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State Senate

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Governor Brown Releases Updated State Budget For 2018-2019

Governor Jerry Brown today released a revised state budget proposal, the State Budget 2018-2019 May Revision, that increases education funding to an all-time high, fully funds the Rainy Day Fund, and directs billions of dollars in surplus funding to address homelessness, improve mental health services, and rebuild infrastructure. Governor Brown stated that this is the longest economic recovery in modern history, but this is not expected to last, saying, "This is a time to save for our future, not to make pricey promises we can't keep."

As California's economy has recovered from the Great Recession, the state has continued to increase Kindergarten-12th grade education funding to record levels; raising the minimum wage; expanding healthcare coverage to millions more Californians; investing in transportation and water systems; and, paying down debts, the Governor explained in today's press conference. Significant details of the revised budget include:

Rainy Day Fund

In 2014, voters created a Rainy Day Fund to save money when the economy is strong for uncertain times ahead. The State Budget May Revision 2018-19 maintains the January 2018 budget commitment to fully fill the fund. By the end of the current fiscal year, this fund will have a total balance of \$9.4 billion growing to \$13.8 billion by the end of 2018-19. Additionally, to further protect against the next economic downturn, the budget proposes to direct an extra \$3.2 billion into the state's traditional budget reserve fund.

Infrastructure, Housing, Mental Health Services & Homelessness

California anticipates \$8 billion in higher revenues through 2018-19 compared to the January budget projection. As a result, the state will keep its existing commitments to increase funding for Medi-Cal, Cal Grants, childcare, In-Home Supportive Services and foster care reform, among other programs, while focusing the majority of the remaining funding on one-time expenditures in three areas:

Department of Insurance

Secretary of State

Official Legislative Information

- Infrastructure (\$2 billion) – The state has substantial liabilities from years of deferred maintenance and would use these funds for universities, courts, state facilities and flood control;
- Housing (\$2 billion) – To help address the state’s housing shortage, the May Revision also proposes to place the \$2 billion “No Place Like Home” bond on the November 2018 ballot, which expands housing opportunities for Californians with mental illness;
- Mental Health Services (\$312 million) – The state will provide funding for programs that help people with mental illness, including training for mental health professionals and early identification of mental health problems. This includes \$254 million to help counties serve youth with mental illness; and,
- Homelessness (\$359 million) – The state will assist local governments to address homelessness across the state, bridging the gap until new funding flows from new housing measures signed by the Governor last year.

Climate Change

To date, the state has appropriated \$6.5 billion in Greenhouse Gas Cap & Trade (C&T) auction proceeds to programs. Earlier this year, the Brown Administration allocated \$1.25 billion in C&T auction funds. The May Revision proposes \$96 million, which includes additional auction proceeds and other funds, to implement the Forest Carbon Plan and take other actions to protect California’s forests against the increasing threat of disastrous wildfires. This \$96 million comes in addition to \$160 million proposed in January’s C&T expenditure plan to support forest improvements and fire protection.

K-12 Education

This budget proposal increases Kindergarten-12th grade school funding by about \$4,600 per student compared to 2011-2012 levels. The state will fully implement the Local Control Funding Formula to address what proponents call historical inequities in school district funding, and permanently increase the minimum per pupil funding school districts receive to help offset rising costs. The May Revision maintains the 3% increase in funding for higher education proposed in January while continuing to keep tuition levels unchanged at both the University of California (UC) and California State University (CSU) systems. Since the end of the Great Recession, the UC system has received \$1.2 billion in new funding, the CSU system has received \$1.6 billion and community colleges have received \$2.4 billion.

The May Revision also provides each university system with \$100 million in new, one-time funding for deferred maintenance. The May Revision also refines the state’s California Online College plan and the new funding formula for community colleges.

Poverty

Since 2012, California has committed approximately \$21 billion in new annual funding to maintain a safety net for those with the greatest needs. The May Revision builds on this

commitment by expanding the state's Earned Income Tax Credit program to workers between the ages of 18-25 and above 64, and adjusts income limits to reflect the minimum wage increase to \$12 per hour in 2019. The budget also continues to provide billions of dollars to pay for: the expansion of healthcare coverage; the restoration of low-income health benefits eliminated during the recession; the repeal of the maximum family grant rule in the California Work Opportunity & Responsibility to Kids; and, increases in childcare and early education provider rates and the number of children served.

