaminant Levels (MCLs), set at 5.1 ppt for PFOA and 6.5 ppt for PFOS, but far lower than any other standard set for PFAS in drinking water in the entire country. OEHHA indicated that these levels would result in one additional cancer case per million residents that are exposed over a lifetime to either PFOA or PFOS.

OEHHA wasn't the only state agency active on PFAS. Effective July 2021, the Department of Toxic Substances Control (DTSC) named carpets and rugs containing PFAS as a "Priority Product" under the Safer Consumer Products Program. Then on September 24, 2021, DTSC initiated rulemaking to list treatments containing any PFAS for use on converted textiles or leathers as a "Priority Product" as well. In DTSC's Safer Consumer Products work plan for 2021-2023, there is an emphasis on more regulating of PFAS in consumer products, especially children's products and food packaging.

On the legislative side, the California Legislature sent, and the Governor signed, four bills regulating PFAS: AB 652 (Friedman; D-Glendale) bans intentionally added PFAS in juvenile consumer products. AB 1200 (Ting; D-San Francisco) bans intentionally added PFAS in single-use food packaging and requires that cookware be labeled with the intentionally added chemicals on DTSC's designated list. SB 343 (Allen; D-Santa Monica) prohibits single-use packaging from being labelled "recyclable" if it contains intentionally added PFAS. Finally, AB 1201 (Ting; D-San Francisco) prohibits products from being labeled as "compostable" if they contain more than 100 ppm of PFAS.

WHAT BUSINESSES SHOULD EXPECT REGARDING PFAS

Many businesses have expressed concerns that the technology necessary to detect PFAS contaminants in drinking water at the levels proposed by OEHHA does not currently exist. Therefore, companies are concerned that they cannot reasonably comply with the proposed MCLs. If adopted, it could present significant enforcement liability and cost concerns for businesses across California. Should PFOS and PFOA be deemed hazardous substances under CERCLA and/or hazardous wastes under RCRA, it will bring more regulatory reporting, recordkeeping obligations and potential liability to businesses.

Although the majority of the regulatory landscape around PFAS has centered on drinking water standards, more recent California laws dealing with PFAS and increased pressure on other federal agencies to regulate PFAS in other contexts (for example, cosmetics) suggest more comprehensive regulatory action on the horizon.

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Health Care Affordability

Avoiding Government Mandates Can Help Limit Costs

Health care coverage affordability is a concern that plagues most, if not all, Californians. Many state residents are enrolled in an employer-sponsored health plan, meaning annual premium increases are of the utmost concern. The causes of premium increases, as well as the cost of overall health care is likely to be a component of legislation backed by health care advocates in the 2022 legislative session.

HEALTH CARE COVERAGE PREMIUMS BURDENSOME

According to the California Health Care Foundation, 32.7 million Californians were enrolled in some form of health care coverage, including Medi-Cal, in 2019. Of those enrollees, 18 million obtained coverage through an employer-sponsored health plan.

California employers and employees spent $144 billion on health care in 2019. Employees spent $27 billion on premiums while employers spent $100 billion on premiums. The average premium for family coverage has increased 22% over the last five years and 55% over the last 10 years.

Since 2002, premiums for the average family health plan in the employer market has increased 133%. The 2020 Kaiser Family Foundation Employer Health Benefits Survey indicated that, for job-based coverage, the average annual premium for single coverage rose 4%, to $7,470. The average annual premium for family coverage also rose 4%, to $21,342, which is nearly one-third of the state's median family income.

GOVERNMENT-IMPOSED COVERAGE MANDATES CAUSE PREMIUMS TO INCREASE

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

According to the California Health Benefits Review Program (CHBRP), the California Legislature introduced 19 bills in 2021 that, if signed into law, would have increased California employer premiums a staggering $580.544 million. This figure did not include the potential impact of AB 570 (Santiago; D-Los Angeles), which would have increased premiums by $829.36 million in certain utilization scenarios. Before amendments, AB 570 sought to mandate employees' dependent parents and step-parents be provided health care coverage on employer-sponsored health plans. Also not included in the CHBRP estimate was the cost impact of AB 1400 (Kalra; D-San Jose) — an attempt to create a state government-run, single-payer health care system (see Single-Payer Business Issue article) —which would have cost employers at least $200 billion while upending the entire health care model.

When looked at in isolation, the cost implications of many of the coverage mandates may seem tolerable. In other words, one mandate may raise premiums a nominal amount. As the CHBRP analysis illustrated, however, if all coverage mandates proposed in 2021 had gone into effect, state legislators would have been responsible for increasing state employer premiums by more than $1 billion — and this doesn't include the cost impact of AB 1400's single-payer proposal.

GOVERNMENT MANDATES LARGELY UNNECESSARY

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

The EHB requirement does not extend to large group and

self-insured plans; however, those plans offer comprehensive coverage that can exceed EHB requirements. If a large group or self-funded plan covers any specific category of EHBs, then they cannot place an annual or lifetime dollar limit on that type of coverage. In addition, a state cannot mandate how a self-insured plan is administered because these plans are regulated at the federal level by the Employee Retirement Income Security Act (ERISA).

Small and large group health care plans offer a breadth and scope of coverage that extends to a vast majority of care settings and treatment situations. Benefit design and enrollment choices made by employers should be respected and not infringed upon. Although government mandates usually are intended to address a perceived shortcoming, they inversely cause health care costs to rise for all enrollees even though only some will utilize the expensive new service.

ADDITIONAL STATE COST TRENDS

California pays more for common health care services than the rest of the United States and price disparities abound within the state itself. In a national analysis, the average price of childbirth in California was more than $11,000. Nevada and Arizona had average prices below $8,000.

Within California, prices vary geographically. For example, a vaginal delivery on average is $13,855 in Northern California, while it's $11,202 in Southern California. That is a 24% difference. A colonoscopy in Northern California, on average, is $1,007 while it is $887 in Southern California. Inpatient spending differences are even more dramatic when comparing Northern and Southern California. Inpatient procedures, on average, are $223,278 in Northern California while they are $131,586 in Southern California — a 70% difference.

While prices vary across the state, health care spending in general has increased over the last 10 to 15 years. This includes spending on prescription drugs, office-based care, and inpatient care. From 2014 to 2018, total health care spending increased 18.4% for employer-sponsored enrollees.

The cause of increased health care costs for employer-based plans is likely due to multiple factors, including high health system concentration, government mandates, increased administrative costs, California hospitals being required to retrofit — the costs of which are passed onto patients — and an aging population.

CALCHAMBER POSITION

Californians need to have access to affordable, quality health care. The cost of care and pharmaceutical prices are obviously increasing, which, in turn, causes employer and employee premiums to rise. If affordability is the goal of the California Legislature, expensive coverage mandates are avoidable health care cost drivers. CalChamber will continue to oppose these mandates while supporting legislation and regulatory action that allows health plans to offer a variety of benefit design options to employers for their employees.

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Single-Payer Health Care

Government-Run Health Care Reduces Choice, Increases Costs

During the 2021 legislative session, California legislators reintroduced a bill identifying the government-run, single-payer health care model as the preferred method of health care coverage. This convoluted and extremely expensive system eradicates personal choice by forcing every resident to use an assigned system or physician. A 2018 CalChamber poll found that voters preferred keeping their own health care coverage rather than switching to a government-run program by a 3 to 1 margin. Considering the costs associated with single-payer health care and Californians' preference for coverage of their choosing, the Legislature should respect the will of those they represent.

SINGLE-PAYER HEALTH CARE DEFINED

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

SINGLE-PAYER HEALTH CARE NOT FREE HEALTH CARE

There's nothing free about a government-run health plan. During the 2021 legislative session, AB 1400 was introduced by Assemblymember Ash Kalra (D-San Jose). AB 1400 was similar to SB 562, which was introduced by Senator Ricardo Lara (D-Bell Gardens) in 2017. According to the Senate Floor analysis on SB 562, a single-payer proposal in California was estimated to cost more than $400 billion annually.

In 2019, the Committee for a Responsible Federal Budget conducted a Medicare for All analysis and found that such a model would potentially be funded by payroll tax increases, income surtaxes, value-added taxes, mandated public premiums, doubling individual and corporate income tax rates, or a combination thereof.

In 2008, the Legislative Analyst's Office (LAO) analyzed the cost of a single-payer system in California and concluded that more than $210 billion would be needed in the first year to sustain such a system and the amount would increase up to $250 billion in subsequent years. Even with a 12% payroll tax paid both by employers and employees under that measure, the report predicted a net shortfall of $42 billion in its first full year of implementation and even higher thereafter. Just to cover the shortfall would require a 16% tax on employers and employees, according to the LAO's estimate, resulting in a multibillion-dollar-tax increase on Californians.

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

HEALTH CARE COVERAGE ALREADY AVAILABLE

When health care data is examined, it is clear that coverage is available to Californians. In 2019, data released from the California Department of Managed Health Care and the California Department of Insurance showed that 32.7 million Californians were enrolled in health care coverage. Of this number, more than

10 million Californians had Medi-Cal coverage. As of October 2020, 6,439,998 California residents had Medicare coverage. Covered California reported 1.6 million people enrolled in their plans in 2021.

According to data from the U.S. Census Bureau, 7.1% of Californians were without health care coverage in 2020. The LAO stated that undocumented immigrants represented 40% of California's remaining uninsured individuals. However, California has been expanding Medi-Cal coverage for undocumented residents over the last several years: 536,000 undocumented people age 25 and under have enrolled as full-scale beneficiaries while approximately 345,000 undocumented adults are receiving limited coverage. The state's latest expansion of coverage for this population will qualify all income-eligible residents age 50 and older for full-fledged benefits starting in May 2022, and is expected to enlarge Medi-Cal demographics by about 235,000 people.

GOVERNMENT-RUN SINGLE-PAYER HEALTH CARE REDUCES PATIENT ACCESS TO QUALITY PROVIDERS

Interestingly, a single-payer model would likely reduce patient access to providers. This system typically requires a general practitioner, or primary care provider, be the initial point of contact. In a general sense, health maintenance organizations (HMOs) operate similarly. The current multi-provider system, however, offers variety in relation to coverage, meaning not all patients rely on a primary care provider to be their initial point of contact (for example, preferred provider organization (PPO) patients). This leads to tremendous scheduling and wait time issues. Additionally, patients receive very little interaction with their provider. Furthermore, because the general practitioner is the primary point of contact, the "free" health care services often are overutilized, which may lead to government rationing of health care services.

Personal freedom and choice also are precluded in a single-payer system, forcing every resident to use an assigned system or physician rather than a health plan or physician of their choosing. Additionally, a single-payer health care system can result in decreased quality of care since competition is eliminated and rates are set by the government. 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.

CALIFORNIANS HAVE REJECTED GOVERNMENT-RUN HEALTH CARE

California voters have twice rejected a government-run health care system at the ballot box — in 1994 and 2004. In addition, a CalChamber-conducted poll in 2018 found that voters overwhelmingly preferred to keep their current health insurance (78%) over switching to a single-payer approach (22%). Voters strongly support subsidies for people who cannot afford their own health care (75%) and for those who have pre-existing health conditions (81%) but were not ready to embrace government-run health care.

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

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

HEALTHY CALIFORNIA FOR ALL COMMISSION

California's 2019 budget allocated funding to create the Healthy California for All Commission. According to the 2019 budget, the commission is charged to "Develop a plan that includes options for advancing progress toward achieving a health care delivery system in California that provides coverage and access through a unified financing system, including, but not limited to, a single-payer financing system, for all Californians."

The commission first met in January 2020 and is comprised of 13 voting members, including California Health and Human Services Secretary Mark Ghaly, who chairs the commission, eight gubernatorial appointees and four legislative appointees. The pandemic sidetracked a consistent meeting schedule and has delayed the commission's final report, which will be provided to the Governor, and chairs of the Senate and Assembly Health committees. It is anticipated the commission will issue its final report in February 2022.

CALCHAMBER POSITION

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

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

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California Housing: 2022 and Beyond

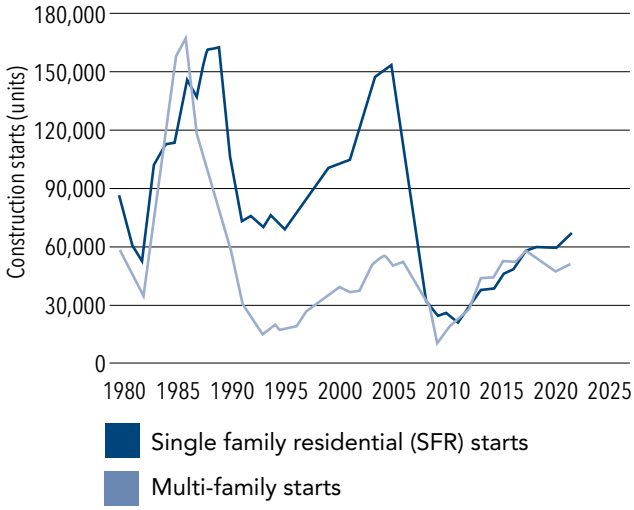
Comprehensive Reform, Re-Evaluation of Environmental, Vehicle Miles Traveled Policies Needed

California remains deeply mired in a housing crisis driven largely by decades of policies that have stifled housing production. The ongoing crisis continues to exacerbate inequality in the state as more Californians are priced out of their neighborhoods, forced to spend more income toward housing or rent, and move farther from and commute longer to and from their job centers, or decide to leave the state entirely. Homeownership has proven to be one of the most important components of building long-term wealth for families, yet the dream of home ownership becomes harder every year for Californians.

The COVID-19 pandemic greatly accelerated changes already taking place in the marketplace, including a record number of workers telecommuting and an exodus of workers from expensive cities. Perhaps what accelerated most from the pandemic was California home prices. The median home price in the Golden State is forecast to rise more than 5% to $834,400 in 2022, following a projected 20.3% increase in 2021. High demand and continued low supply will continue to put upward pressure on prices. However, the shift in housing demand to more affordable areas as remote working continues to grow could help to keep prices in check and prevent the statewide median price from rising too fast in 2022, according to the California Association of Realtors housing and economic forecast.

The Department of Housing and Community Development estimates California needs upwards of 200,000 housing units per year just to meet current demand. But to overcome the existing housing deficit, many experts agree the state needs roughly 3.5 million new housing units — a number Governor Gavin Newsom promised to overcome during his 2018 campaign.

ANNUAL RESIDENTIAL CONSTRUCTION STARTS IN CALIFORNIA



Source: First Tuesday Journal (November 18, 2021).

Unfortunately, California saw a decline in the number of housing units built in 2020, with a particular falloff in multifamily units. The bright spot for California is that after back-to-back years of decline, residential construction is up 20% from last year, while multi-family construction is up 21%. Still, much more must be done by the Legislature and Governor to meaningfully address California's ongoing housing crisis.

CALIFORNIA HOUSING LEGISLATION IN 2021: SECOND TIME'S A CHARM

Expectations were high in 2020 that the California Legislature would deliver a plethora of pro-housing bills to help alleviate the crisis and meaningfully address the growing homeless population. Unfortunately, of the more than 100 housing bills introduced in 2020, only a handful ever made it to the Governor's desk.

The start of a new session provided the Legislature with another opportunity to try again on several housing bills.

Bill Repeats and Redos

• **SB 8 (Skinner; D-Berkeley),** introduced by Senator Nancy Skinner, extended several key provisions from SB 330 (Skinner; D-Berkeley), also known as the Housing Crisis Act of 2019 (Act), and was one of the few major pro-housing bills to pass in 2020. SB 330 streamlines more housing by limiting local governments' ability to downzone residential parcels after a project is deemed complete, limiting fee increases on housing applications to provide more certainty to housing developers, and sets new limits on the local approval process for housing projects.

SB 8 extends the sunset provision in the Act from 2025 until January 1, 2030 and also adds new protections, such as prohibiting a city or county from approving a housing development project if it required the demolition of occupied or vacant protected rental units unless certain requirements were met protecting the renters.

• **SB 9 (Atkins; D-San Diego)**: Senate President pro Tempore Toni G. Atkins introduced SB 9 in the 2021 session as a redo of her SB 1120, which died in 2020. SB 9 evolved over the legislative session to make it distinguishable from SB 1120 — with probably the most notable change being the addition of an owner-occupancy requirement — yet largely remained the same.

SB 9 permits an owner-occupied single-family homeowner to subdivide their lot and construct a duplex residential development on the new parcel pursuant to ministerial approval, without discretionary review or hearings, and thus no California Environmental Quality Act (CEQA) review, if certain enumerated requirements are met. SB 9 protects against gentrification and other community displacement by prohibiting the demolition or alteration of the following types of housing: housing that is subject to a recorded covenant, ordinance, or law that restricts rents to affordable levels; housing subject to rent control; or housing that has been tenant-occupied in the last three years (with no distinction drawn between market rate and affordable housing), among other protections in the law.

• **SB 10 (Wiener; D-San Francisco)** is for the most part a reintroduction of Senator Scott Wiener's SB 902, a bill that failed to pass in 2020. SB 10 creates a voluntary process for cities and counties to pass ordinances zoning any parcel for up to 10 residential units if the parcel is located in a transit-rich area and urban infill site. A "transit-rich area" is defined in Section 21064.3 of the Public Resources Code as a parcel within one-half mile of a major transit stop, or a parcel on a high-quality bus corridor. A zoning ordinance adopted pursuant to SB 10 may override a local ballot initiative which restricts zoning only if adopted by a two-thirds vote of the members of the legislative body. Additionally, the creation of up to two accessory dwelling units (ADUs) or junior ADUs (JADUs) per parcel is allowed, and these units would not count toward the 10 units.

Bills Lowering Development Fees

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

In 2020, eight bills introduced in the Assembly proposed to lower development impact fees for housing projects. All of them failed. But in 2021, the Legislature tried again — and this time with more success.

• **AB 345 (Quirk-Silva; D-Fullerton; Chapter 345)** was introduced by Assembly Member Sharon Quirk-Silva and signed into law in 2021. The bill requires local agencies to allow an accessory dwelling unit (ADU) to be sold or conveyed separately from the primary residence to a qualified buyer if certain conditions in existing law are met. Before the passage of AB 345, existing law permitted a local agency to allow an ADU to be sold if the local agency first passed an ordinance allowing it.

AB 345 also lowers, and in some cases eliminates entirely, impact fees for ADUs. Specifically, local governments are now limited to assessing a fee proportional to the square footage of the primary residence for ADUs 750 square feet or larger. For ADUs under 750 square feet, impact fees are eliminated altogether.

• **AB 571 (Mayes; NPP-Yucca Valley; Chapter 346)** was introduced by Assembly Member Chad Mayes and signed into law in 2021. The bill amends the Government Code to exempt any affordable units from being assessed housing impact fees, inclusionary zoning fees or in-lieu fees. Prior to AB 571, local governments included all units, including affordable, when calculating fees to levy against a housing project. AB 571 should help to lower the costs for any new housing project that contains one or more affordable housing units.

• **AB 602 (Grayson; D-Concord; Chapter 347)** was introduced by Assembly Member Tim Grayson and signed into law in 2021. AB 602 requires local governments to adopt an impact fee nexus study before fees can be levied on a project, and the study must be updated every eight years. Local governments must identify the existing and proposed new level of service for each public facility and explain why any new level of service is appropriate.

2022 CALIFORNIA HOUSING FORECAST

	2015	2016	2017	2018	2019	2020	2021 projected	2022 forecast
Single-Family Home Resales (000s)	409.4	417.7	424.9	402.6	398.0	411.9	439.8	416.8
% Change	7.00%	2.00%	1.70%	-5.20%	-1.2%	3.5%	6.8%	-5.20%
Median Price ($000s)	$476.3	$502.3	$537.9	$569.9	$592.4	$659.4	$793.1	$834.4
% Change	6.60%	5.40%	7.10%	5.90%	4.00%	11.30%	20.30%	5.20%
Housing Affordability Index*	31%	31%	29%	28%	31%	32%	26%	23%
30-Year Fixed Rate Mortgage	3.90%	3.60%	4.00%	4.50%	3.90%	3.10%	3.00%	3.50%

*=% of households who can afford median-priced home

Source: California Association of Realtors (October 7, 2021).

For housing projects specifically, any nexus study adopted after July 1, 2022 must in addition to other enumerated requirements, also calculate the amount of fees based on the square footage of the proposed units of the development, unless the local agency demonstrates that another metric is more appropriate. Larger jurisdictions of a certain size must adopt a capital improvement plan as part of their nexus study. The new law establishes basic transparency and accountability standards.

• **SB 319 (Melendez; R-Lake Elsinore; Chapter 385)** was introduced by Senator Melissa Melendez and also signed into law in 2021. SB 319 clarifies and expands the scope of the audits that local agencies must perform when failing to comply with their reporting obligations under the Mitigation Fee Act (Government Code, Section 66000 et seq.), while also closing what many regarded as a "loophole" in cost recovery of audits pursuant to Government Code Section 66023.

With the passage of SB 319, local agencies are required to pay for each consecutive audit year that the local agency was out of compliance with existing law regarding annual impact fee reports. The intent is that this will hold local governments more accountable by providing a more transparent view of whether the local agency is justified in assessing the impact fee or whether it should be adjusted.

COVID-19 Housing Bills

The California Legislature passed a number of COVID-19-related housing bills. Most notable were AB 3088, SB 91 and AB 832, intending to help renters financially struggling due to COVID-19-related hardships stay in their units and landlords to receive rental income.

• **AB 3088 (Chiu; D-San Francisco; Chapter 37, Statutes of 2020) and SB 91 (Committee on Budget and Fiscal Review; Chapter 2, Statutes of 2021)**

Passed in August 2020, AB 3088 provided renter and homeowner protections and a statewide moratorium on evictions for tenants hit by COVID-19-related troubles through March 1, 2021. The Legislature then extended the moratorium until June 30, 2021 with the passage of SB 91, which established the California COVID-19 Rent Relief Program to provide up to $2.6 billion in federal rental assistance to low-income renters and landlords.

• **AB 832 (Chiu; D-San Francisco; Chapter 27, Statutes of 2021)** was passed and signed into law in June 2021, extending the eviction moratorium until September 30, 2021 and expanding the program to provide up to 100% assistance for rental and utility financial obligations, including both arrearages and prospective payments.

In a September 13, 2021 news release, the Governor's office reported that since AB 832 was signed into law on June 28, 2021, there had been more than 243,000 applications received and more than $2.2 billion in rent and utility assistance requested. Tenants earning less than 80% of the area median income were to be protected through a pre-eviction diversion process through March 31, 2022, as long as they had submitted a completed application for rental relief through either the state or

a locally administered program. In addition to providing 100% of back rent and prospective rent, AB 832 also gave California renters some of the strongest eviction protections in the country.

WHAT LEGISLATURE SHOULD ADDRESS IN 2022 RELATING TO HOUSING

Amend Vehicle Miles Traveled Policy

Legislation signed into law in 2013 (SB 743; Steinberg; D-Sacramento; Chapter 386) directed the Governor's Office of Planning and Research (OPR) to develop a new approach to measuring transportation impacts for projects under the California Environmental Quality Act (CEQA). After several years, OPR adopted new regulations directing lead agencies to measure transportation impacts for projects using vehicle miles traveled (VMT) as essentially a proxy for reducing greenhouse gas emissions.

The problem is, as local lead agencies began complying with the regulations, extremely high-cost estimates for VMT mitigation became alarmingly clear. For example, San Diego County estimated VMT mitigation for new housing would range from $50,000 to $900,000 per new unit of housing, depending on how far the new units were from major transit. Homes built farther from major transit saw the highest mitigation fees applied.

It is precisely because of California's expansive and diverse landscape that the California Legislature bifurcated its statutory mandates in SB 743 so that OPR would treat "transit priority areas" differently from all other areas of the state. Since "transit priority areas" are those localities within one-half mile of a major transit stop and comprise less than 1% of California's 100 million acres of land, SB 743 required OPR to develop new criteria for determining the significance of transportation impacts of projects based on VMT. But for all other areas outside of "transit priority areas," which is the vast majority of California land, SB 743 expressly stated OPR may adopt guidelines establishing an alternative metric to level of service (LOS) impacts from transportation.

Unfortunately, OPR's regulations apply a one-size-fits-all VMT standard over all new housing construction in California. OPR looks at the state's transportation sector as it was, almost a decade ago when SB 743 was passed, rather than where the state is going. Executive Order N-79-20 underscores California's transportation sector is expeditiously heading toward zero emissions over the next decade.

The efficacy of a VMT-focused land use planning that adds significant costs to each new unit of housing should be re-evaluated by the Legislature in light of an ongoing and growing affordability and homelessness crisis. At a minimum, the Legislature could amend the law to further clarify that the VMT as a metric for analyzing transportation impacts should apply only to "transit priority areas" in California.

California Environmental Quality Act (CEQA) Abuse

CEQA is not the sole cause of the housing shortage, but often is a major impediment to housing development in California. CEQA requires local governments to conduct a detailed review of discretionary projects prior to their approval. CEQA protects human health and the environment by requiring lead agencies to analyze project impacts and then require project developers to mitigate any potentially significant environmental impacts.

But unlike most environmental laws and regulations in California, CEQA is enforced through private litigation. The law enables litigation abuse that can substantially slow or even stop housing projects when opponents do not want added density in their neighborhood.

Community resistance to new housing construction also exacerbates the housing shortage. Local communities often fear that increasing housing density will change the character of their neighborhood, increase traffic congestion, lower their home values, and bring new crime. Local residents often place significant pressure on local officials to use their land use authority to suppress new development.

As a result, approximately two-thirds of the cities and counties in California's coastal metropolitan areas have adopted growth control ordinances that limit housing development. These growth control ordinances are effective at limiting growth and consequently increasing housing costs. One study found that each additional growth control policy a city adopted correlated to a 3% to 5% increase in home prices. And even where local officials do not bend to community pressure, California's initiative process provides active residents with the ability to circumvent their local officials and intervene in local land use decisions via the initiative and referendum process.

CEQA can add significant cost and time to the housing development process. Even the threat of litigation, which is never reflected in data regarding CEQA abuse, is highly effective at discouraging or raising the costs of development. And because housing costs are ultimately borne by future home buyers, CEQA inevitably increases housing prices in California even if the project is never challenged.

California's cost of housing increased significantly the same decade in which the California Legislature passed CEQA and community resistance to new homes got stronger. According to

a report from the Legislative Analyst's Office, California home prices went from 30% above U.S. levels to more than 80% higher between 1970 and 1980.

Although there were several failed attempts to amend, streamline or expand CEQA in 2020, there were no serious attempts to reform CEQA in the 2021 session. SB 950 (Jackson; D-Santa Barbara), which the sponsor touted as "CEQA 2.0" to bring the statute into the 21st century, remains the last attempt by the Legislature. At that time, the California Chamber of Commerce led a coalition to defeat the bill, labeling it a job killer because it proposed amendments that would have substantially expanded CEQA to create onerous translation requirements, amended CEQA's intent language to incorporate environmental justice, removed bond protections for middle class housing, and changed the Elections Code to override a California Supreme Court decision in order to apply CEQA to certain qualified ballot initiatives.

Local Finance Structures Favoring Commercial Development

Different types of developments (for example, commercial, residential, industrial) yield different amounts of tax revenues and service demands. California's local government finance structure provides cities and counties with a much larger fiscal incentive to approve nonresidential development or lower density housing development. For example, commercial developments like major retail establishments and hotels often yield the highest net fiscal benefits for cities and counties, as increased sales and hotel tax revenue that a city receives usually more than offsets the local government's costs to provide public services to the commercial developments.

In contrast, housing developments generally do not produce sales or hotel tax revenues directly and the state's cities and counties typically receive only a small portion of the revenue collected from the property tax. As a result, cities and counties often incentivize commercial developments by zoning large swaths of land for these purposes and by offering subsidies or other benefits to the prospective business owners. Opposed by the CalChamber, Proposition 15 on the November 2020 ballot was defeated, but a split roll property tax has been proposed for the 2022 California ballot. Successful split roll measures would further incentivize local governments to favor commercial development over residential and substantially raise costs on businesses.

Historic Budget Surplus Leads to Historic Spending on Housing and Homelessness

California's historic budget surplus provided the Governor with a unique opportunity to allocate substantial fiscal resources toward housing and homeless programs. Notably, the budget apportions a record $10 billion for numerous housing programs and $12 billion through 2023 for programs aimed at addressing the state's growing homeless population.

It should be noted that the housing crisis stems from several major problems, namely a lack of supply sufficient to meet housing demand. Accordingly, while this funding is important, the state cannot spend its way out of the crisis. The housing supply developed by private markets must increase to meet demand.

Additionally, the Attorney General set up inside the California Department of Justice a new "Housing Strike Force" tasked with enforcing California housing laws. This "Housing Strike Force" is intended to go after cities across the state that have been evading or ignoring housing laws.

CALCHAMBER POSITION

California's housing crisis is driving many residents and businesses out of state and discouraging new economic investments. Unaffordable housing also forces many Californians into extra-long commutes — adding to air pollution, traffic congestion, reduced worker productivity — or into more crowded living situations.

Comprehensive reform of environmental and zoning laws is necessary to remove obstacles that hamper housing construction and raise new and existing home prices and rent across California. A comprehensive re-evaluation and reform of CEQA, including VMT policies being implemented by OPR, is critical to spurring housing development and avoiding further increases in housing development costs 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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Sub-Saharan Africa Trade Relations

World's Largest Free Trade Zone Takes Effect, But Takes Backseat to COVID

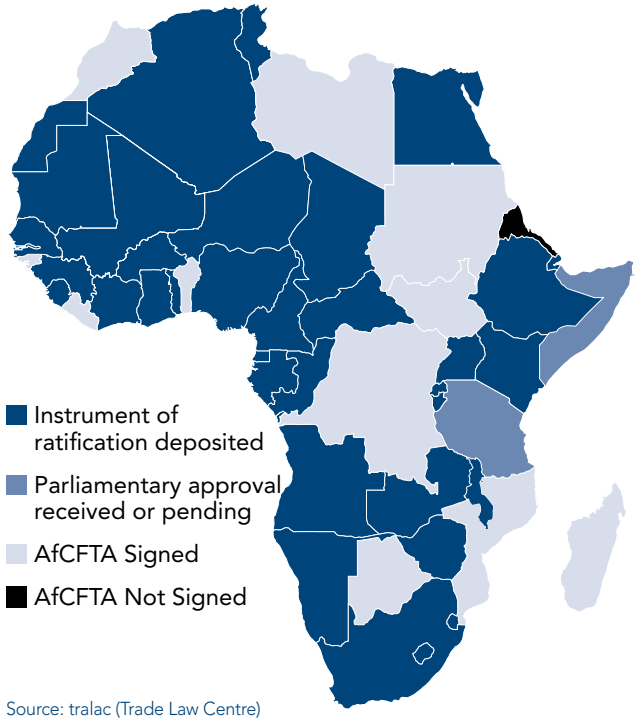
- Hope that the Biden administration will greenlight negotiations for the first trade agreement between the United States and a sub-Saharan African country, U.S.-Kenya in 2022. Meg Whitman was nominated to be U.S. Ambassador to Kenya in December 2021.
- AGOA brings good will to U.S.-African trade at large during the global pandemic.
- AfCFTA went into effect on January 1, 2021 after a six-month delay due to COVID. AfCFTA is expected to bring 30 million people out of extreme poverty and raise the incomes of another 68 million who live on less than $5.50 per day.

According to the International Monetary Fund (IMF), the outlook for sub-Saharan Africa is uncertain as the region battles one of the slowest recoveries compared to other areas. The sub-Saharan economy is expected to expand by 3.7% in 2021 and 3.8% in 2022. The region continues to struggle with a slow vaccine rollout and new variants, and is vulnerable to food price inflation, as well as disruptions in global activity. The IMF notes, however, that the region has a promising renewable energy potential.

AFRICAN GROWTH AND OPPORTUNITY ACT

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

COUNTRIES THAT HAVE RATIFIED AFCFTA AGREEMENT



Source: tralac (Trade Law Centre)

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

In November 2021, President Joe Biden notified Congress of his intent to terminate the designation of Ethiopia, Guinea, and Mali as beneficiaries under AGOA beginning January 1, 2022, as these countries had been identified by the Biden administration as falling out of compliance.

AFRICAN CONTINENTAL FREE TRADE AREA

The African Continental Free Trade Area (AfCFTA) was brokered by the African Union in 2018, with the pan-African free trade zone taking effect on January 1, 2021. The effective date was postponed from July 1, 2020 due to the COVID-19 pandemic.

The AfCFTA will have far-reaching benefits for the region, representing the opportunity for countries in sub-Saharan Africa to boost long-term economic growth, reduce poverty and broaden economic inclusion. The AfCFTA creates the largest free trade area in the world by area and number of participating countries, connecting more than 1.2 billion people across 55 countries with a total gross domestic product (GDP) of $2.5 trillion. As of September 2021, 38 of the 54 participating countries, have ratified the agreement, including Nigeria, the agreement's largest economy.

As of July 2021, countries completed their tariff reduction schedules and finalized essential rules of origin. Over the next 5 to 10 years, 90% of tariffs for goods traded within the bloc will be liberalized. Intra-African trade is only a small portion of all African trade, making up about 15%–18%. According to the International Monetary Fund, eliminating tariffs could boost trade in the region by 15% to 20%. The World Economic Forum estimates AfCFTA will allow the area to generate $4 trillion in investments and goods/services transactions.

U.S.-KENYA TRADE AGREEMENT

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

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

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

The first round of virtual free trade agreement (FTA) negotiations, which was expected to take place in 2021, never materialized. U.S. Trade Representative Katherine Tai met with a few of her Kenyan counterparts to discuss the importance of strengthening the U.S.-Kenya relationship, but the U.S.-Kenya FTA remains under review with the Biden administration. President Biden also met with Kenya President Kenyatta in October 2021, but the conversation largely surrounded COVID.

U.S.-Kenya bilateral trade currently exceeds $900 million annually. In 2020, U.S. exports to Kenya totaled $370.7 million, while imports into the United States from Kenya totaled $568.9 million. Apparel manufacturing product imports into the United States made up almost 68% of the total. California is the second largest exporting state and the first largest importing state of Kenyan goods, with exports totaling $36.6 million in 2020. Imports to California from Kenya totaled $107.8 million, with apparel manufacturing products again making up more than 63% of the total.

U.S.-AFRICA POLICY TOOLS

• **Power Africa** aims to add more than 30,000 megawatts of cleaner, more efficient electricity generation capacity and 60 million new home/business connections through private-public partnerships.

• **Millennium Challenge Corporation** (MCC) provides large grants (in the hundreds of millions of dollars) to promote economic growth, reduce poverty and strengthen institutions.

• The **U.S. International Development Finance Corporatio**n (DFC) replaced the Overseas Private Investment Corp. and has an expanded mandate and greater resources.

• **Prosper Africa** is a one-stop shop to facilitate increased trade and investment between U.S. and African businesses.

AGENDA 2063

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

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

There was little discussion on Agenda 2063 in 2021, likely due to the continent's focus on the AfCFTA and continuing the battle against COVID, along with the rest of the world.

ANTICIPATED ACTION

It was announced in November 2021 that President Biden is expected to host the second U.S.-Africa Leaders Summit in 2022. The summit's goals include continuing efforts to strengthen ties with African partners as well as collaborating with African counterparts in key areas.

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

CALCHAMBER POSITION

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

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

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

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Global Supply Chains and Port Congestion

Automation, Increased Efficiencies Key to Avoiding Port Congestion

- California ports see 40% of the nation's imports and almost 30% of the nation's exports. *(California Association of Port Authorities)*
- Supply chains congestion expected to continue for the next 18 months.
- Multi-level response needed to address global supply chain challenges.

BACKGROUND

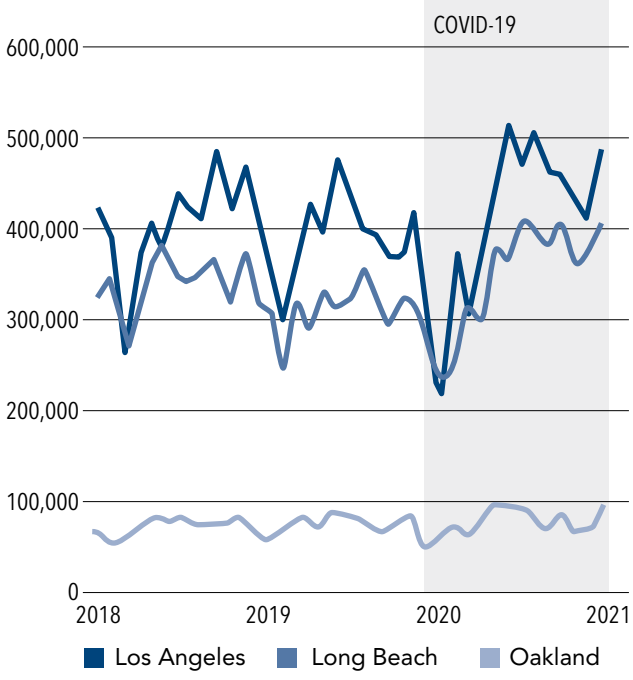
Fueled by a surge in consumer spending and driven by supply chain interruptions due to COVID-19, global transport of goods is facing a crossroads. The United States and California are not alone. Global supply chains have been put to the test since the COVID-19 pandemic shut down much of the world in March 2020. Pair that with general product shortages, a lack of shipping containers and chassis to move them, a lack of places to store those containers, labor shortages and an amalgam of other issues and you have a recipe for logjams and rising prices across the supply chain.

Shipping bottlenecks have been the most recent symptom in the supply chain crisis, with ports across the world experiencing backups. U.S. ports have had some of the highest congestion in the world. California feels this pinch more than most, as more than 40% of the nation's imports and 30% of the nation's exports come through the state's major ports at Los Angeles, Long Beach, and Oakland, along with California's smaller port systems up and down the coast.

For the global supply chain, which relies on a "just-in-time" delivery model, these delays have a strong correlation with the long wait times and shortages that consumers are experiencing in their day-to-day lives, affecting the world economy's ability to avoid price shocks and increasing the cost of living across the United States and California.

IMPORTS ACHIEVE RECORD HIGHS

Loaded Imports, Twenty-foot Equivalent Units (TEUs)



Source: American Farm Bureau Federation/Port of Los Angeles, Port of Long Beach, Port of Oakland (June 9, 2021).

2021 STATE ACTIVITY

In 2021, Long Beach and Los Angeles ports experienced a record number of 100 ships (compared with the usual one or maybe two) waiting to enter the port, reaching an all-time high in October. The city of Long Beach issued an emergency order in October 2021 allowing containers once they make their way into warehouses and container yards to now be stacked four high, instead of two. Then in November 2021, a working group of industry leaders introduced a plan for a new queuing process for container vessels to significantly reduce the number of backlogged ships at anchorage off the ports. The ships are now required to wait 150 miles off the coast and will now enter the arrival queue based on when they cross a line 20 nautical miles from the port.

While the backlog grew in Southern California, the Port of Oakland in Northern California saw a 20% decline in cargo volume in October 2021 due to many ships diverting to Asia after having dealt with the delays in Southern California. The Port of Oakland called on shipping lines to reroute cargo to the Northern California port to help drive vessel traffic away from Southern California.

2021 GLOBAL ACTIVITY

Port backlogs have also occurred on the other side of the Pacific where, for example, Singapore experienced a 22% increase in ships waiting in harbor. The Asia/Pacific region also contended with typhoons and other weather phenomena causing delays. Europe experienced its own port congestion troubles, as trucker shortages and limited space kept ships waiting in harbor too.

In addition to port congestion, other issues have contributed to global supply chain delays. China experienced power shortages that affected production (*The New York Times*). The United Kingdom experienced a similar shortage of truck drivers, which combined with changing trade rules as Brexit took full effect in 2021, caused disruptions in the supply chain (CNBC). Parts of Asia experienced a diesel shortage in fall 2021, with rates skyrocketing over 64%, leading to driver strikes (Bloomberg). All these factors combined have resulted in exponential increases in freight rates, with prices more than quadrupling from the previous year (*The Wall Street Journal*).

