



**MEETING AGENDA**

**Monday, May 18, 2015**

Mt. San Jacinto College Campus in Room 805

**Presiding: Alex Braicovich, Chair**

**2015 Strategic Initiatives**

*Budget & Tax Reform / Job Creation and Retention / Healthcare / Infrastructure & The Environment*

**Call to Order, Roll Call & Introductions: 12:00 p.m.**

**Chair Report**

**Agenda Items**

- 1. Approval of April 2015 Meeting Minutes (To follow) Action

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- 2. Legislative Report #4 Action
  - 1. [AB-463 \(Chiu\) Pharmaceutical Cost Transparency Act of 2015](#)
  - 2. [AB 476 \(Chang\) Taxation: homeowners' exemption and renters' credit.](#)
  - 3. [AB 35 \(Chiu D\) Income taxes: credits: low-income housing: allocation increase.](#)
  - 4. [AB 1357 \(Bloom D\) Children and Family Health Promotion Program.](#)
  - 5. [AB 465 \(Hernández, Roger D\) Contracts against public policy.](#)
  - 6. [AB 359 \(Gonzalez D\) Grocery workers.](#)
  - 7. [SB 251 \(Roth D\) Civil rights: disability access.](#)
  - 8. [AB-219 \(Daly D\) Public works: concrete delivery](#)

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- 3. Legislator, Staff and Stakeholder Updates Information

**Federal:** Senators Feinstein & Boxer. Representatives Calvert & Hunter  
**State:** Governor Brown, Senators Stone & Morrell, Assembly Members Melendez, Waldron, Jones & Medina  
**Local:** County, Cities, Utilities, EDC, Healthcare, League of Cities

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- 4. Chamber & Council Member Announcements Information

**Adjourn – Next meeting June 22, 2015.**



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**AB-463 (Chiu) Pharmaceutical Cost Transparency Act of 2015**

**Recommended action: OPPOSE**  
**Presentation: Gene Wunderlich**

**Summary:**

Existing law establishes the Office of Statewide Health Planning and Development, which is vested with all the duties, powers, responsibilities, and jurisdiction of the State Department of Public Health relating to health planning and research development.

This bill would require each manufacturer of a prescription drug, made available in California, that has a wholesale acquisition cost of \$10,000 or more annually or per course of treatment to file a report, no later than May 1 of each year, with the Office of Statewide Health Planning and Development on the costs for each qualifying drug, as specified. The bill would require the office to issue a report annually to the Legislature outlining the information submitted pursuant to this act, and the office would be required to post the report on its Internet Web site. The bill would also require the office to convene an advisory workgroup, as provided, to develop the reporting form required by this act.

**Requirements:**

The report shall include all of the following for each drug:

- (1) The total costs for the production of the drug, including all of the following:
  - (A) The total research and development costs paid by the manufacturer, and separately, the total research and development costs paid by any predecessor in the development of the drug.
  - (B) The total costs of clinical trials and other regulatory costs paid by the manufacturer, and separately, the total costs of clinical trials and other regulatory costs paid by any predecessor in the development of the drug.
  - (C) The total costs for materials, manufacturing, and administration attributable to the drug.
  - (D) The total costs paid by any entity other than the manufacturer or predecessor for research and development, including any amount from federal, state, or other governmental programs or any form of subsidies, grants, or other support.
  - (E) Any other costs to acquire the drug, including costs for the purchase of patents, licensing or acquisition of any corporate entity owning any rights to the drug while in development, or all of these.
  - (F) The total marketing and advertising costs for the promotion of the drug directly to consumers, including, but not limited to, costs associated with direct to consumer coupons and amount redeemed, total marketing and advertising costs for promotion of the drug directly or indirectly to prescribers, and any other advertising for the drug.
- (2) A cumulative annual history of average wholesale price (AWP) and WAC increases for the drug (expressed as percentages), including the months each increase in each category, AWP and WAC, took effect.
- (3) The total profit attributable to the drug as represented in total dollars and represented as a percentage of the total company profits that were derived from the sale of the drug.
- (4) The total amount of financial assistance the manufacturer has provided through patient prescription assistance programs, if available.
  - (c) All of the information in subdivision (b) shall be itemized and documented by the manufacturer, and audited by a fully independent third-party auditor prior to filing.
  - (d) The information required by this section shall be filed annually with the Office of Statewide Health Planning and Development on a form prescribed by the office and shall be submitted no later than May 1 of each year.
  - (e) (1) Notwithstanding Section 10231.5 of the Government Code, the Office of Statewide Health Planning and Development shall issue a report annually to the Legislature outlining the information submitted pursuant to this section, and the office shall post the report publicly on its Internet Web site.
- (2) A report submitted to the Legislature pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.
  - (f) The Office of Statewide Health Planning and Development shall convene an advisory workgroup to develop the form required by this section. The workgroup shall include, but is not limited to, representatives from the pharmaceutical industry, health care service plans and insurers, pharmacy benefit managers, governmental agencies, consumer advocates, and physicians.

## Arguments in Support:

**The author asserts** that as prices for both new and existing prescription drugs continue to rise, it is critically important to analyze drug price and underlying costs associated with individual medicines to inform the development of policies that will ensure access to affordable medications. Legislation is needed to enhance transparency in prescription drug pricing so policymakers and purchasers can deliver on the promise of health care coverage and affordability. According to the author, manufacturers should report data to the State of California in order to provide taxpayers, policymakers and consumers with insight into cost centers associated with drug development and availability.

**EXPENSIVE AND SPECIAL.** Most of the conditions targeted by these specialty drugs tend to be chronic and progressive in nature and can impact quality of life, along with morbidity and mortality. Examples include growth hormone disorders, rheumatoid arthritis, asthma, multiple sclerosis, hepatitis C, hemophilia, cancer, and lupus. Cancer drugs represent a very large segment of specialty drugs, and can cost up to \$10,000 per month. Cancer drugs traditionally are delivered either through IV fluid or through injection in a physician's office or hospital, and were often covered through the plan's medical benefit, rather than pharmacy benefit. Recently, oral anticancer medications have also been used in cancer treatment either as an adjunct to IV therapy, as a substitution for IV therapy, or alone. Oral anticancer medications are being prescribed more frequently for cancer treatment, and an estimated 25% of anticancer agents currently in development are oral cancer treatments. With the advent of oral chemotherapeutics, and recent changes in benefit designs, some of most expensive drugs have been shifted to pharmacy benefit instead of medical benefit.

**Another group of high-cost specialty drugs are "orphan drugs,"** those that are developed to treat very rare diseases. The FDA provides orphan status to drugs and biologics which are intended for the treatment, diagnosis or prevention of rare diseases/disorders that affect fewer than 200,000 people in the U.S., or are not expected to recover the costs of developing and marketing a treatment drug. Because orphan drugs treat very rare conditions, their high price tag is often justified to balance the need to fund manufacturers' research and development toward medical breakthroughs that might not otherwise happen. In recent years, concerns have been raised by payers that manufacturers are charging prices typically reserved for orphan drugs for new drugs that treat a significantly larger population. Due to expected approval of more specialty drugs, the movement of expensive drugs into pharmacy benefits, and charging specialty drug prices for non-specialty drugs, the high cost of prescription drugs is at the forefront for the public, payers, and policymakers.

**EXCLUSIVITY, PATENTS, AND GENERIC DRUGS.** When new drugs come to market, they are patented for approximately 10 to 12 years. The time that a patent covers starts from the initial FDA application, therefore, while patents generally cover a molecule for 20 years, the time it takes each drug to come to market varies, and therefore the remaining patented time varies among drugs. As drugs come off patent the presence of generic competition dramatically reduces price. For example, blockbuster drugs such as Lipitor, Cymbalta and OxyContin have recently come off patent as part of a wave of billions of dollars' worth of brand blockbuster medications losing patent protection<sup>3</sup>. This led to unprecedented availability of generic drugs, while the resulting competition among manufacturers and suppliers of new generic medications drove down drug costs substantially in most of the top therapy classes. The high rate of generic utilization in recent years has led to more than 80% of prescriptions being now filled with generic medicines. However, the pace of price reductions has begun to slow and some generic drugs; for example, doxycycline and oxycodone, available generically for many years, experienced considerable price increases in 2014.

**STICKER PRICE vs ACTUAL PRICE.** The WAC price of a drug on the market, as originally announced by the company is rarely the price paid. The actual price paid by any one payer is proprietary information, which complicates discussions of value and cost to consumers. Drug companies negotiate with payers – Medicare, Medicaid, insurers, and pharmacy benefit plans – to set an initial gross sales price. Drug manufacturers pay rebates back to government entities, creating a difference between gross sales for a drug and net sales. The rebates are not publicly available, and vary highly among payers and for different drugs. Estimates put them between 2% for innovative new drugs all the way to 60% for drugs that have several competitors are generics on the market.

