
LEGISLATIVE REFORM:

ADDRESSING CRITICAL ECONOMIC ISSUES

CITIZENS' ECONOMY AND EFFICIENCY COMMISSION
MARCH 1995

CITIZENS' ECONOMY AND EFFICIENCY



COMMISSION OF LOS ANGELES COUNTY

March 6, 1995

Honorable Gloria Molina, Chair
Los Angeles County Board of Supervisors
Room 856, Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Chair

Gunther W. Buerk

Vice Chair

Betty Trotter

Dear Chairperson Molina,

In 1993 the Economy and Efficiency Commission formed a County Economic Growth Task Force to assist the Commission in presenting to your Board a citizens' perspective on issues involving the economic growth and of Los Angeles County and legislative issues that affect it. The Commission made some recommendations to your Board on May 5, 1993 and your adopted them. We have continued to work on those issues and the Commission now recommends to you to adopt the attached recommendations. We will continue to work on these issues and we anticipate that we will make additional recommendations in the future.

The attached document has been reviewed by the CAO and County Counsel. We have been informed that they have nothing to add or subtract to this report.

The Commission appreciates having the opportunity to assist your Board in the development of programs dealing with the economic health of the county. As always we remain ready to assist in the implementation of the recommendations made in the attached report

Commissioners

Fred P. Balderamma
Richard D. Barger
John Crowley
David W. Farrar
John A. FitzRandolph
Louise Frankel
Jonathan S. Fuhrman
Jaelyn Tilley Hill
Chun Y. Lee
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Roman Padilla
William J. Petak
Robert H. Philibosian
Randolph B. Stockwell
H. Randall Stoke
Julia E. Sylva
Tony Tortorice
Albert M. Vera

Executive Director

Bruce J. Staniforth

Sincerely,

Gunther Buerk
Chair

C: Each Supervisor
Each Commissioner
Ms. Sally Reed, Chief Administrative Officer
DeWitt Clinton, County Counsel

TABLE OF CONTENTS

SECTION	PAGE
I. EXECUTIVE SUMMARY	1
II. OVERVIEW	1
III. WORKERS' COMPENSATION REFORM	2
IV. CIVIL LITIGATION REFORM	7
V. REGULATORY REFORM	12
VI. DAILY OVERTIME REQUIREMENTS	15
VII. ADDITIONAL RECOMMENDATIONS:	17
VIII. CONCLUSION	18



Los Angeles County Citizens' Economy and Efficiency Commission

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The Mission of the Economy and Efficiency Commission is to examine any function of County government at the request of the Board of Supervisors, on its own initiative, or as suggested by others and adopted, and to submit recommendations to the Board directed toward improving local government economy and efficiency, and effectiveness.

I. EXECUTIVE SUMMARY

In May 1993, the Citizens' Economy and Efficiency Commission formed the County Budget and Economic Growth Task Force to examine issues critical to the economic needs of Los Angeles County and California.¹ The Task Force submitted a report urging the Board's support of legislative reforms, which were designed to create a climate for business growth within Los Angeles County and the State of California. In an effort to continue the pursuit of an agenda geared toward economic growth the Task Force has prepared an update to its preceding report.

This update report offers recommendations designed to improve the County and the States' business climate through sound legislative reform without the imposition of unnecessary taxes on Californians or California businesses. Consistent with our 1993 report, the Commission targeted three areas of legislative reform: workers' compensation, civil litigation, and regulatory reform. Added in this report is a presentation on the issue of daily overtime pay requirements in California. The table on the following page presents a summary comparison of the 1993 and 1994 recommendations with a detailed policy discussion of the current recommendations presented in this report. It is the Commission's position that the legislative reforms advocated in this report will be a substantial step in the development of a stronger economy and friendlier business climate.

II. OVERVIEW

Los Angeles County and California continue to face a financial and economic crisis. Current economic indicators suggest that much work remains to improve our business climate. The nonpartisan California Legislative Analyst's Office notes that "for the first time in recent history, California's share of national income has declined" back to its mid-1980's level of just over 12 percent.²

Between June 1990 and November 1994, California has lost 580,000 jobs.³ According to a recent report on California's economic outlook prepared by Pacific Gas & Electric (PG&E), approximately 60 percent of the state's job losses are the result of structural changes, not cyclical, and are, therefore, permanent. The study concluded that corporate downsizing is likely to continue in California for the next several years. As of January 1994, California's unemployment had reached 10.1 percent. This percentage represents a steady increase since 1990. California's employment growth continues to lag behind the nation's. According to November 1994 unemployment figures, the United States posted a

¹ See attached copy of May 1993 report.

² Legislative Analyst's Office, Cal Facts, May 1993, p.1.

³ California Department of Finance

See disk inside report file for Table

Legislative Reform: Addressing Critical Economic Issues

5.6 percent rate of unemployment while California is struggling at 7.7 percent.⁴ Part of the explanation for this disparity rests with the state's dependence on defense based industries. Continued economic diversity will ensure that California's economy is not subject to the non-proportionate impact of a downturn in a particular industry.