Service Tax Amended, Set for Hearing

This week [**SB 993**](#) (Hertzberg, Dem-Van Nuys), a proposal to tax services purchased by businesses, was significantly amended and is set for hearing next week on Wednesday, May 16th. The amendments to the bill added specificity to the percentage of tax to be collected, the mechanisms for taxation, and exemptions for certain services.

Previously, SB 993 did not specify the amount of tax to be collected on services that are purchased by businesses, but the amendments to the bill created a gradual tax structure that would begin at ¾ percent beginning in January of 2020 and increase to 3 percent by January of 2022. In an effort to offset the tax burden, sales tax on personal property purchased by business would decrease by 2 percent over approximately the same period of time, with adjustments built in for actual revenue loss. A number of industries have been exempted by the amendments, including health care, education, rental of property, child care, and residential building construction. Additionally, services that are provided by businesses with less than \$100,000 in annual gross receipts would also be exempted.

There are several problems with the amendments that have been made to SB 993, not the least of which is that it would create a massive tax increase for California businesses. Multiple studies have shown that California is already one of the most unfriendly states for doing business, with high taxes and strict regulations that make it difficult to stay competitive. The addition of this tax on services would create a significant tax increase, and extend to a great number of services that are utilized by businesses in their daily operations. Although the bill attempts to offset this increase by lowering sales tax, it is not enough to cover the wide scope of newly taxed services that will increase costs.

The increased cost of doing business will necessarily be passed on to the consumer in the form of higher prices for goods, as businesses will be faced with increased taxes at multiple stages of their production process. Additionally, the liability for payment of the tax has been placed on the purchaser of the service, not the retailer, further complicating the purchase of necessary services required for business operation. Costs will also be increased for local governments, as an analysis by the California Department of Tax and Fee Administration has estimated that the cost for the administration of the program would be \$900 million in the first year and \$600 million for every year after. When the fact that service tax initiatives in other states have been repealed shortly after implementation is added to the high potential cost of this proposal, the outlook does not look good.

With these amendments, SB 993 is headed to the Senate Governance and Finance Committee for hearing on Wednesday, May 16th. Since the bill is a tax proposal it would

require two thirds vote on the floor, and it has already received strong opposition from the California Chamber of Commerce, the California Taxpayers Association, and other business groups. This is shaping up to be a bitter fight, so stay tuned for more updates as it progresses.

Details On Labor & Employment Legislative Activity

California Chamber of Commerce Employment Coalition members continue to work behind the scenes to make every effort to amend pending bills so they are more realistic to implement. In some cases, it is necessary to remain opposed and outright defeat. These details are discussed below.

AB 1870 (Reyes, Dem-San Bernardino) Unlawful Employment Practices

Summary: The Fair Employment and Housing Act makes specified employment practices unlawful, including discrimination against or harassment of employees. Current law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. This bill extends the period to 3 years for which complaints alleging unlawful employment or housing practices may be filed with the Department.

- According to the Chamber, there is not sufficient industry help to defeat this legislation, in part, because of its bipartisan support. Nevertheless, the Chamber is hopeful industry will stop by the author's office to express concern. It falls just below the category of Chamber Job Killer. The Chamber is seeking documentation of abuses and reducing the complaint filing period to 2 years. No conversations with the Governor's Office have taken place yet, but the sense is that the Governor is not likely to veto the measure as it is written. This is a Women's Caucus priority.

Support & Opposition: This bill is supported by the American Civil Liberties Union, California Employment Lawyers Association, and California Teamsters, among 16 other unions and consumer groups. The opposition is led by the Chamber, 15 large industry trade organizations, as well as multiple local chambers of commerce.

Status: The bill previously passed the Assembly Labor Committee with a unanimous vote, and was placed on the Assembly Appropriations Committee Suspense File.

AB 1976 (Limón, Dem-Santa Barbara) Employer Lactation Accommodation

Summary: Current law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. This bill instead requires an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes.

- The Chamber met with the author on the measure to talk about including a hardship exemption for employers, but discussion did not reach the point of identifying the

number of employees for which it would apply. Assembly Member Monique Limon expressed the view that since the bill is in the Senate, she is not likely take amendments.

Support & Opposition: The sponsor of the bill is the California Medical Association. Other support, of which there are four, include the American Civil Liberties Union and California Employment Lawyers Association. The opposition list is longer, 16 in total, including the Chamber, and 11 large industry trade associations. The National Federation of Independent Business is also opposed.

Status: This bill was approved by the Assembly, and has been referred to the Senate Labor Committee.