Federal law requires manufacturers to provide rebates to CMS and state Medicaid agencies. The program requires a drug manufacturer to enter into, and have in effect, a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) in exchange for state Medicaid coverage of most of the manufacturer's drugs. These rebates are paid by drug manufacturers on a quarterly basis to states and are shared between the states and the Federal government to offset the overall cost of prescription drugs under the Medicaid program. According to the Department of Healthcare Services (DHCS), drug manufacturers are required to pay a Medi-Cal rebate for all outpatient drugs that are dispensed and paid for by the Medi-Cal program. In addition, some manufacturers have agreed to pay supplemental Medi-cal rebates above the standard rebate. Federal law requires rebates for prescriptions offered through the AIDS Drug Assistance Program (ADAP), in part because of the high cost of HIV/AIDS medications. According to the Kaiser Family Foundation, drug manufacturer rebates account for 40% of the annual ADAP budget<sup>4</sup>.

**THE COST OF DEVELOPING DRUGS.** The research and development process is complex, costly, and time-consuming. According to the California Biotechnology Foundation, it takes 10 to 15 years and costs \$1.2 billion, on average, to advance on potential new medicine from a research concept to an FDA-approved treatment. Failure is built into

the research system. Roughly 95% of candidates entering clinical trial will eventually fail. On average, only one out of every 10 thousand potential new compounds becomes a new drug. According to the Pharmaceutical Manufacturers of America (PhRMA), out of every 5 to 10 thousand screened compounds, only 250 enter preclinical testing, five enter human clinical trials, and one is approved by the FDA.

Due to the complexity and length of time invested in research, it is difficult for analysts and researchers to assess exactly how much it costs to bring one drug to market. The timeframe of development can last for decades, and may be a combination of efforts from multiple companies or previous research on other drugs. An analysis of publicly available data performed by Forbes magazine in 2013 estimated the cost of bringing a drug to market can vary from \$350 Million to \$4.5 Billion.

### **Arguments in Support:**

Supporters believe that this bill is necessary due to the lack of transparency surrounding the pricing of prescription drugs. Proponents state that the public and policymakers should know more about the pricing of drugs in order to determine if the value is worth exorbitant costs. The ACA has increased transparency across our health care system but unfortunately not regarding prescription drug costs and pricing. Anthem Blue Cross writes that this bill will bring the increasing cost of pharmaceuticals into the broader conversation around how to control health care costs in the coming years. While the focus of controlling costs is generally directed at health plans and insurers, it is time for drug manufacturers and other entities to participate in this conversation and offer solutions to reduce costs. The California School Employees Association and other supporters believe that the information provided by this bill will provide accountability into the pricing process and help the public know what the costs are based on. AIDS Healthcare Foundation believes that the lack of drug pricing transparency has been a detriment to the state and its citizens for too long. Many of the supporters argue that high prescription drug prices affect the overall cost of delivering health care, which threatens the long-term success of the ACA and put enormous cost pressures on state and local governments. Health Net states that health plans, insurers, hospitals, and physicians are all required to submit extensive cost and quality data to regulators to guide them in their policy making. If the high cost of these new specialty drugs is justified by the investment the pharmaceutical companies have made to develop, manufacture, and market these drugs then the reporting requirements of this bill will demonstrate this.

### **Arguments in Opposition:**

Opponents argue this bill will result in increased costs without tangible results. The Biotechnology Industry Organization states that this bill does not provide adequate context for the complex issue of pricing, which is based not just on manufacturers' costs, but also on market forces and an assessment of value that cannot simply be reduced to a few lines on a balance sheet. The Pharmaceutical Research and Manufacturers of American (PhRMA) opposes this bill and claims it would create new burdensome reporting requirements on an industry that should otherwise be dedicating its resources to bringing new therapies and cures to prescribing physicians and their patients. PhRMA asserts that the information required by this bill would be difficult to ascertain, and complying with the reporting requirements imposed in the bill will be costly for the life sciences industry. The Orange County Business Council states that these types of disclosures are limited due to confidentiality and proprietary reasons because substantial competitive information can be gleaned from costs associated with specific research and development information and sales and marketing information by marketplace competitors.

Some opponents have voiced concerns about the ultimate goal of this type of transparency. While no one is supportive of the high price of medication, there is a concern that this bill establishes a framework by which future legislation could set out to establish an arbitrary price cap on a drug. There have already been overtures made to establish profitability limits on private enterprise including oil development and other corporate interests.

Further, while the price for a single drug might seem exorbitant, the bill, as proposed, would not allow a manufacturer to offset the cost of development for other drugs which never came to market. A drug manufacturer might incur R & D expense for ten drugs for the same or other illnesses before finding the one drug that is effective for treatment.

Manufacturers could incur significant compliance costs predicated on the extensive reporting and auditing requirements. The bill also seeks to establish yet another ongoing state advisory work group with no information on size or cost of such a group.

Finally, while the bill seeks to promote transparency, it will do nothing to impact the price of drugs and may well exacerbate the cost of a medication due to the increased reporting element imposed by the bill.

### **Support**

AIDS Healthcare Foundation America's Health Insurance Plans  
Anthem Blue Cross  
Association of California Life and Health Insurance Companies  
Blue Shield of California

California Association of Health Plans  
California Hepatitis Alliance  
California Labor Federation  
California Nurses Association  
California PACE Association  
California Professional Firefighters

California School Employees Association  
 California Teachers Association  
 Consumers Union  
 Fresno Chamber of Commerce  
 Greater West Covina Business Association  
 Health Access  
 Health Net  
 Industry Manufacturers Council  
 Kaiser Permanente  
 Laborers International Union of North America Local 777  
 and 792  
 Loma Linda University Medical Center  
 Los Angeles Area Chamber of Commerce  
 Molina Healthcare  
 Montebello Chamber of Commerce

National Multiple Sclerosis Society  
 Ontario Chamber of Commerce  
 Richmond Chamber of Commerce  
 San Gabriel Valley Economic Partnership  
 San Gabriel Valley Regional Chamber of Commerce  
 San Ramon Chamber of Commerce  
 SEIU California  
 Small Business Majority State Building and Construction  
 Trades Council, AFL-CIO  
 Torrance Area Chamber of Commerce  
 Torrance Area Chamber of Commerce Governmental Affairs  
 Policy Group  
 UFCW Western States Council Valley Industry and  
 Commerce Association  
 Young Professionals Chronic Disease Network

## **Opposition**

AbbVie  
 Allergan  
 Amgen  
 Astellas Pharma  
 BayBio Biocom Biogen  
 Bayer  
 BioMarin Pharmaceutical  
 Biotechnology Industry Organization  
 Boehringer-Ingelheim  
 California Healthcare Institute  
 California Manufacturers & Technology Association  
 Eisai

Genzyme  
 Irvine Chamber of Commerce  
 Orange County Business Council  
 Otsuka Pharmaceutical Development & Commercialization,  
 Inc  
 Pfizer  
 Pharmaceuticals Research and Manufacturers of America  
 Sanofi  
 Sunovion  
 Takeda Pharmaceutical Company  
 TechNet

**Status:** Active - In Committee Process. Assembly Committee on Health. Hearing postponed by committee

<b>Legislative Item #2</b>	<b>Action</b>
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### **[AB 476 \(Chang\) Taxation: homeowners' exemption and renters' credit.](#)**

**Recommended action: SUPPORT**  
**Presentation: Gene Wunderlich**

#### **Summary:**

**Introduced by Assembly Member Chang  
 (Principal coauthor: Assembly Member Harper)  
 (Principal coauthor: Senator Vidak)  
 (Coauthors: Assembly Members Achadjian, Travis Allen, Brough, Chávez, Gallagher, Grove,  
 Jones, Kim, Lackey, Linder, Mayes, Melendez, Olsen, Patterson, Steinorth, Waldron, and Wilk)  
 (Coauthors: Senators Morrell, Nguyen, and Nielsen)**

Existing property tax law provides, pursuant to the authority of a specified provision of the California Constitution, for a homeowners' exemption in the amount of \$7,000 of the full value of a "dwelling," as defined, and authorizes the Legislature to increase this exemption.

This bill, beginning with the lien date for the 2016–17 fiscal year, would increase the homeowners' exemption from \$7,000 to \$25,000 of the full value of a dwelling. This bill would also require, for the 2017–18 fiscal year and for each fiscal year thereafter, the county assessor to adjust the amount of the homeowners' exemption by the percentage change in the House Price Index for California for the first 3 quarters of the prior calendar year, as specified.

The California Constitution requires the Legislature, whenever it increases the homeowners' property tax exemption, to provide a comparable increase in benefits to qualified renters. The Personal Income Tax Law authorizes various credits against the taxes imposed by that law, including a credit for qualified renters in the amount of \$120 for married couples filing joint returns, heads of household, and surviving spouses if adjusted gross income is \$50,000 or less, and in the

amount of \$60 for other individuals if adjusted gross income is \$25,000 or less. Existing law requires the Franchise Tax Board to annually adjust for inflation these adjusted gross income amounts.

This bill would, for taxable years beginning on and after January 1, 2016, increase this credit for a qualified renter to \$428 for married couples filing joint returns, heads of household, and surviving spouses if adjusted gross income is \$50,000 or less, as adjusted for inflation, and to an amount equal to \$214 for other individuals if adjusted gross income is \$25,000 or less, as adjusted for inflation. The bill would also require, for taxable years beginning on or after January 1, 2017, the Franchise Tax Board to annually adjust for inflation, based upon the California Consumer Price Index, the amount of these credits.