In March 2021, international shipping lines first grabbed the world's attention as the Ever Given ship, part of the Evergreen fleet, became stuck in the Suez Canal. An internet obsession ensued, as each day passed that the ship was lodged in the canal, more memes were shared of the failed voyage. After six days, the ship that had become wedged across the width of the canal amidst high winds, was finally freed. The whole ordeal brought all navigation of the canal to a standstill, disrupting trade globally. The Suez Canal Authority sought compensation of $550 million and reached an agreement with Evergreen after impounding the ship for three months nearby. In 2021, 50 ships per day, about 12% of global trade, travel through the canal. It was estimated that for each day of the Suez Canal blockage, an additional $9.6 billion worth of goods was disrupted, or $400 million every hour (CNBC).

FEDERAL RESPONSE

On November 9, 2021, the Biden administration released a plan to try to combat congestion at U.S. ports, including California. The new guidance frees up federal funding already allocated for other projects to be used toward relieving the backlogs. This existing grant money can be used immediately to address the shipping crisis. The guidance also includes a program to modernize ports and marine highways, allocating $240 million in grant funding. It also seeks to identify projects for the U.S. Army Corps of Engineers at coastal ports and inland waterways, providing a roadmap for $4 billion in funding to repair outdated infrastructure and deepen harbors.

President Joe Biden addressed the global supply chain crisis at the G-20 at the end of October 2021, stating: "Solving this is going to take all of us — government and private industry, labor unions and research institutions." Along with the guidance, the Biden administration had previously ordered the Port of Los Angeles to operate around the clock to relieve the growing backlog.

Most experts agree, however, that even with these new provisions, ports will continue to see delays resulting primarily from shifts in supply and demand as manufacturing, shipping, and transport continue to grapple with the COVID-19 pandemic worldwide. Secretary of Commerce Gina Raimondo said that it will likely be well into 2022 before there is relief in the supply chains.

STATE RESPONSE

Governor Gavin Newsom signed an executive order on October 20, 2021, directing state agencies to develop longer-term proposals that support port operations and goods movement for consideration in the January 10, 2022 Governor's Budget.

The executive order built on earlier efforts in 2021 by the Governor's Office of Business and Economic Development (GO-Biz) to ease supply chain issues by engaging the diverse network of stakeholders along the supply chain to discuss key challenges and identify short-term and long-term solutions.

The executive order also directed state agencies to continue coordinating with the Biden-Harris Administration Supply Chain Disruptions Task Force to address state, national and global supply chain challenges.

Lastly, under the order, state agencies were directed to identify state-owned properties and other locations that could be available to address short-term storage needs once goods are unloaded from ships; to identify priority freight routes to be considered for a temporary exemption to current gross vehicle limits to allow for trucks to carry additional goods; and to create workforce training and education programs. The executive order also expedited implementation of 2020 legislation AB 639 (Cervantes; D-Corona), setting up a process to develop recommendations for mitigating the employment impacts of automation at the ports of Los Angeles and Long Beach.

FUNDING IN GOVERNOR'S BUDGET PROPOSAL

In the 2022–2023 California budget, Governor Newsom is proposing $2.3 billion in state funding to help ease congestion and supply chain problems that continue to affect the California ports of Los Angeles, Long Beach and Oakland.

Specifically, the spending plan for ports includes:

- $1.2 billion for port infrastructure and goods movement.
- $875 million for zero-emission port equipment, short-haul trucks and infrastructure.
- $110 million for a training campus to support the workforce.
- $40 million to enhance the state's capacity to issue commercial driver licenses.
- $30 million in funding for operational and process improvements at the ports, which could include improving data connectivity between the ports for more efficient cargo movement and congestion reduction.

POLICY SOLUTIONS AT FEDERAL AND INTERNATIONAL LEVELS

As global supply chains continue to recover from the initial shock of the COVID-19 pandemic, it is important to maintain coordinated efforts between governments and private sectors while weathering the current crisis. Diversifying trading relationships and countries where products can be produced can help alleviate strain on the system. Turning toward digitalization where available will be important for the modernization of supply chains.

POLICY SOLUTIONS AT STATE LEVEL

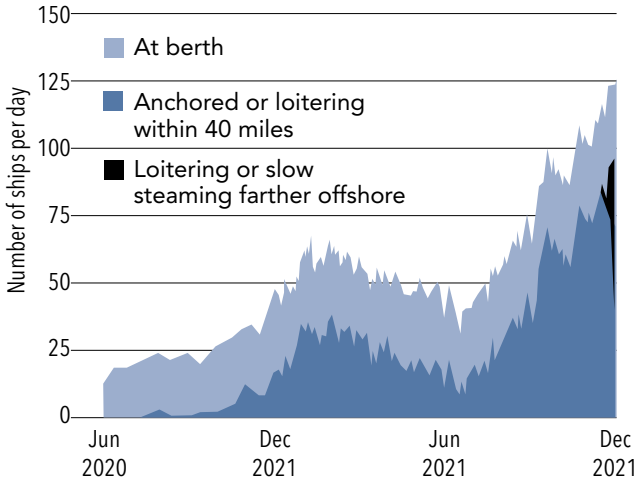
In a November 2, 2021 letter to the Governor Newsom and state legislators, the California Chamber of Commerce outlines a series of practical steps the state can take to ease the supply chain crisis and alleviate congestion at California ports.

Short-Term Solutions

California should identify and prioritize medical and health care supplies to keep hospitals and health care facilities fully supplied. The administration should work with suppliers and California health care systems to identify and prioritize containers that contain medical supplies and to prioritize related routes. California can work directly with health care distributors to identify delayed containers, ships and ground transport, and provide priority for those goods and services.

Facilitate maximum port-to-port rail routes: All routes that connect to on-dock and near-dock rail services that serve California's ports should be evaluated for weight exemptions and other measures to increase efficiencies. This should include all transfer container facilities and intermodal yards that connect California's ports to the transcontinental rail system that transports cargo across North America.

CONTAINER SHIPS WAITING IN PACIFIC AND AT BERTHS IN LOS ANGELES/LONG BEACH PORTS



Source: *American Shipper* based on data from Marine Exchange of Southern California (December 5, 2021).

Ensure that off-port storage is organized, secure and accurate: California should continue to work with the federal government and the ports to ensure sufficient tracking and tracing and adequate security at off-site locations during this temporary endeavor, along with a strong and accurate communications system. The state should also evaluate upgrades to information technology (IT) appointment systems which will help streamline pick up and drop off of containers. These measures will also serve to avoid bad actors taking advantage of short-term solutions and to reduce losses.

Work with ports and terminals to maintain feasible extended gate hours: Increasing predictability of gate hours will provide more time for the trucking community to adjust to extended hours and provide shorter dwell time for drivers. The administration should work with the ports and marine terminal operators to identify terminal gate hours that can feasibly be kept open for at least the next 90 days, including weekend gate hours.

Encourage local government land use variances/permit streamlining: Once it has identified surplus properties, the state should evaluate barriers to temporary use. The state should also identify policy and/or financial mechanisms to encourage streamlining of entitlements or permits and remove unnecessary land use restrictions for this temporary use. The administration could also consider setting timelines for use of each property depending

upon proximity to the ports and/or priority routes. This is likely to be a multi-year supply chain crunch, the CalChamber pointed out, which will interfere with the normal business operations and planning for facilities in California and elsewhere. Identifying which properties are targeted for staging and the length of time for each category will be helpful in allowing companies to plan for the medium- and long-term.

Medium- and Long-Term Solutions

The administration should **set a timeline for identifying and training additional drivers** (medium term): The administration should set dates for interim milestones for identifying and tracking driver-shortage issues. In addition, California could look at temporarily encouraging/allowing out-of-state trucks to assist at the ports, while continuing to provide incentives for in-state hiring.

The state must also **evaluate supply chain issues in critical sectors**. The administration should continue to work with stakeholders to evaluate choke points in the supply chain, in addition to issues inherent to port congestion. Costs, interstate travel, and ensuring consistency across transportation sectors may also be a factor in supply chain delays. For example, agricultural goods represent some of the largest share of exports. On-time export of food is integral to keeping costs down in California as well as ensuring California remains a leader in the agricultural sector.

In addition, the state should **evaluate investments in waterside infrastructure capacity and chokepoints**, including evaluating funding support for dredging, navigational infrastructure, and pilotage system overhead, which other ports in the United States have implemented in recent years.

Align electrification timelines with automation upgrades: Recent evaluations rank California's ports amongst the lowest in the world based on time at berth. Although the California ports are attempting to operate efficiently with the tools they have at hand, significant infrastructure investments will be necessary to continue to achieve efficiencies on par with world leading ports, in addition to east coast and southern ports in the U.S.

Increase mobility through priority routes: Once identified, California should immediately and aggressively identify and propose projects to address freight bottlenecks within these priority freight routes. Bottlenecks that create inefficiencies result in congestion and delay for both commercial and personal vehicles using the highways in those trade corridors and excess air emissions. The state already identified numerous priority freight routes through its latest update of the California Freight Mobility Plan. The state can build upon this work and that already performed by local metropolitan transportation organizations through their Regional Transportation Plans, including identification of priority bottlenecks.

CALCHAMBER POSITION

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 will continue to work with stakeholders, the administration, legislators and other interested parties to achieve further progress on easing port and supply chain congestion.

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North/South America Trade Relations

Western Hemisphere Interconnectedness Vital to Regional Post-Pandemic Recovery

- On year later, USMCA continues to support nearly 14 million U.S. jobs.
- Goods exports to countries in the Americas represent more than 40% of U.S. exports, with Canada and Mexico alone making up more than one-third of exports.
- U.S. engagement in the Americas, with a focus on supply chain solutions for the very interconnected North America, is imperative to strengthen U.S. and regional recovery post-COVID.

U.S. FREE TRADE AGREEMENTS

Source: Council on Foreign Relations/U.S. Trade Representative and U.S. Department of Commerce

U.S.-HOSTED WESTERN HEMISPHERE SUMMIT POSTPONED AGAIN TO 2022

The United States was scheduled to host the Ninth Summit of the Americas in the fall of 2021, but due to COVID, it was postponed again to the summer of 2022. This will be the first time the United States will host the meeting since the inaugural summit held in Miami in 1994. The meeting, which takes place every three years, is the only one of its kind that brings together leaders from all countries in North, Central and South America and the Caribbean. Up to 50 heads of state are expected to attend.

At the summit, as many as 10,000 participants discuss common policy issues, affirm shared values, and commit to concerted actions at the national and regional levels to address continuing and new challenges faced in the Americas. The last summit took place in Lima, Peru in 2018 and had the theme of "Democratic Governance Against Corruption."

AMERICA CRECE

In December 2019, the U.S. government launched the whole-of-government "Growth in the Americas" or "America Crece" initiative. This initiative is a new approach to support economic growth in the Americas by encouraging public-private engagement, private sector investment in energy and infrastructure, sharing best practices, and creating opportunities to expand economic ties between the United States and Latin America.

UNITED STATES-MEXICO-CANADA AGREEMENT

The one-year anniversary of the U.S.-Mexico Canada Agreement (USMCA) entering into force was July 1, 2021. The agreement was celebrated as being a truly bipartisan effort to level the playing field for the American worker. The USMCA is now in effect after more than three years of negotiations starting from President Donald J. Trump's initial announcement of his intent to renegotiate the North American Free Trade Agreement (NAFTA) in May 2017.

The U.S. International Trade Commission released a report in April 2019 on how the new agreement will affect jobs and

the economy. The report estimated that the USMCA would increase U.S. gross domestic product (GDP) by 0.35% or $68.2 billion and raise employment by 176,000 new jobs. The trade commission report also estimated that the agreement would have a positive impact on all broad industry sectors within the U.S. economy and that manufacturing and services would receive large gains.

The United States, Canada and Mexico comprise more than 490 million people (6.5% of the world's population), a $26 trillion GDP (18.3% of world GDP), and $6 trillion in trade (nearly 16% of global trade). Under NAFTA, the three USMCA countries' bilateral goods trade totaled $1.06 trillion in 2020. California's exports to the USMCA countries totaled $40.06 billion the same year.

In February 2021, the Biden administration laid out a "Roadmap for a Renewed U.S.-Canada Partnership." The roadmap set goals to accelerate economic recovery for U.S. and Canadian small and medium-sized enterprises and strengthen U.S.-Canada supply chains, along with recognizing the importance of economic and energy security.

In September 2021, the Biden administration relaunched the annual U.S.-Mexico High Level Economic Dialogue at which the two countries expressed their intent to create a Bilateral Supply Chain Working Group to build resiliency in the supply chain, among other goals to promote sustainable economic development and train workers for the 21st century economy.

In November 2021, the leaders of the three countries met for the North American Leaders' Summit. The three heads of state reiterated their strong ties and integration as well as their willingness to chart a new path of partnership. They also discussed fostering competitiveness in order to propel the future growth of the region, as well as coordinating on migration and development in order to secure North America.

U.S. FREE TRADE AGREEMENTS IN THE AMERICAS

• The **U.S.-Chile Free Trade Agreement** (FTA) entered into force in 2004, eliminating tariffs and opening markets and allowing all goods originating in the United States to enter Chile duty free in 2015. Since the implementation of the FTA, U.S. goods exports to Chile have increased more than 470%. Chile is the 21st largest export partner of the United States with exports totaling $12.76 billion in 2020. In 2019, Chile was the third fastest growing source of foreign direct investment (FDI) into the United States, with FDI totaling $3.43 billion. California exports to Chile totaled $987 million in 2020.

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

The United States and the five Central American countries share roughly $48.89 billion in total (two-way) trade in goods. U.S. goods exports to Central America totaled $24.76 billion in 2020. The United States is the main supplier of goods and services to Central American economies. More than 40% of total goods exports to Central America come from the United States. California is the fourth largest state exporter to the DR-CAFTA market with exports totaling $1.87 billion in 2020.

In December 2021, Vice President Kamala Harris announced a call to action for private business to invest in Central America in order to promote economic opportunity.

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

Colombia is an emerging economy that is providing California with a quickly expanding export market and opportunity for future collaboration. Since 2006, both U.S. and California exports to Colombia have nearly doubled. In 2020, the United States exported $12.06 billion of goods to Colombia, with total trade amounting to $22.83 billion. In 2020, California exports to Colombia exceeded $389.5 million.

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

The new deal covers trade facilitation, goods regulatory practices and anti-corruption, and features a chapter on small and medium-sized enterprises. The United States exported $4.2 billion worth of goods to Ecuador in 2020 and imported $5.9 billion the same year. California is one of the top five exporting states to Ecuador, exporting $343 million of goods in 2020.

• The **U.S.-Panama Trade Promotion Agreement** went into effect in October 2012. The agreement significantly increased the ability of American companies to export their products to one of Latin America's fastest-growing economies. Half of U.S. agricultural goods became duty free at the time, with all tariffs on industrial goods to be eliminated by the 10-year anniversary and most of the remaining tariffs on agricultural goods to be eliminated by the 15-year anniversary. In 2020, the United States exported $5.76 billion to Panama, making it the 36th largest

U.S. export partner. California exported $239.6 million worth of goods to Panama in 2020.

• The **U.S.-Peru Trade Promotion Agreement** entered into force in February 2009. U.S. exports to Peru have more than tripled since then, totaling $7.68 billion in 2020. California exports to Peru more than doubled during the same period, totaling $419 million in 2020.

FLEETING POSSIBILITY OF A U.S.-BRAZIL TRADE AGREEMENT

In October 2020, an agreement was reached to update the 2011 Agreement on Trade and Economic Cooperation (ATEC) with three new annexes that included state-of-the-art provisions on customs administration and trade facilitation, good regulatory practices, and anticorruption. The United States and Brazil plan to continue discussions on how to increase trade and further investment between the two countries.

President Trump and Brazilian President Jair Bolsonaro in March 2020 had instructed their trade officials to deepen discussions of a bilateral trade agreement; however, the Biden administration has not continued such talks. Stakeholders in both countries hope to continue fostering investments and diversifying bilateral trade.

Brazil is the ninth largest export destination of U.S. goods, with exports totaling $35.04 billion in 2020. The United States imported $23.31 billion of Brazilian goods the same year. Brazil is California's 29th largest export destination; California exported more than $1 million to Brazil in 2020. The United States was the first country to recognize Brazil's independence in 1822, representing a long, well-established diplomatic relationship between the two countries. A U.S.-Brazil CEO forum, originally established in 2007, was reinvigorated in November 2019 and now meets regularly.

ANTICIPATED ACTION

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

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

CALCHAMBER POSITION

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

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

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Trade Promotion Authority

Reauthorization Needed to Help Speed Approval of Trade Pacts Needed for Post-COVID-19 Economic Recovery

- Trade is an important engine for U.S. economic growth and jobs, particularly in times of recovery. More than 30% of U.S. gross domestic product (GDP) is tied to international trade and investment and 95% of the world's population abroad.
- U.S. engagement in the international marketplace to diversify investments is more important to the nation's economy than ever.
- Renewal of trade promotion authority will help Congress and the President to work together to forge new and beneficial trade agreements for the United States.

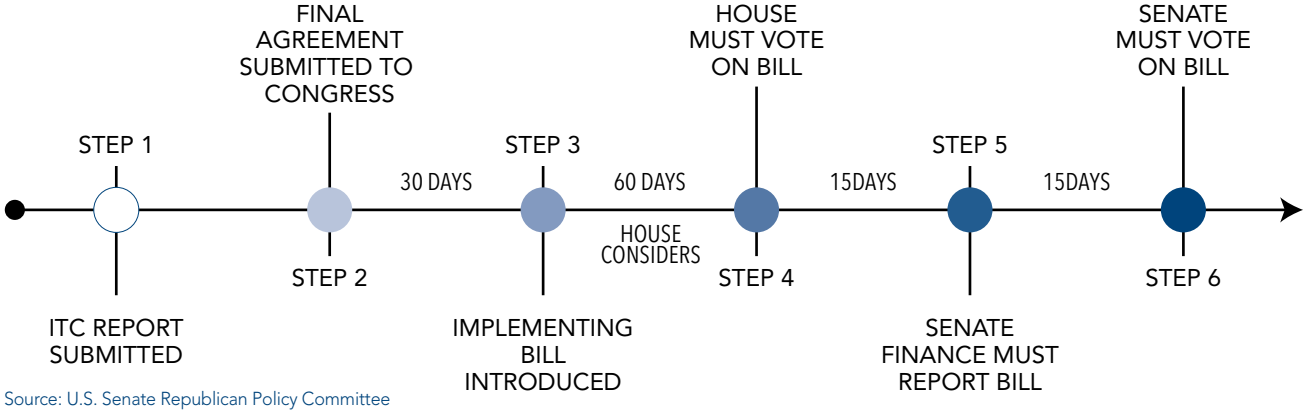
BACKGROUND

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

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

President George W. Bush signed the landmark Trade Act, H.R. 3009, on August 6, 2002. The act helped put U.S. businesses, workers and consumers back in the game of international

TRADE PROMOTION AUTHORITY PROCESS TIMELINE



Source: U.S. Senate Republican Policy Committee

trade by granting the president trade promotion authority. At the request of President Donald J. Trump, trade promotion authority was renewed in July 2018 for three years. Congress was tasked with reauthorizing trade promotion authority in 2021; unfortunately the Biden administration did not request renewal of trade promotion authority and it expired on July 1, 2021.

After the expiration, a few U.S. House Republicans called on President Biden to end his trade moratorium and begin consulting with Congress to renew the authority. The last time trade promotion authority expired, in 2007, it took Congress eight years to renew it. A new trade promotion authority bill is now believed to be unlikely before the 2022 elections.

IMPACT: U.S. COMPLETED AGREEMENTS

Since the Trade Act of 2002 granted the President trade promotion authority, the United States has completed the following free trade agreements:

- U.S.-Australia;
- U.S.-Bahrain;
- U.S.-Chile;
- U.S.-Colombia;
- U.S.-Dominican Republic/Central American;
- U.S.-Israel;
- U.S.-Jordan;
- U.S.-Mexico-Canada Agreement;
- U.S.-Morocco;
- U.S.-Oman;
- U.S.-Panama;
- U.S.-Peru;
- U.S.-Singapore; and
- U.S.-South Korea.

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

FUTURE AGREEMENTS

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

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

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

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

ANTICIPATED ACTION

Trade promotion authority legislation establishing strong rules for trade negotiations and congressional approval of trade pacts, and delivering trade agreements that boost U.S. exports and create American jobs, would need to be taken up by Congress soon.

Reauthorizing trade promotion authority is imperative as it enables the United States to continue aggressively pursuing new trade deals.

CALCHAMBER POSITION

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

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

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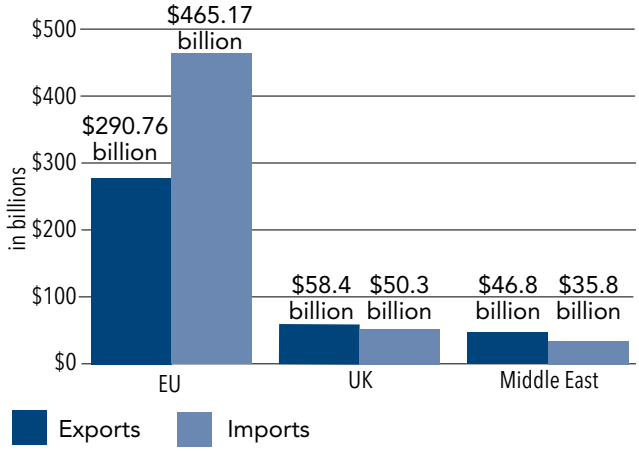
Trans-Atlantic Trade Relations

Time to Revitalize Historic Relationships

- Trans-Atlantic trade and investment supports an estimated 16 million jobs on both sides of the Atlantic.
- The Trans-Atlantic economy accounts for half of total global personal consumption.
- EU countries buy about 20% of California exports.
- Agreements with Middle Eastern countries help foster deeper economic and trade ties.

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



Source: U.S. Department of Commerce

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 United Kingdom ended a year-long transition period in 2020, finally officially leaving the European Union on January 1, 2021. At the end of 2020, the EU and U.K. entered into the EU-U.K. Trade and Cooperation Agreement, which formally went into force on May 1, 2021. The United Kingdom has since begun a campaign entitled "Global Britain." The country has been on a whirlwind tour of entering into free trade agreements. The U.K. has begun the process to formally join the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP, formerly the TPP).

The U.K. has also negotiated a deal with New Zealand and is hopeful for a U.S. deal in the near future.

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

The EU-27 market represents an estimated 447.5 million people, and has a total gross domestic product (GDP) of $15.6 trillion, as of 2020, while the United Kingdom has an estimated population of 67.2 million people and a GDP of $2.7 trillion. The United States has 329.48 million people and a GDP of $20.937 trillion as of 2020 (World Bank).

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

U.S.-EUROPEAN UNION FREE TRADE AGREEMENT

In October 2018, then-U.S. Trade Representative Robert Lighthizer notified Congress, in keeping with Trade Promotion Authority (TPA) protocol, of the Trump administration's intent to start negotiations with the European Union. Negotiating objectives published in January 2019 included removing tariff and nontariff barriers and creating more balanced, fairer trade. In 2021, the Biden administration held a U.S.-EU Summit

where the two nations renewed their trans-Atlantic partnership. However, a U.S.-EU agreement has not yet been pursued by the Biden administration.

Total bilateral trade between the European Union and United States was more than $1 trillion in 2020, with goods trade accounting for $755.76 billion. The United States exported $290.76 billion worth of goods to EU member nations. The U.S. and EU are each other's primary source and destination for foreign direct investment (FDI). The $3.6 trillion invested by the U.S. in the EU in 2018 represented 61% of total U.S. investment abroad; the EU investment of $3 trillion in the U.S. represents 68% of total FDI in the U.S. (AmCham Europe). California exports to the EU were $30.9 billion in 2020, making up nearly 20% of all California exports.

In December 2020, the EU announced a new "agenda for global change" between the EU and U.S., with the intention of creating a like-minded partnership in relation to China. The agenda outlined goals such as working together to solve bilateral trade irritants, leading reforms of the World Trade Organization, establishing an EU-U.S. Trade and Technology Council (TTC), finding solutions for a digital tax, and protecting technologies against global economic and security concerns. The EU-U.S. Trade and Technology Council had its inaugural meeting in September 2021. The outcomes from that meeting in Pittsburgh centered on investment screening, export controls, artificial intelligence, semiconductors, and global trade challenges. Another TTC meeting is expected in the first half of 2022.

In October 2021, the U.S. and EU came to an agreement to re-establish trans-Atlantic trade flows in steel and aluminum. Under the new agreement, the United States will not apply Section 232 duties and will allow duty-free imports of steel and aluminum from the EU at a historical-based volume. In return, the EU will suspend related tariffs on U.S. products.

U.S.-UNITED KINGDOM FREE TRADE AGREEMENT

The Biden administration inherited the U.S.-U.K. Free Trade Agreement that President Trump had initiated in October 2018. Negotiations were launched on May 5, 2020. Negotiating sessions amidst the coronavirus pandemic provided some challenges, so the U.S.-U.K. trade agreement was the first agreement to be negotiated virtually. The Biden administration did not continue the negotiations in 2021, and the agreement has been shelved until a later date.

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 $1.375 trillion in 2020 and creating nearly 3 million jobs, about 1.5 million in each country. Moreover, U.K. FDI into the United States in 2020 totaled $480.787 billion, while FDI from the United States into the United Kingdom totaled $890.086 billion. Two-way trade between the United States and the United Kingdom was $109.2 billion in 2020 and the United Kingdom was the fifth largest importer of U.S. goods; the total value was $59 billion. The United Kingdom is California's 11th largest export destination, with more than $4.9 billion in exports. In California, the United Kingdom is the second largest source of FDI through foreign-owned enterprises (FOEs). British FOEs in California provide more than 100,231 jobs through 2,380 firms, amounting to $8.88 billion in wages (World Trade Center Los Angeles, June 2021).

FREE TRADE AGREEMENTS IN MIDDLE EAST

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

- The **U.S.-Bahrain Free Trade Agreement** (FTA), first enacted in 2006, is now responsible for $1.52 billion in bilateral trade, of which $885 million is U.S. exports to Bahrain. California is one of the top exporting states to Bahrain with $85.6 million in goods exported to Bahrain in 2020.
- The **U.S.-Israel Free Trade Agreement** was the first U.S. FTA. Since it entered into force in 1985, exports to Israel have increased by more than 450%. In 2020, Israel was the 26th largest export destination for U.S. exports, which topped $10.18 billion. In the same year, California exported $1.3 billion to Israel, making it the 25th largest export destination for California goods. Israeli FDI into the United States totaled $59.18 billion in 2020, while U.S. investment into Israel totaled $40.4 billion.
- The **U.S.-Jordan Free Trade Agreement** went into effect in 2010. In addition to increasing trade, the agreement also aimed to improve labor standards in Jordan. The United States is one of the largest exporters to Jordan, having exported $1.325 billion of products in 2020. The United States imported $1.8 billion worth of goods in 2020. California is the largest exporting state to Jordan, exporting $277.6 million worth of products in 2020.
- The **U.S.-Morocco Free Trade Agreement** entered into force in 2006 to support economic and political reforms in Morocco and give improved opportunities for U.S. exports to Morocco. In 2020, goods exports to Morocco totaled $2.3 billion, compared to $79 million in 2005, the year before the FTA went into force. The United States also is one of the largest importers of Moroccan goods, importing $1.047 billion in 2020. California exported $139.16 million worth of goods to Morocco in 2020 and imported $108.28 million the same year.

• The **U.S.-Oman Free Trade Agreement** enacted in 2009 continues to promote trade and investment liberalization and openness in the region. The United States exported $1.129 billion to Oman in 2020. Since the FTA took effect, California exports to Oman have nearly tripled, totaling $126.4 million in 2020.

ANTICIPATED ACTION

The California Chamber of Commerce is hopeful that the United States and Trans-Atlantic region will continue to strengthen relations in 2022 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 negotiations.

It is expected the Biden administration will continue to revitalize U.S. alliances with European nations, and it is hoped that the administration may revitalize negotiations for a U.S.-U.K. Free Trade Agreement and consider an eventual U.S.-EU Free Trade Agreement.

It also is hoped the Biden administration will continue to cultivate the trade and economic ties with U.S. strategic partners in the Middle East.

CALCHAMBER POSITION

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

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

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

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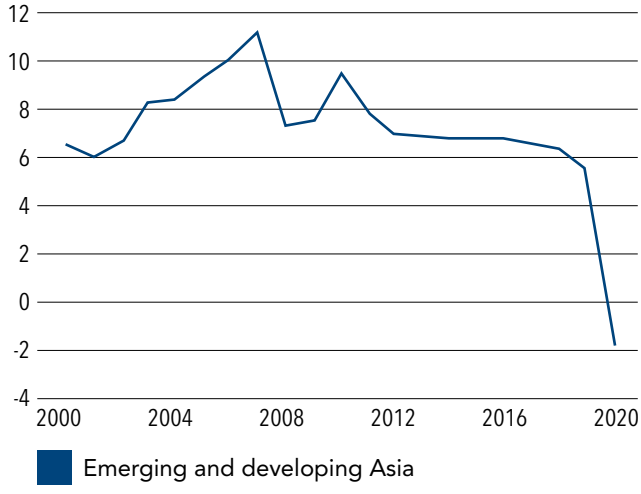
Trans-Pacific Trade Relations

Upcoming Indo-Pacific Framework Expected to Strengthen Partnerships in Region

- Region has seen an average annual economic growth rate around 6% over the last five years, prior to the COVID-19 pandemic.
- New trade opportunities to help boost post-COVID-19 economic recovery.
- Re-engagement with region is imperative with growing international interest in the comprehensive agreement (CPTPP) and to counter China-led regional partnership (RCEP).

PERCENT OF REAL GDP GROWTH IN DEVELOPING ASIA



Source: Center for Strategic & International Studies/International Monetary Fund, World Economic Outlook Database: October 2020 Edition.

BACKGROUND

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

The Trans-Pacific is the most populous, fastest-growing and most economically dynamic part of the world. By 2030, it will represent 66% of the world's middle class, and 59% of all goods and services sold to middle class consumers will be sold in the Trans-Pacific. 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 Trans-Pacific region's growth, over the last decade, growth in U.S. exports to Asia has lagged behind overall U.S. export growth. The United States is gradually losing market share in trade with Asian countries. Meanwhile, Trans-Pacific countries have signed more than 150 bilateral or regional trade agreements, while the United States has just four trade deals in the Trans-Pacific region — with Australia, Singapore, South Korea and Japan.

IMPACT

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

STATUS OF FREE TRADE AGREEMENTS IN TRANS-PACIFIC REGION

- **U.S.-Korea Free Trade Agreement**. In 2018, President Donald J. Trump renegotiated the U.S.-Korea Free Trade Agreement (KORUS), which originally entered into force in March 2012. The renegotiated deal went into effect on January 1, 2019 and included an extension to phase out U.S. tariffs on trucks,

as well as harmonized vehicle testing requirements, Korean recognition of U.S. standards on parts, and improvements to fuel economy standards. There also were modifications to Korea's customs and verification processes, and its pharmaceutical pricing policy.

South Korea is the seventh largest export partner for the United States and the fifth largest for California, exporting $51.2 billion and $9.78 billion, respectively.

• **U.S.-Singapore Free Trade Agreement**. The U.S.-Singapore Free Trade Agreement went into effect in January 2004. All tariffs have been phased out now. Singapore is a strategic partner for the United States in the Trans-Pacific region and is the 14th largest U.S. export partner; U.S. exports total $27.08 billion. Singapore is California's 13th largest export partner; state exports exceed $3.89 billion.

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

• **U.S.-Australia Free Trade Agreement**. The U.S.-Australia Free Trade Agreement came into effect in January 2005 and eliminated tariffs on 99% of U.S.-manufactured goods exported to Australia at the time. Since the agreement came into force, two-way trade between the United States and Australia has doubled to $58.9 billion in 2019. Australia is one of the United States' oldest and closest allies due to sharing common values and major interests in each other's economies. The United States is the largest investor in Australia.

In 2020, the United States exported $23.48 billion worth of goods to Australia, making Australia the 16th largest U.S. export partner. The United States enjoys a trade surplus with Australia that reached around $9 billion in 2020. Australia is the 14th largest export partner for California, which exported $3.2 billion to the country in 2020.

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

In April 2021, the first foreign leader visit of his presidency, President Joe Biden met with then-Japanese Prime Minister Yoshihide Suga. The two renewed the U.S.-Japan alliance, dubbing it a "global partnership for a new era" and stating that the alliance is "prepared more than ever to address regional challenges."

In November 2021, U.S. Trade Representative Katherine Tai and U.S. Department of Commerce Secretary Gina Raimondo traveled separately to Tokyo, where the U.S. and Japan agreed to establish a new Japan-U.S. Commercial and Industrial Partnership on trade. The two countries will collaborate more closely on trade issues, including labor, the environment, digital commerce, and confronting other countries. The U.S. and Japan are expected to start meeting regularly in 2022 to address bilateral areas of concern. This new partnership is part of the Biden administration's plan for an Indo-Pacific economic framework.

Japan is the fourth largest export partner of the U.S. and the fourth largest export partner for California; exports total $64.09 billion and $10.65 billion, respectively. Japan is one of the largest markets for U.S. agricultural products. The country also is the largest investor into California through foreign-owned enterprises as of 2020. The Japanese and U.S. markets together cover approximately 30% of global gross domestic product (GDP). The trade deal is an important step in furthering the long-shared partnership between the U.S., Japan and California.

• **U.S.-Taiwan Trade**. The United States and Taiwan first signed a Trade and Investment Framework (TIFA) in 1994. Under the previous administration in 2020, the U.S. showed more support for Taiwan and a possible trade agreement with Taiwan, relaxing some regulations in order to show good faith in starting talks. Support for a trade agreement is popular among some in the U.S. Congress. In September 2021, Taiwan applied to join the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP), a move that is importance to the country's long-term economic growth and stability in the region. Taiwan was notably left out of the China-led Regional Comprehensive Economic Partnership (RCEP).

Taiwan was the 10th largest export partner for the United States in 2020, with a total of $30.49 billion in goods exported to Taiwan. For California, Taiwan is the sixth largest export partner with $7.39 billion goods being exported, including $265 million worth of California agricultural products.

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

After many rounds of tariffs on each other's goods, China and the United States signed a Phase One Agreement on trade on January 15, 2020. This historic agreement required structural reforms and changes to China's economic and trade model, including intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange. The Phase One Agreement also included a commitment by China to purchase U.S. agricultural goods. The commitment fell to the wayside during the global COVID-19 pandemic, reaching only 60% of the target by September 2021. U.S. Trade Representative Katherine Tai continues to hold China accountable to the Phase One agreement. As of November 2021, Tai is exploring weaknesses in China's performance and is reported to be gaining traction. The Biden administration continues to use Section 301 tariffs as part of its strategy to compete more effectively with China.

While China and the United States have a complex relationship, China's relationship with Association of Southeast Asian Nations (ASEAN) countries continued to grow deeper in 2021 as more countries ratified the Regional Comprehensive Economic Partnership (RCEP) deal, which was signed on November 15, 2020 after almost a decade of negotiations. The RCEP deal went into force on January 1, 2022 and encompasses the 10 member nations of the ASEAN, as well as China, Japan, South Korea, Australia and New Zealand. The RCEP deal will cover nearly one-third of the global population and about 30% of global GDP, making it the largest trading bloc in the world.

The nations in ASEAN, established in 1967, have the goal of creating an ASEAN economic community (AEC) by 2025. The region's combined GDP topped $3 trillion in 2020. AEC already has eliminated 99% of intra-ASEAN tariffs and continues to strive for deeper economic integration.

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

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

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

In 2021, the United Kingdom announced its intent to apply for membership to the CPTPP and began talks in September. In September, China also submitted an application to join CPTPP, preempting Taiwan's own bid six days later. The dueling bids have created opposing sides within the trading bloc; the outcome remains to be seen. Meanwhile, South Korea has also expressed interest in the possibility of joining the CPTPP.

With the new applications to the CPTPP, there is a renewed push for the Biden administration to consider re-entering the agreement. U.S. engagement in the region is critically important to counter China's influence and potential addition to the agreement, as well as the China-led RCEP. In October 2021 at the East Asia Summit, President Biden announced his administration's plans to develop an Indo-Pacific framework. Re-engagement in the TPP/CPTPP could be beneficial for California, which in 2020 exported almost $63.18 billion to the CPTPP member countries.

ANTICIPATED ACTION

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

In 2022 in partnership with our regional allies, the Biden administration will develop a new Indo-Pacific framework, which is not expected to take the form of a traditional free trade agreement, and thus will not require congressional approval. The U.S. expects the "flexible and inclusive" framework to set standards in digital areas like cybersecurity and privacy, address infrastructure investments, clean energy, and export controls. U.S. Secretary of Commerce Gina Raimondo expects to negotiate the framework with Indo-Pacific nations within an aggressive timeline of 12 months.

CALCHAMBER POSITION

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

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

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

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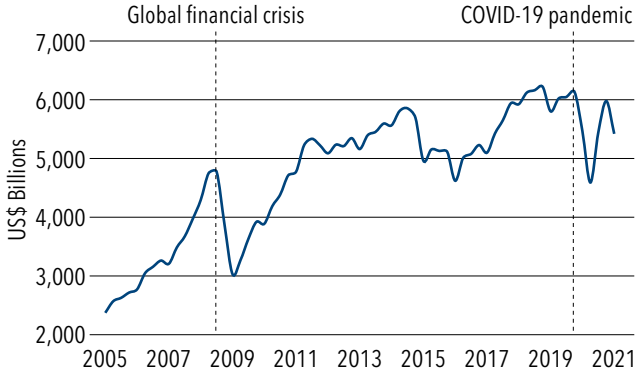
World Trade Organization

Global Trade Proves Resilient, WTO Awaits Reform Under New Leader

- Global trading system was a source of flexibility, diversification and strength during the pandemic.
- *2021 World Trade Report* shows the value of global trade in goods and services declined by 9.6% in 2020.
- Global economic output expected to recover by 5.3% in 2021.

GLOBAL TRADE MORE RESILIENT DURING COVID-19 PANDEMIC THAN DURING 2008–09 GLOBAL FINANCIAL CRISIS



Source: World Trade Organization, *World Trade Report 2021* (November 2021).

BACKGROUND

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

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

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

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

WTO FUNCTION

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

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

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

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

IMPACT

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

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

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

2021 ACTIVITY

The WTO announced its new Director General on March 1, 2021, Ngozi Okonjo-Iweala, former finance and foreign minister of Nigeria, and the first woman, and the first African to serve in the position. Her term will expire on August 21, 2025. Director General Okonjo-Iweala inherited the WTO in a tough position, after the organization had been under scrutiny from the Trump administration and while the world continued to respond to and recover from the challenges of COVID-19. Under her leadership in 2021, the WTO continued to tackle COVID-19 issues with the rest of the world, largely focusing on vaccine intellectual property, response and distribution.

The WTO ministers had many other issues they faced in 2021 in addition to COVID-19, including fishery negotiations, supply chain challenges, agricultural discussions, and an e-commerce duty moratorium. These issues were scheduled to be discussed at the already-once-postponed 12th ministerial conference that was expected to be held in December 2021 in Geneva. Emergence of the new omicron COVID-19 variant, however, led to the meeting being postponed again. There is talk that the meeting may now be held in March 2022.

Throughout 2021, many countries continued to call for reform of the WTO's dispute settlement system, to restore the Appellate Body, and new trade liberalization agreements. There were also calls for a new "rulebook" that reduces barriers and distortions in the international trading system, as many countries are questioning how to deal with China.

In August 2021, President Joe Biden nominated Maria Pagan to be the U.S. envoy to the WTO. The Biden administration has continued to express systemic concerns with the functioning of the Appellate Body. U.S. Trade Representative Katherine Tai, during a speech to the organization in Geneva in October, called for "new voices" and "new approaches" to move past old paradigms. Tai called on her peers to "change the way we approach problems collectively" and to "restore the deliberative function of the organization." Pagan's mandate when she arrives at the WTO will cover restoring the Appellate Body to what it was originally envisioned for and helping the organization succeed.