Numerous groups, including Assembly Democrats, Senate Republicans, and Governor Wilson's bipartisan Competitiveness Council have studied this crisis and continue to review the possible actions to improve our economic conditions. There continues to be a strong consensus among their conclusions. Workers' compensation reform, civil litigation reform and regulatory reform remain policy areas in which they feel action would be effective. Although each issue is important, we have attempted in this document to identify those areas where the county can achieve the greatest impacts.

The recommendations made in this report have been developed further to assist the Board in its pursuit of a legislative agenda designed to revitalize the economy of Los Angeles County and California.

III. WORKERS' COMPENSATION REFORM

BACKGROUND

California established its basic Workers' Compensation laws between 1911 and 1917. As one of the first states in the nation to enact a no fault workers' compensation system, the new laws guaranteed injured workers certain medical and economic benefits while limiting employers' liability and the employees' right to sue the employer for damages.⁵

By 1989, the workers' compensation system had grown into an unwieldy \$8.4 billion a year system--nearly triple that of 1982. Costs to employers were the third highest in the country, nearly 60 percent above the national average, yet weekly benefit levels for injured workers were among the lowest.⁶ Delays in the delivery of benefits lengthened, and the state's ability to administer and manage the system was understandably questioned.

In 1989, the legislature enacted the Workers' Compensation Reform Act. The legislation was an initial step toward reform, but fell short of the necessary comprehensive improvements for both

⁴ Ibid. These findings were recently confirmed by the March 1994 release of the Federal Reserve's "Beige Book" Report on Current Economic Conditions.

⁵ Senate Republican Caucus

⁶ California Workers' Compensation Institute

workers and employers. Those involved recognized that significant problems remained in the workers' compensation system.

The cost of the workers' compensation system increased drastically in the following years. The cost of the system had risen from less than \$4 billion in 1981 to over \$11 billion by the early 1990's--an increase of over 200 percent.⁷ The number of new filings in 1991 was 167,064. By 1993 the number had reached 253,079--an increase of over 50 percent.⁸ Virtually every study, from the Council on Competitiveness Report to the research conducted by the State Assembly Democrat ADEPT Team, indicates that skyrocketing workers' compensation premiums are a major factor in business growth stagnation and companies flight from California.

1993-1994 LEGISLATIVE ACTIVITY

The 1993 legislative session was an active year for worker's compensation reform. The Legislature passed and Governor Wilson signed the 1993 Workers' Compensation Package. The new laws were designed to reduce costs by \$1.5 billion annually in a system that is currently running over \$11 billion a year.

The Commission's May 1993 report urged that the Board support three bills: SB 30 (Johnston), SB 55 (Leonard), and AB 110 (Peace). Both SB 30 and AB 110 passed. SB 30 repeals the "minimum rate" law precluding insurers from charging less for workers' compensation insurance than the rates established by the Department of Insurance.⁹ Essentially, this law replaces the "minimum rate" law as of January 1, 1995, with a "file and use" rating system, which provides for new open rate competition among insurance companies.¹⁰

⁷ See supra note 6.

⁸ 1992-1993 Biennial Report, Department of Industrial Relations, Department of Workers' Compensation. DWC monitors administration of workers' compensation claims, attempts to minimize disputes, and provide administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers'

⁹ California and Missouri were the only states not allowing insurers to set premium rates below the rates approved annually by the State Insurance Commissioner. This "minimum rates" include a built-in profit and overhead percentage. Little Hoover Commission, Workers' Compensation: Containing the Costs, February 1993.

¹⁰ SB 30 (Johnston)—Ch. 228, Statutes of 1993: As adopted this measure: 1) replaces the "minimum rate" law as of January 1, 1995, with a "file and use" rating system, which provides for new open rate competition among insurance companies, 2) provides a predominant cause standard for stress claims, and prohibits stress claims that are a result of routine employment events or lawful, good-faith personnel actions, 3) allows employers to provide managed health care and an option to the vocational rehabilitation system along with other limits on vocational rehabilitation costs and duration, and 4) limits medical-legal reports to one per employee and employer.

AB 110, the omnibus workers' compensation reform legislation, established the Employer Bill of Rights, capped vocational rehabilitation benefits, emphasized the role of the treating physician in the evaluation process, incrementally increased temporary and permanent disability benefits and extended injury prevention efforts, among other provisions. According to the Workers' Compensation Conference Committee legislative analysis, AB 110 will save employers at least \$1.5 billion from reforms. The savings will be passed on in equal proportion to the employer and to the injured employee in the form of increased benefits phased in over a 3-year period. Primarily, AB 110 makes extensive procedural and structural changes to specific areas of the system that are considered to be the "cost-drivers" i.e., litigation, medical treatment, vocational rehabilitation, etc. It also increases benefits to injured workers, who have some of the lowest weekly benefit levels in the nation.¹¹