#### **Purpose of Bill:**

The California Constitution provides a \$7,000 reduction in the taxable value for a qualifying owner-occupied home. The home must have been the principal place of residence of the owner on the lien date, January 1st. To claim the exemption, the homeowner must make a one-time filing of a simple form with the county assessor where the property is located. The claim form, BOE-266, *Claim for Homeowners' Property Tax Exemption*, is available from the [county assessor](#).

This bill seeks to expand the decades old exemption of \$7,000 with an exemption of \$25,000 and automatically link future exemptions to the Housing Price Index.

**The author has provided the following statement in support of this bill:** "The current homeowners' exemption in California is \$7,000. This is taken off the value of a homeowner's primary residence, amounting to \$70 annually off of your property tax bill, or one percent. As of 1972, when the homeowner's exemption was last changed, the median California home price was approximately \$21,000. Today, it is nearly \$425,000 and climbing. Clearly this benefit to taxpayers has not kept up with the price of homes.

"Since 1985, there have been at least 30 bills introduced into the state Legislature attempting to increase the exemption amount, either for all homeowners or for certain groups (such as seniors or first-time home buyers) or to index it to inflation. All have failed. "Beginning with the 2015-16 fiscal year, the exemption would increase from \$7,000 to \$25,000. This would increase the annual exemption every homeowner would receive from \$70 (1% of exemption) to \$250.

Some would argue that this increase is not necessary because Proposition 13 already saves homeowners thousands of dollars every year. However, property taxes remain high because of local bond debt and special taxes – especially special parcel taxes –which do not count against Proposition 13's one percent cap." According to the non-partisan Tax Foundation, California ranks 19th out of 50 states in per capita property tax collections. We would argue there is much more government can do to bring increased property taxes under control. This is especially true considering California ranks at or near the top of a number of major tax categories including income, sales, and gas taxes.

With California experiencing a revenue surplus in the billions of dollars, and the highest General Fund budget since before the recession, the time seems right for broad based tax relief. With homeowners constituting a majority of California's population, an increase in the exemption represents sound public policy. "The proposed bill would also annually index the homeowner's exemption to the House Price Index for California as determined by the federal Housing Finance Agency to ensure that current and future homeowners can also benefit from the full value of the homeowners' exemption."

Proponents argue that the time "is right for tax relief...that supports the greatest number of taxpayers" and that, "while Proposition 13 continues to provide necessary property tax relief for all homeowners, more is needed." They assert that inflation, "as well as bonds and voter-approved parcel taxes, have added additional burdens to homeowners' tax bills." Thus, the proponents believe that, given "California's homeownership base and increased General Fund revenues, increasing the homeowners' exemption represents appropriate public policy."

#### **HJTA INITIATIVE WOULD MAKE HOUSING MORE AFFORDABLE**

##### **Jon Coupal May 1, 2015**

As part of an ongoing effort to help those who struggle to keep a roof over their heads, the [Howard Jarvis Taxpayers Association](#) has filed an initiative that would increase the *homeowners exemption* and the *renters tax credit*. This is the first step in qualifying the initiative, the [California Homeowners and Renters Tax Relief Act of 2016](#), for the ballot. The Office of the Attorney General has about 60 days to provide a title and summary so that signature gathering can begin.

Only about one-third of Californians can afford to realize the American dream of owning their own home. The homeowners' property tax exemption of \$7,000 (worth a \$70 deduction on your property taxes) has not been increased since 1972 when the median priced home sold for \$28,660. Currently, an average home is selling for nearly ten (10) times that amount, and yet the homeowners' exemption remains unchanged.

Increasing the homeowners' property tax exemption from \$7,000 to [\\$32,000](#) will save every homeowner in California an additional \$250 per year. This will help to mitigate the heavy financial burden placed on homeowners from property tax increases to repay local bonds, and provide some relief from excessive utility fee and charge increases.

By increasing the *renters tax credit*, this act will provide tax relief to renters, who also face severe housing affordability problems.

HJTA will keep taxpayers up to date on progress on the California Homeowners and Renters Tax Relief Act of 2016, and when the initiative title and summary are issued, inform homeowners and renters how they can help qualify tax relief for the ballot and pass it into law.

### **FISCAL EFFECT:**

The State Board of Equalization (BOE) staff estimates that this bill would result in an annual General Fund (GF) revenue loss of \$1.07 billion (from the increase in the state reimbursement for the homeowners' exemption). In addition, the FTB staff estimates that this bill would result in an annual GF revenue loss of \$340 million in FY 2016-17, and \$220 million in FY 2017-18.

### **Support**

B. Dutton, Assessor-Recorder-County Clerk, San Bernardino County  
**California Association of Realtors**  
Contra Costa Taxpayers Association  
**D. Harkey**, State Board of Equalization, Member  
Fullerton Taxpayers Association  
**G. Runner**, State Board of Equalization, Member  
**Howard Jarvis Association**  
Humboldt County Taxpayers League

Kern County Taxpayers Association  
KernTax Fact Through Research  
Long Beach Taxpayers Association  
Napa County Taxpayers Association  
National Tax-Limitation Committee  
Orange County Taxpayers Association  
Placer County Taxpayers Association  
San Diego Tax Fighters

### **Opposition**

None on file

**Status:** Active - Committee on Revenue & Taxation.

<b>Legislative Item #3</b>	<b>Action</b>
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### **AB 35 (Chiu D) Income taxes: credits: low-income housing: allocation increase.**

**Recommended action: SUPPORT**  
**Presentation: Gene Wunderlich**  
**CalChamber designated Job Creator**

### **Summary:**

Modifies the existing Low-Income Housing Tax Credit (LIHTC) program and increases the aggregate credit amount that may be annually allocated to low-income housing projects by \$300 million for the 2015 calendar year and each calendar year thereafter. Creates Affordable Housing Opportunities. Expands the existing low-income housing tax credit program, **making the state better able to leverage an estimated \$200 million more in Federal Tax Credits.**

### **Purpose of Bill:**

**The author has provided the following statement in support of this bill:** "California's shortfall of 1.5 million affordable rentals impedes our state's economic growth by slowing job creation and driving Californians into poverty. When housing costs are accounted for, the proportion of people unable to meet their basic needs – food, shelter, transportation – rises from 16 percent to 23 percent, the highest rate of poverty in the nation. "A recent report from the California Housing Partnership depicts a growing statewide crisis driven by a growing divide between incomes and rents. Statewide, median incomes have fallen 8 percent since 2000; meanwhile, rental prices have soared by 21 percent in the same timeframe. **There isn't a single county in California with enough affordable rentals for families struggling to make ends meet.** "Rising rents are locking broad swaths of Californians – people who are key contributors to our communities – out of San Francisco, San Diego and many other California cities and crowding their families into unsafe housing. **Twenty-one of the nation's least affordable cities are in California;** our home-health aides, child-care workers, and teachers' assistants have virtually nowhere to live in the communities where they work, even if they work full-time. "Small businesses and creators of entry-level jobs face particular difficulties recruiting employees. Closing our communities to struggling workers reverberates through our entire economy and impacts all taxpayers." **California leaders must act to replace the \$1.5 billion annual state investment wiped out when voter-approved housing bonds were expended and redevelopment funding was**

eliminated. AB 35 would take a step in the right direction by increasing the California Low-Income Housing Tax Credit, a proven public-private-partnership model, by \$300 million per year, and enable the state to attract \$600 million in additional federal funding that would otherwise not come to California."

### **Arguments in Support.**

The proponents state that the lack of affordable housing is "the main reason why California has the second lowest homeownership rate in the nation." The proponents note that, while the state "has invested a considerable amount of money through the sale of voter-approved bonds and other measures to incentivize the construction of affordable housing, the cost of housing is either out of reach for many people or consumes a significant portion of their family budget." The proponents, citing a February 2015 report by Standard and Poor's, assert that the lack of affordable housing "contributes to a relatively weaker business climate in California." They argue that, although this bill "will not make up for the dissolution of the state's redevelopment agencies that previously served as a critical source of capital for affordable housing projects, it does have the potential to allow California to pull down hundreds of millions of dollars in federal tax credits and federal tax-exempt bonding authority each year to create and preserve affordable homes for low income Californians." This bill would not only increase "California investment in low-income housing, but it will help leverage an additional \$600 million in federal housing resources." Finally, the proponents assert that "increasing the aggregate housing state credit dollar amount that may be allocated among low-income housing developments and allowing the state to more effectively leverage federal tax-exempt bond financing will help fill the gap in funding affordable housing units across our communities and the state."

**Deficiency in Current Law:** According to the California Housing Partnership, California used more of the federal 4% LIHTC than any other state during the early part of last decade. However, with the elimination of California's redevelopment agencies and the exhaustion of state housing bond funding, developers of low-income housing have been left with very few resources to leverage the 4% credit. As a result, the number of newly constructed LIHTC units that have been funded with the 4% credit has plummeted in the last two years, from 4,000 in 2012 to fewer than 2,000 in 2014.

**A Different Kind of Credit?** The LIHTC program induces investment into low-income housing by sanctioning a tax shelter structure that helps compensate private investors for allocating capital to an asset class with a relatively poor rate of return. Low-income housing projects face many barriers in California: the high cost of land, labor, and capitol, as well as state laws and policies protecting the environment, among others. In return for providing the LIHTC, the state arguably gets more affordable housing.