ANTICIPATED ACTION

In 2022, it is anticipated that the WTO will finally be able to hold its 12th ministerial conference to address the many issues facing the organization. The ministerial was originally planned for June 2020 in Kazakhstan, then it was postponed and moved to Geneva with the understanding that Kazakhstan would serve as a co-host.

Pagan is still awaiting U.S. Senate approval to be the U.S. envoy to the WTO. It is hoped that she may be approved soon in 2022, as it is vital that the United States once again has representation at the international organization.

The California Chamber of Commerce is hopeful the major trading economies can reach consensus on a path forward for the WTO in 2022. The revamp should address the functioning of the Appellate Body, encourage greater transparency and enhance discipline for members who fall behind on reporting obligations.

CALCHAMBER POSITION

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

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

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

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AB 5 Independent Contractor Law

Industry Carveouts Impractical; Workers Need Flexible, Holistic Approach

AB (Gonzalez; D-San Diego) was signed by Governor Gavin Newsom on September 18, 2019. The bill codified the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (Dynamex)*, and extended the application of *Dynamex* to several additional California employment laws while creating industry-specific exemptions. Upon signing the bill, Governor Newsom, as well as its author and the proponents (mainly labor unions), indicated there was more work to be done on this issue and that additional legislation would be expected in 2020.

There was indeed some additional legislation in 2020 to address AB 5 — AB 2257 (Gonzalez; D-San Diego), which added even more exemptions and made some clarifications to the business-to-business exemption. In 2021, no further exemptions were approved, leaving those industries that did not receive an exemption questioning how to comply with the rigid ABC test created by the *Dynamex* decision and AB 5.

BACKGROUND

Before *Dynamex*, California courts and state agencies had long applied what is known as the *Borello* test for determining whether a worker was an independent contractor or employee for labor and employment purposes. (*S.G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341). This flexible, multi-factor approach looked primarily at whether the hiring entity had a "right to control" the manner in which the worker performed the contracted service.

Per *Dynamex*, and now AB 5, a worker is presumed to be an employee unless the hiring entity establishes all three of the following conditions:

A. The person 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. The person performs work that is outside the usual course of the hiring entity's business.

C. The person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

Because of the rigidity of the ABC test — specifically factors "B" and "C" — most individuals who control their own schedule, control the projects or tasks that they take on, and control the way in which they perform the tasks or projects, will likely lose existing contracts and work opportunities. The reason is that if the worker performs work which is similar to that of the business entity retaining the worker's services and/or is not in an independent business or trade of the same work being performed, the workers will now be classified as an employee per the ABC test.

Although the *Dynamex* ruling applied only to California's Wage Orders and therefore was limited to minimum wage, overtime, and meal period and rest break liabilities, AB 5 is more expansive. Per AB 5, misclassified workers also are eligible for workers' compensation coverage, unemployment insurance, leave mandates under the Labor Code, and various other benefits. Additionally, because hundreds of thousands of workers will now be considered employees, those workers may assert their civil rights protections and potentially the ability to unionize.

2020 PUSH FOR ADDITIONAL EXEMPTIONS

AB 5 as enacted in 2019 exempted certain occupations from the ABC test, clarifying that *Borello* would apply instead. Those exemptions included, but were not limited to:

• Persons or organizations licensed by the Department of Insurance.

• Doctors, surgeons, dentists, podiatrists, psychologists and veterinarians.

• Lawyers, architects, engineers, private investigators and accountants.

• Securities broker-dealers and investment advisers.

• Direct salespersons.

• Specified commercial fishermen.

• Specified newspaper carriers and distributors.

Other Industries

Other industries were exempted under the professional services contract exemption. For these industries, workers are exempt only if specific criteria are met. These industries include: human resources administrators; travel agents; marketers; graphic designers, grant writers, fine artists, payment processing agents, enrolled agents licensed by the U.S. Treasury, certain photographers or photojournalists, certain freelance writers, editors and newspaper cartoonists.

Other professional exemptions carry additional conditions. For example, estheticians, electrologists, manicurists, barbers and cosmetologists are exempt, but only if they set their own rates, are paid directly by clients, schedule their own appointments, and follow several other requirements more akin to independent workers than employees.

AB 5 also provided specific exemptions and requirements for a real estate licensee, repossession agency, those subcontracting in the construction industry, construction trucking industry, referral agency relationships, and a motor club exemption.

BUSINESS-TO-BUSINESS EXEMPTION

AB 5 and AB 2257 include a limited exemption for business-to-business relationships. It exempts from the ABC test "bona fide business-to-business contracting relationships" where a contractor "acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership or corporation contracts to provide services to another such business."

Twelve separate criteria must *all* be satisfied, including that the service provider is free from control of the contracting entity, they provide services directly to the contracting entity rather than its customers, the contractor sets its own hours and location of work, and the contractor is customarily engaged in an independent established business of the same nature as the work being performed.

The exemption is difficult to satisfy. Businesses like health care providers often contract with other businesses to provide services directly to customers or patients. A business hiring for a service realistically must have some control over the hours and location of the work — a contractor cannot just show up at midnight or not be held to any standards. Further, it is not always possible to have a contractor bring their own tools. Industries like construction or medical care necessarily utilize large and expensive machinery that are stationary. Unlike under *Borello*, where there was a balancing of factors and flexibility that took these issues into account, the rigidity of the 12 criteria usurps the joint employer analysis, allowing employees of a vendor to claim they are employees of the contracting business based on the ABC test, or even allowing the owner of a separate business to claim the owner is actually an employee of the hiring entity under the ABC test.

By February 2020, more than **30 bills** were introduced to add a myriad of exemptions to the ABC test. The result was the enactment of AB 2257, which added exemptions and made changes to the already-existing exemptions. As a result of the adoption of AB 2257, there now are 109 exemptions to the ABC test, each with unique criteria. The exemptions added by AB 2257 include:

• Recording artists, songwriters, composers, musicians, vocalists, and other music industry occupations (although there are certain limits on musicians; for example, they are not exempt if they are part of a symphony headlining in a large venue seating more than 1,500 attendees).

• Cartographers, content contributors, specialized performers, home inspectors, narrators.

• Inspectors for insurance underwriting.

• Comedians, magicians, and other similar performers.

• Manufactured housing salespersons.

• Certain animal services workers.

• Competition judges.

• Licensed landscape architects.

• Youth sports coaches.

• Wedding and event planners.

• Interpreters.

2021 LEGISLATIVE SESSION MAKES CLEAR THAT EXEMPTIONS ARE SET IN STONE

Compared to the more than 30 AB 5-related bills introduced by February 2020, only a handful were introduced in 2021. AB 231 (Nguyen; R-Fountain Valley) sought to make the exemption for licensed manicurists permanent and AB 1506 (Kalra; D-San Jose) sought to extend the exemption for newspaper carriers to

2025. Both bills eventually were condensed into a bill by the Assembly Committee on Labor and Employment, AB 1561, but the committee was willing only to extend the manicurist exemption from January 1, 2023, to January 1, 2025. In exchange for extending the newspaper carrier exemption to 2025, the bill requires every newspaper publisher or distributer to submit a report to the Labor and Workforce Development Agency detailing the number of carriers, their average wage rates, and the number of wage claims filed. SB 805 (Susan Rubio; D-Baldwin Park), which was vetoed by the Governor, would have exempted nonprofit performing arts organizations over a certain profitability margin from AB 5.

RETROACTIVITY

AB 5 itself is not retroactive (*See Myers v. Philip Morris Cos., Inc.,* 28 Cal. 4th 828, 844 (2002); *Quarry v. Doe I*, 53 Cal.4th 945, 955 (2012)), but it does provide differing retroactive and prospective applications in certain areas. AB 5 is prospective for violations of the Labor and Unemployment Insurance codes (beginning January 1, 2020) and for violations of workers' compensation (beginning July 1, 2020) (except for Labor Code violations "related to wage orders." *See* AB 5).

However, AB 5 explicitly states that the industry exemptions apply retroactively "to the maximum extent permitted by law," ensuring specific industry carveouts. The bill also states that it does not change, "but is declaratory of, existing law" with regard to the IWC Wage Orders and "violations of the Labor Code *relating* to wage orders." (*Note*: It is unclear which Labor Code sections are "related" to the wage orders. However, in a May 2019 opinion letter, the Division of Labor Standards Enforcement explained that it would be appropriate to apply the ABC test to any claim, including Labor Code violations, that rest on an employer's obligations under a wage order, including minimum wage, overtime, reporting time pay, recordkeeping violations, meal and rest periods, and others.)

On January 14, 2021, the California Supreme Court dealt a blow to employers in *Vazquez v. Jan-Pro Franchising International, Inc.*, when it held that *Dynamex* is retroactive. The court held it was retroactive because the decision did not change any "settled rule" about what test applied to the Wage Orders and doing so is not "improper or unfair" to employers. The court explicitly rejected Jan Pro's argument that *Dynamex* should not be retroactive because it and others had reasonably relied on *Borello* in determining how to classify its workers, reasoning that employers had no reasonable basis for relying on *Borello* for Wage Order claims and claiming that *Dynamex* was not a "sharp" departure from the basic approach of *Borello*.

Even if the court is technically correct that *Borello* was not a Wage Order case, the court's decision unfortunately did not reflect reality. Employers relied on the Labor Commissioner's use of *Borello* in misclassification cases for years when determining how to classify their workforce. Those employers may now face lawsuits for their good faith efforts to comply with the state's guidance. Worse, the decision opens businesses to millions of dollars of exposure that will largely go to plaintiffs' attorneys. The court's *Vazquez* opinion states *Dynamex* applies retroactively to all cases "not yet final" as of April 30, 2018. Most claims for unpaid wages under the California Labor Code carry a three-year statute of limitations that can be extended to four years as long as the plaintiff also includes a claim under California's Unfair Competition Law — not to mention the penalties that can be added to those claims under both the Labor Code and the Private Attorneys General Act. A business that relied in good faith on *Borello* can now be liable for not following the ABC test before the *Dynamex* decision was ever issued.

COURT CASES POSE CHALLENGES FOR EMPLOYERS

In 2020, 58% of voters passed Proposition 22, which enacted a hybrid model of independent contractors and employees for app-based drivers. The proposition provided workers with flexibility to select their own schedule, work for other companies, and determine their own assignments while guaranteeing a minimum wage and providing health care subsidies, among other benefits.

Opponents of the proposition sued, arguing the initiative is unconstitutional. The plaintiffs filed their lawsuit in Alameda County, which has a reputation as a pro-plaintiff court. In August 2021, the judge held that Proposition 22 was unconstitutional. The three primary reasons for the ruling were that by exempting the workers from the workers' compensation system, the measure prevents state lawmakers from implementing a workers' compensation system for the workers; the amendment procedures provided for in the initiative unconstitutionally limited the Legislature's power to pass related legislation that does not constitute an "amendment"; and that it violated the "single subject" rule by which initiatives must abide. The appeals process will take several months, and observers expect the losing side to take the issue back up to the California Supreme Court, so this case likely will not be resolved until late 2022 or possibly 2023.

A similar blow was dealt to the trucking industry by the federal U.S. Ninth Circuit Court of Appeals in April 2021. Several years ago, a trial court granted a preliminary injunction blocking the state from enforcing AB 5 against motor carriers. The state appealed, taking the issue to the Ninth Circuit. The appeals court reversed the trial court ruling, holding that AB 5 was not preempted by the Federal Aviation Administration Authorization Act. The California Trucking Association filed a petition asking the U.S. Supreme Court to review the case. The Supreme Court recently invited the Solicitor General to file a brief in the case. It has not yet determined whether it will hear the case.

CALCHAMBER POSITION

While the California Chamber of Commerce appreciates the recognition in AB 5 that the *Dynamex* decision is not one-size-fits-all and agrees that there must be some exemptions, the law's industry carveout approach is unfair and impractical. That is made evident by the fact that there now are more than 100 one-off exemptions. Carveouts should be available for workers who meet certain criteria, such as the ability to set their own schedules, choose whether to take assignments, and negotiate their own rates. Flexibility is necessary to recover from the financial devastation of COVID-19, and as demonstrated by voters with Proposition 22, the current workforce values flexibility. What's needed is a more flexible and holistic approach to applying *Dynamex* that reflects today's modern workforce.

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Child Care Crisis

Pandemic Underscores Need for Flexible Work Options for Working Parents

- 110,000 child care workers left labor force at start of pandemic.
- 420,000 child care slots may be lost permanently.
- Cost is most significant barrier to increasing child care-related employee benefits; 72% of employers say they lack resources to invest more in child care.
- 91% of voters agree (56% strongly) that state labor laws should be changed to make it easier for employees to work from home.

The COVID-19 pandemic shed an important spotlight on California's child care crisis. Approximately 110,000 child care workers left the labor force in the beginning of the pandemic and many child care centers that had to shut down early in the pandemic ended up closing permanently. The Center for American Progress estimates that as many as 420,000 child care slots may be permanently lost in California as a result of these lost provider jobs. Even those centers that are still operating are not doing so at full capacity. About 99% of care centers and 78% of home-based child care providers reported that they had fewer children enrolled than before the pandemic.

Due to facilities being financially unable to reopen and the shortage of child care workers, this lack of available child care had a detrimental impact on women in particular. Women were forced to leave the labor force due to the need to care for young children at home. According to the Bureau of Labor Statistics, in March 2020, unemployment rates for men and women were similar. By September 2020, however, the national unemployment rate for women was approximately three percentage points higher than for men. Women were leaving the workforce at a rate of four times more than men nationally and two times more in California. Women of color were disproportionately affected.

The crisis continued into 2021. According to data from the U.S. Census Bureau, millions of families were still making adjustments to their work schedules because young children were unable to attend daycare due to COVID-19 concerns. A report from McKinsey & Co. shows that women feel far more burnt out in 2021 than they did even in 2020, citing caring for children and other family members as one of the primary reasons.

2021 BUDGET INCLUDES MAJOR CHILD CARE REFORM

In 2021, California experienced a historic budget windfall. In recognition of the impact of reduced child care options for working mothers, both the Governor and Legislature prioritized child care reform. Many groups, including the California Chamber of Commerce, supported this effort.

Even prior to COVID-19, the high cost of child care acted as a barrier to many parents being able to enter or remain in the workforce. A robust, quality, and affordable child care network is not only crucial for the development of young children, but also essential for millions of working parents. Due to the breadth and complexities of the topic, it was one of the budget trailer bills that took the longest to negotiate, with debates about how much reform was necessary. For example, the Legislative Women's Caucus issued the following statement on the Governor's May Revision:

> "The pandemic has shattered decades of progress improving women's economic advancement and participation rates in the workforce, lowering them to mid-1980s levels. Many women who left jobs did so because of caregiving duties, many others because the job they held was eliminated. As we examine the details of the May Revise, child care and women's economic security will remain a priority for the Women's Caucus," said Assemblywoman Cristina Garcia (D-Bell Gardens), Chair of the California Legislative Women's Caucus. "While we are pleased with the Governor's proposal to increase child care spaces by 100,000, we stand by our budget request to expand the number of children served by 200,000, implement child care reimbursement rate reform, waive family fees for *all* families, and modernize the administration of child care programs.

> "California is a diverse state with diverse child care needs, as such, we need to ensure that our expansion of slots has diversity of care providers and targets kids from 0-12. We must simultaneously increase *both* provider rates and the number of childcare spaces as well as waiving the fees on low-income families.
>
> "Nothing less than California's strong economic recovery and an equitable future for women and children is at stake. Proper funding for providers — our childcare heroes, will positively impact the predominantly female workforce that delivers care to our children; the families who can return to the workforce; and the children who benefit now who are our future workforce. We thank Governor Gavin Newsom for his proposed investment in childcare and we look forward to continuing working with his Administration, as well as Senate and Assembly leadership. Together, we know that we will get women back to work and children back to learning."

Ultimately, a compromise was reached in budget trailer bill AB 131. The bill included significant reforms, such as:

- Waiver of family fees for subsidy-funded child care through June 2022
- Addition of 110,000 new, subsidized child care spaces
- Provision for stipends for those receiving subsidies
- Increase in subsidy payment rates to providers

In addition to AB 131, the budget included funding for expansion of transitional kindergarten. The bill phases in transitional kindergarten starting in the 2022–2023 school year through 2026 by expanding eligibility every two months. By 2026, all children who turn 4 years of age by September 1 can enroll in transitional kindergarten. Both bills will help provide some relief to working parents and bolster early learning for children.

On January 10, 2022, the Governor issued his proposed 2022–2023 budget. It expands on the 2021 budget by proposing an additional $5.8 billion in spending on child care programs. That money would be used to again increase subsidized child care spaces, increase provider rates, and fund infrastructure improvements. That proposal was being reviewed by the Legislature as this publication went to print, and it is likely the Legislature will include that proposal or a similar one in the final budget.

ROLE OF EMPLOYERS IN CHILD CARE

The employer community recognizes the importance of a robust child care system to assist working families. Some companies support their workers through onsite child care, allowing children in the work place, helping employees pay for back up child care each year, or allowing new parents to work part-time or remotely.

One example of success in bringing stakeholders together on this issue is the effort by the Santa Rosa Metro Chamber of Commerce. After the devastating 2017 wildfires in Sonoma, the Santa Rosa Metro Chamber made an effort to develop partnerships with businesses, education groups and the city to find ways to reduce costs for child care providers and educate employers about ways to support workers. Employers that provided child care benefits discussed their programs with other employers and worked with local child care experts. The city agreed to make multiple policy changes to lower the cost of building new child care centers, and both the city and a local employer agreed to invest in a new center. It is evident from the success of the Santa Rosa example that local efforts must be part of the equation of addressing child care.

The most significant barrier to increasing child care-related employee benefits is cost. A study by the U.S. Chamber of Commerce Foundation shows that, of those employers that cannot increase investment in child care needs, 72% of them said they do not have the funds or resources. (*See* "Piecing Together Solutions: Employer Childcare Assistance Now and Looking Ahead," November 2020). In interviewing employers on this topic, renting or building even a small child care center costs millions of dollars due to the specifications required for such centers.

At least one company reported that its center does not make any money; it operates as a loss. Others needed to charge employees rates comparable to other child care centers to have the resources to continue to operate centers. At least one business in California that previously reimbursed employees for child care had to stop because of all the new mandates that were put on businesses in 2020 related to COVID-19.

AB 1179 (Carrillo; D-Los Angeles), introduced in 2021, would have required all employers with 1,000 or more employees and all public employers to pay for 60 hours of "back up" child care per employee. Back up child care is defined in the bill broadly to include child care where the employee's "regular childcare provider cannot be utilized." The amount the employee would receive was tied to their rate of pay, so it was equivalent to 60 hours of pay with employees making more getting the most benefit rather than lower-income employees. The Assembly Appropriations Committee, which analyzes the fiscal impact of legislation on the state, indicated there were "unknown costs" to the state as a result of providing state workers with 60 hours

of pay for child care. The committee ultimately held the bill, presumably due to the high costs associated with providing employees with that additional pay.

FLEXIBLE WORK OPTIONS FOR WORKING PARENTS

Incentivizing remote work is another option to balance the challenges of child care for working parents. California's inflexible Labor Code and steep penalty system currently dissuades employers from providing employees more flexibility during their workday or remote work.

Added costs such as split shift premiums, daily overtime, meal and rest break premiums, and a broad expense reimbursement requirement make workplace flexibility prohibitively expensive. Some employers are hesitant to continue to offer telecommuting after the pandemic because these wage and hour laws were not designed with telecommuting employees in mind. Any failure to adhere to certain rules or a good faith dispute about a law's interpretation immediately triggers penalties and attorney fees under various Labor Code provisions, including the Private Attorneys General Act (PAGA).

Employees want flexibility, whether it is through a more flexible daily schedule, alternative workweek schedule, or the ability to continue to telecommute after the conclusion of the pandemic.

In a recent CalChamber poll, 91% of voters agree (56% of them strongly) that the state's labor laws should be changed to make it easier for employees to work from home. As to specific changes:

- 88% support changing overtime requirements to allow alternative workweek schedules.
- 82% support allowing employees to take rest periods at any time of their choosing.
- 80% support allowing employees to forgo their 30-minute meal period to go home earlier.
- 79% support allowing employees to split their shifts to accommodate personal needs.

CALCHAMBER POSITION

The CalChamber recognizes the challenges working families face with reliable and affordable child care and supports the efforts made with the budget surplus to increase child care slots and reduce costs. The Governor and Legislature should build upon this success with the anticipated budget surplus in 2022 instead of imposing costly mandates on the employer community.

In addition, other policy changes can be made through legislation that will provide employees with more flexible work options to help with family responsibilities.

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'High Road Employer'

Proponents Use Term to Push One-Size-Fits-All California Labor Law Policies

A new phrase has started to emerge in labor law: "high road employer." On its face, the term appears to denote what everyone would agree is a good employer — one who pays good wages, follows lawful labor standards, has sustainable environmental practices, and so on. Indeed, the CalChamber's very mission is to help our businesses comply with the law and improve California. But a review of the term's use in recent publications and proposed legislation makes clear that its proponents define "high road employers" far more narrowly and are using this elevated rhetoric as a new means of pushing a specific policy agenda.

ORIGINS OF 'HIGH ROAD EMPLOYER'

The term "high road employer" has been attributed to Joel Rogers, a professor at the University of Wisconsin. In a paper dating back to 1990, he vaguely describes the "high road" as "a family of strategies for human development under competitive market conditions that treat shared prosperity, environmental sustainability, and efficient democracy as necessary complements, not tragic tradeoffs." His organization at the University of Wisconsin, COWS (Center on Wisconsin Strategy), states that a "low road" is a path of "convenience, greed and contempt for others," leading to low wages and weak labor standards, lack of environmental protections, and the domination of "money and corporate priorities."

Those amorphous definitions provide little clarity as to how these so-called principles would realistically be applied when forming public policy. Until a few years ago, the only use of the term in California was the California Workforce Development Board's (CWDB) "High Road Training Partnerships." The stated goal of these partnerships is to serve as intermediaries to convene employers, workers, unions, and other stakeholders within an industry to train workers for specific career paths.

Currently, the CWDB runs the following High Road Training Partnership programs:

- Building Skills Partnerships (BSP): Green Jobs, Good Jobs Project.
- Shirley Ware Education Center (SWEC): Multi-Occupation Pre-Apprenticeship.
- Worker Education and Resource Center (WERC): Los Angeles County Frontline Healthcare Worker Training Institute.
- California Labor Federation and Balancepoint Strategies: California Transit Works!
- Hospitality Training Academy: The High Road to Hospitality.
- Port of Los Angeles: Workforce Training Center.
- West Oakland Job Resource Center: Transportation, Distribution and Logistics Apprenticeship.
- Jewish Vocational and Career Counseling Service (JCS): Water Utilities Career Pathway Project.

2020 UC BERKELEY LABOR CENTER STUDY CONNECTS 'HIGH ROAD' TO A POLICY AGENDA

In June 2020, the University of California, Berkeley Labor Center issued a report titled "Putting California on the High Road: A Jobs and Climate Action Plan for 2030," which includes a number of citations to Rogers' work. The report was issued in response to AB 398 (E. Garcia; D-Coachella) (2017), which required the CWDB to present a report to the Legislature on strategies "to help industry, workers, and communities transition to economic and labor-market changes related to statewide greenhouse gas emissions reduction goals."

The report explains that for California employers to be on the "high road," they must offer quality jobs. "Quality jobs" are assessed in the report as those that pay a living wage, offer a "stable schedule," provide paid sick leave, paid family leave, health care, and comply with existing labor laws. Some of the strategies proposed in the report to achieve quality jobs are to withhold incentives or funding from employers that do not satisfy certain standards, implement wage floors for government

projects, increase the use of union-negotiated project labor agreements and community workforce agreements, and prohibit the use of contractors.

The Rogers definition and UC Berkeley Report imply that a "high road" employer is a business that meets a narrow set of criteria: one that does not use any contracting, pays more than the minimum wage, and provides benefits above and beyond what is required by law. The term does not account for an employer's financial abilities, the industry's competitive environment, or overlapping state and local regulations and mandates. As evidenced by the proposed legislation discussed below, a "high road" employer is simply a euphemism for the policy agenda of the labor movement, and would inevitably come at the expense of small businesses, new businesses, worker flexibility, and nontraditional business models.

LEGISLATURE USES 'HIGH ROAD' TO PROMOTE SPECIFIC PRIORITIES

In late 2020 and 2021, the term "high road" began to appear more and more in California politics. Governor Gavin Newsom cited the UC Berkeley study in his September 23, 2020 Executive Order N-79-20 directing the state to require that by 2035 all new cars and passenger trucks sold in California be zero-emission vehicles. He ordered the Labor and Workforce Development Agency, Office of Planning and Research, and the Department of Finance to develop a roadmap consistent with the recommendations in that study and referenced the need to create and retain "high-road" jobs.

The 2021 legislative session brought about the first statutory definition of "high road" — AB 138, the budget trailer bill passed by the Legislature related to labor and employment, added a definition to provisions of California's Unemployment Insurance Code relating to the California Workforce Development Board. Unemployment Insurance Code Section 14005(r) defines "high road" as:

[A] set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity and a clean environment. The strategies include, but are not limited to, interventions that:

(1) Improve job quality and job access, including for women and people from underserved and underrepresented populations.

(2) Meet the skill and profitability needs of employers.

(3) Meet the economic, social, and environmental needs of the community.

The bill also added references within the statute to "high road employers," "high road jobs," a "high road workforce," and "high road partnerships." Further, the bill tasked the California Workforce Development Board with "developing standards, procedures, and criteria for defining high road employers, high road jobs, high road workforce development, and high road training partnerships in California, in accordance with lessons learned from the board's ongoing high road workforce development initiatives."

More Legislation Uses 'High Road'

The amorphous definition in AB 138 merely introduced the term in economic development law. Two other bills, however, may provide some insight as to the priorities that proponents of the "high road" rhetoric intend to promote.

The first is **AB 794 (Carrillo; D-Los Angeles; Chapter 748, Statutes of 2021)**, which expressed its intent to carry out the goals of the UC Berkeley report. The original language of AB 794 sought to implement some of the report's strategies, such as imposing certain labor standards above what is required by law on fleet purchasers, short haul truckers, and vehicle manufacturers that receive grants or incentives from the state.

The standards it would have imposed on vehicle manufacturers, for example, were quite significant and applied to workers both inside and outside of California:

- Have a three-year history of compliance with all labor laws.
- Assemble the entire vehicle in the United States.
- Implement a wage floor of at least 120% of the California minimum wage, *regardless of where the worker is located.*
- Provide data of hiring disadvantaged workers.
- Disclose data such as the average wages for all occupations and the use of part-time employees or contractors versus full-time employees.

Those provisions ultimately were stricken from the bill, but provide insight as to how the "high road" phrase would be leveraged into specific policy goals. A manufacturer with workers in other states would be required to pay them at least 120% of California's minimum wage, which would be about two-and-a-half times the federal minimum wage, and the use of independent contractors or part-time workers would jeopardize the ability to obtain California incentives or grants.

The final version of the bill signed by the Governor was limited to purchasers of new drayage and short-term haul trucks. While it does not impose the above requirements, the bill requires new drayage and short-term haul truck purchasers to disclose the following before utilizing any of the state's incentive programs: (1) that it does not have any applicable labor law violations at the time of its application; (2) that it is not on a list maintained by the Division of Labor Standards Enforcement of port drayage motor carriers that have unsatisfied court judgments; and (3) that it will retain direct control over the manner and means for performance of any individual using or driving

the vehicle, for example, that the vehicles will be used or driven by employees rather than independent contractors.

The second bill that also revealed the motive behind use of the term "high road" is **AB 1192 (Kalra; D-San Jose)**. AB 1192 would have required employers with 1,000 or more employees to disclose certain metrics about their entire U.S. workforce. The metrics were to be publicly displayed on the Labor and Workforce Development Agency's (LWDA) website with the intent of establishing a certification program to provide incentives such as procurement contracts, tax benefits, and funding to those that qualify as "high road" employers. The vague statutory definition of "high road" means that whether a business qualifies will be a subjective determination.

The data proposed to be collected under AB 1192 give insight as to what types of factors the Legislature cares about. Several of the metrics are similar to what was included in AB 794:

- Median pay for workers.
- Number of full-time, part-time, hourly, and salaried workers.
- Scheduling practices.
- Benefits offered to employees.
- Use of independent contractors and temporary workers.
- Rates of pay broken down by race and gender.
- Percentage of managerial positions broken down by race and gender.

Metrics would have been compared between employers across broad industry groups, including materials, capital goods, media and entertainment, and consumer services. Each group encompasses a wide variety of businesses.

Although the bill intended to reward "high road" employers with policies promoting equity and quality jobs, simply looking at data across an employer's entire U.S. workforce does not tell the whole story. For example, an employer with a majority of its employees in states with lower minimum wage laws or areas with lower costs of living, will naturally have lower pay. And, if operations in those states have a higher number of women or racial minorities in the workforce than another area of the country, the difference will affect the data reported. Businesses that do not offer certain benefits which go beyond government mandates may have a legitimate reason for doing so, such as their competitive market environment.

It is evident from the metrics to be collected how the Legislature would likely view "high road" employers. For example, employers that use independent contractors or temporary workers would be viewed negatively by the Legislature, even if the reason for using the independent contractors or temporary workers is legal and legitimately serves that employer's business interests. Businesses with lower average wages would likely not be deemed "high road" employers, no matter the reason, even if the employer's choice was between lower wages or layoffs. Small businesses might struggle because they may not be able to afford the wages and benefits that larger businesses could afford. AB 1192 was not brought up for a vote in the Assembly.

Several other bills during the 2021 legislative session tried to establish parameters about what is a "high road" employer and/or make certain benefits contingent on meeting that standard. For example:

- **SB 46 (Stern; D-Canoga Park)** would have required the LWDA to develop the standard for what is a "high road" employer for purposes of allocating certain funds from the America Rescue Plan Act of 2021. The bill was not set for a committee hearing.
- **AB 572 (Kalra; D-San Jose)** would have established a program within the California Workforce Development Board that trains restaurants to implement "high road" policies, defined as "*policies that promote equity of income and career pathways for people of color, immigrants, women, and people who are transgender, nonbinary, or intersex.*" The board therefore would have had the discretion to determine exactly what is a "high road" employer. The bill was held in the Assembly Appropriations Committee as a two-year bill.

CALCHAMBER POSITION

The California Chamber of Commerce supports public policies that create incentives for businesses to create quality jobs, but a one-size-fits-all approach disguised by this new rhetoric will punish employers who do business in traditionally lower-wage or intensely competitive markets.

Further, any data collected to determine whether an employer is qualified for an incentive program should be kept confidential. The publication of this type of data, inevitably free of context or explanation, is intended to smear a company's reputation and subject employers to frivolous litigation.

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Joint Liability

Legislature Shifts Workplace Labor Enforcement to Private Sector by Expanding Joint Liability

There are two ways in which one employer can be held liable for the actions of another employer in employment law: if the employer exercises sufficient control over the second employer's workers, or if it is statutorily liable.

The Industrial Wage Orders define "employer" as any person "who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

In *Martinez v. Combs*, 49Cal.4th 35 (2010), the California Supreme Court explained that under this language, an entity that contracts with another may be a joint employer to the second entity's workers where the contracting entity (1) exercises control over wages, hours or working conditions; (2) suffers or permits the employee to work; or (3) engages with the worker such that a common law employment relationship exists, such as by providing workers with tools, using them as an integral part of their business, or holding the workers out to the public as their own.

The test applies to claims under the Wage Orders or the California Labor Code. In evaluating whether joint liability exists, courts consider factors such as whether the contracting entity has authority to negotiate or set wages, control working conditions, hire, fire, supervise day-to-day activities, cause the employee to work or prevent work. Many courts construe the Wage Orders' definition broadly to ensure that businesses are not turning a blind eye to other companies they contract with that are failing to properly pay their workers.

STATUTORY JOINT LIABILITY

In addition to the three factors explained by *Martinez*, the California Legislature has identified specific industries in which joint liability automatically attaches. Generally, those laws have emerged in industries where wage theft has historically been more prevalent, such as the construction or garment industries, and industries where the Legislature believes that a business should always have a higher burden to oversee its contractors, like property services or long-term care services.

• **Garment Industry**: Any person who contracts for garment manufacturing is jointly liable for any failure to pay workers minimum wage and overtime compensation. Effective January 1, 2022, under SB 62 (Durazo; D-Los Angeles; Chapter 329, Statutes of 2021), that joint liability will be extended to any entity that falls under the newly added group called "brand guarantors." That broad definition encompasses any person that contracts for the making, processing, repairing, altering, or finishing of garments, which can include retailers, small or large, or companies that license a logo. The joint liability applies to any wages owed, expense reimbursements, attorney fees, penalties, and workers' compensation coverage. Finally, SB 62 eliminates existing law that apportions liability where a worker worked on multiple garments during the same pay period. *It instead makes all businesses jointly and severally liable for all wages owed to a worker.* If a worker spends 5% of their time on shirts for Company A and 95% of their time on shirts for Company B, Company A would now be liable for 100% of the worker's wages. This is a significant expansion beyond other joint liability laws.

• **Construction**: Direct contractors are jointly liable for any wages owed by a subcontractor to a worker. Effective January 1, 2022, under SB 727 (Leyva; D-Chino; Chapter 338, Statutes of 2021), that liability will extend to penalties, liquidated damages, and interest as long as the direct contractor had knowledge of the subcontractor's failure to pay wages, or the direct contractor meets certain requirements regarding monitoring the subcontractor's payroll.

• **Property Services** (janitorial, valet, security, landscaping, and gardening): Any person that contracts for property services is jointly liable for any unpaid wages where the entity has been provided notice of any proceeding or investigation by the Labor Commissioner in which the employer is found liable.

• **Long-Term Care Services**: Any person that contracts for long-term care services is jointly liable for any unpaid wages

where the entity has been provided notice of any proceeding or investigation by the Labor Commissioner in which the employer is found liable.

The key difference between statutory joint liability and joint liability imposed by the *Martinez* tests is that statutory joint liability imposes liability even where a third party may have little to no control over another employer's workers or conduct. Many of these laws implement what is essentially strict liability: it is irrelevant whether the employer knew or even had reason to know that the other employer violated the law.

Although asking companies to contract only with other reputable, lawful companies is laudable, policy makers must recognize that there are inherent limitations on one employer's ability to audit another. One employer cannot subpoena another's records or monitor another's employee interactions day in and day out. Even if the other employer is complying with the law, the complexity and vagueness of California's labor laws means good faith mistakes are easy to make. These strict statutes therefore make companies hesitant to conduct business in California because of the high level of risk that they will be held liable as a joint employer.

LEGISLATORS SEEK TO EXPAND STATUTORY JOINT LIABILITY

Several bills introduced in the 2021 legislative session sparked debate about how far statutory joint liability should extend. Many in the targeted industries commented about the need for enforcing the robust laws that already exist to address the perceived issues regarding unpaid wages and health and safety laws rather than simply increasing joint liability. As described above, SB 62 and SB 727 ultimately were passed and signed by the Governor, expanding liability in the garment and construction industries. Both bills included provisions expanding liability far beyond any prior law.

AB 257: Fast Food Industry

Another bill that proposed to extend liability but did not make it out of the Assembly was **AB 257 (Lorena Gonzalez; D-San Diego)**. Among other changes to regulation of the fast food industry, AB 257 would have held a franchisor jointly liable for any penalties imposed on a franchisee for violations of any worker and health and safety laws and regulations. As described above, just like any other potential joint employer, a franchisor may already be liable for the actions of a franchisee if it has the right to control day-to-day operations at the workplace and the workers. As the California Supreme Court has noted:

> [F]ranchisees are owner-operators who hold a personal and financial stake in the business. A major incentive is the franchisee's right to hire the people who work for him, and to oversee their performance each day. A franchisor enters this arena, and becomes potentially liable for actions of the franchisee's employees, only if it has retained or assumed a general right of control over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee's employees. **Any other guiding principle would disrupt the franchise relationship**. *Patterson v. Domino's Pizza, LLC*, 60 Cal.4th 474, 497-98 (2014) (*emphasis added*).

Franchisees are essentially small business owners who have been granted permission to operate under the name of a larger, well-known brand. That is often the extent of their relationship and the franchisor has little to no control over the day-to-day operations of the franchisee. Automatically imposing liability on franchisors that are not involved in their franchisees' daily operations would be another example of overreach by the California Legislature and will surely decrease the number of franchisees in the state.

INCREASED STATE ENFORCEMENT BENEFITS WORKERS AND EMPLOYERS

It is undeniable that there are certain industries where wage theft is more prevalent than others. Despite robust regulations, including registration requirements or industry-specific wage and hour requirements, these issues have persisted.

Data demonstrates that the Labor Commissioner has not been enforcing those laws. For example, less than 2% of Bureau of Field Enforcement investigations in 2017–2018 and 2018–2019 and less than 3% in 2016–2017, 2015–2016, and 2014–2015 were in the garment industry despite it being one of the industries the Labor Commissioner has flagged as needing more oversight. Proponents of SB 727 admitted that enforcement in the construction industry remains "rare."

The state should increase enforcement of the laws that already exist to address these exact problems. Through joint efforts between the business community and worker representatives, the state has the power to:

- Place a lien on any of the employer's property in California to satisfy wages owed to an employee.
- Require an employer to post a surety bond if they haven't paid a final judgment within 10 days.
- Issue a stop order if any employer operates without a bond.

• Impose successor liability for unpaid wages, so that an employer cannot shut down and reopen as a different company to avoid liability.

• Impose personal liability for managing agents of employers.

• Deny registration to businesses in known problematic industries such as car washes or garment manufacturers.

• Subpoena records from employers.

Shifting enforcement to the private sector often means delayed outcomes for workers, significant money going to attorneys instead of workers, and higher costs for employers in settlement costs and attorney fees. A perfect example of this problem is the Private Attorneys General Act (PAGA). Available data shows that the average payment a worker receives from a PAGA case filed in court is $1,300, whereas it is $5,700 if the worker files a claim that is then adjudicated by the state labor agency. Notably, even though workers receive more through state-handled claims, employers are paying out less. This is due to the large attorney fees that are levied in court cases, usually totaling around 33% or more of the total settlement amount. Court cases are also slower. Workers wait on average 23 months for payment in a court case and only an average of 12 months in state cases.

CALCHAMBER POSITION

The California Chamber of Commerce believes the state should focus on enforcing existing laws instead of placing more burdens on private businesses that face automatic liability under these laws, even if the businesses have little to no control over the workers. California has the most protective, robust employment laws in the country. We must enforce those laws so that the bad actors are held accountable instead of simply passing the buck to others.

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Paid Sick Leave

Conflicting Rules Cause Confusion; Honest Errors Don't Deserve Penalties

In recent years, California has enacted multiple different forms of paid sick leave requirements. The first was the Healthy Workplaces, Healthy Families Act (Act), which went into effect on July 1, 2015. The law requires all employers, regardless of size, to provide employees who have worked in California for 30 or more days with paid sick leave. The leave must be provided at an accrual rate of 1 hour for every 30 hours worked or under a different accrual method as long as the employee has at least 24 hours of leave, or three days, by their 120th day of employment.

In the wake of COVID-19 in 2020, the federal government, California Legislature, and California Division of Occupational Safety and Health (Cal/OSHA) all enacted various additional COVID-19 paid sick leave on top of what was required by the Act. Each of these different leaves has presented its own challenge to employers over the last few years.

COMPLIANCE CHALLENGES WITH THE ACT

CHALLENGES WITH LOCAL ORDINANCE OVERLAP

The biggest compliance hurdle for California employers regarding paid sick leave under the original Act is that it allows cities and counties to adopt different sick leave mandates. The proliferation of local ordinances creates inconsistency and confusion for California employers that operate in multiple jurisdictions.

Below is a brief summary of how the Act differs from local ordinances and creates compliance burdens for employers:

• **Permitted Use of Verification or Documentation:** The Department of Industrial Relations has opined that requiring documentation (that is, a doctor's note) could be considered interference with an employee's right to take leave under the Act. However, Los Angeles, Oakland, San Diego, Berkeley and San Francisco all allow employers to either request "reasonable" documentation or to request documentation 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 have no idea what is permissible regarding documentation and verification of sick leave.