Other significant legislation that emerged from the 1993 package included: AB 119 (Brulte, Ch.118, Statutes 1993) which placed severe limits on psychiatric injury and post termination claims, AB 1300 (Brown, Ch. 120, Statutes 1993) which enhanced the tools for combating workers' compensation fraud, SB 31 (Johnston, Ch. 4, Statutes 1993) which limits medical-legal evaluation fees and the circumstances under which these fees can be charged, SB 983 (Greene, Ch. 117, Statutes 1993) which authorizes alternative arrangements for the delivery of worker's compensation benefits and dispute resolution in the construction industry, and SB 1005 (Lockyer, Ch. 227, Statutes of 1993) which created the labor management commission to oversee the programs for preventing and compensating occupational injuries.

The 1994 legislative session included the passage of AB 3075 (Costa, Ch. 1131, Statutes 1994) which regulates workers' compensation insurers' ability to issue deductible workers' compensation insurance policies to employers. The policy requires the insurer to initially pay all compensation (receiving reimbursement from the employer for the deductible amount) and meet certain other conditions. SB 853 (Greene, Ch. 963, Statutes 1994) also passed clarifying the eligibility and rules applicable to the delivery of workers' compensation benefits and dispute resolution in the construction industry.

THE CURRENT SITUATION

The Democratic ADEPT Team, the Governor's Bipartisan Council on Competitiveness, the Senate Republican Caucus and the California Chamber of Commerce agree that workers' compensation reform will go a long way in creating a friendlier business climate in Los Angeles County and California. Most of the reforms enacted in 1993 apply to injuries incurred on or after January 1, 1994. Many reforms became effective on July 16, 1993, the date most of the reforms were signed into law, yet others take effect January 1,

¹¹ AB 110 (Peace), Ch. 121, Statutes 1993.

1995, including repeal of the "minimum rate." Due to length of time it takes for cases to work through the system, it will be some time, maybe years, before the full amount of the cost savings is known.

Since the impact of the reform package on the existing workers compensation system is not fully known, some observers believe that it is prudent to "monitor" the progress of the reforms rather than chart a new legislative course.¹² However, many groups, including the bipartisan Council on Competitiveness and the California Chamber of Commerce, are concerned that key reforms were not adequately addressed in the 1993-1994 session. Three policy areas which continue to receive attention for further action are:

A. Physical Injury (Non-Psychiatric) Claims: First, low causation thresholds establishing employer liability result in workers claiming benefits for injuries not directly related to the work place. As with stress claims, a predominant cause standard (i.e. 51 percent or greater proof of liability) will reduce the availability and abuse of physical injury claims by establishing a greater connection between the injury and the workplace. Without a higher standard of causation for non-psychiatric injury cases, fraud will continue as a problem.¹³

B. Litigation Costs: A major component of the rise in litigation costs is the cost of "medical/legal" forensic opinions. The forensic medical evaluations are used to prove or disprove a disputed claim.¹⁴ Litigation costs have increased from \$400 million in 1984 to \$2.2 billion in 1992. Medical/legal fees were the biggest contributor to the 1992 figures--a total of \$1.2 billion or 54 percent of all litigation expenses.

Disputed claims are frequently prolonged by lawyers who hire "dueling doctors." These doctors, in turn, render extreme opinions to buttress the client/patient's position. This unnecessary delay in time and expense adds thousands of dollars to the cost of handling a worker's compensation claim because, unlike treating physicians, these doctors are "experts" who give opinions on the extent of injury suffered.¹⁵ Moreover, these doctors and lawyers have little incentive to minimize costs or expedite the opinion time. On the contrary, incentives financial and otherwise encourage a costly and lengthy claim resolution.

There are some indications that the 1993 reforms have had a positive impact. According to the California Workers' Compensation Institute, the average cost of a comprehensive evaluation has dropped by more than a third under the new medical-legal fee schedule. However, tremendous potential savings are possible if sound reforms continue to be implemented.

¹² Mr. William Molmen, General Counsel, California Workers' compensation Institute.

¹³ Note: The predominant cause standard currently applies to stress (psychiatric) injuries.

¹⁴ California Worker's Compensation Institute Legal Cost Surveys.

¹⁵ See supra California Jobs & Future, Council on Competitiveness

C. Contain Medical Treatment Costs: Employer and insurer efforts to control soaring workers' compensation medical treatment cost have intensified in recent years. Workers' compensation remains one of the few remaining health care systems that has virtually no mechanism for cost containment. Workers' compensation medical treatment costs nationwide have grown at a much faster rate than medical care costs.¹⁶ Between 1970 and 1988, medical treatment cost in workers' compensation grew 1 and 1/2 times faster than health care costs. In California medical costs outpaced the national average by 15 percent.¹⁷ Better cost management will, in part, result in a more efficient system.