### **Supporting:**

Betty T. Yee, California State Controller	City of Concord
Bridge Housing	City of Lakewood
California Apartment Association	City of Sacramento
California Bankers Association	City of San Diego
California Building Industry Association	City of Thousand Oaks
California Council of Community Mental Health Agencies	Habitat for Humanity
California Infill Builders Federation	Mental Health America of California
California Special Districts Association	National Association of Social Workers, California Chapter
California State Association of Counties	San Diego County Apartment Association
Cities Association of Santa Clara County	Santa Clara County Board of Supervisors
City of Banning, City Council	California Chamber of Commerce

### **Opposition**

None on file

**Status:** Active - Amend, and do pass as amended and re-refer to Com. on REV. & TAX. (Ayes 7. Noes 0.)

**Ayes:** Burke, Chau, Chiu, Beth Gaines, Lopez, Mullin, Steinorth

## **Legislative Item #4**

## **Action**

### **AB 1357 (Bloom D) Children and Family Health Promotion Program.**

**Recommended action: OPPOSE**  
**Presentation: Gene Wunderlich**  
**CalChamber designated Job Killer**

## **Summary:**

Imposes a health promotion fee of \$0.02 per fluid ounce on bottled sugar sweetened beverages (SSBs) and concentrates. Establishes the Children and Family Health Promotion Trust Fund (Fund) and allocates moneys from the Fund to various state departments for purposes of statewide diabetes and childhood obesity treatment and prevention activities and programs. Authorizes the Board of Equalization (BOE) to administer and collect the fee and deposit all fees, penalties, and interest collected under the law into the Fund. Contains an urgency clause to ensure that the provisions of this bill go into immediate effect upon enactment. Targeted Tax. Threatens jobs in beverage, retail and restaurant industries by arbitrarily and unfairly targeting certain beverages for a new tax in order to fund children's health programs.

- Fifty-one percent must be allocated to Department of Public Health (DPH)
- Twenty-five percent of funds must be allocated to the Department of Education (CDE),
- Twenty percent of funds must be allocated to the Department of Food and Agriculture (DFA)
- Four percent of funds must be allocated to the Department of Health Care Services (DHCS)

## **PURPOSE OF THIS BILL.**

According to the author, this bill would establish the Children and Family Health Promotion Program. The program will administer a competitive grant process to provide counties, nonprofit organizations, community-based organizations, and licensed clinics to fund childhood diabetes and obesity prevention activities and oral health promotion programs. The program will also fund existing programs designed to increase access to California-grown healthy and fresh foods, encourage increased physical education in California's public schools, and ensure access to clean drinking water.

The revenues from this bill will be used to help diminish the human and economic costs of diabetes, obesity, heart disease, and dental disease in California. The author asserts that diabetes alone adds an extra \$1.6 billion every year to state hospitalization costs with the attendant increased cost in all of our public health programs - money which would be better invested in preventive health and education. Although the number of Californians with diabetes has increased significantly over the past decade, DPH received 22% less federal funding for diabetes prevention in fiscal year 2013-14. At a funding level of \$0.03 per capita, California has the lowest per capita funding for diabetes prevention in the nation. The author states that California needs to step up its efforts to combat and prevent childhood obesity and diabetes and that there is a great need for a new program to fund more effective local prevention and treatment programs.

## **Arguments in Support:**

The American Heart Association, cosponsor of this bill, states that the adverse health effects of the overconsumption of SSBs are harming our communities, and its effects pose a significant economic burden on our state that requires urgent action. They further state that soda and other SSBs are the number one source of added sugar in the American diet, and are linked to increased risk of diabetes and other serious diseases such as heart and liver disease, obesity, and tooth decay. The Center for Science in the Public Interest and other supporters state that definitive scientific studies have concluded that SSB intake is a major cause of rising obesity rates. Most people consume nearly 300 more calories per day than 30 years ago and 43% of that caloric increase comes from the consumption of SSBs. Latino Coalition for a Healthy California, a cosponsor of this bill, states that the revenue generated by this fee will enable the state to improve access to healthy foods and invest in diabetes-related healthcare services and prevention in communities that are disproportionately impacted by type 2 diabetes and other diseases related to high sugar consumption.

## **Arguments in Oppositon:**

The California League of Food Processors states that they understand and share the concerns about the nationwide problem with obesity, but do not believe that this bill is the right policy approach. The personal decision to purchase and consume a SSB should not be regulated by the Legislature through the imposition of new fees or taxes. Californians for Food and Beverage Choice state that singling out one group of products is discriminatory and will not reduce obesity or diabetes. Obesity and diabetes are complex health issues that have myriad contributing factors including genetics, physical activity, and calorie intake from all sources – not just beverages. As a result, it is unfair and inaccurate to portray SSBs as the main culprit.

It needs to be made clear that obesity and related diseases, like diabetes, have multiple risk factors, including diet, genetics, age, and stress. Dealing with these health issues is more complicated than simply taxing a sub-set of beverages. The California-Nevada Beverage Association and others state that targeting a specific industry to pay for a problem that has multiple causes is short sighted and will impede economic growth and eliminate jobs in that industry. The business community consistently maintains that if a fee or tax is necessary, it should only be temporary and broad based so that the impact is minimized as it is shared by all instead of an individual business or industry.

## Support

American Heart Association / American Stroke Association (cosponsor)  
California Dental Association (cosponsor)  
Latino Coalition for a Healthy California (cosponsor)  
ACCESS Women's Health Justice  
ACT for Women and Girls  
AltaMed Health Services Corporation  
Alturas Health  
American Federation of State, County and Municipal Employees, AFL-CIO  
Asian Americans Advancing Justice - Los Angeles  
Asian Law Alliance  
Asian Pacific Partners for Empowerment, Advocacy, and Leadership  
Black Women for Wellness  
California Alliance of Boys & Girls Clubs  
California Association of Environmental Health Administrators  
California Black Health Network  
California Center for Public Health Advocacy  
California Chronic Care Coalition  
California Food Policy Advocates  
California Immigrant Policy Center  
California Latinas for Reproductive Justice  
California Pan-Ethnic Health Network  
California Partnership  
California Primary Care Association  
California Rural Indian Health Board, Inc.  
California Rural Legal Assistance Foundation  
Cal-Islanders Humanitarian Association  
Center for Science in the Public Interest  
Central Valley Partnership for Citizenship  
Centro Binacional para el Desarrollo Indígena Oaxaqueño - Fresno  
Centro Binacional para el Desarrollo Indígena Oaxaqueño - Greenfield  
Centro Binacional para el Desarrollo Indígena Oaxaqueño - Los Angeles  
Chinese Progressive Association  
Coalition for Humane Immigrant Rights of Los Angeles  
Community Alliance with Family Farmers  
Community Clinic Association of Los Angeles County  
Consejo de Federaciones Mexicanas

County Health Executives Association of California  
Earth Mama Healing  
El Camino Children and Family Services, Inc.  
El Quinto Sol de America  
Farmer Veteran Coalition  
Fresno Center for New Americans  
Fresno Interdenominational Refugee Ministries  
Guam Communications Network  
Having Our Say Coalition  
Health Officers Association of California  
Healthy and Active Before 5  
Korean Community Center of the East Bay  
Korean Resource Center  
Latino Health Alliance  
Libreria del Pueblo  
Madera Coalition  
Maternal and Child Health Access  
Mexican American Legal Defense Fund Mid-City CAN  
National Council of La Raza  
National Hmong American Farmers  
Nile Sisters Development Initiative  
North County Health Services  
Orange County NAACP  
Pacific Islander Cancer Survivors Network  
PDI Surgery Center  
Prevention Institute  
Providence Health & Services Southern California  
Roots Community Health Center/Roots Community Health Alliance  
Roots of Change  
Santa Clara County Board of Supervisors  
San Ysidro Health Center  
Saban Community Clinic  
Services, Immigrant Rights, and Education Network  
South Asian Network  
SSG/Pals for Health  
Street Level Health Project  
Sustainable Economic Enterprises of Los Angeles  
The Council of Mexican Federations  
United Farm Workers  
Vision y Compromiso  
Young Invincibles

## Opposition

American Beverage Association  
Association of Food, Beverage, and Consumer Products Companies  
CalAsian Chamber of Commerce  
California Attractions and Parks Association  
California Chamber of Commerce  
California Grocers Association  
California League of Food Processors  
California Restaurant Association

California Retailers Association  
California Right to Life Committee, Inc.  
California Taxpayers Association  
California Teamsters Public Affairs Council  
California-Nevada Beverage Association  
Californians for Food and Beverage Choice  
Howard Jarvis Taxpayers Association  
IFA Franchising  
Juice Products Association

Los Angeles County Business Federation  
National Association of Theatre Owners of  
California/Nevada

National Federation of Independent  
Business

**Status:** Active - Referred to Committees on Health, Amend, and re-refer to Com. on HEALTH. (Ayes 12. Noes 1.) .

**Ayes:** Bonilla, Bonta, Burke, Chávez, Chiu, Gomez, Lackey, Maienschein, Patterson, Ridley-Thomas, Waldron, Wood

**Noes:** Steinorth

**No Votes Recorded:** Gonzalez, Roger Hernández, Nazarian, Rodriguez, Santiago, Thurmond

## Legislative Item #5

Action

### AB 465 (Hernández, Roger D) Contracts against public policy.

**Recommended action: OPPOSE**

**Presentation: Gene Wunderlich  
CalChamber designated Job Killer**

#### Summary:

**AB 465** will preclude pre-dispute employment arbitration agreements, which both the California Supreme Court and the United States Supreme Court have already authorized. As such, **AB 465** will only serve to drive up litigation costs for all California employers, increasing individual claims, representative actions and class action lawsuits against California employers of all sizes until such legislation can work through the judicial process to be challenged again. It will also increase pressure on the already-overburdened judicial system by precluding mandatory employment arbitration agreements. This measure is likely pre-empted by the Federal Arbitration Act.