AB 2069 (Bonta, Dem-Alameda) Medicinal Cannabis Employment Discrimination

Summary: Provides that, when used to treat a known physical or mental disability or known medical condition, the medical use of cannabis by a qualified patient or person with an identification card is subject to reasonable accommodation. The bill provides that it does not prohibit an employer from refusing to hire an individual or discharging an employee who is a qualified or person with an identification card, if hiring or failing to discharge an employee causes the employer to lose a monetary or licensing-related benefit under federal law. The bill also provides that it does not prohibit an employer from terminating the employment of, or taking corrective action against, an employee who is impaired on the property or premises of the place of employment or during the hours of employment because of the use of cannabis.

- The Chamber has established a coalition, for which the California Manufacturers & Technology Association is the practical lead. Unlike last week, the coalition has some optimism amendments will be listened to, but it remains quite low. There needs to be language that addresses marijuana use in the workplace.

Support & Opposition: The bill is sponsored by the Service Employees International Union, the United Food & Commercial Workers, as well as the Conference of California Bar Association. The 60 member opposition includes the Chamber and 30 industry trade groups, including the National Association of Mutual Insurance Companies, Personal Insurance Federation of California, Property Casualty Insurers Association of California, and the Civil Justice Association of California.

Status: The bill previously passed the Assembly Labor Committee on a party line. The bill was referred to the Assembly Appropriations Committee.

AB 2613 (Reyes, Dem-San Bernardino) Failure to Pay Wage Penalties

Summary: Current law provides for a civil penalty, in addition to, and entirely independent and apart from other penalties, on every person who fails to pay the wages of each employee and requires the Labor Commissioner to recover that penalty. Current law requires that a specified percentage of the penalty recovered under that provision be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws and that the remainder be paid into the State Treasury to the credit of the

General Fund. This bill repeals those provisions and makes an employer or other person acting individually or as an officer, agent, or employee of another person who fails to pay to pay wages of each employee subject to a penalty of \$200, payable to each affected employee, per pay period where the wages due are not paid on time. Penalties escalate financially for additional wage payment failure.

- As mentioned at last week's Chamber Employment Coalition meeting, this affects employers of all sizes. This is a Chamber-designated Job Killer, and meetings with as many Members as possible are occurring. The Chamber's lead labor lobbyist is encouraging as many industry representatives as possible to educate Legislators as possible about the deleterious effects of this measure.

Support & Opposition: This bill is supported by 17 organizations, largely labor unions, such as the California Labor Federation, the Service Employees International Union – California, and the California Employment Lawyers Association. The 30 member opposition consists of the 15 large industry trade organizations, such as the Chamber.

Status: The bill previously passed the Assembly Labor Committee on a party line vote, and was placed on the Assembly Appropriations Committee Suspense File.

AB 2841 (Gonzalez-Fletcher, Dem-San Diego) Sick Leave Accrual

Summary: This legislation changes the requirements of the employer's alternate sick leave accrual method to require no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment. The bill also provides an employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 80 hours or 10 days. The bill raises the limitation on sick leave carried over to the following year of employment to 40 hours or 5 days.

- The Chamber is starting meetings to express concern about the bill, but the author has stated that she is not taking amendments. The Chamber seeks amendments that provide sick leave carry over to the following year in the amount of 3 years. The Chamber would appreciate any lobbyist support with Members, as practical.

Support & Opposition: The bill is supported by the California Employment Lawyers Association. Opposition includes 15 of the largest industry trade groups, including the Chamber.

Status: The bill previously passed the Assembly Labor Committee on a party line vote, and was placed on the Assembly Appropriations Committee Suspense File.

AB 2946 (Kalra, Dem-San Jose) Labor Standards Enforcement Division Complaint Filing

Summary: Current law authorizes a person who believes has been discharged or discriminated against in violation of any law under the jurisdiction of the Labor Commissioner to file a complaint with the Division of Labor Standards Enforcement within 6 months after the occurrence of the violation. This bill extends the period to file a complaint to within 3 years after the occurrence of the violation.

- The Chamber is having personal visits with legislative staff, and requests employer representative accompaniment as available.

Support & Opposition: This bill is supported by 20 organizations, including the Employee Rights Center, the National Immigration Law Center, and the Service Employees International Union. The opposition consists of 38 industry trade groups and local chambers. The Chamber is opposed to the legislation, as well as the California State Association of Counties and Civil Justice Association of California.