• **Accrual Method:** The local ordinances have more complex options than the Act 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. Emeryville, Los Angeles, San Diego and Santa Monica take different approaches, such as 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 (that is, 40, 48, or 72 hours) depending on each city ordinance's accrual cap.

• **Accrual Use Cap:** The accrual caps 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 per employer, and each city has a different employee threshold.

• **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:** In Berkeley, Emeryville, Los Angeles, Oakland, San Diego and Santa Monica, an employee need work

in the city for only 2 hours per calendar week and be entitled to minimum wage. That means, for any employee who travels for work, the employer must keep track of how long the employee is in each city. If the employee meets the 2-hour threshold, then that employee is entitled to the benefit of the local sick leave ordinance. In San Francisco, any employee is entitled to paid sick leave as long as they work 56 hours or more in San Francisco during one calendar year.

• **Permitted Paid Sick Leave Use:** Even the permitted use of paid sick leave may differ from city to city. While the Act states that 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 are permissible uses for paid sick leave, 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. San Diego adds public health emergencies resulting in the closure of the employee's worksite, child care or a child's school as valid reasons to utilize paid sick leave. San Francisco adds bone marrow or organ donation as a permitted use.

LIMITED ABILITY TO REQUEST DOCUMENTATION

The Act does not require an employee to provide any advance warning for an "unplanned" illness and it is silent as to whether an employer may request documentation before or after granting the leave. The Department of Industrial Relations has opined that requesting a doctor's note could expose employers to liability for interfering with an employee's right to sick leave and employers are therefore generally better off not requesting documentation.

Due to this ambiguity, employees can and likely have used paid sick leave as vacation. Anecdotal examples of this abuse include last-minute "no shows" during the holiday season that are requested as sick leave. Even the author of the Act has boasted on social media on Super Bowl Sunday that employees have the right to sick leave and employers can't ask for documentation — appearing to imply that employees can use the leave for purposes other than being ill.

WAGE STATEMENT REQUIREMENTS

Under the Act, Labor Code Section 246 (i), an employer is required to provide written notice on employee wage statements of the amount of paid sick leave an employee has available. Because this requirement is identified separately from the remaining wage statement requirements outlined in Labor Code Section 226, some employers have faced wage claims and Private Attorneys General Act (PAGA) lawsuits for failing to realize that this is a requirement. *See Ramirez v. C and J Well Service, Inc., et al.*, 2020 WL 5846464 (C.D. Cal. Mar. 27, 2020) (explaining employees have consistently tried to seek PAGA penalties for violations of Section 246 (i) even though penalties are not intended for violations of notice requirements).

Notably, these wage claims and litigation under PAGA and the significant financial burden created on the employer, are for a paperwork error that did not actually deny leave to an employee.

PROPOSAL TO INCREASE LEAVE UNDER THE ACT TO FIVE DAYS WOULD BURDEN SMALL BUSINESSES

In 2021, Assemblymember Lorena Gonzalez (D-San Diego) introduced AB 995, which would have increased the minimum number of paid sick days employers are required to provide from three days to five days, increased the cap that employers can place on paid sick days from six days to 10 days, and increased the number of paid sick days an employer can roll over to the next year from three days to five days.

The business community, especially small businesses, raised significant concerns over the proposal. This change would have harmed even those businesses that operate in local jurisdictions that already require five days of leave because the Act discourages requesting documentation. While a city like San Diego requires five days, employers are explicitly permitted to ask for documentation after three days of leave. The proposed changes to the statewide Act did not grant employers that right.

Similarly, employers that currently offer more than three days have the right to set certain parameters around that extra time, such as requesting documentation or specifying that leave may be limited during a busy or holiday season. Under AB 995, they would no longer have that right.

The bill failed to come up for a vote on the Assembly floor.

SUPPLEMENTAL COVID-19 PAID SICK LEAVE AND CAL/OSHA EMERGENCY TEMPORARY STANDARD (ETS)

On March 18, 2020, the federal government enacted the Families First Coronavirus Relief Act (FFCRA). The FFCRA included a new federal paid sick leave law that required employers with fewer than 500 employees to provide up to 80 hours of paid sick leave for qualifying reasons related to COVID-19.

Given that the FFCRA applied only to companies with fewer than 500 employees, Governor Gavin Newsom issued Executive Order N-51-20, which mandated up to 80 hours of paid sick leave to food sector employees who work for employers with 500

or more employees that could be used if the worker was subject to a federal, state or local quarantine or isolation order related to COVID-19, advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19, or prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19.

State Leave

With less than two weeks remaining in the 2020 legislative session, the Legislature passed AB 1867 (Committee on Budget) as a part of the State Budget. The bill mandated up to 80 hours of sick leave for all workers who work for employers with 500 or more employees and for any publicly employed first responders or health care providers whose employers had exempted them from the federal law. Unlike the FFCRA, AB 1867 did not include a tax credit to offset the cost of providing the leave.

AB 1867's expiration date was tied to related federal legislation: if the sick leave mandate in the FFCRA was extended past December 31, 2020, then AB 1867 would be extended as well. If not, it would expire at the end of 2020.

Rather than extend the FFCRA leave mandate, Congress offered tax credits to employers that voluntarily continued to offer paid sick leave. AB 1867 therefore expired on December 31, 2020. In response to its expiration, the California Legislature pushed SB 95 (Skinner; D-Berkeley) through the early State Budget process in March 2021. The bill provided all employees who work for an employer with more than 25 employees an additional 80 hours of sick leave for COVID-19-related reasons, including getting the vaccine or recovering from vaccine side effects. Employees were entitled to the additional 80 hours even if they already used 80 hours under the FFCRA or AB 1867.

Retroactive Leave Mandate

The mandate was retroactive to January 1, 2021. This left employers with the administrative burden of figuring out how to issue retroactive pay to employees who had taken time off for a covered reason between January 1 and the effective date, March 19. It also led to unanswered questions about scenarios where an employee may have used sick leave or paid time off (PTO) and now needed to have that time credited back and whether the bill could retroactively trigger any of the many penalties in the Labor Code.

Documentation Still Issue

The biggest issue employers faced with SB 95 was the inability to request documentation. Like the Act and AB 1867, SB 95 was silent as to whether employers may request documentation for use of the COVID-19 paid leave. The Labor Commissioner issued the same frequently asked question (FAQ) as it had for AB 1867, clarifying that employers may not request any certification from a health care provider unless the employer has reason to doubt that the employee is using the leave for a legitimate purpose. The FAQ explains, for example, that it would be reasonable to request documentation if a worker informs the employer that he or she is subject to a local quarantine order, "but the hiring entity subsequently learns that the worker was at a park."

While it is beneficial that the Labor Commissioner has recognized some instances in which it would be reasonable to request documentation to support the leave, the Commissioner's FAQs were hardly a safe harbor, and it is likely that many employers never did so for fear of litigation.

The California Chamber of Commerce polled our members on the topic of COVID-19 paid sick leave and more than 60% of the 900 respondents raised concerns about employees fraudulently using the leave. Employers reported employees requesting multiple days off for vaccine side effects before even getting the shot, with some requesting the entire 80 hours up front.

Balancing State Law with Cal/OSHA Exclusion Pay

The second biggest issue was balancing SB 95 with the exclusion pay mandate in the Cal/OSHA Emergency Temporary Standard. Under the ETS, any employee of any business of any size in California who has COVID-19, is subject to a local or state isolation order, or was in "close contact" with a COVID-19 case and is either unvaccinated or vaccinated and showing symptoms is entitled to:

- Be excluded from the workplace for at least 10 days, or potentially longer if they are symptomatic;
- Continue being paid their full wages and benefits while they are excluded; and
- Receive a COVID-19 test at the expense of the employer.

There is no cap on the amount of paid leave an employee can receive, and an employer cannot compel the employee to use existing, accrued paid sick leave prior to receiving exclusion pay.

The ETS presumes that an employee who tests positive for COVID-19 was exposed in the workplace. Even assuming that the employer demonstrates the employee was not exposed in the workplace — which is very difficult to do — the employee still is entitled to unpaid leave. Because of the difficulty in meeting this burden, employees generally are receiving the paid sick leave under the ETS, regardless of the source of COVID-19, for the duration of their exclusion. Obviously unwilling to risk violating the ETS, employers usually have paid the sick leave even if they suspected the employee was exposed outside of work.

GOVERNOR CALLS FOR MORE COVID-19 LEAVE IN 2022

Days before releasing his proposed 2022–2023 budget, Governor Newsom issued a press release asking the Legislature to enact additional COVID-19 paid sick leave in light of the high infection rates caused by the omicron variant. No guidelines were provided as to what the bill should look like — that was left to the Legislature. The CalChamber intends to raise to the Legislature many of the issues our members saw with SB 95.

CALCHAMBER POSITION

Although the CalChamber supports the need for employees to stay home from work while they are sick, especially during a pandemic, the proliferation of different types of leaves and differences between state and local leave laws has placed an enormous burden on businesses to keep up with these requirements. The availability of the COVID-19 vaccines also has reduced the chance of workers being exposed to and getting ill from COVID-19.

Employers are making good faith efforts to comply with all the existing mandates, but struggle with the lack of clarity on how to calculate leave entitlements, how to update wage statements, and the interaction of state mandates with local ordinances. These uncertainties make businesses of all sizes vulnerable to litigation, including PAGA, even when the mistakes are unintentional.

Future changes to paid sick leave mandates should be minimal and easy for employers to implement and understand with no penalty for honest errors.

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Private Attorneys General Act

Reform Can End Abuse Forcing Costly Settlements that Benefit Attorneys, Not Workers

California labor and employment laws are complex and burdensome compared to the rest of the nation. There is no better example of California's distinction in this area than the Private Attorneys General Act (PAGA). PAGA allows aggrieved employees to file a representative action on behalf of themselves, all other aggrieved employees, and the state of California for alleged Labor Code violations. The CalChamber is not aware of any other state that has such a law, and each of the other 49 states should resist any effort to adopt such a law.

INCREASED EMPLOYMENT LITIGATION, BUT NOT BETTER COMPLIANCE

PAGA has significantly increased employment litigation in California, yet has left unfulfilled its promise of promoting better compliance with California's burdensome labor and employment protections and improved compensation for employees for alleged harm.

PAGA lawsuits have increased more than 1,000% since the law took effect in 2004. By 2014 and every year since, the Labor and Workforce Development Agency (LWDA) has received approximately 4,000 PAGA notices. *See* 2019 Budget Change Proposal, *PAGA Unit Staffing Alignment*, 7350-110-BCP-2019-MR (hereinafter PAGA BCP). This number is anticipated to grow to more than 7,000 by 2022 (PAGA BCP, p. 7).

The popularity of these lawsuits is likely due to the significant monetary awards that can be levied against an employer. The threatened penalties can be staggering. The default penalty for a violation of the Labor Code is $100 per employee per pay period for an initial violation and $200 per employee per pay period for each subsequent violation. Courts have provided little clarity as to what constitutes a "subsequent violation" and whether those penalties can be compounded for multiple alleged Labor Code violations, also known as penalty "stacking." The threatened penalties are therefore often very high, especially in relationship to the actual alleged harm.

In *O'Connor v. Uber Technologies, Inc.*, a group of drivers sued Uber, claiming they were misclassified as independent contractors and were owed expense reimbursements and converted tips. The LWDA submitted a statement to the court, saying that if the drivers succeeded on their PAGA claim, PAGA penalties would exceed *$1 billion*, which was more than half of the highest possible verdict value of the case. *See* 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

PAGA lawsuits also are expensive to litigate. The alleged Labor Code violations that form the basis of these lawsuits usually are wage and hour issues. Even if an employer has Employment Practices Liability Insurance (EPLI), those policies often either do not cover wage and hour lawsuits at all or cover only a limited amount of defense costs. The remaining legal fees and any award or settlement itself must come directly from the employer. The threatened penalties and inability to obtain insurance coverage to fight PAGA claims force employers to either settle the case or risk hundreds of thousands of dollars, if not millions, litigating the case on the merits.

DATA CONFIRMS PAGA BENEFITS ATTORNEYS, NOT WORKERS

A review of PAGA case data demonstrates that the law benefits trial attorneys, not workers. The current average payment that a worker receives from a PAGA case filed in court is $1,200, compared to $5,900 for cases adjudicated by the state's enforcement agency. Even though workers are receiving higher awards in state-adjudicated cases, employers are paying out 29% less per award. This is likely because of the high attorney fees in PAGA cases filed in court. Attorneys usually demand a minimum of 33% of the workers' total recovery, or $372,000 on average, no

matter how much legal work was actually performed. In addition to receiving lower average recoveries in PAGA cases, workers also wait almost twice as long for their owed wages. The average wait time for a PAGA court case is 18 months, compared to 11 months for the state-decided cases.

Labor Agency Recognizes PAGA Abuse

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

Governor Edmund G. Brown Jr. sought to address these issues in a budget "trailer bill," SB 836 (2016–17). SB 836 requires that a copy of a proposed settlement be submitted to the LWDA. It is still too soon to determine the success of SB 836. As the data above shows, publicizing these settlement documents has not resulted in less abuse. Workers are still recovering less and waiting longer than if their case had gone through the labor agency.

Why Attorneys Benefit

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

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

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

A case cited in a recent publication by the UCLA Labor Law Center titled "California's Hero Labor Law: The Private Attorneys General Act Fights Wage Theft and Recovers Millions from Lawbreaking Corporations," illustrates perfectly how small the state's share of a settlement can be. In *Coates v. Farmers Insurance*, a group of female attorneys sued for general discrimination in violation of Title VII and the Fair Employment and Housing Act, violation of the federal and California Equal Pay Acts, PAGA, and violation of California's Unfair Competition Law. Suing under the California Equal Pay Act allowed the plaintiffs to also bring their PAGA claim because that law is found in California's Labor Code. Coates' attorney says that the threat of PAGA penalties "unquestionably contributed" to Farmers' willingness to agree to "comprehensive monetary and injunctive relief" in the amount of $4.1 million. Despite touting PAGA as the reason that her clients were able to get a $4.1 million settlement from Farmers, she took home $1.83 million and allocated only $15,000 to the LWDA for PAGA, which is a mere 0.3% of the total settlement.

Suitable Seating Not Typical PAGA Cases

That same article praises PAGA for remitting millions of dollars to the LWDA by citing seven cases which brought in higher-than-average PAGA penalties. The publication cites a string of cases that it describes as "[t]he most significant PAGA judgments," including one case that generated $10 million to the LWDA. The cases cited, however, are distinguishable from most other PAGA cases. Most of the cases cited are suitable seating cases, which represent a unique scenario uncommon to most PAGA cases.

The Industrial Wage Orders have included a seating provision since their inception in 1919. The most current version, which was the basis for those lawsuits, was established in 1976 and contains no individual monetary remedy for an alleged violation. The Labor Commissioner never enforced the provision and issued multiple opinion letters limiting the provision's applicability to retail establishments and others. After PAGA was enacted, attorneys decided to sue retailers and banks to enforce this provision.

Suitable seating cases are not representative of the majority of cases because unlike most cases that tack on PAGA to underlying causes of action for wages such as failure to pay overtime or provide meal or rest breaks, in a suitable seating case, PAGA is the only cause of action. So, in a settlement there is no other cause of action to allocate the money to in order to avoid paying money to the state. For example, in *McLeod v. Bank of America*, after the plaintiffs' attorneys took their $5 million share of the $15 million settlement, the remaining $10 million was statutorily required to be split 75/25 between the LWDA and the employees. These cases cited do not represent a run-of-the-mill PAGA case.

PAGA REFORMS NEEDED

Despite this failing grade from the LWDA, proponents of PAGA still maintain that it is an important enforcement tool that encourages compliance and protects employees. On the other hand, employers and legal counsel claim that PAGA is not working as intended. Rather, they say the law is being utilized against employers as financial leverage to force employers into costly settlements for minor, innocent mistakes. 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 a paystub state the legal entity that 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 has a unique standing requirement**. PAGA defines "aggrieved employee" as any person who was employed by the employer and against whom "one or more of the alleged violations" was committed. This language means that the representative employee pursuing a civil action for multiple Labor Code violations needs to have suffered only one of the alleged violations. In March 2020, the California Supreme Court also held that an employee can pursue a PAGA claim even when they settled their own individual claims.

Even if the representative employee suffered only one of the alleged violations or received compensation to settle their individual claims, the employee can collect penalties for all the violations alleged and, under PAGA, retain 25% of those penalties. This means the representative employee receives penalties for Labor Code violations that they never encountered or that they were already compensated for under a separate settlement agreement, thereby potentially taking away penalties for employees who actually were affected by the Labor Code violation.

• **PAGA penalties are imposed regardless of intent or the extent of any harm**. Thus, employers are held liable even if they make a good faith error. A disgruntled employee who missed one lunch break can file a PAGA lawsuit to collect thousands of dollars in penalties from an employer, and is likely to also end up with an enhancement award upwards of $10,000 or $20,000 for themselves for serving as the lawsuit's representative, even if they do little to no work to further the case.

• **A 2021 case held that an employee can sue under PAGA even if the statute of limitations for their individual claims has expired.**

• **PAGA applies to all employers regardless of size.**

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

As an example: Employer provides its 100 employees with a quarterly bonus of $500, but fails to include that bonus as a 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 employer 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 half a million dollars for just one, alleged Labor Code violation. If this one mistake results in the violation of multiple Labor Code sections (incorrect paystubs, miscalculation of meal period or rest break premiums, payment of wages upon termination, etc.), this half million dollars in penalties can be doubled, tripled, etc.

• **PAGA lawsuits are a "representative action" rather than a class action** and, therefore, the aggrieved employee does not have to satisfy class action requirements. Thus, PAGA actions are much easier to file, and it is easier to include much larger groups of employees than in a class action. Additionally, the employee often files a PAGA action and a class action simultaneously so they can recover the PAGA penalties, but not allocate the correct amount owed to the LWDA as demonstrated by the above cases.

• Another issue is the **abuse of "draft" PAGA complaints**.

Plaintiffs' attorneys create draft PAGA complaints and send them to the employer. These litigation threats compel settlement before a PAGA complaint is filed. Because 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 its share of the settlement.

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

• **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.

• **PAGA plaintiffs can sue in any venue as long as one employee worked in that county**, allowing trial attorneys to forum shop.

LEGISLATIVE ACTIVITY AND BALLOT INITIATIVE

Although there appears to be acknowledgment of PAGA abuse as noted by the LWDA in the PAGA BCP, there still is no appetite in the Legislature for useful reform. Of more than 20 bills in recent years proposed to reform PAGA or repeal it, only two were successful: AB 1654 (B. Rubio; D-Baldwin Park, Chapter 529, Statutes of 2018) exempted employers in the construction industry from PAGA if there is a collective bargaining agreement; and SB 646 (Hertzberg; D-Van Nuys; Chapter 337, Statutes of 2021) exempted employers in the janitorial industry from PAGA if there is a collective bargaining agreement.

Numerous other bills introduced in 2021 were not set for hearing, including AB 530 (Fong; R-Bakersfield), which would have required more detailed PAGA notices; and AB 385 (Flora; R-Ripon), which would have exempted cases from PAGA during the COVID-19 state of emergency where the employee signed a valid arbitration agreement and the employer agreed to waive the right to enforce that agreement.

In light of PAGA's failure to protect workers or employers, the California Chamber of Commerce, the New Car Dealers Association, and the Western Growers Association are sponsoring a ballot initiative titled "The California Fair Pay and Employer Accountability Act." The initiative repeals PAGA while also bolstering the powers of the Labor Commissioner and providing more effective compensation for aggrieved employees. It replaces PAGA with alternative enforcement mechanisms in the hands of the Labor Commissioner to ensure workers recover more of their unpaid wages in a timely manner.

Those mechanisms include creating additional penalties where one is not statutorily provided and providing for double penalties where the Labor Commissioner determines the employer willfully withheld wages. The measure requires 100% of penalties for violations be paid to employees — instead of the state. The initiative also creates a Consultation and Publication Unit to provide confidential consultation to employers and binding compliance letter advice to be posted on the unit's website. Finally, this initiative prohibits arbitration of hearings before the Labor Commissioner.

Poll Shows Voters Support Initiative

The annual CalChamber poll in 2021 asked voters to choose between the two major arguments over this proposal:

• Supporters say that using independent regulators to quickly resolve wage claims is better and faster than hiring a lawyer and going to court, which can take years and cost thousands of dollars. Supporters say this measure offers a better way to quickly get problems fixed, and still protect workers' rights.

• Opponents say that the threat of immediately getting a lawyer and filing a lawsuit is the only way to get a company's attention and fair compensation. Opponents say this measure would reduce workers' rights, and still tie up most cases in court.

By a margin of 79% to 21%, voters agreed with proponents to the labor law enforcement proposed in this measure.

CALCHAMBER POSITION

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

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

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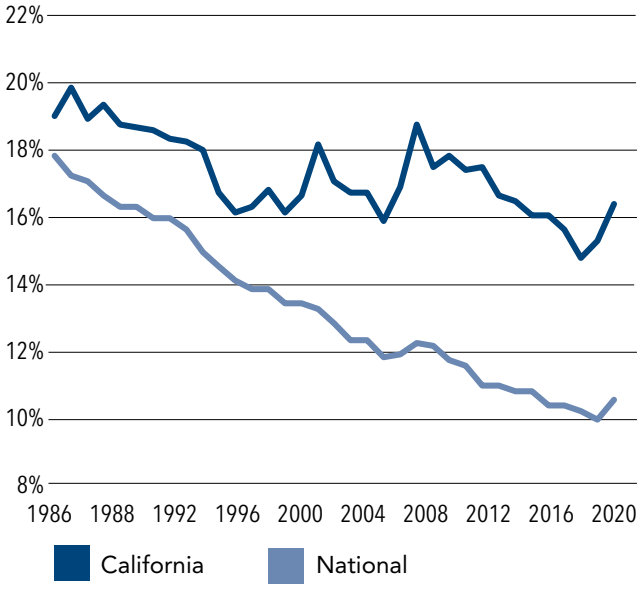
Sectoral Bargaining

Raises Concerns of Negative Unintended Consequences for Workers and Employers

Union membership has remained relatively low in recent years. Only about 16.2% of workers are unionized in California and just over 10% are unionized nationally. Groups differ as to why. Some say it is due to slower growth in traditionally heavily unionized industries like manufacturing, some say it is due to corporate opposition to labor organizers, some say it is due to the increase of temporary and contract work, and some say unions are declining in relevance and are spending more time and money on lobbying compared to organizing campaigns. To address this membership decline, some labor advocates are calling for the implementation of sectoral bargaining.

UNION PARTICIPATION DECLINING



Source: CalMatters/Barry T. Hirsch of Georgia University and David A. Macpherson of Trinity University. Figures based on U.S. Bureau of Labor Statistics Current Population Survey.

WHAT IS SECTORAL BARGAINING?

Currently, most bargaining in the United States and California is "enterprise-based bargaining," in which unions negotiate with individual employers. "Sectoral bargaining" has historically been more common in European countries. It occurs when an association representing an industry negotiates with a union that may represent workers in that industry. The resulting agreement is then imposed by a government agency on all firms in the industry in that jurisdiction, regardless of whether those firms' employees are represented by that union or any other union.

Supporters of sectoral bargaining say it is an answer to declining union membership, and the benefits they say a union provides to workers. They support applying collective bargaining agreements to similar workers within the same industry, regardless of whether those workers belong to a union. Even proponents of sectoral bargaining, however, acknowledge that effects of sectoral bargaining are limited. An industry-wide agreement may be useful to set wages, but it cannot be used to address workplace-specific issues. Proponents therefore envision a sort of hybrid system where one version of union contracts applies to workers in nonunionized workplaces, but workplace-specific contracts also exist only for unionized firms.

Sectoral bargaining raises concerns for both workers and employers.

• First, it imposes a union onto employees who may not have ever voted on union representation — or even voted against union representation in the first place. Proponents of sectoral bargaining also advocate strengthening unions' abilities to collect dues, so it is likely such sectoral agreements would involve

collecting dues from all employees, regardless of whether the employee's worksite is organized. Indeed, proponents have argued that while sectoral bargaining leads to higher levels of union density, it also engenders the "free-rider problem" because not all workers subject to the negotiated contracts are dues-paying union members. (*See* Center for American Progress Action, "How to Promote Sectoral Bargaining in the United States," (July 10, 2019).)

• Second, under sectoral bargaining, every employer must adhere to the same salary, benefits and work rule requirements, no matter how the market and economic circumstances of each individual business may vary. Larger, more financially successful businesses would have a clear advantage over small businesses or businesses with thinner profit margins. It would also be difficult for a new business to enter into that market because it can take years to make a profit as a new business.

Even some countries with sectoral bargaining recognize that not every employer should be subject to these contracts. In Germany, employers are not required to join the association negotiating the agreement, so they can opt out of it.

• Finally, a one-size-fits all approach also limits the ability to compete for employees or for market share based on price and quality of a product or service. Some say sectoral bargaining may dissuade employee movement because other firms have no incentive to offer more competitive compensation or benefits packages. (*See The Wall Street Journal*, "Germany's Labor System Would Be Difficult to Import to U.S." (October 20, 2019).)

PROPOSALS TO STRENGTHEN UNIONS' BARGAINING POWER

Sectoral bargaining proponents also advocate strengthening unions' bargaining position to achieve broader-based bargaining. This includes transferring certain government powers to unions, such as:

• **Unemployment benefits.** Labor advocates hold up the Ghent system as driving union membership. The Ghent system exists in countries like Sweden, Belgium, and Denmark where labor unions administer unemployment benefits. (*See* Center for American Progress Action and American Progress, "American Ghent" (September 18, 2019).)

• **Enforcement**. Proponents of sectoral bargaining say unions also should be involved with the enforcement of labor laws.

• **Wage boards**. Members of the public, unions, and employer representatives would establish minimum requirements in specific industries.

Each of these ideas may have negative unintended consequences for workers and employers. Regarding unemployment benefits, the goal behind having unions run this benefit is to increase membership, which would therefore be an effort to have employees pay dues. Employees would feel pressured into financially supporting the entity in charge of their access to benefits. There have even been countries that have required union membership to get unemployment benefits. Second, unions in the United States largely cover specific industries, so determining which union would oversee benefits could lead to complications.

Regarding enforcement, there has been a general distrust of nongovernment entities enforcing labor laws. Issues have arisen in other areas. Attorneys have manipulated laws like the Unruh Civil Rights Act, Americans with Disabilities Act, and California's Private Attorneys General Act (PAGA) for their own financial gain, to the detriment of workers. For example, PAGA data demonstrates that workers receive far less compensation with longer wait times through PAGA cases than if they had filed a claim with the state. Nothing in current law prohibits unions from helping workers navigate and file claims with the Labor Commissioner or Department of Fair Employment and Housing. Giving unions a more formal role could create perverse incentives that would benefit the union through increased membership over the interest of workers.

Regarding wage boards, California previously authorized and empowered an Industrial Welfare Commission (IWC), which developed orders governing minimum wages and hours of work. The Legislature in effect abolished the IWC in 2003, and much that had been subject to industry wage orders is now codified in the California Labor Code, which in turn is controlled by the Legislature.

Legislative Proposal Fails

The Legislature recently rebuffed a proposal that would have given significant powers to a fast food council comprised largely of worker representatives. AB 257 (Lorena Gonzalez; D-San Diego)) would have established a Fast Food Sector Council consisting of five government representatives, two employees, two employee advocates, one franchisor, and one franchisee — meaning employers would be outnumbered 2 to 1 by worker representatives. The council also would have alienated other interests that may have a stake in rules surrounding the industry, such as issues regarding privacy or environmental concerns. The council would have had broad power to establish industrywide

law on wages, hours and other working conditions. It would have usurped any other regulations or laws, taking power away from the Legislature and state agencies.

Concerns about this immense power were raised in the Assembly Floor debate on the bill, which ultimately failed by three votes. The bill also would have allowed certain cities to establish their own local councils, creating different requirements in different parts of the state. Differing local requirements have caused administrative burdens for employers in other matters, such as sick leave and vaccine-related mandates.

CALCHAMBER POSITION

Employees deserve the right to decide whether they want to be a member of a union and pay dues. The California Chamber of Commerce opposes policies that seek to strip employees of that right to choose and impose requirements on employers at the expense of small and new businesses.

California has robust, complex labor laws that are the strictest in the country. The CalChamber supports increasing enforcement mechanisms of the Labor Commissioner rather than outsourcing this role.

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California Privacy Protection Agency

California's New Privacy Agency Hits Ground Running

In November 2020, California voters passed Proposition 24, also known as the California Privacy Rights Act (CPRA). The CPRA amends and extends the California Consumer Privacy Act of 2018 (CCPA) and establishes the California Privacy Protection Agency. This new agency has administrative power to implement and enforce the CCPA. The agency's responsibilities include updating existing regulations and adopting new regulations.

Before the CPRA, the CCPA required the Attorney General to promulgate and enforce CCPA regulations against businesses. Proposition 24 now requires the agency to promulgate additional regulations under CPRA by July 1, 2022.

The agency held its inaugural meeting on June 14, 2021, and wasting no time, published an initial invitation for comments on September 22, 2021. The agency's invitation for public comment solicited comments related to any area on which the agency has authority to adopt rules. In its invitation, however, the agency identified several areas of particular interest, as set forth below.

CALIFORNIA PRIVACY PROTECTION AGENCY IDENTIFIES AREAS OF FOCUS

Public comment is intended to assist the agency in developing well-informed regulations and determining whether changes to existing regulations may be necessary. The agency solicited comments related to any area on which the agency has authority to adopt rules but identified several topics of particular interest where it would like to receive viewpoints and comments. This is an informal process in advance of formal rulemaking.

• Processing that Presents a Significant Risk to Consumers' Privacy or Security: Cybersecurity Audits and Risk Assessments Performed by Businesses.

In this area, the agency was interested in factors including when a business's processing of personal information actually presents a significant risk to privacy or security, and what businesses that perform annual cybersecurity audits should be required to do. The agency also asked for information about risk assessments, including what goes into a risk assessment and how often a risk assessment ought to be submitted.

• Automated Decisionmaking.

The agency showed interest in what activities should be deemed to constitute "automated decisionmaking technology" and "profiling." The agency was also interested in identifying when consumers should be able to access information about a business's use of automated decisionmaking technology and what processes consumers and businesses should follow to facilitate access. Additionally, the agency sought information about what specific information businesses must provide to consumers in response to access requests, including what it means to provide "meaningful information about the logic" involved in automated decisions.

• Audits Performed by the Agency.

The agency showed interest in what the scope of an agency audit should be, what the process should be to exercise an audit, and what safeguards the agency should adopt to protect consumer information for disclosure to an auditor.

• Consumers' Right to Delete, Correct, and Know.

The agency acknowledged that, with regard to consumer rights to delete and know, the Attorney General has already adopted regulations. The CPRA, however, added a right to correct, and additionally provides for the creation of regulations to establish rules and procedures that facilitate the right to correct. The agency's interest here was related to procedure, including the frequency of consumer requests to correct, the circumstances warranting the same, and how a business is required to respond. The agency also showed an interest in helping businesses take steps to avoid fraud.

• Consumers' Rights to Opt-Out of the Selling or Sharing of Their Personal Information and to Limit the Use and Disclosure of Their Sensitive Personal Information.

The Attorney General has previously issued regulations to enforce the consumers' right to opt out of the sale of their

personal data. The CPRA now provides for additional rulemaking to update the CCPA's rules on the right to opt-out of the sale of personal information. It also calls for the adoption of regulations to limit the use of sensitive personal information, and account for other changes in this provision. The agency showed interest in understanding what policies and processes may help consumers control how sensitive personal information is used by businesses.

• Consumers' Rights Related to Sensitive Personal Information.

Because the term "sensitive personal information" is new to the CPRA, the agency solicited comments to help understand what should constitute "sensitive personal information" that should not be subject to the right to limit use and disclosure. Additionally, the agency sought information about what type of uses or disclosures of consumer sensitive personal information ought to be permissible notwithstanding a consumer's direction to limit the use or disclosure of the same.

• Information to Be Provided in Response to a Consumer Request to Know Specific Pieces of Information.

When a business is required to disclose specific pieces of information to a consumer, the CPRA generally requires the disclosure to cover the 12 months prior to a consumer's request. However, for all information processed on, or after January 1, 2022, consumers may request, and businesses must disclose, information beyond the 12-month window subject to an exception.

On this issue, the agency was interested in identifying the standard that should govern a business's determination that providing information beyond the 12-month window would involve a disproportionate effort or is otherwise impossible.

• Definitions and Categories.

Interestingly, the agency requested additional information on a wide range of definitions of categories. Notably, the agency was interested in what regulations, if any, should be adopted to further define "dark patterns," "law enforcement agency-approved investigation," and whether any changes or updates should be made to the categories of "personal information" given in the law.

CALCHAMBER POSITION

The California Chamber of Commerce participated in the agency's preliminary invitation for comments and submitted written comments to the agency on issues that were of concern for businesses. In its comments, the CalChamber provided guidance on the issues outlined by the agency, including substantive feedback to help the agency identify foreseeable issues in advance of promulgating a draft.

The CalChamber supports regulations that clarify ambiguities in the text of CPRA, and simplify and streamline compliance for businesses.

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Content Moderation and Internet Safety

Legislation Must Consider First and 14th Amendment Concerns

Few things impress the imagination more than our ability to connect with each other using cheap, commonplace digital services. We enjoy a world where we can see our loved ones instantly, in real time, when we may be too distant to see them in person. And out of the shadows of a pandemic-induced shutdown also came the realization that these services were not just tools for interaction, but tools that could help us continue to thrive and connect economically and socially. But this increased use and usefulness of online tools has also led to more questions about bad content on the internet, and how best to keep the internet safe for everyone.

Surely, there is no shortage of stories where the use of digital technology has helped highlight the best in humanity. But there is a growing concern that the use of digital tools for harmful, or otherwise negative results warrants some measure of protection. Most people would agree that the internet should be safe and secure for everyone. But reasonable minds differ about how best to achieve that shared goal.

CONSTITUTIONAL CHALLENGES WITH CONTENT MODERATION

One of the difficulties of drafting legislation related to content moderation is the risk of running afoul of First and 14th Amendment protections. The First Amendment deals with free speech and restricts the government's power to control speech by private actors. The 14th Amendment deals with equal protection under the law.

First Amendment Consideration

The First Amendment generally prohibits states from interfering with speech, the press, religious beliefs, or the right to assemble. Relevant here is that the First Amendment does not apply to private actors, and thus restricts only the state's ability to tell its citizens what they can and cannot express.

In the context of content moderation, whether legislation related to content moderation would survive a judicial challenge hinges upon whether the legislation is content-based, or content-neutral. This distinction is important because it determines what level of review the court will apply — either strict scrutiny or intermediate scrutiny.

A content-based law or regulation discriminates against expression based on the content of what the expression communicates. Typical examples are restrictions on specific ideological viewpoints. Courts treat content-based restrictions with strict scrutiny.

Strict scrutiny is the most exacting level of judicial examination and requires the government to demonstrate that the statute in question serves a compelling state interest in a manner that imposes the least possible burden on expression.

By contrast, a content-neutral restriction may apply to the expression of content, but does not restrict the content of expression itself. Content-neutral restrictions generally are considered those with reasonable time, place, or manner restrictions on expression, or those that address the secondary effects of expression. Examples include requirements that demonstrators comply with safety protocols when gathering on public property.

Courts treat content-neutral restrictions with intermediate scrutiny, a lower standard of review than strict scrutiny. To survive intermediate scrutiny, the state must demonstrate that a challenged law furthers an important government interest and does so by means that are substantially related to that interest.

14th Amendment

Content moderation also may be subject to challenges under the 14th Amendment's Equal Protection Clause. The purpose of the equal protection clause is to secure every person against arbitrary discrimination. Under the 14th Amendment, the standard of review applied by the court hinges upon where a statute draws lines based on certain characteristics.

Statutes that single out groups based on protected characteristics,

such as race, are subject to strict scrutiny. Classifications based on quasi-suspect characteristics, such as gender, are subject to intermediate scrutiny. Purely arbitrary government classifications, even classifications consisting of just one person, are subject to rational basis review. Rational basis is a very deferential level of judicial review.

For online content moderation, the key question is to what extent the identification of general characteristics is relevant to the objective of the legislation. For example, if a bill seeks to regulate "social media companies," it cannot define the term merely by defining the number of users who visit a website. If this was the case, some of the most dangerous or radical platforms could go unregulated simply because they are not large enough to fall within the definition.

Similarly, if a bill defines "social media companies" by outlining a specific set of features, such as the ability to create a profile, interact with other users, or share user-generated content, bad actors could easily subvert the law's application by altering the features offered on their services to avoid its application.

In both examples, the arbitrary definition of who is covered by the law could be a potential violation of the 14th Amendment, although subject to a very deferential standard of review by the courts.

FEASIBILITY OF COMPLIANCE

In addition to difficulties with adequately defining the scope of content moderation legislation, feasibility of compliance also is a concern. Businesses are not opposed to investing in an internet that is safe for everyone, but imposing costly ongoing compliance requirements on businesses can be unnecessarily punitive. For years, businesses have invested billions of dollars, hired tens of thousands of workers, and developed scaled operations dedicated to transparency, safety and security online.

By now, everyone has seen the rollout of increased privacy, security and safety features on their favorite applications. Businesses treat information about how these features work as sensitive and proprietary because inadvertent disclosure or breach of these processes could compromise the systems designed to protect users. For example, disclosure of how security warnings are triggered, or the methods by which a system verifies a user, can be sensitive and should be protected against potential breach or disclosure. This is why bills requiring businesses to create and submit detailed reports on content moderation practices or divulge sensitive content moderation information significantly increase the risk that the information will be breached or otherwise compromised. Proposed legislation that creates reporting requirements to address content moderation should consider the security risks that over-reporting or disclosure may create with regard to data breaches.

LEGISLATIVE EFFORTS

Drafting legislation in this area that strikes the right balance between the twin objectives of promoting internet safety while maintaining First and 14th Amendment principles is challenging. The primary flaws of California Chamber of Commerce-opposed bills in this area last year related to their scope of application and feasibility of compliance:

- AB 613 (C. Garcia; D-Bell Gardens) Would have required platforms, as defined, to place labels on images, specifically those that depict humans and have been altered with regard to bodily figure or skin, and are posted for promotional or commercial purposes. The Assembly policy committee hearing on this bill was canceled at the author's request.
- AB 587 (Gabriel; D-San Fernando Valley) Would have required all social media companies to make detailed disclosures on a quarterly basis describing content moderation practices and procedures, including details that could threaten the security and efficacy of content moderation practices currently in place. This bill passed the Assembly, but the Senate policy committee hearing was canceled at the author's request.
- AB 1545 (Wicks; D-Oakland) Would have created restrictions on specific features and content that can be viewed by underage users online. This bill was held in the Assembly fiscal committee.
- SB 388 (Stern; D-Canoga Park) Would have required social media platforms to divulge detailed information relating to content management practices to the Department of Justice on an annual basis. The Senate policy committee hearing on this bill was canceled at the author's request.

CALCHAMBER POSITION

Social media platforms are unique as the users of the platform are creating content and expressing their own views. Forcing social media companies to censor, edit, or remove content creates constitutional challenges. The CalChamber supports efforts to protect consumers, but such efforts must be done in a way that balances constitutional protections and does not impose on companies unnecessary compliance requirements that provide no additional consumer safety protections.

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Privacy Act Exemptions

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

In 2018, the Legislature enacted the California Consumer Privacy Act (CCPA). The CCPA is a comprehensive consumer privacy law that applies to businesses of all sizes and affects almost every industry. It created five privacy rights for consumers:

- Right to delete data.
- Right to know what data is collected.
- Right to opt-out of data being sold.
- Right against retaliation for exercising rights under the CCPA.
- Right to sue for data breaches.