RECOMMENDATIONS

Your Board should support legislation seeking to accomplish the following:

A. Physical Injury (Non-Psychiatric) Claims:

1. Extend the predominant cause standard (i.e. 51 percent or greater) for psychiatric injuries to physical (non-psychiatric) workplace injuries.
2. Eliminate the cumulative trauma concept in favor of granting benefits for specific injuries, i.e. sudden, extraordinary stress inducing events.¹⁸

B. Litigation Costs:

3. Adopt more "objective" medical standards for the determination of impairment and disability, e.g. American Medical Association's "Guide to the Evaluation of Permanent Impairment."
4. Establish a permanent disability rating based on the treating physician's information and "objective" standards applied by the state's Disability Evaluation Unit.
5. Institute an arbitration-like system whereby a single physician should be chosen from a pool of impartial Qualified Medical Examiners (QME) to

¹⁶ Parry, Thomas, Medical Benefit Delivery, Group Medical versus Workers' Compensation in California, California Workers' Compensation Institute Research Notes, August 1994.

¹⁷ Ibid.

¹⁸ Cumulative trauma is defined as an injury that results from a repetitive or continuous work related activity, e.g. lifting or bending with resulting back injury.

evaluate contested cases in the event that a dispute arises concerning the medical opinion.

C. Contain Medical Treatment Costs:

6. Allow employers and insurance carriers to manage medical costs for the duration of treatment by utilizing state-certified health maintenance organizations, preferred provider organizations or other employer selected facilities. These programs should be used in conjunction with existing employee health care programs in the absence of an employee designated "personal physician."

IV. CIVIL LITIGATION REFORM

BACKGROUND

California's civil litigation system weighs down California businesses as they attempt to compete in an international economy.¹⁹ Increased liability exposure, litigation-encouraging rules and exorbitant punitive damage awards are adding costs to California goods and services, making them less competitive.²⁰ In addition to a reduction in domestic investment in California, the high cost of the civil litigation system continues to be a significant inhibiting factor in attracting foreign investment to our state. This "tort tax," i.e., "the tangible cost of our liability system, amounts to a \$10 billion annual drag on the California economy."²¹

"According to the Judicial Council of California, more than 1,200,000 civil lawsuits were filed in California in 1992. That is over one lawsuit for every 30 Californians. Los Angeles lead California's counties with 452,120 filings--36 percent of all filings. That is approximately one lawsuit for every 20 Los Angeles County residents.²² The runner-up, Orange County, has roughly one-fourth the number of filings--120,426.²³ Although these numbers are proportionally relative to the counties'

¹⁹ Tort Reform Needed to Reduce Litigation Burden on California Firms, California Chamber of Commerce 1994.

²⁰ Ibid.

²¹ Faustman, David F., The Wages of Tort Liability, February 1993. Mr. Faustman is a lawyer who has contributed to the Legal System Reform proposals of the Council on California Competitiveness.

²² Judicial Council of California, 1992-1993 Annual Data Reference.

²³ Ibid. Note: San Diego County ranks 3rd with 100, 232 filings and Alameda County ranks fourth with 60,631 filings.

respective populations, the high rate of filing illustrates the litigious nature of our culture and a problem that continues to plague our state and County.²⁴

The average time for a jury trial for a civil case in Los Angeles County was 28-37 months during years 1991-94.²⁵ Statewide, 63 percent of the superior court civil cases took 18-24 months to be disposed and 93 percent of municipal court cases took 18-24 months to be disposed during 1992-1993. The costs of conducting a trial are even more staggering. The Los Angeles County Superior Court estimates that a jury trial costs \$3,053 per day with the average trial lasting 5.95 days--that is over \$18,000 per trial in costs borne by California taxpayers and California businesses.²⁶

Whether the litigation is meritorious or frivolous, there are costs associated with the court's time and operations. Further, small and large businesses alike endure a cumulative loss of resources--pointing to a negative impact to the state's economic vitality. California's existing civil justice system contributes to a climate, which is perceived by many as being unfavorable to business. Reform of our tort laws is necessary to ensure that California will be able to attract and retain businesses.

1993-1994 LEGISLATIVE ACTIVITY

The Commission's May 1993 report urged the Board's support of several bills in the area of tort reform. AB 498 (Richter), was enacted, which has the effect of discouraging frivolous lawsuits by strengthening summary judgment law.²⁷ Notably, the 1993 resolution geared toward improving the business climate of Los

²⁴ The public treasury suffers as well. The city of Los Angeles paid out over \$40 million in tort suits in 1992. See also Report on General Public Liability Tort Reform, by former California Supreme Court Justice John Arguelles, October 1, 1992, revised February 9, 1993. As Special Counsel to the Board of Supervisors, Arguelles did a detailed study proposing specific recommendations designed to protect the County's civil tort liability exposure. At present, none of the recommendations have been signed into law.

²⁵ Los Angeles County did not compile figures for the year 1992-1993, and the 1993-1994 figures were not available at the time of this report.