**AB 465** deems any pre-dispute contractual provision made as a condition of employment that waives “any legal right, penalty, forum, or procedure for specified employment law violations as unconscionable, involuntary, and against public policy.”

#### California and United States Supreme Courts Have Already Authorized Mandatory Employment Arbitration Agreements:

#### ARGUMENTS IN SUPPORT

According to the author and the sponsor, the goal of this bill is to protect workers from being coerced into signing contracts to waive the right to take labor violations to the Labor Commissioner or to court and submit all claims to the employer’s arbitrator. As one of the legislative findings and declarations contained in the bill states:

"It is the purpose of this act to ensure that a contract to waive any of the rights, penalties, remedies, forums, or procedures under the Labor Code, including any provision that has the effect of limiting the full application or enforcement of any right, remedy, forum, or procedure available under the Labor Code, *is a matter of voluntary consent, not coercion.*"

Therefore, this bill is designed to ensure that waivers of important employment rights and procedures arising under California law are made voluntarily and with the consent of the employee.

This bill is sponsored by the California Labor Federation, AFL-CIO, which states:

"Wage theft and other labor abuses are particularly egregious for immigrant workers but are widespread across industries for so many low-wage workers. Workers are often required to work off the clock, are paid only in tips, or are misclassified as independent contractors and not even paid for all the hours worked. Pervasive labor law violations serve to exacerbate economic inequality and prevent workers from ever getting ahead.

There are very few remedies available to most low-wage workers when their rights are violated. They can file a claim to the Labor Commissioner or they can find access to counsel through a collective legal action. Yet employers have found a way to circumvent these avenues. Increasingly companies are requiring workers to sign waivers of the right to take claims to the Labor Commissioner or to court and instead requiring them to take any claims to the employer’s private arbitrator.

The use of mandatory arbitration agreements is increasing dramatically. A recent article in the Wall Street Journal reported that the number of companies that use such agreements has risen sharply from 16% in 2012 to 43% in 2014. As they become more common, we are increasingly seeing them in low-wage workplaces, where immigrant workers who may not even speak the language used in the contract are required to sign as a condition of employment. From port truck drivers to retail workers to car wash workers to janitors, workers across the low-wage economy are being required to sign away their right to engage in collect action or even just rely on state agencies for help without even knowing they have done so.

[This bill] would provide some basic protections to these workers. It would require that these agreements be voluntary and not required as a condition of employment. It would require that a waiver of rights be voluntary. Lastly, it would prohibit employers from threatening, retaliating, or discriminating against workers for refusing to sign such a waiver. These are core tenets of contract law and are consistent with the Supreme Court's direction that such contracts should not be entered into under coercion.

[This bill] is modeled on AB 2617 (Weber), passed in 2014 and signed into law, which provided the same protections for these types of waivers involving civil rights. Nothing in this bill undermines the ability of employers or workers to voluntarily enter into arbitration agreements. This bill simply provides a minimal level of protection to keep workers from being coerced into waiving basic rights."

Similarly, the **Consumer Attorney of California** states the following in support of this bill:

"These forced waiver of rights clauses, sometimes referred to as arbitration clauses, should not protect individuals violating our labor laws by shielding their bad acts from the public and subjecting the employees to forced, private and secret proceedings.

Finally, the **California Employment Lawyers Association** (CELA) states:

"CELA strongly supports arbitration when it is voluntarily and knowingly agreed upon by the employee post-dispute or pursuant to a collective bargaining agreement negotiated between employers and unions. However, most arbitration agreements today are imposed by employers on employees—it is not voluntary and there is no informed consent by the employee. Moreover, it is virtually impossible for an employee to evaluate and make an educated choice about the appropriateness of a resolution mechanism prior to the existence of an actual employment dispute.

## **ARGUMENTS IN OPPOSITION**

In addition to the arguments regarding **preemption under the Federal Arbitration Act** discussed above, opponents make a number of other arguments against this bill.

First, they state that **adequate protections already exist for mandatory, pre-dispute employee arbitration agreements:**

"Specifically, in *Armanderiz v. Foundation Health Psychcare Services, Inc.* 24 Cal.4th 83 (2000), the California Supreme Court held that pre-dispute employment arbitration agreements upon which employment is conditioned that encompass unwaivable statutory rights are valid and enforceable as long as the following contractual protections are included: (1) provide for a neutral arbitrator; (2) no limitation of remedies; (3) adequate opportunity to conduct discovery; (4) written arbitration award and judicial review of the award; and, (5) no requirement for the employee to pay unreasonable costs that they would not incur in litigation or arbitration...

...Arbitration agreements that have not included these mandatory provisions have regularly been struck down as unconscionable. *See Wherry v. Award, Inc.*, 192 Cal.App.4th 1242 (2011), a court deemed an independent contractor arbitration agreement unconscionable where it expanded the right to attorney's fees for FEHA violations to the company and reduced the time to file a FEHA claim from one year to 180 days. *See also Ajamian v. CantorCO2e, L.P.*, 203 Cal.App.4th 771 (2012) (denying arbitration where terms that required a California independent contractor to pay upfront costs, arbitrate in New York, and waive statutory rights was substantively unconscionable); and *Trivedi v. Curexo Technology Corp.*, 189 Cal.App.4th 387 (2010) (refusing to enforce arbitration agreement that provided a prevailing party an attorney's fee award without imposing limitation of recovery under FEHA). Accordingly, adequate protections already exist in pre-dispute, mandatory employment arbitration agreements." Second, opponents contend that arbitration provides an effective and efficient means to resolve employment-related claims:

"According to the U.S. District Court Judicial Caseload Profiler, there were 29,312 civil cases filed in California in 2014. As of June 2014, approximately 2,132 cases had been pending in federal court in California for over three years and the median time from filing of a civil complaint to trial in Northern California was 31 months. Comparatively, a 2003 article

in the New York University School of Law legal journal authored by Theodore Eisenberg and Elizabeth Hill regarding employment arbitration found that arbitration was resolved within a year while litigation usually lasted over two years.

A 2006 study by Mark Fellows, Legal Counsel at the National Arbitration Forum, titled "The Same Result as in Court, More Efficiently: Comparing Arbitration and Court Litigation Outcomes," concluded that **consumers and employees actually fare better in arbitration than in court**. Fellows specifically analyzed data from California and found that consumers prevail in arbitration 65.5% of the time, as compared to 61% of the time in court. In their article, Eisenberg and Hill also found that, aside from civil rights disputes, higher-paid employees' success rate in arbitration was basically the same as in litigation, with equivalent awards.

In a presentation to the George Washington University Law School in March 2011, attorney Andrew Pincus also agreed that the national data and evidence available demonstrate that **consumers do the same if not better in arbitration than litigation**, as one of the largest arbitration providers documented at least 45% of consumer arbitrations result in a damages award, while over 70% of consumer-initiated securities arbitrations result in a recovery to the consumer. Finally, a recent report in July 2013 published by the Heritage Foundation titled "The Unfair Attack on Arbitration: Harming Consumers by Eliminating a Proven Dispute Resolution System," supported these findings by Fellows, concluding that "[a]rbitration is generally faster, cheaper, and more effective than the litigation system. It is not affected by cutbacks in judicial budgets or the increases in court dockets that significantly delay justice."

Therefore, **opponents conclude that this bill will send disputes into the overburdened and underfunded judicial system:**

"In March 2015, in the State of the Judiciary address, Chief Justice Tani G. Cantil-Sakauye commented that the judicial system is still falling short in its necessary funding, which has resulted in closed courthouses, reduced hours of service, and reduced number of employees. This funding shortage has significantly increased the length of time to resolve civil lawsuits. Arbitration is a valuable alternative method to resolve disputes in an efficient manner and should be encouraged. Instead, [this bill] will force more employment disputes into the already overburdened judicial system, thereby delaying any recovery of potential wages for an employee even longer by essentially banning any predispute, mandatory employment arbitration agreements."