Passage of the CCPA was contingent upon the revocation of a then-pending ballot initiative sponsored by Californians for Consumer Privacy. Negotiations to have the statute passed through the Legislature meant the CCPA was opened to input from a broader group of legislators and stakeholders, and generally faced a lower amendment threshold so that it could be updated over time. The result was the first comprehensive consumer privacy statute in the United States, and one of only a handful around the world.

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

California Privacy Rights Act

Following up on their success in 2018, proponents of the CCPA qualified and won voter approval of Proposition 24 in 2020, which created the California Privacy Rights Act of 2020 (CPRA). The CPRA revised CCPA by:

- Extending the exemptions for employee and business-to-business information until January 1, 2023.
- Creating a right to correct data.
- Expanding the right to delete data to any third parties, service providers, or contractors that accessed the data.
- Expanding the right to know what data is collected to include the right to access specific pieces of information and the purpose for which personal information is being sold or shared.
- Expanding the right to opt-out by creating a new category of information, called sensitive personal information (SPI) and the right to direct businesses to limit use of SPI.

CONTEXT BEHIND EMPLOYEE AND BUSINESS-TO-BUSINESS EXEMPTIONS

In order to understand the policy issues related to the employee and business-to-business exemptions, it is important to understand the context of this conversation against the text of the CCPA. Because employee-employer relationships and business-to-business relationships are fundamentally different from relationships between businesses and consumers, the drafters exempted information related to these relationships from the consumer rights created in the CCPA.

The CCPA was not designed to be applied to employee and business-to-business information, but because the definition of "personal information" was broad enough to capture these relationships, exemptions were drafted into the statute.

Why Employee Exemption Is Necessary

The CCPA was designed to apply only to consumer "personal information," defined as information that "identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly, or indirectly, with a particular consumer or household." The definition of "personal information" also includes a consumer's "professional or employment-related information."

Thus, the exemption exists to prevent this broad definition from capturing information that falls outside of the consumer context. For an employer, this means the CCPA does not apply

to all the information found on an employee's computer or work phone, all information found in their physical office or workspace, all handwritten materials or Post-it notes, and any other information that potentially falls under the broad umbrella of "personal information" as defined in the CCPA.

Such broad application creates tremendous legal consequences for both employers and employees, and would cause the CCPA to conflict directly with existing laws and rights. In many cases, state and federal law require employers to collect employee information; thus, applying the CPRA's privacy rights is fundamentally inconsistent with existing laws and policies designed to protect workers.

Indeed, courts have even acknowledged limited rights to privacy when using employer-issued computers or email software. *See*, for example, *Holmes v. Petrovich Development Co., LLC*, 191 Cal. App. 4th 1047, 1068-70 (2011) (employee emailing personal attorney on her work computer was akin to talking to them in a "conference room[], in a loud voice, with the door open"). Accordingly, the employee exemption was placed in the CCPA.

Why Business-to-Business Exemption Is Necessary

Similarly, there is also a separate exemption for business-to-business information. Businesses that contract with one another for products or services need the flexibility to exchange relevant information in order to carry out contracts and daily business functions. The definition of "personal information" in CCPA and CPRA is broad enough that it captures much of this business-to-business information.

Thus, in order to avoid shutting down the daily operations of businesses with overwhelming compliance obligations, certain business-to-business information was exempted from much of the CCPA's application. The exemption applies to information that allows businesses to conduct business transactions with one another when no individual consumer is involved.

Specifically, the exemption applies to "personal information reflecting a written or verbal communication or a transaction" between the business and an employee or contractor of another business where the communication or transaction occurs in the context of a business conducting due diligence on another business, or the business providing or receiving a product or service to or from such organization. This would include, for example, information contained in emails between two companies regarding a purchase order or contract.

Small and large businesses rely on this exemption to carry out regular day-to-day operations and tasks, examples of which range from supply chain and logistics to retail operations to producers of digital media and content. This exemption also allows businesses to carry out philanthropic, good-will work with efficiency. Similar to the employee information, CCPA's framework does not make sense in this context and would give people the right to request access to proprietary information or delete pertinent documents.

Why the Sunsets Exist

For the above reasons, stakeholders agreed upon separate exemptions for employee and business-to-business information in order to avoid nonsensical results and conflicts with existing laws. An agreement was reached to include the current exemptions for employee and business-to-business information. Due to the nature of the negotiations, stakeholders added a sunset to both exemptions to give the Legislature time to address employer and employee data issues separately, but to date, no solution has been presented.

The CPRA extended the sunsets from January 1, 2021, to January 1, 2023. If the exemptions sunset, applying the CCPA to employee and business-to-business information will create serious issues for employers, workers, policymakers and the judiciary.

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

Even before passage of the CCPA, California law provided workers with certain rights regarding employment-related documents. These protections are memorialized in the Labor Code and are separate from the CCPA. This means that the exemption for employee data in the CCPA has no effect on employee data protections.

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

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

CONSEQUENCES IF EMPLOYEE DATA NOT EXEMPTED

The CCPA does not apply to employees' "personal information" because the results would be untenable. An employee should not have the ability to request access to all their personal information, requiring the employer to go through thousands of electronic and physical documents, including every email ever sent or received by the employee or even containing their name; paper

files; payroll records; and notes and objects in physical offices. For any employer that has experienced electronic discovery for litigation, even limited electronic searches and reviews cost thousands of dollars and take hundreds of hours to complete. Putting this burden on employers is impractical and does not align with the true purpose of the CCPA: to provide consumers with more control over their personal information in their relationships with businesses.

For example, an employee considering filing a claim against their employer could use the consumer right to know as a means of side-stepping civil discovery rules. Use of the consumer right to know also could lead to the disclosure of proprietary information or communications that normally would be protected under privilege, such as the attorney-client privilege, because there are no limitations in the CPRA to protect that information from disclosure.

Additionally, the right to delete would be problematic as well. Granting this right to employees would create a nearly unfettered right to delete emails or other files. An employee who has acted inappropriately toward others in the workplace should not be allowed to demand deletion of any incriminating emails, texts, or instant messages. Continuing the exemption will assure that evidence will be retained in any future litigation or investigation.

Applying this right to delete in the employer-employee relationship conflicts with existing laws that require employers to maintain certain documents and records. Determining which law governs would become a question for the courts to decide. This would put judges in the position of policy makers. These layers of statutory conflict would also leave employers confused about their legal obligations under the CCPA as opposed to the California Labor Code, federal record-keeping requirements, and agency regulations.

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

The above issues are just examples of the consequences that affect both employers and workers. It is evident why other states with CCPA-styled privacy laws or pending bills have chosen to permanently exclude employee data. Because the CCPA's framework is inappropriate in the employee/employer context, the employee exemption should remain in place indefinitely.

CALCHAMBER POSITION

The California Chamber of Commerce supports extending the employee and business-to-business exemptions permanently. To the extent the State wishes to address the subject of employee privacy or employee data, that issue should be addressed through a separate statutory framework. Permitting the January 1, 2023 exemptions to expire would have serious unintended negative consequences that would harm both workers and employers.

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Smart Laws: Regulating Algorithms

Cultivating Innovation While Protecting Consumers

Across the globe and here at home, California is known as a leader in technological innovation and creative ingenuity. And with this reputation, California has been able to attract some of the most impactful businesses and talents from around the world. New digital technologies and constantly evolving computing systems are a cornerstone of California's competitiveness, and the impact of the innovation economy has been fruitful for California.

In recent years, however, California's ability to maintain its lead has come into question as it gains a reputation for being too tough on technology companies, particularly at a time when other states are welcoming new companies with exciting incentives. (States use credits and incentives to attract startups and technology companies. *See* Deloitte *https://www2.deloitte.com/us/en/pages/tax/articles/states-use-credits-and-incentives-to-attract-startups-and-technology-companies.html*.)

But California does not have to choose between innovation and consumer protection. The two are not mutually exclusive. A policy that values inclusion of industry expertise could yield much sweeter fruit for consumers and the state. In particular, one area where California can exercise this inclusive approach to policy is by tailoring its approach to regulating algorithms in a way that cultivates innovation and protects intellectual property while still protecting consumer interests.

BACKGROUND

At the outset, it is important to understand that algorithms by themselves are not inherently good or bad. They are simply instructions that provide a framework for carrying out tasks, akin to a series of "if-then" statements. But today, the prevalence of this technology, combined with widespread misinformation about surveillance and tracking, has led to a general fear of the unknown. In particular, people have come to fear the use of algorithms in more important decision-making processes, leading to concerns about fairness and privacy. But just as with any technology, a distinction must be made between the technology itself and the conduct of bad actors.

The most-cited concerns surrounding the use of algorithms relate to their use as tools to help make decisions that affect people, particularly protected classes. People legitimately fear the use of algorithms in areas such as criminal justice, financial lending, and even in job hiring because there is a concern that algorithms may inadvertently affect protected classes of people. But it is important to note that any potential bias in algorithms inherently stems from human bias. For example, if an algorithm is given criminal records that already are stained with decades of systemic racism, then that algorithm may have a disparate impact on people of color. Similarly, if an algorithm reviewing thousands of resumes is programmed to search for graduates from Harvard, it may produce inadvertent results stemming from racial bias that exists in the college admission process, even though the algorithm itself does not know what race the applicants are.

CONSUMER PROTECTIONS AGAINST DISPARATE IMPACTS

Under current law, California provides people with protections by allowing them to bring disparate impact claims under Title VII of the U.S. Civil Rights Act of 1964 and the California Fair Employment and Housing Act (FEHA). When it comes to algorithmic decision making, a disparate impact claim can be strengthened by the factual data of an algorithm.

What people don't realize is that eliminating algorithms from decision making removes a layer of accountability from the process. This is because algorithms can be audited for fairness, tested for results, updated, and improved. In stark contrast, with a traditional hiring scheme, a manager with a bias against members of a protected class cannot be audited, cannot easily be tested for results, and certainly cannot be updated to work better next time.

In this way, algorithms are actually a tool for eliminating bias and even identifying bias in data sets (such as criminal records). Indeed, algorithms commonly are used to do exactly that. Considering the benefits that algorithms provide our world, most people would agree that the solution lies not in inhibiting or discouraging the use of the technology itself, but in policy that is smart enough to adapt and improve with the innovations that affect our world.

REGULATING ALGORITHMS

As questions continue to arise regarding the use of algorithms and their impact on people, the California Chamber of Commerce expects to see legislation on the issue.

In 2021, AB 13 (Chau; D-Monterey Park) sought to address the concern of discrimination with the use of algorithms. This bill failed to move out of the second fiscal committee to consider it.

In California, regardless of the use of an algorithm, FEHA precludes discrimination on the basis of a protected classification and permits individuals to pursue disparate impact claims. A disparate impact claim allows employees to challenge any adverse employment action that can be tied to facially neutral policies or practices, including the use of an algorithm, with no need to prove discriminatory intent. California law thus already addresses the misuse of an algorithm that can lead to a disparate impact on a protected class.

AB 13 sought to regulate algorithms and would have created significant additional requirements for the state procurement process that would have negatively affected businesses and the state. AB 13 included an impractical definition of "automated decision system" (ADS) as any "computational process" that "facilitates human decision making, [sic] that impacts persons." Under its definition, AB 13 applied to virtually all electronics used to help make decisions that affected persons, including spreadsheets, standardized tests and performance evaluations. This impact probably was inadvertent, but it demonstrates a fundamental lack of understanding of these technologies, their application in the real world, and the negative consequences that overbroad legislation on these technologies will bring.

LEGISLATIVE ACTIVITY 2022

The CalChamber expects some form of AB 13 to return in 2022. We also expect the California Privacy Protection Agency to advance regulations on algorithms and machine learning technologies, including reporting and auditing requirements, when such technologies are used in a setting that could affect members of protected classes. It is important to maintain a thorough understanding of these technologies and how widespread they really are if we are to design policies that are inclusive of a diverse set of stakeholder input.

CALCHAMBER POSITION

The CalChamber encourages the continued growth of emerging technologies and innovation by tailoring statutes that regulate technologies to address specific, problematic behaviors by bad actors. Overbroad regulations that fail to isolate the problem will unnecessarily burden innovation in California and discourage further investment in our state.

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Single-Use Packaging

Legislature Must Balance Impacts on Business, Supply Chains, Cost of Living

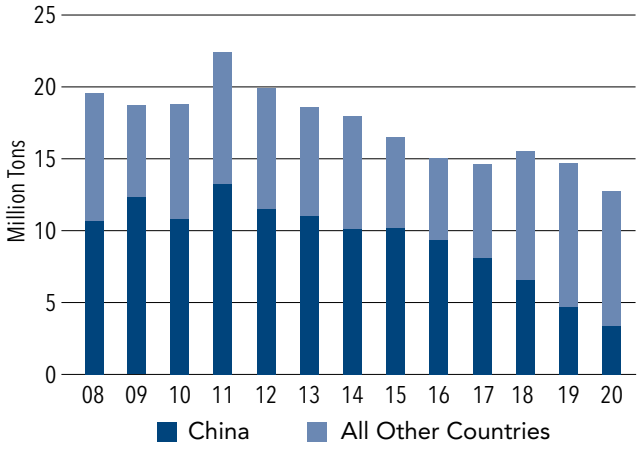
Packaging serves several functions in modern economies beyond merely distinguishing one brand from its competitors. Packaging also protects products from damage, extends product shelf lives, provides more efficient means to move goods through the economy and allows companies to communicate directly with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

BACKGROUND

In 2011, the California Legislature passed and the Governor signed AB 341 (Chesbro; D-North Coast; Chapter 476, Statutes of 2011), a law establishing a statewide 75% recycling goal through source reduction, recycling, and composting by 2020, and requiring all businesses and public entities that generate 4 cubic yards or more of waste per week to have a recycling program in place. In addition, multi-family apartments with five or more units also are required to form a recycling program. A decade later, California has failed to reach its AB 341 waste diversion goals. To reach the 75% target goal, California would need to reduce an additional 26 million tons annually.

In 2017, China shocked many advanced economies by announcing its National Sword policy banning the import of 24 categories of scrap materials, including low-grade plastics and unsorted mixed paper, and setting strict 0.5% contamination standards for allowable bales of recyclable material. China's

RECYCLABLES EXPORTED FROM CALIFORNIA PORTS



Source: CalRecycle

National Sword policy substantially disrupted California's recycling markets because for decades the state relied heavily on China to purchase much of California's recyclable commodities. California exported approximately two-thirds of all curbside collected material to China and other foreign entities. In the past three years, exported recyclables have decreased in California by 1.8 million tons.

This new paradigm in the international recycling marketplace lowered the worldwide price of many scrap materials. What was once a net positive revenue stream for many California local jurisdictions quickly became a significant cost for them. In response, local jurisdictions raised curbside rates to counteract the declining international demand and value for certain scrap. Local jurisdictions cited China's National Sword policy, rising labor and fuel costs, new infrastructure and compliance with SB 1383 (Lara; D-Long Beach; Chapter 395, Statutes of 2016), as the basis for having to raise curbside rates.

SB 1383 established targets to achieve a 50% reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020, and a 75% reduction by 2025. The law provided the California Department of Resources Recycling and Recovery

(CalRecycle) the authority to adopt regulations setting stringent organic waste disposal reduction targets and to establish additional reduction targets for edible food. The Department of Finance estimated the cost to implement and build the necessary infrastructure to meet the mandates in SB 1383 would be approximately $20.9 billion.

SB 54 / AB 1080 SAGA

The Legislature responded to the collapse of the foreign recyclable materials market with the introduction of SB 54 (Allen; D-Santa Monica) and AB 1080 (Lorena Gonzalez; D-San Diego), two identical pieces of legislation that mandate unprecedented recycling rates, source reduction and composting mandates on single-use packaging and service ware manufacturers, distributors and retailers.

SB 54 and AB 1080, titled the California Circular Economy and Plastic Pollution Reduction Act, were first introduced in December 2018 as identical bills comprising a plan to reduce and recycle 75% of plastics in California by 2030. Through the legislative process, the bills were amended to focus only on single-use plastic packaging and single-use service ware instead of all single-use plastic products. The bills were further amended to broaden the scope of what is regulated from single-use plastic packaging to all single-use packaging of any material type, rendering the bills material-neutral. The bills contain three primary mandates on manufacturers:

- First, all single-use packaging and single-use service ware sold or distributed in California must be recyclable or compostable by January 1, 2030.
- Second, 75% of all single-use packaging and single-use service ware sold or distributed in California must be recycled by 2030.
- Finally, all single-use packaging and single-use service ware sold or distributed in California must be source reduced to the maximum extent feasible.

The term "single-use packaging" is defined broadly to include nearly all packaging material types that are placed into the California market (for example, sold, distributed, imported, etc.) and not intended to be refilled or reused by the manufacturer. It includes primary packaging (the material used to hold the product, such as an aluminum soda can), as well as secondary packaging (the material used to contain the primary packaging, such as a cardboard box for soda cans) and tertiary packaging (the material used for bulk handling, such as a palletized load).

The most onerous mandates on the regulated community are the mandated recycling rates and dates in the bills. SB 54 and AB 1080 would require CalRecycle to develop regulations by January 1, 2024 requiring producers of single-use packaging and single-use service ware to meet the following phased-in recycling rates:

- Not less than 30% for packaging and products manufactured on or after January 1, 2026.
- Not less than 40% for packaging and products manufactured on or after January 1, 2028.
- Not less than 75% for packaging and products manufactured on or after January 1, 2030.

Other requirements in the bills include providing CalRecycle with broad authority to establish Extended Producer Responsibility (EPR) programs and minimum recycled content requirements; requiring regulated entities to register with CalRecycle and report any data that the department "deems necessary" under the penalty of perjury; and conditions of sale prohibiting retailers and wholesalers from offering for sale any packaging or products that are not in compliance.

For companies not in compliance, the bills offer the regulated entities a compliance pathway through "Corrective Action Plans" that may include actions such as shifting production away from packaging and product categories that do not meet the recycling rates; reaching a minimum content standard set by the department; or establishing a take-back system or deposit fee system for single-use packaging or priority single-use products that would increase the recycling rate of the material. For regulated entities that fail to enter into or comply with an agreed upon Corrective Action Plan, SB 54 and AB 1080 provide CalRecycle with authority to issue fines of up to $50,000 per day.

SB 54 and AB 1080 failed to pass off the Assembly and Senate floors, respectively, in 2019. The bills were brought back during the 2020 legislative session and ultimately were defeated. In December 2020, Senator Ben Allen (D-Santa Monica) reintroduced a truncated version of SB 54, promising to work with stakeholders to develop a comprehensive "circular economy" packaging bill.

PLASTIC TAX INITIATIVE QUALIFIES FOR CALIFORNIA 2022 BALLOT

In December 2019, Bay Area waste hauler Recology and environmental groups filed a proposed ballot initiative for a single-use plastic tax and ban of certain plastic food packaging. The ballot proponents began collecting signatures shortly thereafter and in July 2021, successfully qualified the initiative with an adequate number of verified signatures, all but ensuring California voters will see it on the November 2022 ballot — unless a legislative solution emerges before then.

The plastic tax ballot initiative requires that all producers of

single-use plastic packaging be taxed up to $0.01 per plastic package or certain plastic products, with some revenue allocated for recycling infrastructure and other system needs. However, about one-third of all funding is diverted away from enhancing California's recycling system to sustain natural resource programs. The tax, ultimately borne by the consumer even though a separate line item on receipts is prohibited, would apply to just about every conceivable consumer good, including food products, where nonreusable plastic packaging is used.

Additionally, the initiative requires that all single-use plastic packaging, containers, and utensils be reusable, recyclable, or compostable, and sets an arbitrary source reduction mandate of 25% (by weight and number of items) for all packaging, regardless of technological feasibility and packaging needs to keep items safe or food from spoiling. The initiative fails to account for reductions already made by companies, thereby punishing businesses that have already cut packaging or light-weighted their products to the maximum extent feasible, while in effect rewarding entities that have never made any reductions and use excess packaging that serves no functional benefit.

Further, the initiative bans polystyrene containers for food vendors, thereby raising their costs at a time when many California restaurants are struggling to keep their doors open amid a global pandemic. Finally, the initiative further prohibits the state Legislature from reducing funding to specified state environmental agencies below 2019 levels, irrespective of the state's budgeting needs in future years.

NEED FOR INFRASTRUCTURE AND FUNDING

For decades, California's reliance on international markets allowed it to operate with limited recycling infrastructure. The limited infrastructure for managing and recycling material was built largely in response to the Beverage Container Recycling Program and each year shrinks as more and more California beverage container recycling centers close. For example, in 2019, California's largest recycling redemption center operator shut down 284 facilities and laid off 750 employees. When the value of certain scrap materials on the international market collapsed and local jurisdictions and businesses struggled to turn a profit, the repercussions of an underdeveloped recycling infrastructure became glaringly apparent. Without downstream outlets for many otherwise recyclable materials, companies in California began stockpiling scrap materials as they sought to find acceptable markets for the material.

Tens of billions of dollars would be needed to build enough recycling infrastructure to process and divert 75% of all

Modern waste recycling processing plant. Separate garbage collection. Recycling and storage of waste for further disposal.

single-use material types. CalRecycle's Standardized Regulatory Impact Assessment (SRIA) calculated the costs to build new infrastructure to process just organic waste would be approximately $20.9 billion. With SB 54 and AB 1080 expanding the universe of material types, the cost to build new recycling infrastructure may even dwarf CalRecycle's estimates for organic waste infrastructure needs pursuant to SB 1383.

Notably, neither SB 54 or AB 1080 ever contemplated a funding mechanism or gave any direction to CalRecycle regarding new infrastructure needs. At a minimum, any proposed circular economy bill must contain funding and permit streamlining to address the need for system upgrades, expansions and new construction in a timely manner. Producers have put forward proposals that would create extended producer responsibility to fund 21st century recycling infrastructure and further educate consumers about what is recyclable or compostable and how to properly dispose of materials. Without funding and without permit streamline for recycling and composting infrastructure, an effective circular economy that could scale beyond California's borders will never materialize.

NO STATEWIDE UNIFORMITY IN RECYCLING

California is home to more than 480 local jurisdictions that each control their waste management systems. While many local jurisdictions offer single-stream curbside collection of recyclables, some do not offer any curbside recycling services. An increasing number of local jurisdictions also are passing ordinances banning certain materials, like expanded polystyrene and single-use plastic food ware. The patchwork of local ordinances must be unified across the state, to the extent feasible, taking into consideration the geographic diversity of the state, including rural areas where municipal services vary greatly. Companies can design for recyclability and

compostability, but they cannot design packaging to comply with a mosaic of different local jurisdiction ordinances. A circular economy framework must standardize what is considered recyclable or compostable, what will be collected and sorted, how enforcement will be applied, and how fees will be collected and spent.

CONSUMER BEHAVIOR AND CONTAMINATION

Manufacturers of single-use packaging lose control over their product and packaging once the customer takes possession, making compliance with circular economy mandates uniquely daunting. For manufacturers selling into California that want to substantially increase recycling of their packaging, a number of steps entirely outside their control must occur. For example, manufacturers rely on the local jurisdictions to provide curbside collection of the materials, but a local jurisdiction could decide to ban or not allow that type of packaging to be put into their local recycling bin. Manufacturers rely on the consumer to properly dispose of the material and avoid contaminating other recyclable material. And manufacturers rely on others to separate, sort and bale material. If a system is properly structured, however, manufacturers can control how revenue is raised and how money is ultimately spent to enhance recycling infrastructure in California to better capture and recycle packaging.

CALCHAMBER POSITION

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

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Proposition 65

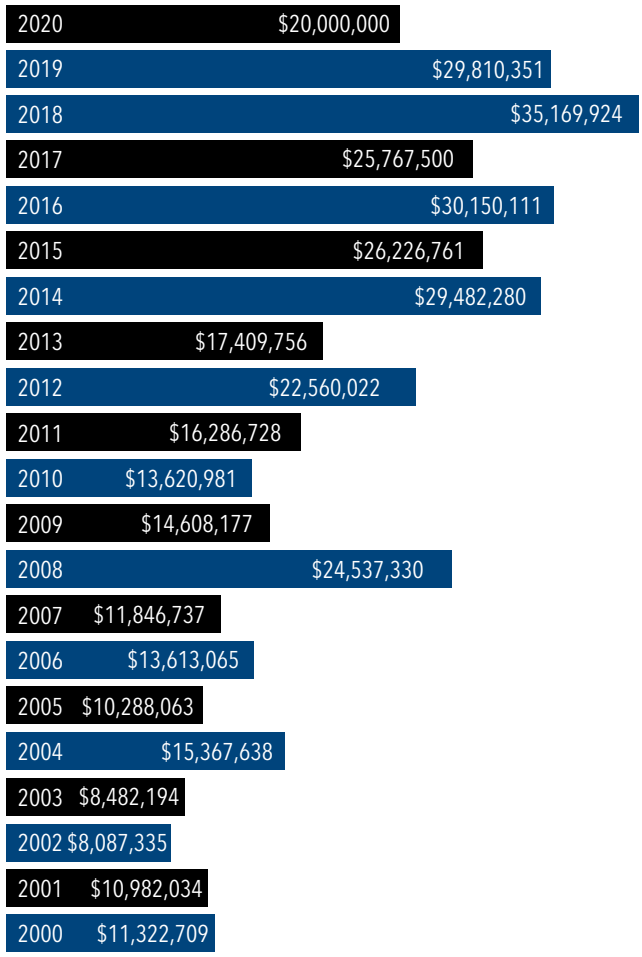
Reforms Will Help Consumers Make Informed Choices When Buying Products

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

Unfortunately, the simple and supportable goals of Proposition 65 have been undermined by some attorneys who use the law for personal financial gain. Proposition 65 contains a private right of action, which allows private persons or organizations to bring actions against alleged violators of Proposition 65 "in the public interest." This has led to the growth of a multimillion-dollar 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 Proposition 65 litigation abuse is supported by statistical data from the California Attorney General's Office in its Annual Summary of Proposition 65 Settlements. The trend line showing the volume of settlements and settlement amounts is rising each year. In 2019, the total number of settlements reached a high of 899, collecting close to $30 million. Yet even amidst the pandemic that shuttered much of the California economy, including courthouses, trial attorneys were still active in 2020 with 626 settlements totaling more than $20 million.

PROPOSITION 65 SETTLEMENTS



Source: California Attorney General

BASIC REQUIREMENTS OF PROPOSITION 65

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

- Assess whether it releases, or its products contain, Proposition 65-listed chemicals;
- Determine whether individuals, whether consumers or bystanders, may be exposed to a listed chemical at levels that necessitate a warning (that is, "when" to warn); and
- Determine what the warning must say, if a warning is required (that is, "how" to warn).

California allows a business to use a chemical without

providing warning as long as exposure does not exceed a specified threshold level. To be clear, the mere presence of a Proposition 65-listed chemical does not trigger the warning requirement; instead, the threshold question is whether the chemical would expose persons at levels that would require a warning.

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

RECENT PROPOSITION 65 REGULATORY RULEMAKINGS

For years, the OEHHA has proposed regulatory amendment packages often described by the agency as "merely clarifying existing law." From the perspective of the business community, these "clarifying" amendments have consistently undermined the protections provided for businesses in the seminal Proposition 65 decision, *Environmental Law Foundation v. Beech-Nut, et al.* The business community has pushed back successfully against these proposed amendments in every instance where OEHHA's proposed regulations directly undermine and contravene the *Beech-Nut* holdings.

The Proposition 65 claims in *Beech-Nut* involved alleged failure to warn of exposure to lead in packaged fruits, vegetables and fruit juice products. In short, the *Beech-Nut* court held that Proposition 65 regulations do not require exposures to be assessed based on a single day, that the Proposition 65 statute and regulations support averaging for Maximum Allowable Dose Levels (MADLs) for Chemicals Causing Reproductive Toxicity determinations, and that the California Attorney General's expert's opinion to the contrary was not supported by any authorized OEHHA policy. The *Beech-Nut* ruling provided businesses with clarity about the standards that apply to determining whether potential exposures to Proposition 65-listed chemicals are below the "safe harbor," or below the No Significant Risk Levels (NSRLs) for carcinogens or MADLs for chemicals without an OEHHA safe harbor level. In sum, the *Beech-Nut* decision has protected businesses from plaintiffs seeking to impose Proposition 65 warning requirements for trace levels of chemicals that pose no significant risk when individuals are exposed to them.

CalChamber-Led Coalition Wins Pull-Back of Harmful Proposals

On October 5, 2018, in the waning days of the Brown administration, the agency instigated formal rulemaking and proposed two amendments to Sections 25821(a) and (c) Level of Exposure to Chemicals Causing Reproductive Toxicity: Calculating Intake by the Average Consumer of a Product. OEHHA's proposals threatened the law's longstanding average exposure-based approach to warnings — without justification and with significant cost and risk to California businesses. From the business community's perspective, these two proposed amendments did not "clarify" existing regulations, but instead presented entirely new regulatory requirements that directly affected businesses' Proposition 65 compliance efforts, as well as placing additional obstacles to a defendant meeting its burden of proof in litigation.

The first amendment, "the **Average Concentration Proposal**" for food products, solved no actual problem that OEHHA could identify, yet would have significantly affected manufacturers and agricultural growers. To evaluate exposure levels under Proposition 65, concentration data — just like consumption data — must reflect what is typical. The Average Concentration Proposal would have effectively excluded cross manufacturing facility averaging from a case-specific consideration of the data, thereby distorting the determination of the reasonably anticipated rate of exposure and significantly raising the burden on defendants when receiving a 60-day notice.

The second proposed amendment, "the **Arithmetic Mean Proposal**," would have established an assumption that the arithmetic mean statistical method shall be used to calculate the rate of intake or exposure for average users of all consumer products unless more specific and scientifically appropriate data are available. This proposal was inconsistent with sound principles of statistics and data evaluation, where the appropriate measure of average depends on the facts and data in specific cases and is not amenable to a one-size-fits-all proposal.

The California Chamber of Commerce, along with coalition partners submitted multiple comment letters challenging the agency's proposed amendments. On July 5, 2019, OEHHA abandoned the Arithmetic Mean Proposal and revised the proposed language for the Average Concentration Proposal.

The CalChamber-led coalition provided a second set of comments, again challenging OEHHA's justification for the revised Average Concentration Proposal. On September 9, 2019, OEHHA officially rescinded the Average Concentration Proposal. In doing so, the Agency put to rest (for now) these two issues that if adopted, would have upended *Beech-Nut* and significantly increased production costs, testing costs, litigation costs and the number of required Proposition 65 warnings.

Proposition 65 Warnings

On January 8, 2021, OEHHA notified the public of proposed

amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings that the agency again framed as "clarifying." But the "clarifying amendments" that the agency found would have "no financial impacts to businesses," actually would have a direct impact on every single business which sells into the California market and uses "short-form warnings" on its products. The CalChamber and Consumer Brands Association led a coalition of 119 organizations, representing tens of thousands of companies, opposing the agency's upending of Article 6 warning requirements because the proposed changes are not supported by substantial evidence, will inject substantial confusion into the market, fail to consider reasonable alternatives, and impose substantial financial burdens and additional litigation risks on businesses at a time when they can least afford it.

In 2016, OEHHA concluded an extensive multi-year regulatory process repealing and replacing Article 6 and creating the "long-form" and "short-form" warnings. Every business needing to warn pursuant to Proposition 65 was forced to update their warning programs according to the new Article 6 requirements in order to comply — a massive undertaking for many businesses. At that time, OEHHA correctly described these as "major changes" in the Initial Statement of Reasons (ISOR). Both the plain language of the amendments and direct statements from OEHHA promised the business community "more certainty and confidence" in the new warning requirements.

Now, just two years after those changes took effect, OEHHA again proposes major regulations amending Article 6, Clear and Reasonable Warnings Short-form Warnings.

At publication time, OEHHA was still reviewing all public comments and had made no public decision regarding adoption of the latest changes.

COURT ACTIVITY

CalChamber Lawsuit Against California Attorney General

On behalf of its members, the CalChamber filed a lawsuit on October 7, 2019 to stop the multitude of Proposition 65 warnings for the presence of acrylamide in food.

The lawsuit, filed against then-Attorney General Xavier Becerra, who was responsible for enforcing Proposition 65, asks the U.S. District Court, Eastern District of California to stop the Attorney General and private enforcers from proceeding with Proposition 65 litigation over acrylamide in food.

Currently, Proposition 65 requires any business that produces, distributes or sells food products containing acrylamide to provide a warning unless the business can prove in court, with scientific evidence, that the level poses no significant risk of cancer. Many businesses have chosen to forgo the expense and uncertainty of litigation and settle with private enforcers while providing warnings for acrylamide.

The CalChamber complaint argues that these warnings are misleading because "neither OEHHA nor any other governmental entity has determined that acrylamide is a known human carcinogen…."

The lawsuit has two goals: to protect companies' First Amendment rights while also protecting the rights of consumers to receive truthful information.

The CalChamber argues that companies should not be forced to provide unsubstantiated and highly controversial acrylamide warnings or face potentially costly enforcement actions initiated by the Attorney General or private enforcers. Moreover, CalChamber argues, by mandating warnings for acrylamide in food, Proposition 65 is forcing individuals and businesses to say something false and misleading.

Acrylamide is not a chemical that is added intentionally to food products. Rather, it forms naturally in many types of foods when they are cooked at high temperatures, whether at home, in a restaurant or in a food processing facility. Common sources of acrylamide in the diet (and subjects of Proposition 65 litigation) include baked goods, breakfast cereal, black ripe olives, coffee, grilled asparagus, French fries, peanut butter, potato chips, and roasted nuts.

To date, attorneys have filed more than 560 60-day notices for alleged violations of the Proposition 65 warning requirement with respect to alleged exposures to acrylamide. More than 500 of these 60-day notices relate to acrylamide in food products.

The CalChamber's lawsuit seeks to limit this recent trend of shakedown lawsuits with regard to acrylamide that are exploiting Proposition 65 for financial gain, exacerbating over-warnings, and raising costs on food products in California. After CalChamber secured a preliminary injunction by the U.S. District Court, the case was appealed and is currently pending at the Ninth Circuit Court of Appeals.

SAFE HARBOR WARNINGS

OEHHA Proposes Major Changes to Safe Harbor Warnings

After two major Proposition 65 litigation victories by the business community at the district court level, OEHHA issued notices for two rulemakings that would fundamentally alter safe harbor warnings for glyphosate and acrylamide.

It is clear from the context of these rulemakings that the pending litigation by the National Association of Wheat Growers (challenging the glyphosate warning requirements) and the

CalChamber litigation on acrylamide instigated OEHHA's rulemaking, which breaks with its historic position that warnings contain an unequivocal statement that the chemical is "known" to cause cancer and/or reproductive toxicity. In fact, the Initial Statement of Reasons as much as confirms this, stating that "OEHHA is aware of the District Court decision in the National Association of Wheat Growers case in which Plaintiffs challenged a potential Proposition 65 warning for glyphosate," and that "OEHHA has developed the proposed regulation taking into account the concerns expressed in the District Court decision in that case."

OEHHA's proposed rulemakings appear to be strategic litigation moves anticipating a loss in the Wheat Growers and CalChamber appeals. Nevertheless, both rulemakings still run afoul of the First Amendment.

The CalChamber, the Consumer Brands Association and a large coalition of industry affected by these rulemakings submitted lengthy opposition letters articulating why both proposals are inconsistent with OEHHA's longstanding approach to safe harbor warnings, not based in sound policy, not needed nor justified. Both rulemakings currently are pending before OEHHA.

CALCHAMBER POSITION

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

Although achieving these goals legislatively has proven nearly impossible, the CalChamber remains committed to initiating or supporting legislative efforts that seek to restore the original intent of the law. Whether changes are proposed in the legislative or regulatory forums, or achieved through litigation, the CalChamber will continue to work actively to ensure that that any proposed changes to Proposition 65 are in line with the original intent of the statute.

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Local Tax Increases

Special Taxes Proposed by Initiative Now Require Only Simple Majority Voter Approval

Since passage of Proposition 13 in 1978, voters have had the final say on local tax increases. A subsequent initiative passed in 1996, Proposition 218, further required most local tax measures to gain approval by two-thirds of voters, whether proposed by a local government agency or by citizen initiative. The exception to this is "general" city or county taxes that do not earmark where proceeds must be used, which can be approved by a simple majority of local voters.

PROPOSITION 218 LOOPHOLE

A California Supreme Court decision opened a small loophole in Proposition 218. The court declared that statutes proposed by voter initiative need not be held to some of the same procedural standards as statutes proposed by local government agencies.

In *California Cannabis Coalition v. City of Upland*, the court found that Proposition 218's requirement that all tax measures be decided at a general election, as opposed to a primary or special election, did not apply to measures placed on the ballot by initiative.

Having established a procedural distinction between tax measures based on their provenance, the court left open the reach of this distinction. While the rhetoric was broad, the remedy was limited. The court ruled that the tax proposal should have been considered at a special election. It left for another day whether its reasoning would extend to the vote threshold for approval of special taxes. That issue, however, was taken up in the City and County of San Francisco.

SAN FRANCISCO CASES

In *Howard Jarvis Taxpayers Association v. Bay Area Toll Authority* (HJTA v. BATA), the association challenged 2018's Regional Measure 3, which authorized a $3 hike in tolls on Bay Area bridges. The Howard Jarvis Taxpayers Association sued because they claimed toll increases were a special tax requiring two-thirds voter approval or two-thirds legislative approval. The measure received only 55% voter approval and failed to receive two-thirds of the Assembly's approval.

A separate initiative, Measure C, was voted on and approved by San Francisco voters in 2018. Measure C raised a business license tax in order to fund homeless services. It passed by 61% of the vote and San Francisco filed a validation action to test whether it could be enforced because it lacked two-thirds voter approval.

These cases were appealed and the appellate court held it took only a simple majority to pass the measures.

SUPREME COURT DENIES REVIEW CONFIRMING SIMPLE MAJORITY THRESHOLD

In its most distilled form, *California Cannabis Coalition v. City of Upland* held that an initiative is not subject to some of Proposition 218's procedural limits on taxes proposed by city councils and county boards of supervisors. This language lent credence to the possibility that a special tax proposed by initiative could be immune from the two-thirds voter approval requirement.

Subsequently, three Courts of Appeal decisions, two of which derived from the San Francisco measures, concluded that initiative special taxes can be approved by a simple majority of votes.

All three cases led to petitions for review in the California Supreme Court and the Supreme Court denied review of all three petitions. As such, the California Supreme Court settled the issue: special taxes proposed by initiative require only simple majority voter approval.

CALCHAMBER POSITION

The California Chamber of Commerce will continue to oppose efforts that attempt to raise taxes on employers. Higher taxes, imposed locally or by the Legislature, will further harm California's economy and depress business growth. In any case, voters imposing special taxes that discriminate against classes of taxpayers, like businesses, should have a higher threshold of approval.

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Split Roll Initiative Looms

Despite California Voters Rejecting 2020 Attack on Property Tax Protections, Another Split Roll Initiative on Horizon for 2022

Since voters reduced California property taxes with Proposition 13 in 1978, multiple factions have attempted to roll back the reform and boost property tax collections. Government labor unions and advocacy organizations aimed to repeal many of Proposition 13's protections and increase taxes on business properties with Proposition 15 in 2020. Despite California voters rejecting this initiative, the ballot initiative process has started yet again for a potential ballot measure attack on Proposition 13 in 2022.

BACKGROUND ON PROPOSITION 13

Proposition 13 has been the law for more than 40 years. In 1978, property values were soaring and so were their corresponding property taxes. There was no limit to how high an assessor could increase a property's value in any given year. Between 1972 and 1977, home prices in Southern California doubled. Even if tax rates didn't change, property tax bills also doubled. Many taxpayers could not afford their ever-increasing property taxes and feared losing their homes.

Proposition 13 brought a halt to all that — limiting total taxes to 1% of the property's value, and any increases to a maximum of 2% per year. California voters passed the constitutional amendment by a nearly 2 to 1 margin, and solidified property tax stability and predictability.

PROPOSITION 13 AMENDMENTS TO STATE CONSTITUTION KEEP PROPERTY TAXES MANAGEABLE AND PREDICTABLE

Proposition 13 required that all categories of real property on the local assessment roll be assessed at the same basic tax rate and under the same valuation standard. It did not distinguish among residential, commercial, industrial, agricultural, or any other type of property.