²⁶ Estimated Los Angeles Superior Court cost for FY 1991-1992. Los Angeles County Municipal Court costs are approximately \$1600 per day with the average trial lasting 5 days—a total of \$8,000 per trial.

²⁷ AB498 (Goldsmith)—Ch.276, Statutes 1993: This law requires a party opposing a motion for summary judgement to set forth specific facts to show the existence of a triable issue of material fact as to cause of action or defense. The effect of this law is to clarify existing case law by ensuring that a party opposing a summary judgment motion has some basis for doing so.

Angeles County and California. AB 401²⁸ concerning mandatory mediation and AB 208²⁹ relating to attorney advertisements were also enacted.

Support remains high for the bills that failed passage and it is likely that these bills will reappear in some form in the 1995-1996 legislative session. The recommended bills that did not pass include: AB 108 (Richter), concerning attorney sanctions for bringing frivolous claims; AB 147 (Richter), proposing a limit on punitive damages evidence, i.e. damages designed to punish a defendant's egregious conduct (two year bill); AB 2299 (Morrow), encouraging parties involved in a civil suit to use alternative dispute resolution (two year bill); and AB 2300 (Morrow), increasing the maximum amount in controversy from \$50,000 to \$100,000 for cases which the court must submit to arbitration. Such a law would expand the use of alternative dispute resolution (ADR) AB 2302 (Morrow); would expand ADR by setting forth mandatory mediation programs, i.e. out of court, informal dispute resolution between the parties before a neutral third party for specified civil actions upon the request of a defendant (two year bill).

Finally, the 1994 legislative session included the passage of AB 3594, which pertains to the filing of frivolous actions.³⁰ The effect of this legislation will be to help curb the frivolous litigation that needlessly and meritlessly brings California businesses to our courts. The Economy and Efficiency Commission will keep track of the subject matter of these bills in the event these bills are reintroduced during the 1995-1996 legislative term.

THE CURRENT SITUATION

The Democratic ADEPT Team, the Governor's bipartisan Council on Competitiveness, the Senate Republican Caucus and California Chamber of Commerce agree that legislative tort reform would go a long way in creating a friendlier business climate in Los Angeles County and California.³¹ In light of the legislation that arose

²⁸ AB 401 (Lockyer)—Ch. 1261, Statutes 1993: This law requires all courts in Los Angeles County to implement a program of mediation of specified civil matter where the amount in controversy does not exceed \$50,000.

²⁹ AB 208 (Horcher)—Ch. 518, Statutes 1993: This law enacts a comprehensive regulatory scheme to provide that no advertisement made by an attorney or law firm shall make various prohibited statements, such a guarantees, and requires certain disclosures. This law will curb unrealistic attorney statements concerning potential client case outcomes, and it is anticipated to decrease the caseload in Los Angeles County courts.

³⁰ AB 3594 (Weggeland)—Ch. 1062, Statutes 1994: This law replaces an existing law provision pertaining to sanctions for frivolous motions with a provision that is similar to the recently revised federal procedural rule to impose sanctions for unsubstantiated pleadings.

³¹ The Democratic ADEPT Team study, the Council on Competitiveness report, and the Senate Republican Caucus study were published in 1992, with 1994 amendments.

out of the 1993-94 legislative session, there remains a bipartisan consensus as to what civil reforms are needed. While there are no bills pending at this time in the legislature, our review indicates that reform must continue if Los Angeles County and California are to make significant strides in improving their business climate. Four policy areas received consensus: discouraging frivolous litigation, limiting punitive damages, encouraging alternative dispute resolution and reforming product liability laws.

A. Discourage Frivolous Litigation: The large number of cases filed in California is a key concern of the business community. Examples include: 1) a man who sued the City of Huntington Beach for \$60 million because the city had given him three speeding tickets. He claimed the city's enforcement of the speed laws was racketeering;³² 2) the owner of a topless bar filed suit against the City of Oceanside to block a bond sale earmarked to help pay for safety improvements;³³ and 3) the City of Ventura was forced to spend more than \$35,000 defending itself from a series of suits the court found to be frivolous.³⁴ Discouraging meritless suits will reduce the crushing economic cost to Californians and California companies.

B. Limit Punitive Damages: Punitive damages were originally intended to punish a defendant's truly egregious conduct in those few cases having a significant public interest and were designed to deter others from similar conduct. In California, punitive damages are far too often awarded for amounts far in excess of any reasonable relationship to the plaintiff's injury or to the defendant's financial condition.³⁵ A recent study revealed that punitive damage awards against California businesses were 89 times greater in the three year period 1988 to 1991 versus 1968 to 1971.³⁶ These disproportionate awards discourage business expansion and cause many California companies to relocate in other states. Punitive damage reform will be a significant step toward lowering the cost of doing business in California.