### **Support**

American Civil Liberties Union of CA  
American Federation of State, County and Municipal Employees  
CA Conference Board of the Amalgamated Transit Union  
CA Conference of Machinists  
California Employment Lawyers Association  
California Labor Federation, AFL-CIO (sponsor)  
California Nurses Association  
California Professional Firefighters  
California Rural Legal Assistance Foundation, Inc.  
California School Employees Association  
California State Firefighters' Association

California Teamsters Public Affairs Council  
CLEAN Carwash Campaign  
Congress of California Seniors  
Consumer Attorneys of California  
Consumer Federation of California  
Consumers for Auto Reliability and Safety  
Engineers and Scientists of CA, IFPTE Local 20  
International Longshore and Warehouse Union  
Koreatown Immigrant Workers Alliance  
Professional and Technical Engineers, IFPTE Local 21  
Service Employees International Union, California  
UNITE-HERE  
Utility Workers Union of America

### **Opposition**

Associated Builders and Contractors of California  
**California Apartment Association**  
California Association of Health Facilities  
**California Association of Realtors**  
**California Building Industry Association**  
California Business Properties Association  
**California Chamber of Commerce**  
California Employment Law Council  
California Farm Bureau Federation  
California Hotel and Lodging Association  
California League of Food Processors

California Manufacturers and Technology Association  
California Newspaper Publishers Association  
California Retailers Association  
California Trucking Association  
Civil Justice Association of California  
**National Federation of Independent Business**  
Personal Insurance Association of California  
West Coast Lumber & Building Materials Association  
Western Growers Association  
Wine Institute

**Status:** Active - Committee on Labor & Employment. Do pass. (Ayes 5. Noes 2.)

Ayes: Chu, Roger Hernández, Low, McCarty, Thurmond  
Noes: Harper, Patterson

[AB 359 \(Gonzalez D\) Grocery workers.](#)

**Recommended action: OPPOSE Job Killer**  
**Presentation: Gene Wunderlich**  
**CalChamber designated Job Killer**

Summary:

**KEY ISSUE:** SHOULD EMPLOYEES OF A LARGE GROCERY STORE BE ENTITLED TO RETAIN THEIR JOBS FOR A 90-DAY TRANSITION PERIOD AFTER THE GROCERY STORE IS PURCHASED BY A NEW OWNER, SUBJECT TO THE NEW OWNER'S RIGHT TO TERMINATE ANY OF THOSE EMPLOYEES FOR CAUSE OR TO REDUCE THE SIZE OF THEIR WORKFORCE?

**AB 359** is a Costly Employee Retention Mandate. It inappropriately alters the employment relationship and increases frivolous litigation by allowing a private right of action and by requiring any successor grocery employer to retain employees of the former grocery employer for 90 days and continue to offer continued employment unless the employees' performance during the 90-day period was unsatisfactory.

Arguments in Support:

This measure will protect the jobs of grocery workers – at least for a 90-day transition period – if the store where they work is purchased by another company that will continue operating the business as a grocery store. The bill only applies to larger grocery stores (greater than 15,000 square feet). A new (or successor) employer would retain the right to terminate employees for cause during the 90-day transition period. Once the 90-day period ends, the employer would be required to "consider" the former employees for permanent employment, but would not be required to hire them.

According to the author, mergers and buy-outs in the supermarket industry can have a devastating effect on workers who suddenly find themselves out of work for no fault of their own. Existing state law provides similar, though not identical, protections for janitorial workers and public transit workers. In addition, at least four California cities – Los Angeles, San Francisco, Santa Monica, and Gardena – already have local retention ordinances for grocery store workers. As discussed in greater detail in the analysis, the California Supreme Court in 2011 upheld the Los Angeles ordinance, the major provisions of which are almost identical to this bill. The bill is co-sponsored by the Western Center on Law & Poverty and the Western Section of United Food and Commercial Workers Union.

According to the author, AB 359 will give job protection "to workers in the rapidly changing grocery industry statewide. Good middle class grocery jobs should not be lost just because shareholders of billion-dollar retailers seek to make even more profits through a Wall Street-style merger." The author adds that AB 359 "will ensure the proper maintenance of health and safety standards in grocery stores during the larger grocer mergers." It will do this by keeping "the grocery workers with knowledge of proper sanitation procedures, health regulations, and state laws."

The United Food and Commercial Workers Union (UFCW), a co-sponsor, supports AB 359 because it will benefit "the approximately 383, 900 grocery workers in California." UFCW claims that while the food retail industry has grown at a "staggering rate" over the last twenty years or more, the same cannot be said for the wages of the employees who work in that industry. "As the largest provider of food to the nation," UFCW concludes, "California should provide workers who sell groceries good jobs – jobs that will allow their families to purchase and enjoy that food themselves."

ARGUMENTS IN OPPOSITION:

A coalition of business groups spearheaded by the California Chamber of Commerce oppose this "job killer" bill as one that "unfairly forces grocery employer to hire a predecessor's employees, undermines the at-will employment presumption, and ensures continued union representation, despite any changes in employers." Along with limiting the employer's freedom to hire, the bill correspondingly eliminates an employer's opportunity to investigate applicants before hiring, thereby precluding the employer from conducting any pre-hiring background checks. The coalition also argues that this bill undermines the at-will presumption in California law in order to protect incumbent unions. The bill will do this, according to opponents, because the federal "successor employer" doctrine provides that if the successor employer

chooses to hire the majority of the predecessor's employees and is generally in the same business, the successor must recognize the incumbent union and bargain in good faith. The coalition believes that "the decision of whether or not to have a union in the workplace should be left to the employers and employees after following the proper election procedures outlined by the National Labor Relations Act." While acknowledging that this bill would permit the successor employer to terminate an incumbent employee "for cause," the coalition observes that this is a higher standard than the at-will presumption and will "undoubtedly [lead to] unfair labor practice charges and civil litigation by the employee or incumbent union."

In addition to its primary objection that employers should be free to hire their own workers, the opposition also highlights a number of other ways in which this bill is unfair or unreasonable. For example, the bill will force an employer to adhere to terms of a contract to which it is not a party; the bill will ultimately discourage investment in grocery establishments and jeopardize jobs because a business will not risk investing in a failing grocery store if it cannot select its own workforce; and, finally, there is no evidence that AB 359 preserves health and safety standards. Indeed, the coalition claims that some businesses might be failing because of repeated health and safety violations, and the successor would be forced to hire employees who were engaging in those violations.

The California Grocers Association (CGA) opposes this bill for substantially the same reasons as those put forth by the coalition.

### **A Job-Saver or a "Job-Killer."**

According to the author and sponsor, this bill seeks to save the jobs of grocery workers who, through no fault of their own, find themselves out of work because of business decisions made by other people. The California Chamber of Commerce, on the other hand, has targeted this bill as a "job killer." The Chamber's view assumes that this bill will discourage businesses that might otherwise acquire a failing grocery store and keep it running from doing so. Although the opponents' coalition letter maintains that the grocery industry is reluctant to take over existing facilities in areas of the state with retention ordinances, the Committee is not aware of any evidence supporting this claim. Even if there were evidence that Los Angeles, San Francisco, Santa Monica, and Gardena, the cities that have adopted such ordinances, have failing grocery stores that go unpurchased, one could still not say that retention statutes, as opposed to some other characteristic of those cities, was the cause.

### **Support**

UFCW Western States Council (sponsor)  
American Federation of State, County and Municipal Employees  
California Labor Federation, AFL-CIO  
California Professional Firefighters  
California Rural Legal Assistance Foundation  
California School Employees  
California Teamsters Public Affairs Council  
Community Food and Justice Coalition  
Community Health Council, Inc.  
Consumer Attorneys of California  
Hunger Action LA  
Los Angeles Alliance for a New Economy  
Orange County Communities for Responsible Development

Partnership for Working Families  
Professional Engineers in California Government  
Roots of Change  
SEIU California  
Tri-Counties Central Labor Council  
UFCW Golden State Local 8  
UFCW Local 135  
UFCW Local 324  
UFCW Local 648  
UFCW Local 770  
UFCW Local 1167  
UFCW Local 1428  
UFCW Local 1442

### **Opposition**

Building Owners and Managers Association of California  
California Business Properties Association  
California Chamber of Commerce  
California Grocers Association  
California Retailers Association  
Camarillo Chamber of Commerce  
Chamber Alliance of Ventura and Santa Barbara Counties  
El Centro Chamber of Commerce and Visitors Bureau  
Family Business Association  
Fullerton Chamber of Commerce

International Council of Shopping Centers  
NAIOP – Commercial Real Estate Development Association  
Orange Chamber of Commerce  
Oxnard Chamber of Commerce  
Rancho Cordova Chamber of Commerce  
San Jose Silicon Valley Chamber of Commerce  
Santa Maria Chamber of Commerce Visitors and Convention Bureau

**Status:** Active - Referred to Coms. on L. & E. and JUD.

**Legislative Item #7**

**Action**

**SB 251 (Roth D) Civil rights: disability access.**

**Recommended action: SUPPORT Job Creator  
Presentation: Gene Wunderlich  
CalChamber designated Job Creator**

**Summary:**

**SB 251 Incentivizes Disability Access and Education.** Seeks to **limit frivolous litigation and claims regarding construction-related accessibility claims** by providing businesses who have proactively sought to become ADA compliant with an opportunity to resolve any identified violations as well as a provide a limited period in which to resolve technical violations that do not actually impede access.

**Existing law** prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires certified access specialists (CASps), upon completion of an inspection of a site, to issue a written inspection report for the site, as specified. Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, that a defendant may file a request for a court stay and early evaluation conference in the proceedings, as specified.