In addition, Proposition 13 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. Proposition 13 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 worth currently.

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, Proposition 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.

Furthermore, Proposition 13 required any state tax to be approved by a two-thirds vote of both houses of the Legislature. It 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 classifying properties based on some characteristic, like value or use, such as residential or commercial. Proponents of a split roll would remove some of the protections of Proposition 13 from some defined classes of properties in order to raise taxes.

The idea of a split roll has been rejected consistently since the passage of Proposition 13. Over the last few decades, there have been numerous legislative proposals to present a split roll to the voters, but none ever reached the ballot. A split roll ballot measure in 1992 was defeated soundly.

PROPOSITION 15 REJECTED BY VOTERS IN 2020

Proposition 15 attempted to amend the California Constitution to require business properties be reassessed to fair market value and then taxed at that value. Proposition 15 included all business property, except for property used for residential (including rental) or agricultural production purposes. Mixed-use property was to be reassessed in proportion to its commercial use.

The proposition exempted from full reassessment business property with an on-site business that was under single ownership with no more than $3 million worth of property statewide.

The properties would have been reassessed every three years. The Legislative Analyst's Office (LAO) estimated Proposition 15 would have increased business property taxes by $7.5 billion to $12 billion a year. Proposition 15 would have dedicated the proceeds of the tax increase to schools, community colleges and local governments, in proportion to what those entities received in general property tax allocations. Pursuant to Proposition 98, 40% of California's General Fund spending must go to education. California's education spending, however, is actually closer to 50% with cities, counties and special districts splitting the rest.

Opponents of the measure argued that Proposition 15 would have hurt small businesses with a particular detriment to female- and minority-owned businesses. In addition, the initiative lacked accountability and transparency, would have increased food and grocery prices, and exacerbated the housing affordability crisis.

California voters rejected Proposition 15 by a margin of 52% to 48%.

TWO SPLIT ROLL BALLOT MEASURES PROPOSED FOR 2022

Split roll proponents have submitted two similar measures for a potential 2022 vote; however, only one measure seems to be in play. The measure will receive a title and summary from the Attorney General by mid-December, and must collect at least 997,139 valid signatures by mid-April 2022 to qualify for the November 2022 ballot.

The Tax Cut and Housing Affordability Act of 2022 proposes a split roll property tax on all property valued at more than $4 million per parcel. The tax revenues would be used to reduce homeowner property taxes and renters' income taxes. The measure also includes permit streamlining for residential housing development.

• First, this measure would apply a "surcharge" of 1% on the full cash value of all property valued at more than $5 million per parcel. For parcels valued between $4 million and $5 million, the surcharge ranges proportionately from 0% to 1%. All property uses, including residential property, is subject to this tax, except agricultural property, residential units in common ownership where the average per-owner value is less than $4 million, and residential housing where the units are restricted by deed to occupancy by low-income occupants. Existing property tax exemptions for religious, nonprofit and educational facilities remain in force.

• Second, proceeds from the tax increase would be used to increase the homeowner's exemption from $7,000 to $200,000 per parcel, for all owner-occupied residences. This exemption is not means-tested. This would increase the tax benefit for homeowners from about $80 to about $2,200 annually per residence. The renters' nonrefundable income tax credit would be increased to $2,000 for married taxpayers or heads of household, and $1,000 for single taxpayers, from the current $120/$60 credit. The new renters' credit may be claimed only by married taxpayers/heads of households with income less than $400,000, and single taxpayers with income less than $200,000.

If the tax increase is insufficient to pay for these redistributions, then the surcharge will increase automatically to 1.2%. If the tax increase collects surplus revenues over time, those surpluses would be used to provide refundable renters' credits.

• Third, the measure creates a streamlined permit process for any residential development that reserves at least half of its units, for sale or rent as a primary residence, for households earning less than 150% of the area median income.

For these developments, local governments would be required to approve any proposals "ministerially," which means without governing board discretion and able to bypass California Environmental Quality Act (CEQA) review, even for zoning changes, as long as they are consistent with the jurisdiction's general plan. There is a process whereby a local government could deny or condition a project by making certain findings based on a preponderance of evidence that the project would have an unmitigable adverse public health or safety impact.

PRELIMINARY FINANCIAL CONSIDERATIONS OF BALLOT INITIATIVE

The LAO concluded that an increased property tax on properties with a taxable value of more than $4 million would increase taxes (that is, new state revenue) by about $16 billion to $19 billion annually. The LAO stated that the increased cost to

local governments for carrying out the measure would total $16 billion to $19 billion annually — thus, the revenues from the initiative would likely be fully offset.

PRIMARY CONCERNS WITH PROPOSED BALLOT INITIATIVE

Notwithstanding the language of the measure, the higher taxes would inevitably be passed on by businesses to consumers, and by landlords to their tenants. In the alternative, businesses would reduce overhead costs, such as employee hours or positions. In the worst case, businesses may shut their doors or relocate to states with a less hostile tax environment.

If landlords could not pass on the tax hikes, the effects would manifest in less upkeep and maintenance, and less investment in new, affordable multi-family housing.

Because this measure combines two very different policies — tax subsidies and land use — it may be vulnerable to a constitutional challenge based on the prohibition against an initiative comprising more than one subject.

CALCHAMBER POSITION

The California Chamber of Commerce strongly opposes any split roll proposal. Proposition 13 is one of the few tax protections Californians enjoy and voters have recognized that issue whenever these protections are threatened. Proponents of the split roll ballot initiative should look to the state and its massive budget surplus to fund the causes they hope to bolster by way of the ballot box.

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Tax Credits

Ending 2020's Emergency Tax Hikes Is the Right Decision

According to Governor Gavin Newsom, California is poised to have another "historic budget surplus," making now the time to reinstate suspended net operating loss deductions and capped business incentive tax credits.

EMERGENCY TAX HIKES

During summer 2020, the state anticipated a COVID-induced $54 billion deficit. To assist with closing this gap, the Legislature approved the Governor's proposal to suspend the use of personal and business net operating loss (NOL) deductions and cap business incentive tax credits, including the research and development (R&D) tax credit, at $5 million per taxpayer. The estimated $9 billion tax increase from AB 85 (Committee on Budget) wasn't permanent and was put into place for a period of three years with a carryback provision. California was borrowing the money interest-free to assist in closing the deficit with the intention of paying it back, in full, beginning after three years.

Fast forward to 2021 and the state actually experienced a once-in-a-generation, $76 billion surplus. Looking forward to 2022, the Legislative Analyst's Office (LAO) estimates a $31 billion surplus. While the 2020 deficit thankfully never came to pass, the temporary tax increases did, even as their intended purpose evaporated. Now is a perfect time to sunset these revenue-raising tax increases and assist California employers with their recovery and growth.

NET OPERATING LOSS DEDUCTIONS

Most businesses do not turn a profit during their formative years. To account for this, both the federal government and California allow businesses to offset their tax liability with an NOL deduction. An NOL deduction occurs when a business reports a net taxable loss of income in a year. This loss is carried forward to future years to offset profits, thus reducing the tax liability of the business.

The NOL deduction is most identified with the tech industry, since Silicon Valley startups typically operate at a loss during their initial years of operation. However, the NOL deduction also is vitally important to employers that suffer a loss but remain in business for years after the financial hit. Employers in the restaurant, hospitality and lodging industries were crippled by the pandemic-induced restrictions throughout 2020 and 2021. Now that these businesses are beginning to recover and operate at a profit, it is crucial they can offset their past losses at tax time by using the NOL deduction.

BUSINESS INCENTIVE TAX CREDITS

AB 85 also limited business incentive tax credits to $5 million per year per taxpayer. This limitation applies to research and development (R&D) credits, enterprise zone credits, hiring credits (including the California Competes Credit), college access credits, motion picture credits, and credits for produce donations by agricultural producers to food banks.

R&D is the backbone of the California economy and the credit cap has the potential to stifle innovation and well-paying job growth. This particular tax credit has incentivized California employers to substantially invest within the state and create high-wage jobs in our communities. According to the Milken Institute, since 1987, California's R&D tax credit has allowed companies to reduce their corporate income tax burden by 15% to 24% when they invest in three key areas. These include qualified research expenses, wages paid to those engaged in research or directly supervising or supporting research activities, and research supplies (other than land or land improvements).

Furthermore, the Milken Institute stated that industry actors performed more than $144.5 billion worth of R&D activities in California in 2018, nearly five times as much as the second-ranked state for industry investment in R&D. Four industries have strong ties to the R&D credit in California, including computers and mathematics, architecture and engineering, life and physical sciences, and arts, design and media. The Milken Institute determined that although computers and mathematics jobs are the state's single largest industry workforce supported

by R&D, the level of job concentration (the size of the industry workforce relative to the state's economy as a whole) is highest in arts, design and media.

Although the R&D tax credit supports a wide variety of industries, it also is dispersed throughout California geographically and supports a number of jobs on the income spectrum. R&D investments are most closely tied to San Diego and the San Francisco Bay Area given the life sciences and information technology industries in those locations. Additionally, while R&D jobs are most heavily concentrated in California's coastal areas, R&D-supported workforces can be found in the Central Valley and Inland Empire. According to the Milken Institute:

"Because R&D supports job creation across a broad variety of activities, investments in R&D don't just generate jobs for people with advanced degrees who are directly engaged in research activities (including analysts, engineers, and lab technicians). These investments also create opportunities for residents with different academic credentials, levels of experience, and industry affiliations, including jobs indirectly related to research outcomes (such as maintenance technicians, marketing and advertising professionals, office managers, and sales associates). Among the occupations requiring an associate's degree that are projected to grow fastest by the Employment Development Department (EDD), several are directly supported by R&D investments, including web developers, network support specialists, and technicians in health care and the life sciences."

California's innovation-based economy thrives in large part because of the R&D tax credit. High-wage job growth is contingent upon expanding this tax credit. Because California never had to address a deficit, the tax credit cap must be restored.

CALCHAMBER POSITION

The California Chamber of Commerce commends Governor Newsom's budget for restoring NOL deductions and lifting the cap on business incentive tax credits. Tax credits and deductions play a vital role for employers in generating employment, expanding operations, and increasing economic output. These benefits also serve the state's economic needs by creating multiple streams of additional tax revenue and stimulating added investment and development within the state.

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California's Attempt to Tax Wealth

First-of-its-Kind Tax on Ultra-Wealthy Will Hurt Job Growth

During the first year of California's two-year legislative session, progressive Democratic Assemblymember Alex Lee (San Jose) introduced companion bills AB 310 and ACA 8, which sought to tax the wealth, rather than the income, of California's richest residents. Although the "wealth tax" failed, progressives continue to promote this novel tax.

Perhaps not coincidentally, a wealth tax was considered briefly as part of the U.S. House Democrats' proposal to pay for the Biden administration's Build Back Better legislation. Facing many of the same constitutional, political, implementation and fairness issues as California, congressional negotiators rejected the tax.

CALIFORNIA'S ATTEMPT TO TAX WEALTH

A tax on wealth, as opposed to income, has never been instituted in the United States. During the 2021 legislative session, Assemblymember Lee attempted to enact such a tax when he introduced AB 310. This bill proposed an annual tax of 1% upon the worldwide net worth of every California resident in excess of $25 million (for married taxpayers filing separately) or $50 million for all other taxpayers. Notably, AB 310 would have applied to individuals who spent 60 or more days in California during the taxable year and spent either at least 120 days in the state over the prior two taxable years or at least 150 days in the state over the prior four taxable years. Also, the bill would have applied to individuals who were subject to the tax in one of the preceding four years, but who now are nonresidents with no expectation of returning to the state to reside.

Worldwide net worth would not have included any real property directly held by the taxpayer, but would have included indirectly held real property. The bill also proposed an additional 0.5% surtax upon worldwide net worth in excess of $500 million for married taxpayers filing separately and $1 billion for all other taxpayers. Worldwide net worth would have been calculated in the same manner that the Internal Revenue Code calculates the federal estate tax and would have been the value of all worldwide property owned by the taxpayer on December 31 of each year.

Under the bill, the Franchise Tax Board (FTB) would have adopted regulations outlining valuation methods for publicly traded assets, interests in business entities, interests in trusts, and debts and liabilities. The FTB would have been required to contract with third-party appraisers to conduct authorized independent appraisals for certain assets.

AB 310 also outlined an expansion of California's False Claims Act so that it applied to the wealth tax and allowed for lawsuits against fraudulent filers.

Because the California Constitution limits the rate at which certain personal and real property can be taxed, AB 310 required a companion bill, ACA 8, to address these issues. ACA 8 proposed to amend the California Constitution and authorize "the taxation of all forms of personal property or wealth, whether tangible or intangible" while eliminating the taxation cap rate on that property or wealth. The Proposition 13 cap was not affected by the bill because the wealth tax excluded from taxation real property directly held.

TAXING WEALTH WOULD BE BAD FOR CALIFORNIA

AB 310 implicitly acknowledged that rates for existing California taxes have reached their practical or political maximums, leaving proponents to devise an entirely new tax never before considered for the state.

California already has the highest income tax rate in the country at 13.3%, while Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not impose any income tax. In 2018, the top 5% of income earners paid 67.2% of the state's personal income tax (PIT) revenue. In 2020, PIT revenue accounted for 66.19% of all state General Fund revenues.

In addition to having the country's highest personal income tax rate, California also has the highest sales tax rate and gas tax rate in the United States. Layering a wealth tax on top of the existing and challenging tax structure would target individuals who may have only a fleeting connection with the state. This tax also would reach across time and space to seize revenues from successful entrepreneurs and business owners who have been the very engine of California's budget growth and who provided the shock-absorbing revenue surpluses in the teeth of the pandemic recession.

The wealth tax would not only degrade California's tax climate, but also would prove to be a tremendous administrative burden. The FTB and Attorney General's office would have to track, follow, and itemize the wealth of each high-net-worth resident to determine whether they are subject to the tax and what their obligation would be. This, in turn, lends itself to a slew of issues, such as how to calculate the fair market value of certain holdings in addition to the state incidentally creating an entirely new practice in the tax avoidance industry for those looking to escape the obligation.

CALCHAMBER POSITION

The California Chamber of Commerce will continue to oppose any attempt that degrades California's business climate and disincentivizes job creators from growing here. There simply is no need for new taxes in California, considering the state saw a once-in-a-generation surplus in 2021 and is anticipating a $31 billion surplus in 2022. California ranks 49th on the Tax Foundation's 2021 State Business Tax Climate Index and this status would likely fall further if it became the only state in the country to administer a wealth tax.

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Tourism in California

Potential Barriers to Recovery, Safe Reopening: Regulations, Travel Restrictions, Legislation

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

COVID-19 SHUT DOWN CALIFORNIA'S TOURISM SECTOR

Unlike the resurgence of some sectors of California's economy, the tourism industry is far from recovered. Ongoing public safety measures in California continue to restrict indoor gatherings and international travel remains far below its 2019 levels.

For comparison — in 2019, California generated just shy of $145 billion in travel-related spending. In 2020, with international and domestic travel severely restricted and public health restrictions in effect, tourism spending plunged from $144 billion to $65 billion — *a decline of approximately $80 billion, or more than 50% of all tourism-related spending.* (Data comparisons between 2019 and 2020 based on statistics from California Travel and Tourism Commission (Visit California) in "Economic Impact of Travel in California 2011–2020" (May 17, 2021), available at *https://industry.visitcalifornia.com/research/economic-impact*.)

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

Although complete data for 2021 is not available, initial data suggests that hotel occupancy, airport travel, and similar metrics all remain significantly below their 2019 levels. Local and state tax revenues also remain far below 2019 levels, with an estimated total of $17.5 billion in revenue lost from January 2020 to September 2021. (Data for 2021 estimates from Visit California's "California Travel-Related Spend & Visitation Forecast (September Update), published in October 2021 and available at *https://industry.visitcalifornia.com/research/travel-forecast*.)

TOURISM INDUSTRY HAS EMBRACED SAFETY AS PART OF REOPENING

Despite these obstacles, California's tourism industry has embraced health and safety as both good for the community and good for business. Popular venues have begun reopening, and many are requiring proof of vaccination or proof of a recent negative COVID-19 test pursuant to local guidelines.

Airlines (many of which are covered under federal contractor vaccine mandates) have implemented vaccine mandates for staff and additional COVID-19 protocols for passengers. (The Biden administration announced a federal employee/contractor mandate and a broad mandate for employers with more than 100 employees in September 2021. Litigation is ongoing on both.)

Lodging establishments have changed their protocols as well, and also participated in state-funded programs to assist in isolating COVID-positive individuals.

BARRIERS TO REOPENING IN 2022: REGULATIONS, TRAVEL RESTRICTIONS, LEGISLATION

Despite diligent industry efforts to reopen, the tourism industry will continue to face multiple barriers to recovery in 2022. Beyond consumer concerns about safety and hesitancy to travel, observers anticipate the following policy barriers also will constrain the tourism industry's resurgence.

• First, regulatory and legal requirements related to COVID-19 are likely to continue to slow reopening. Although most social distancing requirements were removed in June 2021 (with certain exceptions and requirements related to masking and isolation of COVID-19 cases), both Cal/OSHA regulations and local public health orders will likely continue to slow recovery.

• Second, interstate and international travel are likely to continue to be reduced greatly in 2022, due to both legal hurdles and personal concerns. As an example: with the emergence of the omicron variant in late 2021, multiple nations closed their airways to travel from South Africa. Although such bans may be short-term and are unlikely to remain in place through 2022, their effect on public perception of travel and health risks may persist. Even where travel is legal and permitted, fear of COVID will likely continue to depress both domestic and international travel.

• Finally, employers across the United States — but particularly in workforce-heavy areas such as restaurants and hospitality — are experiencing a severe worker shortage. Coupled with Cal/OSHA requirements to exclude sectors of the workplace if one employee tests positive, employers are likely to scramble to find and retain necessary staff.

LEGISLATIVE ACTIONS

Thankfully, the Legislature and Governor understand that California's tourism industry is a valuable asset and a worthy investment. The 2021–2022 budget included $95 million in funds for Visit California to promote tourism once traveling returns to normal. This push was championed by Senator Mike McGuire (D-Healdsburg) and Assemblymember Sharon Quirk-Silva (D-Fullerton) via their bill, SB 285, which was subsumed into the budget. These funds will help keep California at the top of domestic and international travel destinations as the world comes out of COVID-19.

Heading into 2022, the primary legislative focus of the tourism industry will be keeping the path to recovery clear of roadblocks by minimizing burdens. Similarly, tourism employers will be watching to ensure that public health guidelines are clear for employers (and visitors) to understand, and feasible to implement.

CALCHAMBER POSITION

The California Chamber of Commerce supports policies that will help California return safely to its status as a premier tourist destination both for domestic and international travelers, while also ensuring visitors and employees are protected from COVID-19. This includes supporting policies that promote tourism, including Visit California and tourism improvement districts, as well as new incentives to bring significant events or attractions to California.

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

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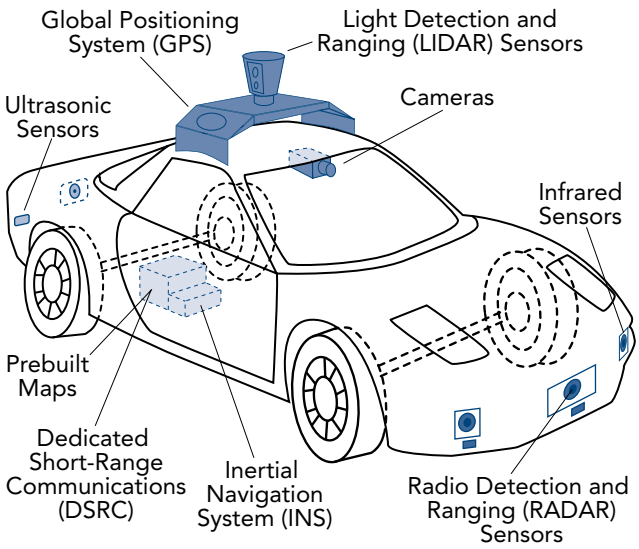
Autonomous Vehicles

California Should Move Forward with Commercial AV Testing

Autonomous vehicle programs are quickly becoming more prevalent, with more than 30 states and District of Columbia enacting legislation relating to autonomous vehicles (AV), the majority just since 2018. 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, our 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 us drive more safely and efficiently.

AUTONOMOUS VEHICLE TECHNOLOGIES



Source: Adapted from Center for Sustainable Systems, University of Michigan, "Autonomous Vehicles Factsheet." Pub. No. CSS16-18 (September 2021).

AV technology is already 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 and providing incentives for deployment in the commercial sector as well as the passenger vehicle space 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 is capable of operating the vehicle without active physical control 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 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 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.

SAE J3016 LEVELS OF DRIVING AUTOMATION

	SAE LEVEL 0	SAE LEVEL 1	SAE LEVEL 2	SAE LEVEL 3	SAE LEVEL 4	SAE LEVEL 5
What does the human in the driver's seat have to do?	**You are driving** whenever these driver support features are engaged - even if your feet are off the pedals and you are not steering			**You are not driving** when these automated driving features are engaged - even if you are seated in "the driver's seat"		
	You must constantly supervise these support features; you must steer, brake or accelerate as needed to maintain safety			When the feature requests. you must drive	These automated driving features will not require you to take over driving	
	These are driver support features			These are automated driving features		
What do these features do?	These features are limited to providing warnings and momentary assistance	These features provide steering **OR** brake/ acceleration support to the driver	These features provide steering **AND** brake/ acceleration support to the driver	These features can drive the vehicle under limited conditions and will not operate unless all required conditions are met		These features can drive the vehicle under all conditions
Example Features	• automatic emergency braking • blind spot warning • lane departure warning	• lane centering **OR** • adaptive cruise control	• lane centering **AND** • adaptive cruise control at the same time	• traffic jam chauffeur	• local driverless taxi • pedals/ steering wheel may or may not be installed	• same as level 4, but feature can drive everywhere in all conditions

Source: Society of Automotive Engineers (SAE) International
For a more complete description, please download a free copy of SAE J3016: *https://www.sae.org/standards/content/J3016_201806/*

• **DMV Finalizes Passenger Vehicle 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 (fully automated) AVs, communication link between the vehicle and a remote operator, as well as the ability to transmit collision data. The DMV also recently granted some of the first on-road approvals for companies to deploy in California, paving the way for additional development.

• **DMV Considering Commercial Deployment.** This regulation does not allow for testing of commercial or freight AV technology. However, the DMV indicates that it is evaluating the unique safety and economic impacts of commercial AV through further study. Commercial AVs could be a key to alleviating some recent supply chain issues, since driver shortages have been cited by many as a primary cause. DMV should consider accelerating rulemaking on commercial AV deployment this year.

• **CPUC Revised Deployment Rules.** Although the DMV is the agency charged with evaluating the safe operation of vehicles, the California Public Utilities Commission (CPUC) has asserted jurisdiction over the commercial deployment of autonomous vehicles in California. The CPUC is charged with regulating charter-party carriers of passengers, defined as those engaged in the transportation of persons by motor vehicle for compensation.

This jurisdictional divide has in the past caused some conflicts. For example, the DMV's AV testing permit regulations prohibit charging fees to passengers during the AV testing period. However, once the AVs meet the DMV's stringent testing

regulations and qualify for an AV deployment permit, compensation and fees are allowed. Upon deployment, the vehicle itself is then on a similar playing field as all other DMV-approved vehicles.

Before the CPUC's major decision on AV deployment, it held that commission-approved pilot projects of AV-related passenger carriers may not charge compensation — even if they have a deployment permit and are deemed safe by the DMV. Then in November 2020, after years of regulatory development of AV passenger service, the CPUC policy evolved and the CPUC created two new AV programs allowing companies to accept compensation on fare-based AV trips.

This alignment of AV policy was important because it incentivizes commercial enterprises to invest the time, resources, and capital to deploy passenger-AV technology here in California.

THE POLICY ISSUES

• **Funding for AV Infrastructure.** The transportation funding bill SB 1 (Beall; D-San Jose; Chapter 5, Statutes of 2017), 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, although traffic fatalities declined 5.1% from 3,798 in 2018 to 3,606 in 2019, the general trend is upwards and the 2019 Mileage Death Rate (MDR) — fatalities per 100 million miles traveled — was 1.06. According to National Highway Traffic Safety Administration (NHTSA) preliminary data, which was collected from all 50 states and the District of Columbia, fatalities increased in 2020 even though Americans drove less during the pandemic. NHTSA estimates 38,680 people died on U.S. roads in 2020, a 7.2% increase from the 36,096 fatalities reported in 2019. Speeding, driving under the influence of drugs or alcohol, and not wearing seat belts were the main causes of the increase in deaths, according to the NHTSA, which suggested that the drivers who remained on the roads during the national public health emergency and associated lockdowns engaged in more risky behavior.

AVs use a variety of technology, most of which does not depend upon attention spans, number of cocktails consumed, 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.

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 (fully automated AVs) would allow regulators to adapt more quickly to technology. Experts project, depending upon the level of AV used, as much as a 90% reduction in collisions, 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, policy makers 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 2022

• **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 Cruise. With several deployment programs underway, the CPUC has made some changes to its rules around compensation, shared rides, safety plans, and data collection. Pending regulatory decisions will guide the future of whether California can be a leader in this technology, or whether companies will choose other states with less restrictive policies for larger-scale deployment.

• **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 in development for commercial use. Governor Gavin Newsom's Office of Planning and Research published a set of principles at *http://opr.ca.gov/planning/transportation/automated-vehicles.html* to help guide the policy discussion.

The Legislature should support efforts to move forward regulatory approval for the on-road testing of commercial autonomous vehicles.

CALCHAMBER POSITION

California should encourage the development of AV technology for transit and commercial operations, building upon its regulatory framework for passenger vehicles. It should ensure that laws and regulations keep pace with advancing technology, are not duplicative, do not conflict with federal or other state laws, that California laws allow companies to receive compensation for their DMV-approved programs, 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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Unemployment Insurance and COVID-19

State Funding Needed to Offset UI Fraud, Minimize Employer Tax Hike

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

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

PROGRAM FUNDED BY EMPLOYERS

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

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

Generally, the federal UI tax is fixed at 6% of wages up to $7,000 per year per employee for all employers in the state (FUTA taxes), offset by a 5.4% credit in states that comply with federal UI laws (FUTA tax credit), resulting in a payable rate of 0.6%. Assuming the state is in compliance and its UI Fund is solvent, this comes to $42 per employee per year. FUTA taxes are due January 31 following the year in which the taxes are applied (for example, 2018 taxes are due January 31, 2019).

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

COVID-19 AND UNEMPLOYMENT INSURANCE

COVID-19 and the related economic shutdown brought UI policy to the forefront in California and nationally. As COVID-19 crashed across the nation, and businesses complied with state-mandated safety precautions and shutdowns, unemployment rose rapidly to levels not seen since the Great Depression. Unemployment insurance was used to backfill this economic crater, keeping food on the table for many Californians and providing critical stability to the economy. Little discussed was the inevitable tax consequence for employers.

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

Although parts of the economy were showing signs of recovering as the state headed to 2022, California businesses (particularly the greatly diminished restaurant and hospitality

sectors) continue to struggle with the dual challenges of state-mandated shutdowns and ongoing COVID-19 safety costs. The question in front of policy makers is: how can the state help fix the present insolvency of the UI Fund, which was created in large part when state and local officials forced businesses to act as a statewide social safety net?

FEDERAL RESPONSE AND INCREASED BENEFITS

Multiple rounds of federal legislation struck a careful balance in 2020 — providing additional benefits to employees without placing the cost on employers. First, the Families First Coronavirus Response Act (FFCRA - HR 6201) provided federal funding for extended UI benefits and waived charging interest for loans to states whose UI funds became insolvent. Then the Coronavirus Aid, Relief, and Economic Security (CARES) Act (HR 748) provided a host of significant changes, including hundreds of billions of dollars to fund a $600 increase in weekly UI benefits through July 31, 2020 for all recipients, and to create a new category of benefits and extend existing categories of recipients. All these changes were federally funded, meaning they added no tax liability to California's struggling businesses, but helped out-of-work Californians keep bread on the table.

Most of these benefits or extensions expired in 2021. Most notably, the Pandemic Unemployment Assistance program (which was focused on independent contractors and particularly susceptible to fraud), as well as the Pandemic Emergency Unemployment Compensation (which extended the duration of unemployment benefits by 13 weeks), expired in September 2021.

FUND SOLVENCY: COMPARING 2008 TO THE PRESENT

When considering California's present insolvency and the status of the UI Fund, a comparison to the Great Recession provides important context.

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

By November 9, 2020, California had accumulated $15.7 billion in debt, according to the U.S. Treasury Department. By the end of 2021, California's loan balance had risen to approximately $20 billion, with ongoing elevated levels of unemployment anticipated during 2022. Assuming no federal or state relief, California employers will face an increased tax burden on a per-employee basis — which will disincentivize hiring — for years to come.

Given that it took six years to repay the debt accumulated during the Great Recession, and the present insolvency is approximately twice as large, California employers will likely pay increased UI taxes beginning in 2023 and continuing well into the 2030s.

By way of example: in a normal year, employers pay $42 per employee for the UI Fund. In 2023, an employer will pay $21 more per employee, or $63 per employee, and $21 on top of that in 2024. Looking down the road to 2030, employers will be paying $210 per employee in FUTA taxes — an increase of 400% over a normal year.

EDD CAPABILITIES AND FRAUD CONCERNS

The unprecedented surge of unemployment applicants caused by the state-mandated economic shutdowns laid bare the technological and logistical shortcomings in the EDD. Outdated technology and organizational bottlenecks around claims processing caused a huge backlog of applications, with some claimants waiting months for their claims to be processed. The EDD also failed to catch significant fraud due to its rush to distribute benefits. California paid an estimated $20 billion in fraudulent UI benefits, with at least $1.3 billion coming from the state's UI Fund. Because California employers must pay increased taxes to bring the UI Fund back to solvency, employers will be directly responsible for paying the $1.3 billion in fraudulent payments from the UI Fund.

A slew of legislation from both parties during the 2021 legislative session aimed to increase fraud detection and improve practices at the EDD. Notably, AB 110 (Petrie-Norris; D-Laguna Beach) passed and allowed for improved information sharing to prevent fraud by inmates in California's penal system, and SB 390 (Laird; D-Santa Cruz) will compel the EDD to create a recession plan to improve future performance. However, much of the proposed legislation to increase oversight of the EDD and improve outcomes did not pass, leading to some ongoing concerns regarding the EDD's future performance.

REPAYING THE FUND: OTHER STATES USE FEDERAL STIMULUS DOLLARS

Many other states — which implemented similar (or lighter) shutdowns and fell victim to similar UI fraud — allocated a portion of their federal stimulus funds to repay their UI debt.

Both blue and red states have provided funds to mitigate higher taxes on employers due to COVID-19-related shutdowns, including Delaware ($209 million), New Hampshire ($50 million), Massachusetts ($181.8 million), Georgia ($1.5 billion), and Hawaii ($3.4 million). Most recently, the Texas legislature allocated $7.1 billion of its CARES Act funds to fully repay its remaining insolvency in November 2021.

California has provided no funds to assist employers with the massive insolvency of the UI Fund, despite both causes of the insolvency (statewide economic shutdown and the EDD's failure to prevent fraud) being outside of employers' control.

CALCHAMBER POSITION

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

California's policy makers must acknowledge this partial responsibility in creating the unprecedented insolvency of California's UI Fund and, following the lead of other states, provide at least $3 billion in state funding and tax credits. The funds will repay the account for the fraudulent payments disbursed by the EDD and minimize the approaching per-employee tax increases that will soon hit California employers.

Thankfully, Governor Newsom's January proposal for the 2022–2023 budget includes $3 billion over two years in direct payments to the UI Fund. The CalChamber supports the Governor's proposal and is glad to see California's government taking responsibility for the role of fraudulent disbursements and safety-related shutdowns in causing the insolvency of the fund.

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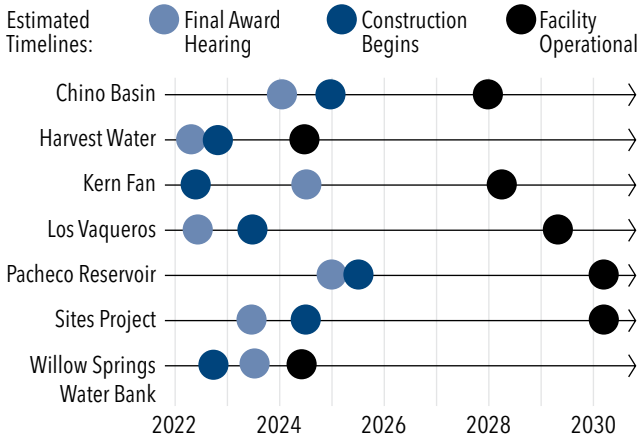
Water Supply

Resolving Chronic Shortages Requires Look at New Storage Options, Alternative Sources

At the beginning of 2022, California's water supply reservoirs were critically low. The top five reservoirs in the state, which together represent more than 70% of total storage in major California reservoirs, were at just one-third of capacity, and at 59% of their historical average levels as of the beginning of the calendar year.

Things are so bad that, in early December, state officials told water agencies they wouldn't get any water deliveries from State Water Project reservoirs heading into the new year — the first "zero allotment" since the 2014 drought. The federal Bureau of Reclamation has done the same for agricultural users. According to the leader of a farm water advocacy coalition, "The carryover water that got a lot of farmers through this past year is gone. Farmers will either have to pump groundwater, if they can, or they're going to be fallowing a lot of farm land."

WATER STORAGE INVESTMENT PROGRAM PROJECTS



Source: California Water Commission

DROUGHT EMERGENCY

After the state saw its second-driest year on record, Governor Gavin Newsom declared a statewide drought emergency, urging residents to reduce their water use voluntarily by 15% to complement local water conservation efforts.

Recent winter storms have eased concerns somewhat. As of the beginning of 2022, snowpack was about 50% above normal for the date, providing a cushion for the vagaries of weather for the balance of the water year.

A normal snowpack would be a welcome relief from the past two very dry years. But it would not in itself refill reservoirs or recharge groundwater supplies. More important, this possible respite in the drought is not a long-term solution to the state's endemic water crises.

The water year is only partially complete, so nature may yet giveth as it has taketh away. But the sobering state of the recent hydroclimate, and the portents for changing distributions and timing of rain and snow as the climate warms, demands urgent attention to state water policy and projects.

SURVEY: WATER SUPPLY POLICIES BACKED BY VOTERS

Voters agree. In a CalChamber poll conducted in October 2021, when asked about the drought in California, three-quarters of likely 2022 voters rated it "very significant," with another 21% saying "somewhat significant." Four policies garnered between 85% and 90% of voter support:

• Expedited permitting of desalination plants (90%, 51% strongly);

• Expedited permitting of off-stream water storage reservoirs (89%, 42% strongly);

• Voluntary water reductions by residential users and mandatory reductions by other users (86%, 42% strongly); and

• Expedited permitting of recycling plants that treat wastewater into drinking water (85%, 50% strongly).

Even mandatory water rationing for all users was supported by two-thirds of voters, a quarter of them strongly.

It's fair to conclude California voters view water supply as existential to their quality of life.

WATER SUPPLY CHALLENGES

California is chronically short of water even in normal water years. Cyclical droughts and changing demands on water supplies have 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 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 will mean doing more with less.

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

The drought has also brought attention to the plight of disadvantaged communities that have either run out of or are suffering polluted drinking water in the Central Valley and rural parts of the state. Bringing water to those communities is expensive, covered in part by money from the state budget, but the problem of how those communities access and pay for water service when connected to nearby water purveyors remains unresolved.

Meanwhile, environmental regulations protecting endangered species and requiring habitat improvements require more water flows from rivers to support fish and wildlife. The state order cutting off most water exports for human use will continue to reserve water in Lake Oroville to maintain water quality in the Sacramento/San Joaquin Delta and protect endangered species.

NEW WATER STORAGE NEEDED

For these reasons, California must develop new water storage projects, above and below ground.

Not a moment too soon, the California Water Commission in December 2021 advanced what could be the state's first major new water storage project in years, even as opponents warned that it would hasten the extinction of an endangered salmon species while disrupting the cultural traditions of some native tribes.

The Sites Reservoir would be a new lake in the Sacramento Valley that, when full, could hold enough water to supply 3 million households for one year. It does not rely on snowmelt, but captures winter runoff from uncontrolled streams below the existing reservoirs in the Sacramento Valley. Because of this, it will inherently adapt to future climate conditions and will be operated to improve water supply resilience to the predicted changes in weather.

Much of the rainfall from extreme events — especially those that occur back-to-back when the ground is saturated — runs off before it can be captured for maximum environmental, urban and agricultural benefit. Sites Reservoir will increase the resiliency of water supplies because it will not rely on spring snowmelt for filling, but instead will capture storm-related runoff and a portion of storm-related flood water.

By operating in conjunction with other California reservoirs, Sites Reservoir substantially increases water supply flexibility, reliability, and resiliency in drier years. Sites Reservoir is the only proposed storage facility in California that will help with statewide operational effectiveness of the State Water Project and Central Valley Project.

The Water Commission's vote confirmed Sites' eligibility for $800 million in state bond funding to help meet the overall $4 billion price tag for the reservoir.

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

OPPOSITION TO WATER PROJECTS

Opposition to new water projects is a fact of life in California. Environmental, NIMBY (not in my backyard), ratepayer or landowner groups will inevitably oppose desalination, recycling, or storage projects.

Desalination, Rain Barrel, Permeable Pavement and Wastewater Treatment

Some say that conservation can provide enough water for all purposes. Indeed, during the five-year drought that ended in 2018, mandatory conservation measures did result in 25% less water usage.

Many rural communities, however, suffered from the ramping down of the agricultural economy, and still others simply ran out of water and required state assistance to obtain a basic ration.

In these cases, nearby water storage could alleviate the problem by storing excess water in wet years for use in drier times.

ALTERNATIVE WATER SOURCES

• **Recycled Wastewater.** 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. Taking advantage of technologies developed by water-scarce countries, local water agencies are considering advanced treatment of wastewater as a possible source of drinking water.

Water recycling is used widely in countries like Israel, Saudi Arabia, Australia and Singapore. Israel reclaims about 80% of its wastewater and uses it to irrigate agricultural lands and recharge aquifers. Singapore reclaims almost 100% and uses it for industrial purposes. California water districts are beginning to invest in water recycling to provide a locally controlled, drought-proof water supply.

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

In late 2019, the Metropolitan Water District of Southern California and the Sanitation Districts of Los Angeles County launched a new water recycling demonstration plant that takes wastewater and purifies it using innovative processes that could significantly improve efficiencies and reduce costs in water recycling. The 500,000-gallon-a-day demonstration facility has been undergoing intense testing to see if the process results in water that meets the highest quality standards. This testing could lead to a full-scale plant with the potential to produce up to 150 million gallons of purified water daily — enough to serve more than 500,000 homes and industrial facilities.

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 more than 40% of San Diego's water supply locally by the end of 2035. The first phase of construction kicked off in August 2021 and when complete will expand San Diego's potable water production capacity by 30 million gallons per day, replacing the use of imported water. Overall, the project is expected to provide 1,000 green jobs, according to the mayor. Eventually, the program will recycle up to 83 million gallons of wastewater per day into high-quality drinking water.

• **Desalination.** Desalination of ocean and brackish groundwater is rapidly becoming a reality in California. According to the Department of Water Resources, 26 desalination plants were operating in California in 2013. Twenty of the plants desalt brackish groundwater and six plants desalt seawater. The largest ocean desalination plant in North America went online in Carlsbad, California in December 2015. The plant supplies 50 million gallons of drinking water daily to San Diego. Another large desalination plant designed by Poseidon is scheduled to come online in Huntington Beach by 2023. It is expected to produce 50 million gallons of drinking water daily to augment Orange County's drinking water supplies.

California American Water is building a desalination plant on the Monterey Peninsula, in large part to offset mandated reductions in the community's water supply from the Carmel River

and the local aquifer. It will convert ocean water into high quality desalinated potable water and will restore flows to the Carmel River, providing benefits to endangered species and habitat that depend on the river, and provide the Monterey Peninsula with a reliable, drought-proof water supply.