C. Encourage Alternative Dispute Resolution (ADR): Legislation in this area promotes and facilitates the use of neutral evaluation processes outside the courtroom to encourage settlement and reduce the burden on the courts. Increased use of mediation as a form of alternative dispute resolution provides the opportunity for parties to resolve their disputes without resorting to the costly and burdensome traditional litigation

³² Huntington Beach Open to Anti-Racketeering Suit, Los Angeles Times, August 23, 1990.

³³ Lawsuit By Nude Club Delays Oceanside Bond Sale, Los Angeles Times, June 17, 1992.

³⁴ Lawyer Sentenced For Frivolous Suits, The San Diego Union-Tribune, March 28, 1992.

³⁵ Mark Pulliam noted in his article California Crushing 'Tort Tax' that the U. S. Supreme Court recently "upheld a punitive damages award of \$10 million in a case where actual damages were only \$19,000—the punitive damages were 526 times the compensatory damages."

³⁶ Ibid.

process. Mediation takes place in the presence of a neutral third party who, by consent of the parties, resolves the dispute. Mediation reduces court congestion, court costs to the taxpayers, the cost of dispute resolution among the feuding parties and expedites the dispute resolution process.

D. Product Liability Reform: Steps must be taken to reform current product liability laws which are strongly biased against manufacturers and have the effect of deterring the marketing of safer products. For example, if an employer takes steps to develop a more technologically advanced and safer product, this can be used as evidence against the manufacturer in a product liability suit to "prove" that the previous design was defective. Such a rule discourages research and development of safer products by essentially penalizing the manufacturer for developing a safer design.

RECOMMENDATIONS

Your Board should support legislation seeking to accomplish the following:

A. Discourage Frivolous Litigation:

7. Adopt the loser pays rule requiring that the losing party or his attorney pay the winning parties' legal costs, not to exceed the losing party's legal costs.

8. Require that a party who rejects a settlement offer and subsequently receives an ultimate award equal to, or less than, the original settlement offer pay the offering parties' attorney fees, not to exceed the rejecting party's legal costs. This rule would expand existing Civil Code section 998 which provides for payment of expert witnesses' costs.

9. Strengthen sanctions on parties and lawyers who file frivolous, non-meritorious suits by removing judicial discretion and imposing mandatory sanctions.

B. Limit Punitive Damages:

10. Amend California Civil Code section 3294 and the state Constitution to require that the determination of the amount of punitive damages be made by the trial judge after the jury has found liability for such damages.

11. Limit punitive damages to an amount equal to three times actual damages or \$250,000 whichever is greater.

12. Disallow a punitive damages claim unless there is a threshold showing of a *substantial probability* that the party will prevail on the claim. The substantial probability threshold is a "fact-based", case by case judicial inquiry (no percentage applies).

13. Preclude an award of punitive damage against a manufacturer in a product defect case where the manufacturer has complied with government standards in making a product.

C. Encourage Alternative Dispute Resolution (ADR):

14. Mandate mediation as a condition to filing a lawsuit. During the mediation process the statute of limitations should be tolled or stopped so as not to prejudice the parties' right to receive a trial.

15. Raise the cap for mediation from its current level of \$50,000 to \$100,000.

16. Educate the public, courts, and lawyers on the advantages of the numerous available alternatives to resolving disputes through litigation.

D. Product Liability Reform:

17. If a plaintiff contends that injury was caused by a defective design, the plaintiff should bear the burden of proving that an alternative design exists which would have prevented or reduced the injury without rendering the product undesirable. Current California law requires the defendant to bear the burden of showing no alternative design exists.

V. REGULATORY REFORM

BACKGROUND

Historically, California's system of environmental permitting often entailed bureaucratic delays, unnecessary costs, duplicative and contradictory rules without necessarily ensuring adequate environmental protection. Decades of efforts to protect California's delicate ecology have resulted in a regulatory quagmire for business. California must strike the critical balance between continuing efforts to maintain a clean and healthy environment and efforts to boost its sluggish economy by stimulating the job base and encouraging investment.

California's environmental regulation imposes a significant cost of compliance--a cost which many other states choose not to impose or to impose to a lesser degree. However, there is also a cost of non-compliance, or environmental neglect, which is paid through a reduction in our quality of life and a diminished attractiveness.

Our last report recommended that reforms are needed to streamline the permit process itself. A restructuring and reduction of the bureaucratic layers as well as a shortening of the process were viewed as imperative reforms designed to yield substantial cost savings while maintaining environmental standards. Business leaders agreed that a "one-stop" permitting process would be a major step toward imposing order on a chaotic system.

1993-1994 LEGISLATIVE ACTIVITY

Reform of California's regulatory process took center stage during the 1993 legislative session. However, much remains to be done to address this major impediment to business growth and expansion.