**This bill** would provide that **a business is not liable for violating a construction-related liability standard if the business is an inspected by a CASp site and the violation is corrected within 90 days of receiving the above-described written inspection report from a CASp.** If the alleged violation is a minor matter, as provided, the bill would provide that the business is not liable for the alleged violation if the violation is corrected within 30 days of service of a summons and complaint in a construction-related accessibility claim or receipt of a written notice, whichever is earlier.

**Existing law** establishes remedies for discrimination on the basis of personal characteristics. Under existing law, a defendant is liable for actual damages plus an additional amount, up to three times actual damages but no less than \$4,000, for each offense. A defendant's liability for statutory damages for a violation of a construction-related accessibility standard may be reduced to \$1,000 for each offense if the defendant demonstrates, among other things, that it has corrected the construction-related violations within 60 days of being served with the complaint. Under existing law, a person who interferes with the rights of an individual with disabilities, as provided, is liable for actual damages plus an additional amount, up to three times actual damages but no less than \$1,000, for each offense.

**This bill** would provide that a **defendant is not liable for statutory damages for more than one offense if the defendant is a microbusiness,** as defined, and has corrected the construction-related violation prior to the filing of the lawsuit.

**Under existing federal law,** a landlord and tenant are both responsible for compliance with the federal Americans with Disabilities Act and implementing regulations. The parties to a lease agreement may allocate responsibility by the lease or other contract. Existing law requires a commercial property owner or lessor to state on every lease form or rental agreement executed on or after July 1, 2013, whether the property has been inspected by a certified access specialist and, if so, whether or not the property has been determined to meet all applicable construction-related accessibility standards.

**This bill** would require a commercial property owner **to state on every lease form or rental agreement** executed on or after January 1, 2016, that the owner or lessor and the tenant are both responsible for compliance with the Americans with Disabilities Act and that responsibility for compliance may be allocated between the parties by the terms of the lease or other contract.

**The Planning and Zoning Law** establishes procedures for the application, and review of an application, for a development project. Existing law requires a public agency to notify applicants for development permits of specified information, including the time limits established for the review and approval of development permits.

**This bill** would additionally require local agencies to develop and provide to applicants materials relating to the requirements of the federal Americans with Disabilities Act. The bill would require a local agency to notify an applicant that approval of a permit does not signify that the applicant has complied with that act. The bill would also require local agencies to expedite review of projects that have received a written report from a CASp indicating that the site meets applicable CASp standards, as specified. The bill would declare that these provisions constitute a matter of statewide concern and shall apply to charter cities and charter counties.

By imposing additional duties on local agencies with respect to the receipt and review of applications for development projects, this bill would impose a state-mandated local program.

**Existing federal law** allows a credit against federal income taxes for eligible small businesses for eligible access expenditures, as those terms are defined, in an amount equal to 50% of eligible access expenditures for a taxable year that exceed \$250 but do not exceed \$10,250. The Personal Income Tax Law and the Corporation Tax Law allow a credit against the taxes imposed by those laws for the amount paid or incurred for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year as do not exceed \$250, as specified.

**This bill** would, for taxable years beginning on or after January 1, 2016, and before January 1, 2023, allow a credit under both the Personal Income Tax Law and the Corporation Tax Law for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year, as specified. If the taxpayer is a microbusiness, as defined, the bill would provide that the credit is the amount calculated pursuant to these provisions, plus an additional \$5,000.

### **Arguments in Support:**

**SB 251** is a balanced approach between preserving the civil rights of those who are disabled to ensure access to all public accommodations, and limiting the number of frivolous lawsuits threatened or filed against businesses that do not improve accessibility.

**SB 251** seeks to incentivize businesses to proactively take steps to become accessible by providing them with 90 days from receipt of a Certified Access Specialist (CASp) report to resolve any violations identified without being subject to statutory penalties or litigation costs. This proposal will assist businesses who are trying to ensure they are compliant with the law from being subject to frivolous claims or litigation.

**SB 251** also provides a limited time period for businesses to resolve minor, technical construction-related standards that do not actually impede access to the public accommodation. Specifically, **SB 251** provides businesses with 30 days from the service of the summons and complaint to resolve any alleged violation regarding signage, parking lot striping, and truncated domes. This limited period will provide a business owner the opportunity to devote their financial resources to resolving these minor issues before being subjected to statutory penalties and attorney's fees.

**SB 251** also requires the California Commission on Disability Access to post educational materials for business owners regarding how to comply with California's construction-related accessibility standards, as well as share that information with local agencies and departments. **SB 251** requires landlords to notify tenants as to whether a building has been CASp inspected as well as who is liable for any alleged violations. Notice and education are key components to helping create more accessible public accommodations and limiting frivolous claims or litigation.

Finally, **SB 251** creates an additional incentive for businesses to become accessible by providing a tax credit for access expenditures.

### **Supporting:**

CalChamber

### **Opposing:**

None on record 5/6/2015

**Status:** Active - Referred to Coms. on JUD. and GOV. & F.

**AB-219 (Daly D) Public works: concrete delivery**

**Recommended action: OPPOSE**  
**Presentation: Gene Wunderlich**

**Summary:**

This bill expands the definition of "public works" for purposes of prevailing wage law to include the hauling and delivery of ready-mixed concrete or asphaltic concrete to a public works site, with respect to contracts involving any state agency or any political subdivision of the state.

**Purpose of Bill:**

Existing law defines "public works," for purposes of requirements regarding the payment of prevailing wages for public works projects, to include, among other things, the hauling of refuse from a public works site to an outside disposal location with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state. Existing law makes a willful violation of law relating to payment of prevailing wages on public works a misdemeanor.

This bill would expand the definition of "public works" for these purposes to include the delivery of ready-mixed or asphaltic concrete with respect to contracts involving any state agency or any political subdivision of the state. This bill would provide that the expansion of that definition does not apply to contracts advertised for bid or awarded prior to the effective date that provision. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law defines "contractor" and "subcontractor," for purposes of requirements regarding the payment of prevailing wages for public works projects, to include a contractor, subcontractor, licensee, officer, agent, or representative thereof, when working on public works, as specified. Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board.

This bill would provide that a person is a "contractor" or "subcontractor" for the purposes of those requirements regardless of whether the person is subject to the requirements of the Contractors' State License Law. This bill would provide that an agreement with a contractor or a subcontractor to perform a public work is a "contract" or "subcontract" for the purposes of requirements regarding the payment of prevailing wages described above.

**ARGUMENTS IN SUPPORT**

This bill is co-sponsored by the State Building and Construction Trades Council of California, the California Teamsters Public Affairs Council, and the California Labor Federation, AFL-CIO. They state that this bill will expand the prevailing wage to drivers delivering ready-mix concrete and asphaltic concrete to public works projects, regardless of whether the delivery drivers are employed by material suppliers or project contractors.

The sponsors argue that ready-mix concrete is a precise mixture or set recipe that is customized for construction sites and which is transported from a dedicated batch location or from a manufacturing facility. They contend that under current law, the delivery of ready-mixed or asphaltic concrete for a public works project is covered under the prevailing wage if either of the following occurs: 1) The product is delivered by a driver hired by the on-site general contractor or a subcontractor; or 2) the product is manufactured at a "dedicated" plant (i.e. one that is established solely for the public works project).

The sponsors state that under the current material supplier exemption to the prevailing wage law, delivery drivers hired by a material supplier are exempted from the prevailing wage. However, there is no physical distinction between the work performed by ready-mix drivers employed by contractors and ready-mix drivers employed by manufacturers, as the product and work is identical. By expanding the prevailing wage to all ready-mix drivers serving public works, this bill would create a more fair application of the Labor Code that does not depend on who owns the truck delivering the ready-mix or whether the driver is employed by an onsite contractor or a cement manufacturer.

They conclude that this bill is about uniformity and a fair application of the prevailing wage law to deliveries of ready-mix and asphaltic concrete and not about expanding prevailing wage to all material drivers.

### Arguments in Opposition:

**AB 219** is a significant expansion of the prevailing wage mandate on public works projects. As set forth in *O.G. Sansone Co. v. Department of Transportation*, (1976) 55 Cal.App.3d 434, a material supplier that: (1) sells supplies to the general public; (2) its fabrication or manufacturing facility is not established for the particular public works contract; and (3) the fabrication or manufacturing facility is not located at the site of the public work, is exempt from the prevailing wage requirement. In April 2000, the Department of Industrial Relations in a Decision on Administrative Appeal, applied these three factors to determine that a contractor was not required to pay their delivery drivers of ready-mixed concrete prevailing wages, as the contractor was a material supplier excluded from the prevailing wage requirement.

**AB 219** disregards the analysis of a material supplier under *Sansone* and simply deems that the delivery of ready-mixed concrete and asphaltic concrete are considered duties within the definition of public works for which prevailing wages must be paid. This mandate will significantly increase cost for public construction as well as enforcement and compliance efforts. Additionally, **AB 219** creates an opportunity for future efforts to eliminate the material supplier exemption from prevailing wages for the delivery of other materials to public works site, such as lumber, sand, or drywall.

Further, opponents raise three general arguments against this bill.