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

• **Capturing Stormwater Runoff.** 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 availability and reliability.

BUDGET SUPPORT FOR DROUGHT RELIEF PROJECTS

Governor Newsom has recognized the devastating impact a continued drought could have on California communities and the economy, not just with more stringent regulations, but by providing state General Fund support for drought relief projects. His proposed 2022–2023 budget includes $500 million to expand support for critical drinking water emergencies and mitigate drought damage to fish and wildlife, and the investments also will support small farmers and ranchers and water systems facing a loss of water supply. He set aside another $250 million as a contingency for further legislative actions to combat the effects of the drought.

CALCHAMBER POSITION

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

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

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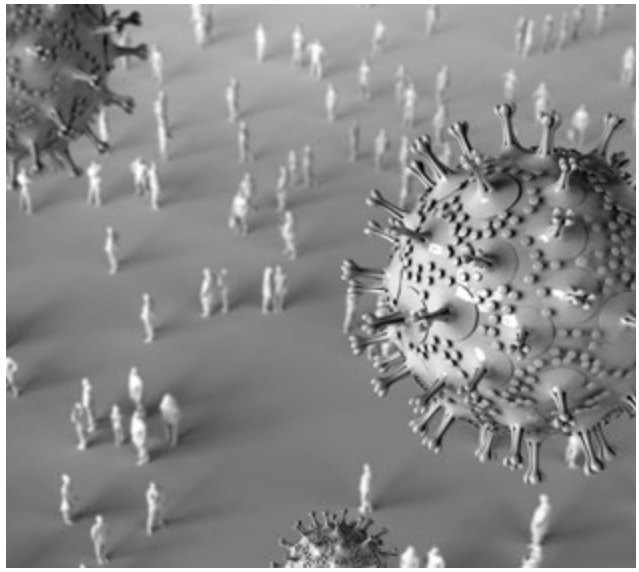
Cal/OSHA Regulatory Roundup

What's Coming for Businesses in 2022

The California Division of Occupational Safety and Health (Cal/OSHA) was busy before the pandemic — and COVID-19 has pushed the understaffed agency into overdrive. Through 2020 and 2021, Cal/OSHA's COVID-19 workplace emergency temporary standard (ETS) — California Code of Regulations, Title 8, Section 3205 et seq.) — and the related guidance was arguably the most important regulatory issue in California. The ETS was constantly evolving, and it is likely to continue to do so in 2022, albeit at a slightly slower pace. In addition, Cal/OSHA has a number of long-term rulemakings that may become regulations in 2022, and out-of-state issues, including the new federal vaccine mandate from federal OSHA (Fed/OSHA) loom large.

With all of that in mind, here is a brief primer on the state's COVID-19 regulations, as well as some of the other high-profile regulations and concerns that employers should be aware of heading into 2022.

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



COVID-19 REGULATIONS IN 2022

Thankfully, California has been among the most successful states in the nation in combating COVID-19 and reducing transmissibility, despite the state's relatively high population density. (At the start of 2022, before the omicron variant pushed California into the "high rate of transmission" category in the Centers for Disease Control and Prevention (CDC) nationwide analysis, it was in the "moderate risk of transmission" category. Only a few other states reached this relatively low level at any point in 2021. Up-to-date data is available at: *https://covid.cdc.gov/covid-data-tracker/#county-view*.)

Despite a labor shortage and considerable vaccine hesitancy among workers, California employers largely embraced vaccination during 2021 and reaped the benefits of reduced workplace cases and workplace disruption. That does not mean, however, that the Workplace ETS or COVID-19-related workplace obligations will necessarily be going away in 2022.

PROCEDURAL TIMELINE FOR COVID-19 EMERGENCY REGULATION:

Cal/OSHA initially approved an emergency regulation on COVID-19 in November 2020. In an unprecedented regulatory process, stakeholders were given no public opportunity to

comment prior to the Standards Board's hearing and vote on November 19, 2020, and the text was made public only five business days before the vote. As the Workplace ETS and its guidance evolved through 2021, this pattern of minimal notice and communication improved somewhat, but remains an ongoing issue for stakeholders.

Looking toward 2022, the Workplace ETS will evolve at least once more. Procedurally, an emergency regulation can be extended only twice before it must either be turned into a permanent regulation or expire. The Cal/OSHA Standards Board voted to readopt the Workplace ETS in June 2021, and again in December 2021. With its two readoptions already used, the Workplace ETS will need to be converted to a "permanent" regulation in the spring of 2022 or it will expire on April 14, 2022. (*Note*: A "permanent" regulation does not necessarily have a permanent duration — but it is not constrained by the statutory timeline provided for emergency regulations. In other words, Cal/OSHA could set a limited timeline for the COVID-19 Workplace ETS when it is converted into a permanent regulation. In fact, Cal/OSHA's present proposal for the permanent regulation sets a two-year sunset for the regulation.)

SUBSTANTIVE ISSUES IN COVID-19 EMERGENCY REGULATION AND CHANGES IN 2022

Employers are adapting to the changes to the regulation that Cal/OSHA approved in its second readoption of the Workplace ETS in December 2021. Substantively, these changes include increased testing for vaccinated employees after exposure and are aimed at preventing breakthrough changes. They will be in effect until mid-April 2022. (*Note*: The second readoption of the Workplace ETS made some substantive changes to its text, which can be found at *https://www.dir.ca.gov/oshsb/documents/Dec162021-COVID-19-Prevention-Emergency-txtcourtesy-2nd-Readoption.pdf*.)

Looking past April 2022, Governor Gavin Newsom issued Executive Order N-23-21 to specifically authorize a third extension for the Workplace ETS, which would extend its application from April 2022 to December 31, 2022. Although the proposed text of this third extension had not been made public as of January 3, 2022, employers should look to the proposed permanent version of the Workplace ETS (for which Cal/OSHA released draft text and held workshops in September 2021) as a likely framework.

Although Cal/OSHA's staff and the Standards Board may alter the draft permanent regulation due to stakeholder input or changing conditions, the draft text remains a helpful guideline for employers in planning for 2022, and is available online at *https://www.dir.ca.gov/dosh/DoshReg/covid-19-emergency-standards/*.

Substantively, the draft permanent regulation is considerably more flexible than the Workplace ETS's December 2021 readoption text and includes a two-year sunset clause. Regulators also are likely to be watching to see how California's COVID-19 case rates and hospitalization rates look before April 2022 (particularly with the omicron variant) in determining whether changes to the draft standard are necessary.

A few positive notes for employers regarding the draft permanent standard:

- Permanent standards usually are not changed as often as emergency standards — which means that the rate of revisions to the Workplace ETS and its interpreting guidance over the course of 2022 is likely to be slower than the rapid changes that occurred through 2021;
- Cal/OSHA could, if COVID-19 case rates fall sufficiently, end the duration of the permanent regulation before its sunset date — but that will hinge on California seeing considerable improvement over 2021 hospitalization and case rates.

OTHER COVID-RELATED ISSUES IN 2022

Looking outside the text of California's regulatory environment, employers will need to monitor the Legislature and their local public health departments. Legislatively, a vaccine mandate was discussed by legislators late in the 2021 session (*see* Vaccine Mandate article on page 151), and is likely to be discussed again in 2022. At the local level, employers should be aware of both municipal ordinances and county public health department guidance that may apply to their locations and consider jurisdictional differences in guidance.

COVID-19 test availability (and related cost increases) is another concern on the horizon. In the last quarter of 2021, COVID-19 rapid tests became increasingly scarce as employers' and citizens' demand increased. Heading into 2022, it appears demand will increase even further with the federal vaccine mandates (*see* Vaccine Mandate article on page 151), due to their reliance on weekly testing as an alternative to vaccination.

In short: California employers should expect to continue adapting to a changing regulatory environment in 2022 — and keep a particular focus on the so-called "permanent" regulation

draft as the March 2022 Standards Board meeting approaches. Employers will need to make their voices heard repeatedly throughout the year to ensure COVID-19 precautions are feasible and effective at maintaining employee safety.

OTHER REGULATIONS THAT MAY ARISE

Despite the recent focus on COVID-19, multiple other regulations with potentially huge effects on the business community are nearing their final vote with the Standards Board and will likely move forward in 2022. Two particular candidates stand out:

• **Indoor Heat**. California's draft Indoor Heat Regulation has been in final draft form since April 2019 and the required economic analysis — Standardized Regulatory Impact Analysis (SRIA) — was completed in 2021. Given the broad effect this regulation could have for indoor working environments in restaurants and industrial settings, this regulation deserves a close eye and will certainly be an important vote should it arise in 2022.

• **Lead Standards**. California's lead exposure standards in construction and in general industry have been creeping through the Cal/OSHA regulatory process since 2011 (California Code of Regulations, Title 8, sections 1532.1, 5198). Generally speaking, the draft regulation will greatly lower thresholds for testing and medical removal related to blood lead levels, and consequently greatly expand the number of workplaces and employees that will fall under blood lead monitoring.

In 2019, the SRIA was finally completed, allowing the lead exposure standards to move to formal rulemaking. However, that SRIA has prompted multiple rounds of comments from the state Department of Finance and is being revised. Once it is complete, the regulation will be nearing its vote at the Standards Board.

Businesses working with even small amounts of lead — potentially even lead contained in other metals, such as brass – should keep an eye on this process as it heads to the Standards Board. Per Cal/OSHA staff, this is likely to be voted upon in early spring 2022.

CALCHAMBER POSITION

The California Chamber of Commerce supports effective workplace safety policies and believes that such policies must be based on sound science, must be clearly drafted, and must be feasible to implement. The CalChamber also believes stakeholder input, even in times of crisis, is critical to drafting effective, successful regulations. The CalChamber will continue to advocate sound, effective and feasible policy at Cal/OSHA in all rulemaking processes.

Regarding COVID-19, the CalChamber acknowledges that COVID-19 appears unlikely to be eliminated in the near future and supports transitioning from emergency-footing workplace precautions to more feasible precautions befitting a disease that will remain endemic in the population.

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Medical Marijuana

Concerns About Keeping a Safe Workplace Compounded by Testing Limitations

In California and in many states across the country, marijuana is now legal for medical and adult recreational purposes, and several states have legalized marijuana for medical use. This changing legal landscape has left employers wondering about their rights and responsibilities regarding drug testing for marijuana. While 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 conducting pre-employment testing or 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.

• Federal law requires that California's employers who work with the federal government comply with the federal Drug-Free Workplace Act, which requires employers to maintain drug-free workplace policies.

• California's new laws regulating medical use and recreational use — including particularly Proposition 64 of 2016 — explicitly maintain employer rights to maintain a drug-free workplace.

• The California Chamber of Commerce did not oppose legislation or regulations establishing the legal framework for medical marijuana. The CalChamber also did not oppose the 2016 initiative (Proposition 64) legalizing adult recreational use specifically because of the inclusion of language to protect employers' rights.

• Prohibiting testing or requiring employers to hire medical marijuana users undermines employers' ability to provide a safe and drug-free workplace. An impaired employee puts everyone at risk of injury.

• Federally, marijuana remains illegal as a Schedule 1 drug under the Controlled Substances Act.

DRUG TESTING

Impaired workers undermine workplace safety, quality and productivity. Employers are focused on safety in the workplace and are concerned that medical marijuana users could be impaired workers. This impairment puts the safety of the impaired employee, other employees, and potentially members of the public at risk.

In addition, employers know that an uptick in on-the-job injuries and vehicle accidents will result in increased workers' compensation and vehicle insurance premiums for their business.

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 working alongside impaired employees are concerned for their own safety. Employers that decline to employ applicants who test positive for drugs lower the odds of workers being impaired at work.

Drug-Testing Technology Limitations

Employers' safety concerns are compounded by the limitations of present drug-testing technology:

• There currently is no objective and legally recognized test an employer can administer or have administered by a testing company that can detect marijuana and determine exactly when marijuana was consumed. Generally speaking, this relates to marijuana's active ingredient, Tetrahydrocannabinol (THC) being fat-soluble, meaning THC and its metabolites are stored in the body's fatty tissues, and can be released periodically as the body

taps fat for energy. In contrast, alcohol is water-soluble, so it resides in the body's bloodstream (which is mostly water) and diminishes relatively predictably as it is filtered out of the bloodstream.

• There is no method to determine if an individual is being impaired by the marijuana when the drug is found in their system or, conversely, if the individual is no longer impaired.

Therefore, employers do not have precise tools to investigate marijuana impairment in the workplace. In light of this imperfect information, many employers adopt a zero-tolerance policy to protect their workplace and workers.

LEGISLATION

There have been several legislative attempts to protect the use of marijuana by employees.

• For example, AB 882 (McCarty; D-Sacramento) (2019) would have included employees completing drug rehabilitation programs as a protected class under the Fair Employment and Housing Act. This meant that AB 882 would have forbid employers from terminating any employee for a positive drug test result if the drug identified was being used as part of a "medication-assisted treatment, under the care of a physician" (MAT) or a "licensed narcotics treatment program" (NTP), even if the employee cannot perform the essential functions of the job and no accommodations are available.

• Similarly, AB 2069 (Bonta; D-Oakland) (2018) would have required employers to provide reasonable accommodations under the Fair Employment and Housing Act to employees who use medical marijuana. While technically an employer would have had the right to discipline employees impaired at work, the lack of available clinical testing and the duty to accommodate those employees would have made it nearly impossible for employers to exercise that right.

Both bills would have forced employers to weigh keeping a safe, drug-free working environment (with the cost of litigation exposure) against the cost of allowing potentially impaired employees in the work environment. For context, an average single-plaintiff lawsuit can cost approximately $160,000 to defend.

Neither bill made it to the Assembly Floor thanks to the CalChamber and employer community raising concerns to the Legislature.

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. Conversely, the CalChamber opposes legislation that undermines employers' ability to maintain a drug-free workplace.

In addition, 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.

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Vaccine Mandates

Employers Anticipate Potential Vaccine Mandates

Since the release of COVID-19 vaccines by Pfizer, Moderna, and Johnson & Johnson, vaccination has become the most critical weapon in fighting the COVID-19 pandemic. Individuals and employers have embraced vaccination as the cheapest and most effective way to minimize the risk of COVID-19 and return their lives (and businesses) to usual. California is doing well on vaccination vis-a-vis much of the nation, with just more than 70% of adults having received full vaccination and another 8% partially vaccinated at the start of 2022 — but those rates are slowing, due to strong feelings of hesitancy among the remaining unvaccinated adults.

Many policymakers and employers have turned to vaccine mandates to push California (and the nation) closer to full vaccination.

BACKGROUND: VACCINE MANDATES SO FAR

Looking back at 2021, individual public and private sector employers have embraced vaccines by providing vaccination opportunities at the workplace and, more recently, imposing vaccine mandates for employees. Private employers such as Southwest, Delta Airlines, Salesforce, and others were early adopters of a vaccine mandate in May 2021. Subsequently, many others moved to implement their own vaccine mandates in the following months, including giants in tech (Microsoft, Facebook, Google, Cisco), entertainment (Disney, Netflix, Viacom, NBC Universal), finance (Goldman Sachs, Blackrock) and retail (Walgreens, CVS Health).

Among public sector employers, Governor Gavin Newsom announced a vaccine requirement for state workers and certain select industries (health care and high-risk congregate settings) in July 2021. Similarly, the Biden administration issued a mandate for federal employees and contractors which affected many large employers in California. These requirements generally take the form of a "soft" mandate — requiring an employee to *either* be fully vaccinated *or* submit to regular testing. Although not being discussed currently by either California or the federal government for most workplaces, the alternative is a "hard" mandate, which *does not* allow for a testing option and instead requires all workers to be vaccinated. By law, vaccine mandates (soft or hard) must allow for reasonable accommodation, discussed below.

Federal Vaccine Mandate

In September 2021, the Biden administration made waves by announcing: (1) a vaccine mandate for federal employees/contractors (with a testing option), and (2) an emergency regulation from the Occupational Safety and Health Administration (OSHA) that will require all employers with 100 or more workers to mandate vaccination (with employers having discretion regarding a potential testing option).

Both the federal contractor mandate and regulation were legally challenged and stayed in federal court, but on December 17, 2021, the U.S. Court of Appeals for the Sixth Circuit lifted the stay on the workplace mandate. Then on January 13, 2022, the U.S. Supreme Court halted enforcement of the workplace mandate again, in effect eliminating it for the foreseeable future. The case went back to the Sixth Circuit, for consideration of the underlying merits of the challenge, which may take longer than the expiration date of the mandate itself, May 2022. If the Sixth Circuit rules quickly, the matter *could* once again be appealed to the Supreme Court — but such a timeline before May 2022 appears unlikely.

LIKELY FUTURE ISSUES SURROUNDING VACCINE MANDATES IN 2022

Vaccine mandate discussions have brought new questions for employers, and a few specific concerns are likely to resurface in 2022.

• **The Cost of Testing**. Employers face a fundamental question concerning all so-called "soft" vaccine mandates (those that

allow an alternative of regular testing for employees who *choose* to remain unvaccinated) – the cost of regular testing for workers who choose to remain unvaccinated. Testing is expensive. Rapid tests cost anywhere from $50-$200 per test, so the cost of weekly testing of 20% of California's workforce (the approximate unvaccinated portion of California's workforce) is significant.

Notably, the text of the federal vaccine mandate for employers with 100+ employees does *not* place the cost of surveillance testing on employers. Employees can be required to pay for testing if they choose not to get vaccinated.

In contrast, California's present COVID-19 workplace emergency temporary standard (Title 8, Section 3205) does *not* require surveillance testing, but *does* makes employers responsible for all exposure-related testing costs, which comprises a much smaller number of employees and is less frequent than weekly surveillance testing.

• **Reasonable Accommodations**. Both state and federal employment law require employers to provide reasonable accommodation for an employee's disability or religious beliefs. The employer must engage in an interactive process to determine whether there are any reasonable accommodations available. A potential accommodation could include a testing alternative or remote work. Employers are nervous about determining whether such requests for accommodations are genuine, especially after news articles have surfaced about employees submitting fraudulent religious exemption requests.

Under the Fair Employment and Housing Act (FEHA), not only could an employer face litigation over whether an accommodation should have been granted, but they also can face a separate cause of action of allegedly failing to properly engage in the interactive process.

A 2017 study by insurance provider Hiscox estimates that the cost for a small to mid-size employer to defend and settle a single plaintiff FEHA claim was approximately $160,000, which was a $35,000 increase from Hiscox's study just two years earlier.

• **Labor Shortage and Potential Worker Loss Due to Vaccine Mandate**. The post-pandemic recovery has been labeled by some as the "Great Resignation," since more and more employers are struggling to hire right now. For example, the Public Policy Institute of California reported that more than 400,000 California workers quit their job in August 2021 — the highest monthly total at any point in the last 20 years. Many employers who already are struggling to fill vacant positions are hesitant to impose a vaccine mandate out of fear of losing current employees or applicants. Some may even welcome a statewide or federal mandate to level the playing field in that regard.

Depending on its terms, however, a mandate also may fall more heavily on in-person workplaces, such as service industry employers. Notably, the federal large employer vaccine mandate does not apply to remote workers or those who work exclusively outdoors.

• **Multi-State Compliance Issues for Large Employers**. Although a federal mandate and regulation might suggest an easier compliance path for multi-state employers, that may not be the case. Multiple states, including Texas and Montana, have taken executive or legislative action to forbid vaccine mandates.

Evolving and inconsistent laws raise a difficult compliance environment for nationwide employers that find themselves under conflicting state-to-state and federal-to-state obligations. While some of these conflicts eventually may be solved by the courts, employers are stuck in the middle of these political struggles and face possible enforcement consequences from both sides until legal challenges are resolved definitively.

WHAT'S ON HORIZON IN CALIFORNIA

The outcome of the litigation surrounding OSHA's nationwide vaccine mandate is likely to influence whether California implements its own mandate and what that mandate looks like. Before President Joe Biden's announcement of a federal mandate, legislators surfaced two bills in California relating to vaccine. Although neither bill passed in 2021, they will be the foundation for discussions in 2022.

• The first, **AB 455 (Wicks; D-Oakland)**, would have required employers of all sizes to mandate that employees show either proof of vaccination or proof of a weekly negative COVID-19 test. The employer could *choose* to enforce a hard mandate and forgo the testing alternative for all employees (other than for those employees who are legally entitled to a reasonable accommodation).

In addition to a vaccine mandate, the bill provided each employee with 24 hours of leave to obtain a vaccine or recover from related side effects. The bill originally also included a consumer-facing mandate for certain businesses, but that was removed from the bill.

• The second, **AB 1102 (Low; D-Campbell)** was not a vaccine mandate, but provided liability protection to employers that chose to mandate vaccines. It codified existing guidance issued by the Department of Justice, Department of Fair Employment and Housing, and Equal Employment Opportunity Commission explaining that it is legal under California and federal law to require vaccination if an employer so chooses.

AB 1102 also confirmed that an employer is not required to verify that an employee's documentation is valid as long as it

reasonably appears to be genuine and relates to the employee, alleviating some concern about how closely employers must look out for fraudulent vaccine cards. In addition, it would have provided 40 hours of COVID-19 related leave for certain reasons.

If the Legislature does not impose a vaccine mandate, it still is possible that Cal/OSHA may attempt an emergency regulation regarding vaccination. Alternatively, more local jurisdictions may impose mandates. Notably, San Francisco and Los Angeles have enacted a vaccine requirement for both customers and employees in certain indoor businesses.

CALCHAMBER POSITION

The California Chamber of Commerce believes that increasing vaccination rates is necessary to keep infection rates low and help keep California's economy open. The state should concentrate on supporting employers that encourage vaccination, incentivizing workers to get vaccinated, and removing the threat of frivolous, expensive litigation against employers that are legitimately requiring workers to be vaccinated. If the state imposes a vaccine mandate, the costs resulting from that mandate should fall on the state, not on private employers.

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Workers' Compensation

COVID-19 Spawns Push for Reforms in Workers' Compensation

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

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

When an employee files a workers' compensation claim, the employer generally has 90 days to accept or reject the claim. The employer is required to pay for up to $10,000 in health care services while the claim is being reviewed, even if it ultimately is denied. If the employer rejects the claim, the employee has the right to have his or her claim heard by a workers' compensation administrative law judge.

WORKERS' COMPENSATION CLAIMS AND COVID-19

When COVID-19 began to spread through California, many companies suffered financially and were forced to lay off employees or find ways to transition their workforce to teleworking, if possible. Many industries — such as health care providers, first responders, restaurants and grocery stores — scrambled to find ways to continue operating while doing all they could to protect workers from exposure to COVID-19.

Companies started to receive workers' compensation claims from workers claiming that they contracted COVID-19 at work and seeking compensation for medical treatment and benefits. Employers also faced lawsuits for workers' family members that were exposed. Whether those lawsuits are barred by the "exclusive remedy rule" that was developed as part of the Grand Bargain is being litigated in the appellate court.

While many employers promptly accepted COVID-19 claims in 2020, some denied claims because there was no evidence the diagnosis was work-related, and some claims lacked any diagnosis or positive test of COVID-19. According to the California Workers' Compensation Institute, a review of claims filed on or before April 30, 2020, shows that 69.7% of claims that were denied were due to negative results on a COVID-19 test. These included claims filed by workers because their co-workers had showed symptoms even though they themselves showed no symptoms and had not tested positive for COVID-19. Data through fall 2021 shows that employers still are accepting the majority of COVID-19 workers' compensation claims.

In May 2020, Governor Gavin Newsom signed Executive Order N-62-20, which created a disputable presumption that employee COVID-19 diagnoses between March 19, 2020, and July 5, 2020 were contracted at work and therefore covered by workers' compensation.

On September 17, 2020, the Governor signed SB 1159 (Hill; D-San Mateo; Chapter 85), which codified Executive Order N-62-20 and also extended the rebuttable presumption to COVID-19 illnesses diagnosed after July 5, 2020 by certain emergency responders and health care professionals who had worked within 14 days of the positive test, as well as employees who performed work at a worksite within 14 days of an outbreak of COVID-19. SB 1159 defined "outbreak" as four employees testing positive for COVID-19 where the employer has 100 or fewer employees or 4% of employees testing positive where the employer has more than 100 employees. Not only does SB 1159 shift the burden to the employer to dispute the claim that the contraction of COVID-19 was work-related, but the bill also shortened the time to accept or reject a claim to 30 or 45 days, depending on the circumstances.

The Workers' Compensation Insurance Rating Bureau of California has indicated SB 1159 may result in between $2.2 billion and $33.6 billion in increased costs per year to the workers' compensation system. The cost to the system has not yet been determined, and it likely will be several years before that data is available.

POTENTIAL CHANGES TO SYSTEM ON HORIZON

Although SB 1159 was a significant expansion of benefits enacted in 2020, a number of workers' compensation bills were introduced in 2021. These provide a good indication of the types of issues employers can expect to see as part of a large conversation about changing the workers' compensation system.

• **Expanding Presumptions of Workplace Injury**. Perhaps the most prevalent issue has been the increased effort to add disputable and even conclusive presumptions to workers' compensation claims. To succeed on a workers' compensation claim, the burden generally is on the injured worker to present some medical evidence that the illness is related to work. The employment need not be the sole cause of the injury, but there needs to be evidence that the injury arises out of and in the course of the employment. In other words, the employment and injury must be causally linked.

A rebuttable presumption that the injury is compensable places the burden on the employer. The employer must accept the claim unless it can show that there is no causal connection between the claim and the employment. This places a tremendous burden on the employer, which now must conduct discovery into the employee's other nonwork activities and whom the employee interacted with to try to demonstrate that the employee did not contract COVID-19 at work.

Although some employers may have the means to try to trace the exposure or hire companies to administer tests on site, many employers do not — in large part because of the financial hits from the economic recession. The employer's burden also applies equally for the next three years to all employees who work at a worksite, even if some employees have very little risk of exposure given the nature of their position or precautions taken by the employer.

Historically, presumptions have been applied only in rare circumstances, such as to claims brought by public safety workers who hold hazardous positions with great risk of injury, such as firefighters and peace officers. Even then, the presumption applies only to certain alleged injuries.

Although COVID-19 presents a unique situation, there is concern that more presumptions will begin to be applied to other types of workers' compensation claims in the future involving infectious diseases, which are difficult to trace. Indeed, SB 213 (Cortese; D-San Jose) as introduced would have created a presumption of industrial causation for all hospital employees who provide direct patient care and manifest any one of many identified infectious diseases. As noted in the report issued by the California Workers' Compensation Institute, "[i]nserting presumptions disrupts the normal process of determining whether the injury is related to employment" and they therefore should be used sparingly.

• **Shortening Claims Review Periods**. SB 1159 shortened the window of time for employers to review potential claims. An employer and its claim adjuster usually have 90 days to review a claim to determine whether to accept or deny coverage. During that time, the claim is investigated, including gathering and reviewing medical evidence. SB 1159 sets precedent for shortening that time frame to just 30 or 45 days, depending on the date of the alleged injury and worker's job title. That time frame is especially short where the employee may be ordered to quarantine for a minimum of two weeks, severely limiting the ability to investigate the claim.

SB 335 (Cortese; D-San Jose) would have shortened the time frame for *all* claims to just 45 days, or 30 days for claims with a presumption. The most probable outcome from this proposed change is a higher number of denials of coverage as a result of not being able to complete the initial discovery process. This is because employers would not be able to identify, acquire and evaluate the records and information necessary to make a fair determination. They certainly will not have time to identify a medical evaluator, set an appointment, deliver appropriate records, and obtain a high-quality medical report to determine causation and inform their decision making. The change also would punish the worker by shortening the amount of time during which they can receive medical care during the discovery phase.

• **Medical Provider Networks**. Two bills introduced in 2021 sought to address medical provider networks.

AB 1465 (Reyes; D-San Bernardino) would have established a statewide medical provider network that any employee could opt into. A state-established medical provider network would have considerably undermined existing medical provider networks because employers would have no means by which to keep out bad providers. The barrier for admittance into the state network is extremely low, with essentially no ability for the state to eliminate problematic providers. Not only does this greatly inhibit an injured worker's ability to obtain quality care, but it will increase frictional costs in the workers' compensation system. These frictional costs are difficult to quantify, but include increased litigation, increased medical-legal evaluations, changes in medical utilization, increased dispute resolution over bills and medical review, and slower return-to-work rates.

AB 399 (Salas; D-Bakersfield) would have made a series of reforms to the medical provider networks, including

implementing hours requirements for providers, increasing required disclosures, implementing changes to bill reviews, and significantly increasing penalties. Such sweeping reforms historically have been part of negotiations between all stakeholders, which is essential to preserving the delicate balance of the workers' compensation system.

BALANCED APPROACH

In recent years, California has fluctuated between being the first and fourth most expensive workers' compensation systems in the nation. According to a biennial report issued by the state of Oregon on national workers' compensation rankings, California employers pay 150% of the national median cost to secure required coverage. (*See 2020 Oregon Workers' Compensation Premium Rate Ranking Summary*, available at: *https://www.oregon.gov/dcbs/reports/Documents/general/prem-sum/20-2082.pdf*.)

In recognition of the unique and costly nature of California's workers' compensation system, major reforms have been rooted in extensive negotiations between relevant interest groups, including the Governor, workers, employers, insurers, and attorneys. In 2012, Governor Edmund G. Brown Jr. signed SB 863 (De León; D-Los Angeles; Chapter 363), which made wide-ranging changes, such as increased benefits to workers, cost-saving efficiencies, and new independent processes for resolving medical treatment issues and billing disputes. Subsequent reforms enacted significant anti-fraud legislation to prevent abuses in the system. As a result, claim and cost trends in California's system have remained largely stable for the last decade.

There still is little data about COVID-19's long-term impact on the system. While the filing of nearly 150,000 COVID-19-related claims was offset in part by a reduction in the number of nonCOVID-19 claims filed, some expect to see a rise in post-employment, cumulative trauma claims in the coming years as a result of the higher unemployment rate. These claims are highly associated with late reporting, slow development, significant litigation and high frictional costs.

The impact from COVID-19 claims and post-pandemic employment trends poses questions for the long-term stability of California's workers' compensation system. For this reason, it is especially important that any workers' compensation legislation be vetted thoroughly. Changes that are unsupported by data and not reviewed by the system's primary stakeholders will destabilize the system by increasing litigation, increasing frictional costs, increasing rates, delaying access to medical care, and delaying the return of workers to jobs — all of which is bad for both employers and workers.

CALCHAMBER POSITION

The workers' compensation system was created to provide a cost-efficient and expedited way to compensate employees for workplace injuries. Once an employee establishes that an injury is work-related, the employee is entitled to compensation, regardless of fault. Adding "rebuttable," or even worse, "conclusive" presumptions that an injury is work-related, limiting an employer's ability to investigate claims, or expanding the injuries resolved in the workers' compensation system could overwhelm the system and significantly increase costs.

The Legislature must be cautious when proposing changes to the workers' compensation structure so as to maintain a balanced system that provides fair benefits to workers while minimizing costs and unfair pressures on employers.

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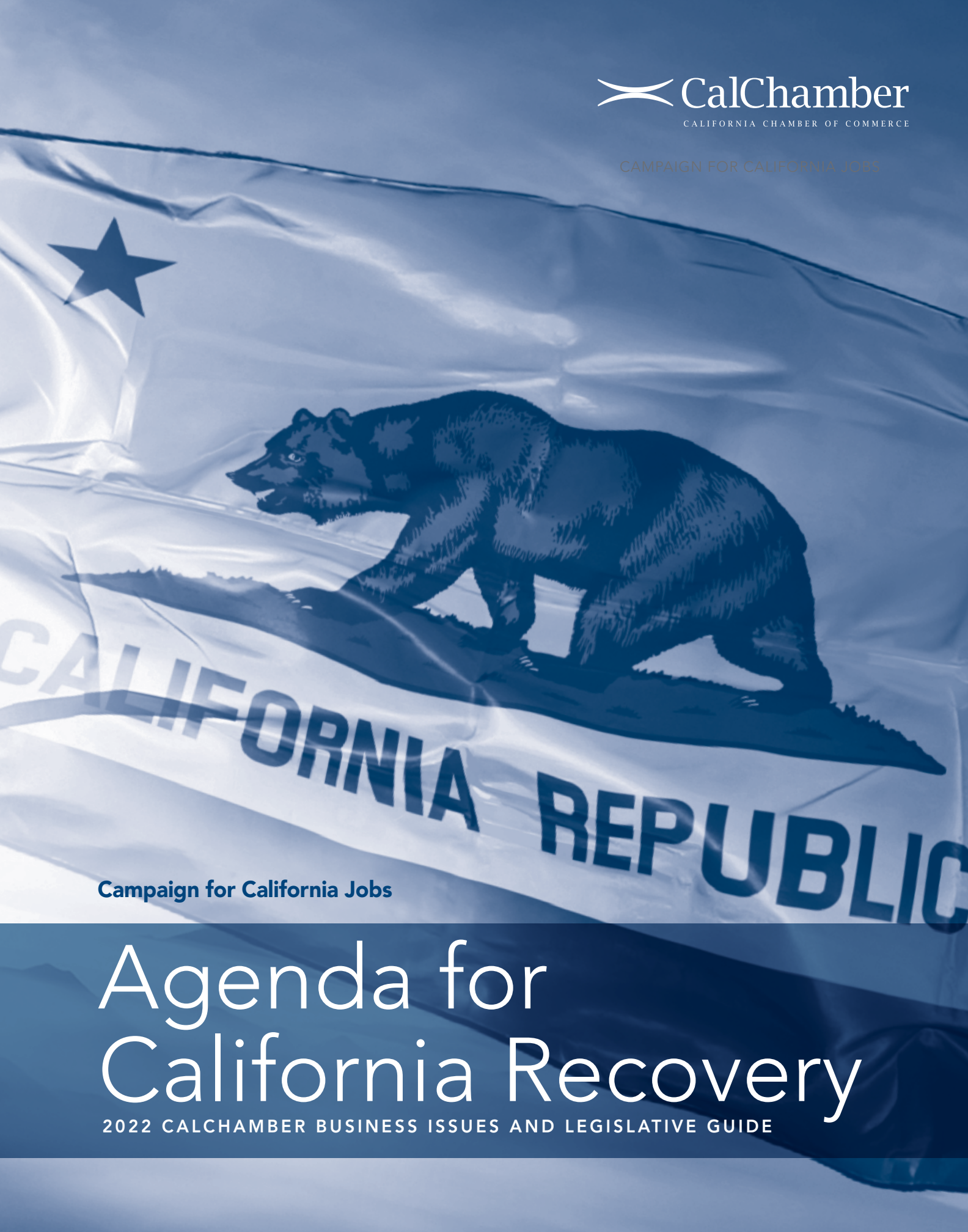
CalChamber
CALIFORNIA CHAMBER OF COMMERCE

CAMPAIGN FOR CALIFORNIA JOBS



Campaign for California Jobs

Agenda for California Recovery

2022 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

CalChamber Job Killer Tag Identifies Worst Proposals

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

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

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

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

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

CRITERIA

Factors that have earned job killer status for legislation include:

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

BILLS STOPPED

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

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

Job Creator Bills Help California Economy Grow

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

Job creating legislation promotes the following policies:

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

SIGNED INTO LAW

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

- Protecting employees and employers from being sued for defamation in sexual harassment cases simply for reporting and investigating harassment.
- Giving employers a limited opportunity to cure technical violations in an itemized wage statement before being subject to costly litigation.
- Reforming disability access requirements and limiting frivolous litigation related to disability access compliance.
- Expediting the environmental review process for projects related to energy or roadway improvements, repair and maintenance.
- Creating a predictable and easy-to-track schedule for implementing new regulations.
- Extending and expanding the film and television tax credit.
- Stopping drive-by Proposition 65 lawsuits for alleged failure to post specific required warnings.
- Repealing a retroactive tax on small business investors.
- Encouraging aerospace projects to locate in California.
- Restoring funding to the California Competes Tax Credit Program.
- Increasing loan access for small business.
- Helping businesses rebuild after disasters by allowing state agencies to establish a procedure to reduce licensing fees for businesses affected by a federal- or state-declared emergency.

Removing 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*.

CalChamber
CALIFORNIA CHAMBER OF COMMERCE

About CalChamber

Agenda for California Recovery

2022 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

Policy/Executive Team

PRESIDENT AND CHIEF EXECUTIVE OFFICER

Jennifer Barrera took over as president and chief executive officer of the California Chamber of Commerce on October 1, 2021.

She has been part of the CalChamber team since 2010 and stepped into the top position after serving as CalChamber executive vice president, overseeing the development and implementation of policy and strategy for the organization, as well as representing the CalChamber on legal reform issues.

Barrera is well-known for her success rate with the CalChamber's annual list of job killer legislation, efforts to reform the Private Attorneys General Act (PAGA) and leadership working with employers on critical issues, including most recently those arising from the COVID-19 pandemic.

In addition, she advises the business compliance activities of the CalChamber on interpreting changes in employment law.

She led CalChamber advocacy on labor and employment and taxation from September 2010 through the end of 2017. As senior policy advocate in 2017, Barrera worked with the executive vice president in developing policy strategy. She was named senior vice president, policy, for 2018 and promoted to executive vice president on January 1, 2019.

From May 2003 until joining the CalChamber staff, she worked at a statewide law firm that specializes in labor/employment defense. She represented employers in both state and federal court on a variety of issues, including wage and hour disputes, discrimination, harassment, retaliation, breach of contract, and wrongful termination. She also advised both small and large businesses on compliance issues, presented seminars on various employment-related topics, and regularly authored articles in human resources publications.

Barrera earned a B.A. in English from California State University, Bakersfield, and a J.D. with high honors from California Western School of Law.

EXECUTIVE VICE PRESIDENT AND CHIEF OF STAFF FOR POLICY

Ben Golombek joined the California Chamber of Commerce on January 17, 2022 as executive vice president and chief of staff for policy.

In this role, Golombek heads the CalChamber policy staff, providing strategic oversight and management of CalChamber's legislative and regulatory priorities.

Most recently, Golombek served as the West Region vice president for public affairs for AT&T, where he managed a team of 20 to create and implement legislative campaigns and media strategies to educate and influence lawmakers, regulators and consumers for eight states, including California.

Golombek has previous experience serving as chief of staff to three members of the California State Assembly, including the chairs of the Assembly Revenue and Taxation, and Assembly Appropriations committees.

Prior to his State Capitol experience, Golombek worked at Los Angeles City Hall, where he served as deputy city controller, communications director for a city councilmember and deputy press secretary for Mayor Antonio Villaraigosa.

Golombek graduated from Northwestern University, has an M.B.A. from the University of California, Davis, and completed the prestigious Coro Fellows Program in Public Affairs.

***Staff to**: Privacy and Cybersecurity Committee*

SENIOR POLICY ADVOCATE

Adam Regele joined the California Chamber of Commerce in April 2018 as a policy advocate specializing in environmental policy, housing and land use, and product regulation issues. He was named a senior policy advocate in April 2021 in recognition of his efforts on behalf of members.

He came to the CalChamber policy team after practicing law at an Oakland-based law firm—Meyers, Nave, Riback, Silver & Wilson, PLC—where he advised private and public clients on complex projects involving land use and environmental laws and regulations at the local, state and federal levels. His extensive environmental and waste regulatory compliance experience includes defending in litigation matters related to the California Environmental Quality Act (CEQA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA).

Before joining Meyers Nave, Regele handled state and federal environmental litigation and administrative proceedings as an associate at a Bay Area law firm that focused on environmental, natural resources, land use, labor and local government law.

He served as a federal judicial law clerk to the Honorable Edward J. Davila of the U.S. District Court, Northern District of California and as a legal fellow with the Oakland City Attorney's Office prior to entering private law practice.

Regele earned a B.S. in environmental science at the University of California, Berkeley, and a J.D. from UC Hastings College of Law, where he was symposium editor and research and development editor for the *Hastings West-Northwest Journal*.

***Staff to**: Food and Agriculture Committee, Environmental Policy Committee*

SENIOR POLICY ADVOCATE

Leah B. Silverthorn joined the California Chamber of Commerce in May 2018 as a policy advocate. She specializes in climate change, air quality, energy, environmental justice, marijuana/cannibis, and transportation and infrastructure issues. In April 2021, she was named a senior policy advocate in recognition of her efforts on behalf of members.