The Commission's May 1993 report urged the support of SB 1185 (Bergeson).³⁷ This important bill became law and a number of critical reforms necessary to assist in California's economic revival are being implemented. The law addresses the often-voiced concern by California's business community that too many agencies govern the permitting process. The new law allows one governmental agency to coordinate the permitting process when more than one agency is required to issue an environmental permit. SB 1185 provides this process through a consolidated agency that would issue one consolidated permit, incorporating all the requirements of the relevant environmental agencies. The law applies to both State and local environmental permits. In addition, the law set specified time limits for decisions on both consolidated and individual environmental permits. In the event that time limits are exceeded without good cause by agencies, applicants may petition the agency Secretary to set a decision date and in some cases also direct the refund of any application fees. This law is an important step in reforming the chaotic and harried permitting process.

The 1994 legislative session produced some legislation geared to improving the business climate as well. Notably, SB 1336 (Leonard) requires that air districts develop a program for allowing businesses to meet ride-share requirements by whatever means they deem economically feasible, provided it reduces a commensurate amount of vehicle emissions.³⁸ Also, SB 1403 (Lewis) prevents the South Coast Air Quality Management District from

³⁷ SB 1185 (Bergeson)—Ch. 419, 1993.

³⁸ SB 1336 (Leonard)—Ch. 538, Statutes of 1994.

indirectly requiring small employers to comply with Regulation XV Trip Reduction requirements. It forces the air district to carry out the intent of previously enacted measures that exempt small employers from those requirements.³⁹ While some positive reforms were enacted last term, commentators and legislators agree that much more needs to be done.

THE CURRENT SITUATION

The Democratic ADEPT Team, the Governor's Bipartisan Council on Competitiveness, the Senate Republican Caucus and The California Chamber of Commerce agree that continued regulatory reform will go a long way in building a friendlier business climate in Los Angeles County and California.

California's permitting process remains one of the biggest roadblocks to orderly business development. While the 1993-1994 legislative session gave serious attention to regulatory reform as a major business climate issue, the reforms were considered a first step with respect to the California business environment. While SB 1185 will likely make significant strides in consolidating the permitting process, there remains a bipartisan consensus that other regulatory reforms are needed. Our review indicates that reform must continue in the following areas if California and Los Angeles County are to make significant strides in improving our business climate.

A. CEQA Reform: The California Environmental Quality Act (CEQA) is the centerpiece of the permitting process. The Legislature enacted CEQA in 1970 for the primary purpose of forcing public agencies to document and consider the environmental implications of new development projects. CEQA is cumbersome, costly and often abused. Groups use lawsuits to stall or kill projects, including those involving land use, hazardous materials and air emission requirements. Under this process, permitting delays of five or more years are not uncommon. For example, a company was building three identical plants to produce oxygenate in Pennsylvania, Mississippi, and California. The oxygenate was used to meet a federal mandate for oxygenated gasoline. The Pennsylvania and Mississippi projects received all the necessary permits to proceed with the project. However, the California project was held up by three citizen's groups that appealed the city's ruling that an environmental impact report is not required. This appeal resulted in delay of the project and significant extra costs to the company which had to import oxygenate from other states in order to meet federal requirements.⁴⁰

Continued CEQA reform will ensure that California's businesses and environment are not working at cross purposes, but are effectively coordinated to insure the maximum benefits in both areas.

³⁹ SB 1403 (Lewis)—Ch. 335, Statutes of 1994.

⁴⁰ California Jobs & Future, Council on Competitiveness, April 1992, amended June 1994.

RECOMMENDATIONS

Your Board should support legislation seeking to accomplish the following:

A. CEQA Reform:

18. Clarify legislative policies to reflect that CEQA is a part of the state's system of planning and environmental protection, and that environmental protection must be balanced with the need for economic development, jobs and housing.

19. Allow projects that comply with an environmental impact report (EIR) to receive a focused environmental review. This review would include only those issues not addressed by the Master EIR, i.e., information not known at Plan adoption, issues not addressed in the Master EIR, subsequent changes in projects, etc.

VI. DAILY OVERTIME REQUIREMENTS

BACKGROUND

The Industrial Welfare Commission (IWC) is authorized to adopt wage orders and regulations governing minimum wage, maximum hours of work and standard conditions of labor for employees.⁴¹ While the IWC was originally created to curb the exploitation of women and children workers, male workers are now within its purview.

The IWC promulgated 15 wage orders applicable to private industry. The relevant provision of the state imposed order provides, in essence, that overtime must be paid at a rate of "time and a half" after eight hours and "double time" after a twelve hour day to "hourly paid" private sector employees.⁴² California remains one of only four states with such a requirement while 46 other states do not require daily overtime after eight hours.

Federal law, under federal Fair Standards Labor Act (FSLA), provides that all workers, public and private, shall be paid overtime for work beyond a 40 hour work week. FSLA applies to private and public employees. Thus, California's public employees are covered by the FSLA which, unlike California law,

⁴¹ The Commission has five members: two employer related seats, two labor related seats, and one public seat.

⁴² One exception includes "on-site construction workers" who may work beyond the eight hours without an overtime requirement.

does not mandate that daily overtime be paid for "hourly" paid employees who work in excess of eight hours within a 24-hour period.