Status: The bill previously passed the Assembly Judiciary Committee on a party line vote, and has been referred to the Assembly Appropriations Committee.

AB 2994 (Holden, Dem-Pasadena) Restroom Grab Bar Requirement

Summary: The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose any building standard to submit the building standard to the Building Standards Commission for approval or adoption. This bill requires the Commission, in the next triennial adoption process of the Building Standards Code, to adopt standards requiring newly constructed public restrooms to be equipped with grab bars.

- This measure is intended to increase bathroom grab bar availability at large amusement locations, specifically stadiums that host sporting events and concerts for example. The California Building Industry Association believes that toward the end of the legislative process, the measure will not prevail. The concern to employers is exposure to Americans with Disabilities Act liability for noncompliance.

Support & Opposition: The three registered supporters are the Association of Regional Center Agencies, California Senior Legislature, and Disability Rights California. There is no registered opposition.

Status: Yesterday, the Assembly Appropriations Committee voted 16-0 to approve the measure. It has been referred to the Assembly Floor.

SB 937 (Wiener, Dem-San Francisco) Workplace Lactation Accommodation

Summary: This bill requires a lactation room or location to include prescribed features and requires an employer to provide access to a sink and refrigerator in close proximity to the employee's work space. The bill requires an employer to develop and implement a policy regarding lactation accommodation and make it available to employees.

- The bill as recently amended took no Chamber provisions, including private right of action and an employer hardship exemption, but the lead Chamber lobbyist has a meeting with the Member to discuss. The California Building Industry Association estimates employer implementation costs in the \$40,000-\$120,000 range for retrofit. This is based on a study of Fortune 500 companies. As opposed to AB 1976, which is mentioned above and addresses the same topic, Senator Anthony Wiener is more open to talking about amendments. Senator Limon, author of AB 1976, is obstinate.

Support & Opposition: The bill is supported by the California Employment Lawyers Association, California Labor Federation, and California Teachers Association. Opponents include the Chamber, American Insurance Association, and 8 large industry trade groups.

Status: The bill previously passed the Assembly Judiciary Committee and Assembly Housing Committee, and has been referred to the Assembly Appropriations Committee.

SB 1284 (Jackson, Dem-Santa Barbara) Employer Paydata Reporting

Summary: This bill requires private employers with more than 100 employees to submit an annual paydata report to the Department of Industrial Relations. This bill requires the Department to make the reports available to the Department of Fair Employment and Housing upon request. It imposes a civil penalty of \$500 on any employer who does not comply with the reporting requirement, and requires any penalties collected to be deposited into the Labor Enforcement and Compliance Fund, to be allocated upon appropriation by the Legislature to the Division of Labor Standards Enforcement to enforce wage differential laws.

- The Chamber remains concerned that this information could make its way to a courtroom via subpoena. If the author agrees to the language to seal this data, the Chamber will move it off its Job Killer list but still oppose on the principal of government overreach. The author's statements that this bill is voluntary confuses the conversation because it contains a \$500 per reporting violation penalty for noncompliance.

Support & Opposition: The bill is supported by the Consumer Attorneys of California and the Service Employees International Union. There are 20 local chambers in opposition, in addition to the Chamber, as well 11 large industry trade organizations.

Status: The bill previously passed the Senate Judiciary Committee on a party line vote, and was placed on the Senate Appropriations Committee Suspense File.

Sexual Harassment Legislation

AB 1867 (Reyes, Dem-Fontana) Employee Sexual Harassment Recordkeeping

Summary: This legislation requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing. The bill authorizes the Department of Fair Employment and Housing to seek an order requiring an employer that violates the recordkeeping requirement to comply.

- Next week, the Chamber will be holding a meeting to lobby against the bill. Specifically, the Chamber seeks a 3 year document retention requirement. The author is thought to be willing to accept length of employment plus 5 years on document recordkeeping. In reality, the Chamber is not drawing a line in the sand on this bill, in order to retain equity with Legislators on higher priority labor bills.

Support & Opposition: The bill is sponsored by the California Teamsters and the California Employment Lawyers Association. Opponents include the Chamber, Associated Builders & Contractors Association, and 23 other trade groups.

Status: The bill previously passed the Assembly Appropriations Committee on a party line vote, and is eligible for vote on the Assembly Floor.