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*

POLICY ADVOCATE

Brenda Bass joined the California Chamber of Commerce in January 2022 as a policy advocate specializing in water supply and storage issues.

She came to the CalChamber policy team from the Sacramento office of Downey Brand, where she was a senior associate. She advised public agency and private clients on environmental review requirements, as well as applying for and complying with water quality permits.

Bass logged experience with California Environmental Quality Act (CEQA) litigation and groundwater quality issues for clients throughout California. She also advised clients on Clean Water Act matters, compliance with state and federal laws governing stormwater and wastewater quality, as well as assisted agricultural enterprises with rapidly changing irrigation discharge regulations.

Before joining Downey Brand, Bass practiced at a California boutique environmental firm. She also externed for a federal bankruptcy judge in Sacramento.

Bass earned a B.A. in linguistics at the University of California, Davis, and a J.D. with distinction from the McGeorge School of Law, University of the Pacific, where she was primary editor of the *McGeorge Law Review*.

Staff to: *Water Resources Committee*

POLICY ADVOCATE

Ashley Hoffman joined the California Chamber of Commerce in August 2020 as a policy advocate specializing in labor and employment and workers' compensation issues.

Before joining the CalChamber policy team, she was an associate attorney in the Sacramento office of Jackson Lewis P.C., representing employers in civil litigation and administrative matters as well as advising employers on best practices, including compliance with laws such as the California Labor Code, California Wage Orders, and the Fair Employment and Housing Act.

She previously worked as a litigation associate and a summer associate at Gibson, Dunn & Crutcher, LLP, Los Angeles, representing clients in a variety of matters, including employment discrimination, consumer protection class actions, trademark disputes, immigration matters, and other issues.

She also was a law clerk at the U.S. District Court for the Western District of Tennessee in Memphis and a judicial extern for the Ninth Circuit U.S. Court of Appeals in Pasadena.

Hoffman holds a B.A. with high honors in political science from the University of California, Santa Barbara, and earned her J.D. from the UCLA School of Law where she was a Michael T. Masin scholar, an editor at the *UCLA Law Review*, and staff member for the *Women's Law Journal*.

Staff to*: Labor and Employment Committee, Legal Reform and Protection Committee, Workers' Compensation Committee*

POLICY ADVOCATE

Robert Moutrie joined the California Chamber of Commerce in March 2019 as a policy advocate. He leads CalChamber advocacy on occupational safety, tourism, insurance, unemployment insurance and immigration, as well as representing employer interests on education issues.

He is CalChamber's expert on the COVID-19 workplace regulation, and was closely involved in its drafting and amendments process at Cal/OSHA.

Moutrie has represented clients on matters such as consumer fraud litigation, civil rights, employment law claims, tort claims, and other business-related issues in federal and state courts.

He previously served as an associate attorney at the Oakland-based firms of Meyers, Nave, Riback, Silver & Wilson, and at Valdez, Todd & Doyle; and as a junior associate attorney at the Law Offices of Todd Ruggiero in San Francisco. He also served as a legal intern for the San Francisco Public Defender's Office and the Los Angeles District Attorney's Office.

Moutrie earned a B.A. in political science from the University of California, Berkeley, and a J.D. with honors from the University of California, Hastings College of the Law. He is an instructor for the nationally ranked UC Hastings Trial Team.

Staff to: *Education Committee, Workplace Safety Subcommittee, Tourism Committee, Immigration Committee*

POLICY ADVOCATE

Preston R. Young joined the California Chamber of Commerce in October 2019 as a policy advocate, specializing in health care policy and taxation issues.

Young came to the CalChamber from the Sacramento law firm of Schuering Zimmerman & Doyle, LLP, where he had been a partner. He specialized in multiple aspects of health care law, medical malpractice, the Health Insurance Portability and Accountability Act (HIPAA), product liability, and elder abuse litigation.

He previously was an attorney with Powers & Miller in Sacramento, specializing in insurance defense and product liability litigation. He also worked as an attorney at State Farm Insurance in San Francisco.

Young holds a B.A. in communications from Saint Mary's College of California, and earned a J.D. from Golden Gate University School of Law, where he was associate editor of the *Environmental Law Journal.*

Staff to: *Health Care Policy Committee, Taxation Committee*

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.

EXECUTIVE VICE PRESIDENT, PUBLIC AFFAIRS

Martin R. Wilson, executive vice president of public affairs, joined the California Chamber of Commerce in October 2011.

Wilson oversees all CalChamber public affairs and campaign activities, including the Public Affairs Council, a political advisory committee made up of the CalChamber's major members; its candidate recruitment and support program; and its political action committees: ChamberPAC, which supports pro-jobs candidates and legislators, and CalBusPAC, which qualifies, supports and/or opposes ballot initiatives.

He is the CalChamber liaison to JobsPAC, an employer-based, independent expenditure committee that supports pro-business candidates.

Wilson has more than 40 years of experience in California politics, playing leadership roles in the election and re-election of two governors, and a U.S. senator. He also has orchestrated numerous successful ballot measure and public affairs campaigns.

In addition to his campaign experience, Wilson has served in government as a senior staff member at the local, state and federal levels.

Before joining the CalChamber, Wilson was managing partner of Wilson-Miller Communications, where he also advised Governor Arnold Schwarzenegger as head of the Governor's political and initiative committee, the California Recovery Team. Before founding his own firm, Wilson was managing director for Public Strategies Inc. in Sacramento for five years and held a similar position with Burson-Marsteller for six years.

Wilson has served as senior fellow for the UCLA School of Public Affairs, board member for the California State Fair and director of the Coro Foundation, a public affairs training organization.

He graduated from San Diego State University with a B.A. in history.

***Staff to**: Public Affairs Council, ChamberPAC Advisory Committee, ChamberPAC, CalBusPAC, Candidate Recruitment and Development Fund*

***Also**: JobsPAC Executive Director*

VICE PRESIDENT, COMMUNICATIONS

Ann Amioka has been a communications specialist at the California Chamber of Commerce since 1980. Since 1982, she has been editor of the CalChamber's legislative newsletter, *Alert*. She oversees editing and production of CalChamber communications and the corporate website.

Before joining the CalChamber staff as editor of the CalChamber's agricultural labor relations newsletter, Amioka was a reporter for a daily newspaper in Yolo County. She has a B.A. in history from Stanford University and an M.A. in history from California State University, Sacramento.

VICE PRESIDENT, 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, CORPORATE RELATIONS

Drew Savage was named vice president of corporate relations at the beginning of 2001. The position is dedicated to enhancing the CalChamber's profile with major corporations.

Savage came to CalChamber in 1990 as a membership specialist following three years in a similar position at the Illinois Chamber. He was named manager of the CalChamber's membership sales team in October 1994. After taking on additional responsibilities for working with the state's growth industries and developing relationships with larger companies, Savage was promoted to vice president of membership in late 1999.

He holds a B.A. in political science from the University of Illinois at Chicago.

VICE PRESIDENT, INTERNATIONAL AFFAIRS

Susanne Thorsen Stirling has headed CalChamber international activities for more than four decades.

She is an appointee of the U.S. Secretary of Commerce to the National Export Council, and serves on the U.S. Chamber of Commerce International Policy Committee, the California International Relations Foundation, and the Chile-California Council.

In previous years, Stirling was an appointee of Governor Edmund G. Brown Jr. to the California International Trade and Investment Advisory Council, and served on the Board of Directors of the International Diplomacy Council, the World Affairs Council of Northern California (Sacramento), and the Danish-American Chamber of Commerce.

The CalChamber is a past recipient of the U.S. Presidential Award for Export Service, and received the Presidential Citation from the government of the Republic of Korea. In November 2019, Stirling was presented with the "Outstanding Woman of the Year in International Trade" award by the Women in International Trade, Los Angeles (WIT-LA).

In March 2021, Senator Bill Dodd named Stirling "Woman of the Year" for Sacramento County, praising her as having been an ambassador for international trade for many years.

Before joining the CalChamber, Stirling held positions in public affairs and public relations for Burmeister & Wain A/S, an international shipbuilding company based in Copenhagen.

Stirling, originally from Denmark, studied at the University of Copenhagen and holds a B.A. in international relations from the University of the Pacific, where she served as a member of the Board of Regents for nine years. She earned an M.A. from the School of International Relations at the University of Southern California.

***Staff to**: Council for International Trade*

California Foundation for Commerce and Education

PRESIDENT

Loren Kaye was appointed president of the California Foundation for Commerce and Education in January 2006.

The Foundation is affiliated with the California Chamber of Commerce and serves as a "think tank" for the California business community. The Foundation is dedicated to preserving and strengthening the California business climate and private enterprise through accurate, impartial and objective research and analysis of public policy issues of interest to the California business and public policy communities.

Kaye has devoted his career to developing, analyzing and implementing public policy issues in California, with a special emphasis on improving the state's business and economic climate.

Kaye also was a gubernatorial appointee to the state's Little Hoover Commission, charged with evaluating the efficiency and effectiveness of state agencies and programs. He served in senior policy positions for Governors Pete Wilson and George Deukmejian, including Cabinet Secretary to the Governor and Undersecretary of the California Trade and Commerce Agency.

Kaye also has represented numerous private sector interests, managing issues that affect specific business sectors to promote an improved business climate or to resist further regulation or costs on business.

Kaye is a graduate of the University of California, San Diego, with a degree in political science.

Policy Issues and Staff Index

CalChamber Committees

California Chamber of Commerce policy committees draft and review policy and make recommendations to the Board of Directors on a range of issues. The CalChamber also establishes ad hoc committees as the need arises to address other policy issues. Committees range in size from eight to 100 members, and meet between two and four times a year (or, as needed) in virtual meetings or via telephone conference calls. Committee chairs generally are members of the CalChamber Board of Directors and work closely with CalChamber policy team members, permitting the CalChamber to act quickly as issues emerge. Membership in committees (other than those whose membership is by appointment) is open to managers, technicians and/or policy experts with member firms. To get involved, submit the form at *www.calchamber.com/getinvolved*.

POLICY COMMITTEES

EDUCATION

Goal: Foster greater business involvement to improve both teacher and student performance, and administrative accountability in schools throughout California. (Membership by appointment.)
Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

ENVIRONMENTAL POLICY

Goal: Oversee issues related to the environment, such as air quality, climate change and AB 32 implementation, energy, the California Environmental Quality Act (CEQA), Proposition 65 and green chemistry, hazardous and solid waste, surface mining and land use. Recommend policies that meet the mutual objectives of protecting human health and the environment while conserving the financial resources of business to the fullest extent possible to help California businesses grow and promote their technologies/services.
Staff Contacts: Adam Regele, *adam.regele@calchamber.com*
Leah Silverthorn, *leah.silverthorn@calchamber.com*

FOOD AND AGRICULTURE

Goal: Shape policy impacting the entire food and agricultural supply chain, from growing and distribution to packaging, transportation, retail and end of life management.
Staff Contact: Adam Regele, *adam.regele@calchamber.com*

HEALTH CARE POLICY

Goal: Promote a sound and affordable health care system. Work to contain costs and avoid unnecessary and expensive regulatory controls, including mandates.
Staff Contact: Preston R. Young, *preston.young@calchamber.com*

HOUSING

Goal: Support housing policies that focus on increasing California's housing supply for the benefit of all Californians' quality of life.
Staff Contact: Adam Regele, *adam.regele@calchamber.com*

IMMIGRATION

Goal: Recommend policies on issues concerning immigration.
Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

LABOR AND EMPLOYMENT

Goal: Protect employers' rights to organize, direct and manage their companies' employees in an efficient, safe and productive manner.
Staff Contact: Ashley Hoffman, *ashley.hoffman@calchamber.com*

LEGAL REFORM AND PROTECTION

Goal: Seek comprehensive tort reform that will halt runaway liability risk and promote greater fairness, efficiency and economy in the civil justice system.
Staff Contact: Ashley Hoffman, *ashley.hoffman@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. (Must be CalChamber Advocate-level member to join.)
Staff Contact: Ben Golombek, *ben.golombek@calchamber.com*

TAXATION

Goal: Monitor legislation and regulatory activity to ensure that California tax laws are fair and can be administered easily. Review state spending plans to make certain that economy and efficiency are the primary goals of government.
Staff Contact: Preston R. Young, *preston.young@calchamber.com*

TOURISM

Goal: Encourage increased travel to California by fostering investment in advertising and improvements to tourism infrastructure, considering the important role of tourism in the state's economy and plans for economic recovery. (Membership by appointment.)
Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

TRANSPORTATION AND INFRASTRUCTURE

Goal: Work toward developing and maintaining a statewide transportation network that is adequate for the needs of business, agriculture and individual citizens.
Staff Contact: 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: Brenda Bass, *brenda.bass@calchamber.com*

WORKERS' COMPENSATION

Goal: Promote legislative, judicial and regulatory actions that maintain an efficient workers' compensation system that provides adequate worker benefits while protecting the competitive position of California employers.
Staff Contact: Ashley Hoffman, *ashley.hoffman@calchamber.com*

SUBCOMMITTEE

WORKPLACE SAFETY

Goal: Advocate cost-effective and practical safety and health regulations while protecting the competitive position of California employers. (Subcommittee of Labor and Employment Committee.)
Staff Contact: Robert Moutrie, *robert.moutrie@calchamber.com*

SPECIAL COMMITTEES

PUBLIC AFFAIRS COUNCIL

Goal: Advise CalChamber on key political issues affecting the business community. (Must be CalChamber Advocate-level member to join.)
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

COUNCIL FOR INTERNATIONAL TRADE

Goal: Work with state and federal administrations and lawmakers to support expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.
Staff Contact: Susanne T. Stirling
susanne.stirling@calchamber.com

CHAMBERPAC ADVISORY COMMITTEE

Goal: Provide guidance and assistance to the CalChamber in its political fundraising efforts. (Must be a member of the CalChamber Board of Directors to join.)
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

POLITICAL ACTION COMMITTEES

The California Chamber of Commerce has established two political action committees (PAC) to help focus business efforts to provide financial support to pro-jobs candidates or issues campaigns.

CHAMBERPAC

Goal: Provide financial support to business-friendly incumbent legislators and candidates for state legislative and local office.
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

CALBUSPAC

Goal: Provide funding to help qualify, support and/or oppose statewide ballot initiatives.
Staff Contact: Martin R. Wilson, *martin.wilson@calchamber.com*

The California Chamber of Commerce is the largest broad-based business advocate to government in California.

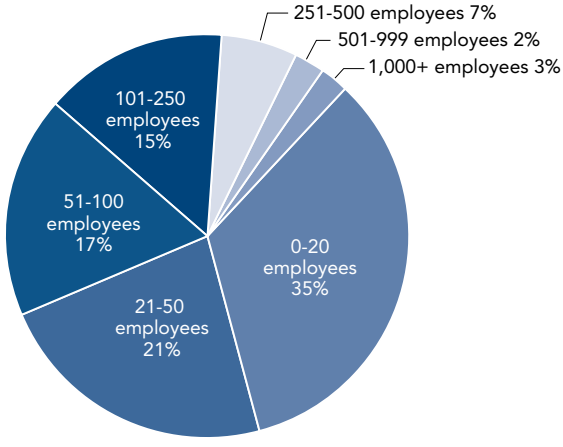
Membership represents one-quarter of the private sector jobs in California and includes firms of all sizes and companies from every industry within the state. More than 230 local chambers of commerce are affiliated with the CalChamber, and are solid partners in CalChamber efforts to promote business-friendly policy.

Based on a survey of members in January 2022:

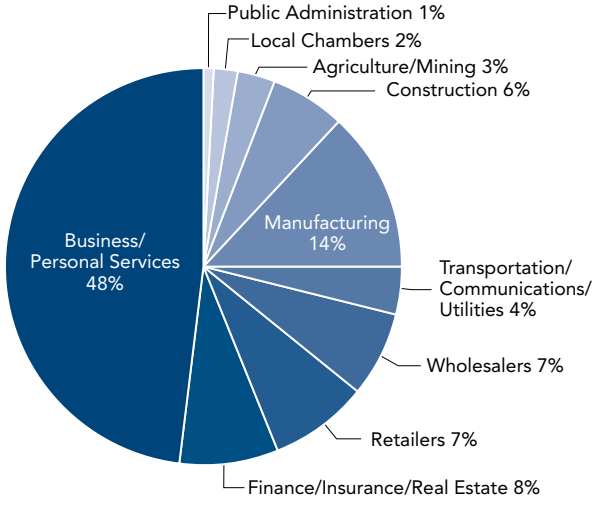
- 71% have been in existence for 25 years or more; 32% for 50 years or more; 7% for 100 years or more.
- 11% have been in existence for 10 years or less.
- 20% are owned/co-owned by women.
- 35% are owned/co-owned by ethnic minorities or persons of mixed ethnicity.
- 29% do business internationally.
- 57% plan to add employees in 2022, while 41% plan to maintain the size of their workforce.
- 89% offer health insurance coverage and 84% offer a retirement savings plan.

MORE THAN TWO-THIRDS OF CALCHAMBER MEMBERS HAVE 100 OR FEWER EMPLOYEES

By Employer Size



By Industry Classification



CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Candidate Recruitment/Development

Agenda for California Recovery

2022 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

Redistricting Opportunities

New Maps Open Avenues to Recruit/Elect Business-Friendly Candidates

For the second time in the state's history, the California Citizens Redistricting Commission completed their constitutional duty by finalizing the political boundaries for 80 Assembly, 40 Senate, 52 congressional and four Board of Equalization districts — 176 new maps in total. The challenging task was completed on a truncated schedule due to a six-month delay in the arrival of the U.S. Census data.

In addition to the compressed timeline, the commission faced the added and unprecedented challenge of California losing one seat in the U.S. House of Representatives. The shrinking of the delegation came about because California did not grow as fast as other sunbelt states like Arizona, Texas and Florida, which all gained at least one congressional representative.

CALCHAMBER, LOCAL CHAMBER INVOLVEMENT

The commission's work is now complete, and office holders and candidates are quite literally mapping out their futures and the California Chamber of Commerce is monitoring these developments closely.

CalChamber was accorded the opportunity to testify before the commission and submitted comments on technical topics as well as worked with our local chamber network to have their voices heard as part of the three-month process.

VOTING RIGHTS ACT REQUIREMENTS

In drawing the maps, the law required commissioners to adhere to the federal Voting Rights Act (VRA), which ensures that ethnic voters' rights are protected by, where possible, creating minority majority districts to increase the possibility of more candidates of color holding office. Increases in the population of California's Latino and Asian American residents plus declines in the number of white voters led the commission to create more VRA districts in the Central Valley and Inland Empire for Latinos and in the Bay Area for Asian Americans.

It is projected that 16 of the 52 congressional districts have a Latino voting age population of at least 50%. Similarly, of the 80 Assembly seats, 22 have a majority Latino population, as do 11 of the 40 Senate seats. The new maps include two majority Asian American districts, plus 16 districts where Asian Americans make up more than 30% of eligible voters or so-called influence districts.

Beyond the VRA, commissioners were tasked with considering Communities of Interest, a loosely defined term that includes city and county boundaries, transportation corridors and business clusters — think entertainment, tech, or aerospace. And, the new districts had to have a consistent number of voters, with the target for the Assembly of 500,000, for the Senate 1 million and 760,000 for the U.S. House of Representatives.

INCUMBENT 'MUSICAL CHAIRS'

What the commission was not to regard is an incumbent's residency or party affiliation. The result has created what CalMatters columnist Dan Walters called "a game of musical chairs" as some members were drawn out of their current districts. It should be noted that congressional representatives are not required to live in their district, but members of the state Senate and Assembly do have a residency requirement, which has forced several to move into newly drawn adjacent seats.

Those members unable to find a friendly place to land will be forced into matchups against colleagues from their own party or choosing not to run for reelection. Several retirements have already been announced and more are expected in the coming days.

TRACK RECORD

The redrawn lines present CalChamber with several new opportunities to recruit and elect business-friendly candidates from both political parties. It is through the political process that we can best affect policy outcomes by selecting and electing business-friendly candidates willing to stand with the employer community to defeat job killing legislative proposals. CalChamber consistently has maintained a better than 90% kill rate on bills given the Job Killer tag.

Our success is attributable to our track record of electing legislators willing to stand up to the public unions and other liberal interests, and defeat bills that will be harmful to the California economy.

CANDIDATE RECRUITMENT

Although not a political action committee, the Candidate Recruitment and Development Program provides the resources necessary to build a bench of electable, pro-jobs candidates for state legislative and local office. 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 $8,100 per year, person, organization or political action committee.
- **JobsPAC** is an independent expenditure committee, meaning it speaks directly to voters on behalf of the business community to elect pro-jobs candidates. Co-chaired by CalChamber and the California Manufacturers and Technology Association, JobsPAC may accept contributions in unlimited amounts.
- **CalBusPAC** is a CalChamber committee that is formed to primarily support or oppose ballot measures having an impact on the state's business climate. CalBusPAC may accept contributions in unlimited amounts.

CALCHAMBER POSITION

California's business community is under constant pressure due to the disproportionate influence that special interest and government employee organizations have on the legislative and regulatory process. CalChamber is committed to standing up for and speaking out on behalf of the state's employer community through political action, our advocacy network, and constant and direct contact with elected officials.

Staff Contact
Martin R. Wilson
Executive Vice President, Public Affairs

martin.wilson@calchamber.com
January 2022

CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Legislative Guide

Agenda for California Recovery

2022 CALCHAMBER BUSINESS ISSUES AND LEGISLATIVE GUIDE

Contacting Your Legislators: Protocol

California Senate and Assembly members want to hear from their constituents—you—the voters in their districts. At times, your association may call on you to do some grassroots lobbying. Often, the contact from a district constituent can sway a legislator's vote.

Here are some guidelines for you to follow in contacting your legislators in person, by phone or by letter.

- **Be thoughtful.** Commend the right things which your legislator does. That's the way you'd like to be treated.
- **Be reasonable.** Recognize that there are legitimate differences of opinion. Never indulge in threats or recriminations.
- **Be realistic.** Remember that most controversial legislation is the result of compromise. Don't expect that everything will go your way, and don't be too critical when it doesn't.
- **Be accurate and factual.** The mere fact that you want or do not want a piece of legislation isn't enough. If an issue goes against you, don't rush to blame the legislator for "failing to do what you wanted." Make certain you have the necessary information and do a good job of presenting your case.
- **Be understanding.** Put yourself in a legislator's place. Try to understand his/her problems, outlook and aims. Then you are more likely to help him/her understand your business and problems.
- **Be friendly.** Don't contact your legislator only when you want his/her vote. Invite him/her to your place of business or your group meetings. Take pains to keep in touch with him/her throughout the year.
- **Give credit where it is due.** If an issue goes the way you wanted, remember that your legislator deserves first credit. He/she has the vote, not you. And, remember also that many organizations and individuals participated on your side.
- **Learn to evaluate issues.** The introduction of a legislative bill doesn't mean that it will become law. Whether you're for it or against it, don't get excited about it until you learn the who, what and why of it.
- **Support your legislator.** If he/she is running for re-election and if you believe he/she deserves it, give him/her your support. He/she needs workers and financial supporters. Don't become aloof at the time when your legislator needs your help.
- **Don't, don't, don't even hint that you think certain bills, campaigns or politics in general are not worthwhile or may be dishonest.**
- **Don't demand anything.** And don't be rude or threatening. There is always "the future," and in many cases a legislator may disagree with you on one issue and be supportive on another.
- **Don't be vague or deceptive, righteous or long-winded, and please don't remind the legislator that you are a taxpayer and voter in his/her district.** (He/she knows it!)
- **Don't be an extremist.** Remember, your legislator represents all his/her constituents—those you consider liberal and those you consider conservative. Don't condemn a legislator just because he/she supports a piece of legislation that you think is too liberal or too conservative.
- **Don't be a busybody.** Legislators don't like to be pestered, scolded or preached to. Neither do you.
- **Be cooperative.** If your legislator makes a reasonable request, try to comply with it. You can help him/her by giving him/her the information he/she needs. Don't back away for fear you are "getting into politics."

Letter Writing

Following are guidelines for an effective letter:

- Be brief.
- Refer to bill numbers whenever possible.
- Make sure the legislator knows this communication is from a constituent who lives and/or does business in the legislator's district.
- Explain how the proposed legislation affects your business, and why you support/oppose it.
- Don't attempt to give "expert" opinions. Tell how the legislation would affect your business, based on your experience and knowledge.
- Ask for the legislator's support or opposition.
- Write the letter without copying any association-provided background information verbatim.
- Request that your legislator take a specific action by telling him/her what you desire. State the facts as you see them. Avoid emotional arguments. If you use dollar figures, be realistic.
- Ask the legislator what his/her position is.
- Keep all communications friendly and respectful. Be sure to thank your legislator for considering your views.
- Write on your personal or business letterhead if possible, and sign your name over your typed signature at the end of your message.
- Be sure your exact return address is on the letter, not just the envelope. Envelopes sometimes get thrown away before the letter is answered.
- Be reasonable. Don't ask for the impossible. Don't threaten. Don't say, "I'll never vote for you unless you do such and such." That will not help your cause; it may even harm it.
- Be constructive. If a bill deals with a problem you admit exists, but you believe the bill is the wrong approach, tell what the right approach is.

- Send your association a copy of your letter and a copy of the response you receive from your legislator.
- Address all letters in the following manner, unless you are on a first name basis:

State Legislature:

- *Assembly Member*
  The Honorable Joe/Jo Doe
  California State Assembly
  State Capitol
  Sacramento, CA 95814
  Dear Assembly Member Doe:
- *Senator*
  The Honorable Joe/Jo Doe
  California State Senate
  State Capitol
  Sacramento, CA 95814
  Dear Senator Doe:

Local Elected Officials:

- *Council Member*
  The Honorable Joe/Jo Doe
  Councilman/woman,
  City of—
  City Hall
  City, State and Zip Code
  Dear Mr./Ms./Mrs./Miss Doe:
- *County Supervisor*
  The Honorable Joe/Jo Doe
  Supervisor, —County
  County Seat
  City, State and Zip Code
  Dear Sir/Madam:
  or Dear Mr./Ms./Mrs./Miss Doe:

Guidelines for District Visits

The following guidelines may be helpful when you make district visits:

- Members of the state Legislature rely heavily on their staffs for a major portion of their responsibilities, i.e., scheduling, advice on specific legislation, constitutent problems, etc. This is why it is important to maintain some familiarity with the district office staff. However, you do want to become acquainted and develop a working relationship directly with the legislators in your district.
- Generally, the legislative schedule permits each legislator to visit the district office on Fridays and holidays.
- Always call in advance for an appointment and briefly explain the purpose of the meeting. As a business person, you are an important constituent and the politician and his/her aides are eager to get acquainted.
- If the meeting with the member of the Senate or Assembly is for the purpose of discussing specific legislation, review the background information and position statements available from your association and use the bill numbers when possible.
- Ask the legislator for his/her position on issues and how he/she will vote.

Other activities

We encourage you to consider other activities as ways of effectively maintaining liaison with your district legislators:

- Invite other members of your profession to join you and your legislator for lunch.
- Invite your legislator to visit your company. You may want to have a short meeting between your employees and the legislator. The legislator could make brief remarks, followed by a question-and-answer period.
- Offer to help organize an information business advisory group to meet regularly with your legislators to discuss business and key industry issues.

Telephone Procedures

- When the Legislature is in session, call the Capitol office; during recess and on Fridays, call the district office.
- Ask to speak directly to the legislator. If he/she is not available, ask to speak to the administrative assistant or legislative aide.
- When the legislator or his/her assistant is on the line, identify yourself and mention the name of your company and the fact that you are from the legislator's district.
- State the reason for the call. Use bill numbers whenever possible.
- Explain how the proposed legislation affects your business and why you support or oppose it.
- Discuss only one issue per telephone call.
- Ask the legislator's position.
  - ✔ If the legislator's position is the same as yours, express agreement and thanks.
  - ✔ If your position differs from the legislator's, politely express disappointment and offer some factual information supporting your views.
- Don't attempt to give "expert" opinions. Tell how legislation would affect your business, based on your experience and knowledge.
- Request that your legislator take a specific action by telling him/her what you desire. State the facts as you see them. Avoid emotional arguments. If you use dollar figures, be realistic.
- Keep all communication friendly and respectful.
- Thank the legislator or aide for his/her time and for considering your views.

The Legislative Process

- **Senate:** 40 members
- **Assembly:** 80 members
- **Regular Session:** Convenes on the first Monday in December of each even-numbered year and continues until November 30 of the next even-numbered year.
- **Special Session:** May be called by the Governor and is limited to a specific subject. Length is not limited and may be held concurrently with the regular session.
- **Effective Date of Laws:** January 1 of the year after enactment unless an urgency measure, which takes effect immediately upon being signed, or a different effective date is specified.

Procedure

- **Introduction:** The bill is introduced by a member of the Senate or Assembly, read for the first time, then assigned to a committee by either the Senate Rules Committee or the Assembly Speaker.
- **Committee:** Hearing(s) are held in committee and testimony is taken from proponents and opponents. Generally, the committee will then amend, pass or fail to pass the bill.
- **Second Reading:** Bills that are passed by committee are read a second time and sent to the full floor for debate.
- **Floor Debate (in house of origin):** The bill is read a third time, debated and voted on. Most bills need a majority to pass (21 for the Senate, 41 for the Assembly). Bills with urgency clauses, appropriation measures and some tax-related bills need a two-thirds majority (27 for the Senate, 54 for the Assembly). If the bill is passed, it is sent to the second house.
- **Second House:** Procedures for a bill to pass the second house are similar to consideration and passage in the house of origin.
- **Amendments:** If the second house passes a bill with amendments, then the bill must be passed a second time by the house of origin for concurrence. If the amendments are rejected, a conference committee is formed to iron out the differences between the two houses.
- **Governor:** The Governor must act on (sign or veto) any bill that passes the Legislature within 12 days during the legislative session. However, the Governor has 30 days in which to act at the end of each year of the legislative session. Bills not acted on by the Governor automatically become law. A two-thirds vote of the Legislature is required to override a Governor's veto.

How to Write an Effective Lobbying Letter

Address lobbying correspondence to the author of the bill with copies to members of the committee hearing the bill and to your local legislator.

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.

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.

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.

Be sure to make clear for whom you're speaking.

Get to the point of your letter quickly: your support for or opposition to the bill.

Provide concrete, credible information on the impact of proposed legislation on your business.

Be sure to be clear about what action you want the legislator to take.

If you have a personal relationship with the legislator, take a moment to write a quick, handwritten note to draw his or her attention to your letter.

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.

Be sure to send a copy of your letter to the Governor. Also please send a copy to the CalChamber staff members assigned to the bill so they can include information on your support or opposition in their committee testimony.

CalChamber

March 18, 2021

The Honorable Marc Levine
California State Assembly
State Capitol, Room 5135
Sacramento, CA 95814

SUBJECT: AB 819 (LEVINE) CALIFORNIA ENVIRONMENTAL QUALITY ACT: NOTICES AND DOCUMENTS: ELECTRONIC FILING
HEARING SCHEDULED – MARCH 24, 2021
SUPPORT – AS AMENDED MARCH 16, 2021

Dear Assembly Member Levine:

The California Chamber of Commerce is pleased to **SUPPORT** your **AB 819**, as amended on March 16, 2021, which would require lead agencies to post notices and environmental review documents pursuant to the California Environmental Quality Act (CEQA) on the lead agency's website, require notices of determination and notices of exemptions to be filed electronically and require the lead agency to submit to the State Clearinghouse these documents in an electronic form.

AB 819 is a commonsense measure that simply codifies existing best practices that many, but not all, lead agencies across California do already. By requiring lead agencies to post pertinent CEQA notices and environmental review documents electronically, **AB 819** aligns with the core purpose of CEQA to identify and disclose to decision makers and the public the significant environmental impacts and mitigation measures of a proposed project prior to its consideration and approval. The bill also provides a much-needed update to CEQA, which when passed about 50 years, did not contemplate the internet nor the digitization of documents. Requiring lead agencies to provide the public with easily accessible electronic information, rather than forcing interested parties to go into the lead agency's office to view or photocopy hard copy documents, is not only common practice but an expectation by members of the public.

AB 819 would complement the Office of Planning and Research's (OPR) new online-only submission portal for CEQA documents, thereby saving not only time and money for lead agencies and members of the public, but also vast amounts of paper that would be saved by electronically posting and submitting CEQA documents.

For these reasons, the CalChamber is pleased to **SUPPORT** your **AB 819**, as amended.

Sincerely,

Adam J. Regele
Policy Advocate

Cc: Legislative Affairs, Office of the Governor

AJR:mm

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com

Use boldface type, underlining or italics sparingly to emphasize important points.

Act promptly. Too many good lobbying letters arrive after a vote already has been taken.

Later…If the legislator does what you ask, be sure to send a thank you letter.

Impact California
Make a difference by using easy-to-edit sample letters and links to more information about bills and legislators at **www.impact-california.com**.

Guide to Reading a Bill

AMENDED IN ASSEMBLY APRIL 5, 2021

AMENDED IN ASSEMBLY MARCH 16, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL **No. 819**

Introduced by Assembly ~~Member Levine~~ *Members Levine and Mathis*

February 16, 2021

An act to amend Sections *21080.4,* 21082.1, 21091, *21092,* 21092.2, *21092.3,* 21108, ~~and 21152~~ *21152, and 21161* of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 819, as amended, Levine. California Environmental Quality Act: notices and documents: electronic filing and posting.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. ~~The act~~

CEQA requires, if an environmental impact report is required, the lead agency to mail a notice of determination to each responsible agency, the Office of Planning and Research, and public agencies with

Date noted each time bill is amended.

Indicates house of origin.

Bills are introduced in sequential number in each house.

Date introduced.

Code section being added or amended.

Legislative Counsel drafts all legislation and writes a summary.

Strikethrough text indicates language that is being deleted; italics highlight language that is being added by an amendment.

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, who also must approve the change.

- ACA 0000—Assembly (authored) Constitutional Amendment.
- SCA 0000—Senate (authored) Constitutional Amendment.

Concurrent Resolution: A legislative proposal that commends individuals or groups, adopts legislative rules or establishes joint committees.

- ACR 0000—Assembly Concurrent Resolution.
- SCR 0000—Senate Concurrent Resolution.

Joint Resolution: A legislative opinion on matters pertaining to the federal government, often urging passage or defeat of legislation pending before Congress.

- AJR 0000—Assembly Joint Resolution.
- SJR 0000—Senate Joint Resolution.

Assembly and Senate Resolutions: An expression of sentiment of one house of the Legislature. Resolutions usually ask a committee to study a specific problem, create interim committees or amend house rules. Resolutions take effect upon adoption.

- AR 0000—Assembly Resolution.
- SR 0000—Senate Resolution.

Spot Bill: Bill introduced that usually makes nonsubstantive changes in a law. The spot bill is substantially amended at a later date. This procedure evades the deadline for the introduction of bills.

Legislative Process

Legislative Counsel: A staff of more than 80 attorneys who draft legislation (bills) and proposed amendments, review, analyze and render opinions on legal matters of concern to the Legislature. The Legislative Counsel's Digest is a summary of a bill's content contrasting existing law with proposed law (in lay language) and appears on the face of each bill.

Legislative Analyst: Provides advice to the Legislature on anything with a fiscal implication, which can cover virtually every major bill. The analyst annually publishes a detailed analysis of the Governor's budget, which becomes the basis for legislative hearings on the fiscal program.

Author: Member of state Senate or Assembly who submits or introduces a bill and carries it through the legislative process.

Floor Manager: Speaks as author when the bill is being heard in the second house. (Assembly members are not allowed to present bills on the Senate floor and vice versa.)

Sponsor: Interest groups or constituents from the legislator's district who bring suggested legislation to the attention of the prospective author (legislator).

Standing Committee: The forum used in the Senate and Assembly for studying bills and hearing testimony from the author, proponents and opponents.

- Many bills are heard by two or more committees in each house.
- If a majority of the committee members approve the bill, it is sent to the floor (or, if it has fiscal impact, to the Senate or Assembly Appropriations Committee) with a recommendation "Do Pass." It takes a majority vote of committee members present to amend a bill.
- Your association's legislative advocate and other members often testify before such committees.

Committee Consultants and Aides: Every legislator has a personal staff plus the assistance of specialists assigned to committees and to the party caucuses. This research staff is responsible for analyzing the pros and cons of the proposed legislation.

Introduction and First Reading: Bill is submitted by member of Senate or Assembly, numbered and read. It is assigned to a committee by the Senate Rules Committee or Assembly Speaker and printed.

Second Reading: When the bill passes the policy committee, it is read on the house floor for a second time.

Third Reading: Bill is read a third time and debated. A roll call vote follows. If passed or passed with amendments, the bill is sent to the second house (or, if it already is in the second house, it is returned to the house of origin) for consideration of amendments.

Enrollment: Legislation that has passed both houses is sent to enrollment for proofreading for consistency before being sent to the Governor for approval.

Item Veto: Allows the Governor to veto (return unsigned a legislative proposal or indicate points of disagreement) objectionable parts of a bill without rejecting bills in their entirety.

Chaptered: A bill that has passed both houses and has been signed by the Governor is said to be "chaptered." The bill becomes law January 1 of the following year unless it contains an urgency clause (takes effect immediately) or specifies its effective date.

Sunset Clause: Acts of the state Legislature that expire after a certain date unless renewed by the Legislature.

Voter Responses

The techniques of direct democracy enable citizens to bypass elected government bodies and act directly on policy matters.

Initiative: A local or state measure that is placed on the ballot after a certain number of registered voters sign petitions supporting its placement on the ballot. Initiatives often are used by groups or individuals when the Legislature fails to pass a law they want to enact.

Referendum: A procedure whereby the voters may approve or disapprove proposals recommended by a legislative body, such as a proposal for an increase in the tax rate.

Recall: A procedure whereby petitions are circulated calling for removal of a public official from office. If a sufficient number of signatures is obtained, an election is held in which voters decide whether to keep the official in office.

PAC: A Political Action Committee is a nonprofit committee that provides a lawful means to help elect and re-elect political candidates selected on the basis of their positions on industry-related issues, committee assignments and leadership in the Legislature. PACs make contributions to candidates or in support of or opposition to ballot measures.

Adapted from California Grocers Association publication.

California State Government — The Executive Branch

The executive branch administers and enforces the laws of California. Led by the Governor, the California executive branch is made up of more than 200 state entities.

The executive officials of the branch—such as the Governor, Lieutenant Governor, Secretary of State and Attorney General, to name a few—are elected by the people of California. Each of these officers is elected to serve a four-year term, and may be elected to an office a maximum of two times.

Within the executive branch there are four types of entities: agencies, which are headed by a secretary; departments, which are headed by a director; and boards and commissions, which are headed by an executive officer or board member.

A number of entities, such as the Regents of the University of California and the Public Utilities Commission, are intended to be independent of direct control by all three branches of the state government. Most of the leaders of these entities are appointed by the Governor and confirmed by the California Senate.

The Governor also is responsible for appointing the secretaries/directors of 11 Cabinet-level state agencies/departments: Business, Consumer Services and Housing; Corrections and Rehabilitation (department); Environmental Protection; Finance (department); Food and Agriculture (department); Natural Resources; Government Operations; Health and Human Services; Labor and Workforce Development; Transportation; and Veterans Affairs (department).

Each Cabinet-level agency includes multiple departments, whose leaders also are appointed by the Governor and usually subject to confirmation by the Senate. The Cabinet-level Natural Resources Agency, for example, includes the Department of Water Resources, the Department of Parks and Recreation, and the California Energy Commission, to name three of 13 entities within that agency.

Each state entity wields significant power and plays a large role in interpreting and applying the laws of the state.

To find a state agency, department, board or office, visit *www.ca.gov/agencysearch/*.

The organization chart is available at *https://www.gov.ca.gov/wp-content/uploads/2021/12/Exec-Branch-Org-Chart-12.12.21_fully-remediated.pdf*.

Referral number for state agencies: (800) 807-6755.

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, 250 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.

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