Following the closure of several main highways after the Northridge earthquake in January, Governor Wilson issued an emergency Executive Order suspending the daily overtime requirement in the counties impacted by the earthquake. Residents of the region were strongly encouraged to reduce traveling, use mass transit, carpool or use flexible work schedules in order to reduce traffic congestion during highway repair. By suspending the daily overtime laws, employers and employees instituted flexible schedules to reduce commuting traffic, i.e. allow an employee to work 10 hours a day for four days, rather than eight hours a day for five days. The daily overtime requirement would have forced the employer to pay overtime on each day worked over eight hours.⁴³

Commentators found that the suspension of the daily overtime requirement expedited the re-building process following the earthquake. The option of instituting flexible weekly work schedules on a permanent basis while maintaining federal overtime requirements for the traditional 40 hour work week received renewed attention.

1993-1994 LEGISLATIVE SESSION

The daily overtime requirement law may be changed in two ways: 1) by a majority vote of The Industrial Welfare Commission, or 2) statutory enactment by the legislature. To date, the five members Commission has not come to agreement on this issue. However, noting the public support for the permanent repeal of daily overtime requirement, the Governor asked the Legislature to enact these changes by amending the Labor Code. Specifically, the reform sought to conform California law with the federal law mandates requiring overtime be paid after 40 hours worked in a given week.

In 1994, Senator Tom Campbell authored legislation (SB 2084) designed to repeal daily overtime requirements, but it was never presented for a hearing and no formal analysis was ever done.

Consensus to repeal the overtime requirement law remains high. Therefore, Senator Campbell or another pro-repeal legislator will likely offer a new bill aimed at eliminating the daily overtime requirements during the current legislative session.

THE CURRENT SITUATION

Employers and employees as well as organizations such as the California Manufacturers Association, the California Chamber of Commerce and the American Electronics Association have continued to voice their support for this reform in the aftermath of the

⁴³ The federal law requiring that overtime be paid for work over 40 hours was not affected the Governor's Executive Order.

Northridge earthquake. Thus, these organizations will likely seek a sponsor to offer a bill to support permanent repeal of the daily overtime requirement.⁴⁴

RECOMMENDATION

Your Board should support legislation seeking to accomplish the following:

A. Repeal Daily Overtime Requirements:

20. Repeal of existing California regulations mandating daily overtime requirements. (Conform California law with Federal law).

VII. ADDITIONAL RECOMMENDATIONS:

The Economy and Efficiency Commission strongly urges the Board of Supervisors to advocate legislative reforms identified in this document which will help create a climate for business growth within Los Angeles County and throughout the State of California. Specifically, we recommend that your Board:

21. Aggressively support legislation that proposes to implement the recommendations addressed in this report in the areas of workers' compensation reform, civil litigation reform, regulatory reform, and daily overtime pay requirements. Bills will be proposed for the 1995-1996 session over the next few months.

22. Implement an action for supporting the above recommendations that includes the following:

a. The Board should invite the entire Los Angeles County legislative delegation to attend and participate in a meeting to discuss these recommendations and develop a coordinated legislative package for the 1995-96 legislative session.

b. Each Supervisor should personally contact members of the Los Angeles County legislative delegation to reinforce their support for this set of recommendations.

⁴⁴ Current fiscal impact analysis is being conducted by the American Electronics Association. Publication of their findings will be available when it is completed.

c. The Board, collectively, and the Supervisors individually, should urge other counties, cities and state organizations, such as CSAC, to join in this advocacy.

The 1995-1996 legislative session just began. This is the ideal time to be proactive in establishing an effective legislative platform from which a vibrant economic revitalization can be built.

VIII. CONCLUSION

Los Angeles County and the state of California cannot survive economically without fundamental changes in their business environments. Specifically, the long-term fiscal health of the County and the state depends on continually improving the efficiency and effectiveness of its laws and regulations. The legislative decisions made by the County, by cities and the state should be designed to create an atmosphere, which fosters economic growth and commerce. Business and investment growth increases revenues and creates new jobs producing greater revenues from individual income tax, sales taxes and property tax as employed persons earn greater incomes. With greater purchasing power these individuals buy more goods and services. Business and investment growth also results in increased revenues from corporate income taxes and improving property values. Economic growth increases tax revenues without increasing tax rates and provides the basis for real tax rate reduction.

The Citizens' Economy and Efficiency Commission stands ready to assist the County in developing a legislative agenda for the long-term health of our economy. Over the next several months the Commission will continue to monitor bills sponsored by California agencies, the Democratic leadership, and Republican caucus. We must support legislation and policies dedicated to the pursuit of a more robust California economy. Restoring California's vibrant economy begins here in Los Angeles County.

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		A. Support Actions/Legislation 20. Conduct an "impact" analysis of repealing daily overtime. 21. Support repeal if favorable.	SUPPORT SUPPORT
Additional Board Actions			
		22. Aggressively support legislation. 23. Implement an action strategy.	SUPPORT SUPPORT

*(Two year bill)