AB 3080 (Gonzalez-Fletcher, Dem-San Diego) Employment Discrimination Enforcement

Summary: This legislation prohibits an employer from, as a condition of employment or as a condition of entering into a contractual agreement, prohibiting an employee or independent contractor from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract.

- As reported last week, there is no movement by the author to date. It remains a Chamber-designated Job Killer. Meetings with legislators are ongoing.

Support & Opposition: This bill is sponsored by the California Labor Federation and supported by the American Civil Liberties Union of California and California Employment Lawyers Association. The opposition consists of the Chamber, the 15 largest industry trade groups, and the Civil Justice Association of California.

Status: The bill passed the Assembly Judiciary Committee on a party line vote, and was referred to the Assembly Appropriations Committee.

AB 3081 (Gonzalez-Fletcher, Dem-San Diego) Workplace Sexual Harassment

Summary: Current law prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off work to obtain relief or because of the employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status. This bill also prohibits an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment. The bill makes the filing deadline for these prohibitions and the reasonable accommodations requirement 3 years from the date of occurrence of the violation. It contains employer-employee joint liability.

- This is a priority kill target for the Chamber, but is not designated a Job Killer because sexual harassment legislation is a third rail for both parties this year. The problem with the measure is that it confuses existing law on the subject matter relative to Fair Employment and Housing Act and Labor Code.

Support & Opposition: The bill is supported by the California Teamsters and several women's organizations, among 12 other entities. It is opposed by the Chamber, 13 business trade groups, and 12 local chambers.

Status: The bill previously passed the Assembly Judiciary Committee, and has been referred to the Assembly Appropriations Committee.

SB 1300 (Jackson, Dem-San Diego) Sexual Harassment Legal Standard

Summary: This measure provides that a plaintiff in an action alleging that a defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring is not required to prove that the plaintiff endured harassment or discrimination and provides that it suffices for the plaintiff to show that the employer knew that the conduct was unwelcome to the plaintiff, that the conduct would meet the legal standard for harassment or discrimination if it increased in severity or becomes pervasive, and that the defendant failed to take all reasonable steps to prevent the same or similar conduct from recurring.

- The Chamber is encouraging industry representatives to meet with as many Members as possible to explain the litigation exposure this creates. The private right of action authorization language is the primary area of concern.

Support & Opposition: This bill is sponsored by the California Employment Lawyers Association and Equal Rights Advocates. It is Chamber-opposed, along with over 15 industry trade groups and 12 local chambers.

Status: The bill was previously approved by the Senate Labor and Judiciary Committees, and was placed on the Senate Appropriations Committee Suspense File.

Governor Brown Issues Executive Order On Wildfire Mitigation Funding

Yesterday, Governor Jerry Brown issued Executive Order B-52-18 – Wildfire Mitigation Funding to combat tree mortality, increase the ability of forests to capture carbon, and systematically improve forest management. Major parts of the Executive Order include:

1. Doubling the land actively managed through vegetation thinning, controlled fires and reforestation from 250,000 acres to 500,000 acres;
2. Launching new training and certification programs to help promote forest health through prescribed burning;
3. Boosting education and outreach to landowners on the most effective ways to reduce vegetation and other forest-fire fuel sources on private lands;
4. Streamlining permitting for landowner-initiated projects that improve forest health and reduce forest-fire fuels on their properties;
5. Supporting the innovative use of forest products by the building industry; and,
6. Expanding grants, training and other incentives to improve watersheds.

The order will improve the health of the state's forests and help mitigate the threat and impacts of deadly and destructive wildfires, which hinder the state's progress towards its climate goals, Governor Brown stated. Forests serve as the state's largest land-based carbon sink, drawing carbon from the atmosphere and storing it in trees and shrubs and in forest soils. But even a single wildfire can immediately cancel all those benefits.

The Governor's State Budget 2018-2019 May Revision, released today, will include \$96 million (from various funding sources) to support these actions. This \$96 million comes in addition to \$160 million proposed in January's Greenhouse Gas Emission Cap & Trade expenditure plan to support forest improvements and fire protection.

A Forest Management Task Force will be convened in the coming weeks to help implement this order and its accompanying Forest Carbon Plan, which was finalized today following more than a year of development and public outreach. The Executive Order follows the commitment the Governor made during this year's State of the State address to improve how the state manages its forests and reduces the threat of devastating fires. Eight of the state's 20 most destructive fires have occurred in the past four years. Last winter's Thomas Fire in Ventura and Santa Barbara Counties was the largest in recorded history.

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