First, opponents contend that it ignored longstanding distinctions in labor law between a driver and a construction worker. They argue that ready-mix concrete is delivered to construction sites by drivers, whose training and duties pertain to driving. The spreading, vibrating, testing and finishing of the concrete is done by trained construction workers. Drivers do not participate in on-site construction work, nor do they work alongside the construction workers. Opponents also state that, by removing these distinctions, this bill also threatens to bring confusion to other areas of employment law, such as the coverage of manufacturing and construction employees under separate Wage Orders of the Industrial Welfare Commission.

Second, opponents argue that this bill is inconsistent with the contract between a supplier and a contractor. They note that ready mix concrete is a finished product, delivered to the site in an unfinished state pursuant to a purchase order. Ready mix concrete delivered to the jobsite is essentially the same as material delivered to the site such as paint, lumber or steel. Opponents contend that, under the Uniform Commercial Code, as adopted by California, the delivery of materials is treated differently than construction. Material suppliers are only responsible for delivery of material to a project site. Once the product is delivered, it becomes the responsibility of the contractor, a separate legal entity.

Finally, opponents argue that this bill contravenes longstanding and well-established legal precedent that material suppliers are not subject to prevailing wage law. They note that DIR has specifically addressed the question of whether the prevailing wage applies in such cases. They argue that the bill also potentially sets off a "chain reaction" by targeting a single delivered product. If delivered concrete is subject to prevailing wage law, what is the legal footing and rationale for excluding the delivery of lumber, steel, paint, welding materials, fuel and other supplies?

In addition, the Associated General Contractors (AGC) argues that this bill imposes significant new liability and administrative burdens on prime contractors since, under California law, prime contractors are jointly and severally liable for the payment of prevailing wages by all subcontractors on a public work project. This bill would expand that liability to include the payment of prevailing wages by a material supplier providing ready-mixed concrete to a public works construction jobsite. Prime contractors cannot practically monitor prevailing wage compliance by material suppliers as they can with jobsite contractors because ready-mixed concrete drivers spend the overwhelming majority of their time off the jobsite on public roads or at the permanent plant to be loaded with the ready-mixed concrete, often in service to other projects. Moreover, AGC argues that this bill presents considerable challenges in maintaining and monitoring certified payroll reports. This exponentially and unfairly increases a prime contractor's exposure to debarment or registration violations under California's strict prevailing wage and registration requirements.

### FISCAL EFFECT:

This bill may cause an increase in state and local government contract costs assuming contractors/subcontractors are not currently paying a prevailing wage to workers delivering concrete. According to Caltrans, on average, the hourly rate for ready-mixed drivers would increase from \$16 per hour to \$34 per hour. Actual additional costs will depend on the prevailing wage rate in each county, any resulting increase in concrete and asphalt costs, and the portion of any contract that involves the purchase and delivery of concrete or asphalt. Though the bill could impact any public works contracts

involving concrete or asphalt, **it will predominantly impact Caltrans and local transportation agencies**. Caltrans indicates that it currently has over \$10 billion in construction project under contract.

With regard to maintenance, Caltrans executes \$350 million worth of contracts annually. Assuming provisions of this bill increase costs by 10%, the state could incur an additional \$35 million in project costs. With regard to construction, this bill will increase support costs on Caltrans contracts both for inspection of the hauling activities and enforcement of prevailing wage requirements under Caltrans' labor compliance programs operations. Caltrans estimates costs of approximately \$1 million related to compliance.

### **Support**

American Federation of State, County and Municipal Employees  
California Labor Federation, AFL-CIO (co sponsor)  
California Professional Firefighters

California State Council of Laborers  
California Teamsters Public Affairs Council (co sponsor)  
State Building and Construction Trades Council (co sponsor)

### **Opposition**

7/11 Materials Inc  
American Alliance Authority & Compliance  
American Alliance DT  
Associated Builders and Contractors of California  
Associated General Contractors of America, San Diego Chapter  
Associated General Contractors of California  
Associated Ready Mixed Concrete, Inc.  
Bender Ready Mix, Inc.  
BoDean Company  
California Asphalt Pavement Association  
California Concrete Contractor Association's  
California Concrete Pumpers Alliance  
California Construction and Industrial Materials Association  
California Construction Trucking Association  
California Precast Concrete Association  
California Professional Association of Specialty Contractors  
Central Supply Co, Inc. dba Harbor Ready-mix  
Coalition of American-Latino Truckers  
Desert Water Agency

Don Chapin Company, Inc.  
George Reed, Inc.  
Hansen Bros. Enterprises  
Hazard Construction Company  
Heavy-Haul Conference  
**Howard Jarvis Taxpayers Association**  
Knife River Construction  
Mathews Readymix  
National Ready Mixed Concrete Company  
Northgate Ready Mix  
Numerous Individuals  
Plumbing-Heating-Cooling Contractors Association of CA  
Puente Ready Mix, Inc.  
Robertson's Ready Mix  
Southern California Contractors Association  
Spragues' Ready Mix  
Vulcan Materials Company  
Western Aggregates  
Western Electrical Contractors Association  
Western Trucking Alliance

**Status:** In committee: Set, second hearing. Referred to APPR. suspense file.

**Ayes:** Chu, Roger Hernández, Low, McCarty, Thurmond

**Noes:** Harper, Patterson



*Please RSVP today!*

*You're Invited To An*

*Important Briefing About*  
**EMWD's DROUGHT  
IMPACTS AND ACTIONS**



**SPEAKER:**  
**Paul Jones II, P.E.**  
**General Manager**



Thursday, June 11, 2015  
10 a.m.—11:30 a.m.

EMWD Board Room, 2270 Trumble Road, Perris 92572



Key stakeholders and legislators are encouraged to attend this briefing to better understand the impacts EMWD's service area is facing.

*Attendees can expect to:*

- Learn how the Drought Conditions affect our Region.
- Understand EMWD's Response to the State Water Resources Control Board's Ruling.
- Learn how EMWD's Water Shortage Contingency Plan Stage 4 affects us all.

**PLEASE PLAN TO ATTEND:**

RSVP to: [www.emwd.org/droughtbriefing](http://www.emwd.org/droughtbriefing)  
Information: Rhonda Cooper, 951.928.3777 x 4378 or Cooperr@emwd.org



# Key State Issues

Latest News on Key Bills in the State Legislature



April 17, 2015

Following is a list of high-priority health care-related bills CHA is tracking this legislative session. This week, CHA issued an *Advocacy Alert* on AB 1300, available at [www.calhospital.org/calls-action](http://www.calhospital.org/calls-action). CHA also issued an alert early in the week requesting oppose letters on AB 850, and learned April 16 that the bill will not move forward this year. For an online version of this report that can be filtered by topic and is updated daily, visit [www.calhospital.org/key-state-issues](http://www.calhospital.org/key-state-issues).

Bill No.	Author		Location/Action	CHA Position	Staff Contact
<b>Care Coordination</b>					
SB 675	Liu (D-La Cañada Flintbridge)	Would require hospitals and health facilities that provide inpatient medical rehabilitation services to record the name of a family caregiver, if any; notify the caregiver upon patient discharge; and provide explanation, live training and telephonic technical assistance to the caregiver regarding the patient's care needs.	To be heard in Senate Health Committee April 29.	Oppose, Unless Amended	Pat Blaisdell/ Barbara Glaser
<b>Community Benefits</b>					
AB 1046	Dababneh (D-Encino)	Would align California's community benefit requirements with the federal Affordable Care Act; would streamline reporting mandates and provide greater transparency and consistency in the reporting and disclosure of investments made by nonprofit hospitals to strengthen the health and well-being of their communities.	To be heard in Assembly Health Committee April 21.  <b>Alert issued</b>	Sponsor	Amber Kemp/ Kathryn Scott
SB 346	Wiedowski (D-Fremont)	Would rewrite California's existing community benefit law to expand community benefit requirements to nonprofit multispecialty clinics; would limit charity care to a multiplier of Medicare reimbursement and exclude the unreimbursed cost to hospitals for providing services to Medi-Cal patients.	To be heard in Senate Health Committee April 22.  <b>Alert issued</b>	Oppose	Amber Kemp/ Kathryn Scott
<b>Emergency Services</b>					
AB 172	Rodriguez (D-Pomona)	Would make an assault committed against a physician, nurse or other health care worker of a hospital or county jail, who is engaged in providing services within the emergency department, punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$2,000, or both.	Held on Suspense File in Assembly Appropriations Committee March 25.	Support	Gail Blanchard-Salger/ BJ Bartleson/ Connie Delgado
AB 503	Rodriguez (D-Pomona)	Would permit hospitals to release patient-identifiable medical information to pre-hospital emergency medical services providers, to the California Emergency Medical Services Authority and to local emergency medical services agencies for quality assessment and improvement purposes.	Passed Assembly Appropriations Committee April 15.	Sponsor	BJ Bartleson/ Connie Delgado
AB 579	Obenotte (R-Big Bear Lake)	Would create an exception to permit a general acute care hospital to operate an emergency department if all applicable licensure and building code requirements are satisfied.	To be heard in Assembly Health Committee April 28.	Sponsor	BJ Bartleson/ Connie Delgado

